

1 A Correct. They had the mandated destruction --
2 discretion to [inaudible].

3 Q Latitude?

4 A Yes.

5 Q Well, no, I guess you're right. The principal would
6 have the latitude, but the school board has the ultimate
7 discretion?

8 A That is correct.

9 Q Okay. Thank you. Forgive me for correcting you
10 when you were wrong. Tell me about progressive discipline,
11 because I think you and plaintiff's counsel were flirting with
12 the concept during the other questions.

13 A Progressive discipline. The Clark County School
14 Board has the behavior guidelines that they mandate out to all
15 the schools. It's a little booklet that we send out to all
16 the kids. Their parents get it and it explains to them what
17 progressive discipline is, what happens at the first offense,
18 second and so forth, and it's progressive.

19 Usually the first offense of any type of altercation
20 or any kind of incidence, a required parent conference, and
21 that is to get the parents in, discuss the situation with the
22 parents and the child and try to come up with a plan so they
23 don't continue doing that. And depending on the situation, at
24 that time a suspension could be handed to the parent and to
25 the child to take them home.

1 Q Okay. Let me ask you a couple of questions about
2 that, because we have -- kind of have a form of progressive
3 discipline, though against lawyers in particular lawsuits when
4 the litigation's going on. Is the idea of progressive
5 discipline that you don't start too high, you start with
6 something lower like an RPC?

7 A Yes.

8 Q Okay. And you go up higher if the lower forms of
9 discipline don't work?

10 A Yes, it progresses. So from an RPC --

11 Q Go ahead. Go ahead. You could tell I was going to
12 ask you a question.

13 A You have the RPC, then they can come in and make a
14 determination what's next.

15 Q Right. But an RPC could be followed by an RPC; it's
16 not necessarily required that if somebody comes in for an RPC
17 the next thing has to be a suspension, does it?

18 A No.

19 Q All right. And you and plaintiff's counsel talked
20 about punishment and deterrence. And so deterrence is
21 behavior modification?

22 A You could look at it that way, yes.

23 Q Isn't that what discipline is?

24 A Yes.

25 Q So really the difference between punishment and

1 discipline is punishment is you're just punishing somebody,
2 where discipline is you're trying to modify their behavior?

3 A Well, in the end we hope it's modifying their
4 behavior and they don't continue making the same choices.

5 Q And that's really what you were trying to do,
6 isn't it?

7 A Yes.

8 Q All right. Let me take you through, because I was
9 really confused with all the questions about what happened
10 with your involvement in this case, when plaintiff's counsel
11 was asking you questions. And I know what the answers are, so
12 if I'm confused, everybody must be confused. Plaintiff's
13 counsel asked you what was the first time you were involved in
14 bullying, what's the first time you heard about stabbing. Let
15 me ask you broader questions that I think will get us better
16 answers.

17 What's the first time that you ever were aware of,
18 became involved with anything involving Ethan and Nolan? Do
19 you remember?

20 A I believe my first involvement was when I met with
21 the parents, Ms. Hairr came to my office.

22 Q Think about that.

23 A Prior to coming to my office she had met with
24 Ms. Winn.

25 Q Right. But you had met with, during an

1 administrative --

2 MR. SCOTT: Objection. Leading.

3 THE COURT: The objection's sustained.

4 BY MR. POLSENBERG:

5 Q Okay. Do you remember any prior conversations that
6 you had?

7 A About?

8 Q About Connor and Ethan and things that were called,
9 that were called then.

10 A Not during admin meetings.

11 MR. POLSENBERG: Your Honor, may I bring up
12 instances to refresh his recollection?

13 THE COURT: All right. Calm down. How? Is there
14 an exhibit? Is there something? Are there minutes of
15 meetings?

16 MR. POLSENBERG: No.

17 THE COURT: No, you can't lead him.

18 THE WITNESS: Can you ask the question again,
19 please.

20 BY MR. POLSENBERG:

21 Q Do you remember the first time --

22 THE COURT: It's already been asked.

23 THE WITNESS: I'm sorry.

24 BY MR. POLSENBERG:

25 Q -- that you ever heard of or were involved with

1 anything having to do with a -- with Connor and Ethan and any
2 form of discipline involving names that they were called?

3 A I was aware, I believe it was in possibly
4 December -- or no, October a situation was taking place in Mr.
5 Beasley's classroom.

6 Q And how did you become aware of that?

7 A I believe Mr. Beasley had spoken to Ms. Winn, and I
8 believe Ms. Winn, if I recall correctly, mentioned it to me
9 there was a situation we had with some boys who were in it.

10 Q And was that during an administrative meeting?

11 A I don't recall. That's a possibility, yes.

12 Q And what did Dean Winn tell you about the episode
13 with Mr. Beasley, or rather in Mr. Beasley's class?

14 A She told me she had spoken to Mr. Beasley about
15 these boys harassing these boys within the one section of the
16 trombone, and asked if he could possibly move the kids away
17 from each other so it'd stop the harassment and bullying.

18 Q Did she talk about what form of discipline that she
19 was imposing on Connor?

20 A No, she did not. I believe, my understanding that
21 it was probably do an RPC, then from there, I'm assuming and
22 I'm not aware, she might have did a suspension, but I did not
23 sign that and I wasn't aware of it.

24 Q So you don't know whether there was a suspension.
25 Did she and you discuss whether there was a RPC?

1 A Yes. There was an RPC.

2 Q And what time frame was the RPC with Connor?

3 A I would believe probably -- I'm taking a guess. I
4 think my recollection's probably in December. I could be
5 wrong.

6 Q And if that was your first incident, would that have
7 been in December?

8 A That would be my first knowledge.

9 Q Right. But the first time you heard about this
10 case, would that have been in December?

11 A No. That was the first time I heard about the
12 situation in Mr. Beasley's classroom.

13 Q Right. And do you recall what it was that Dean Winn
14 told you that Connor called the boys?

15 A He was calling them fat ass and duck bill Dave.

16 Q Okay. And how do you remember duck bill Dave?

17 A Ms. Winn had brought that up to our attention at an
18 admin meeting.

19 Q What is duck bill Dave?

20 A I have no idea, sir.

21 Q So she brought up duck bill Dave at a meeting?

22 A Yes.

23 Q So was it one of your regular administrative
24 meetings --

25 A Yes.

1 Q -- that she brought up the incident that happened in
2 Mr. Beasley's beginner band class?

3 A Yes.

4 Q And she talked about the things that Connor had
5 called the boys?

6 A Yes. She brought that up. She mentioned fat ass,
7 duck bill Dave.

8 Q Okay. Try not to keep repeating that.

9 A Okay.

10 Q But did she mention any other names that were
11 called?

12 A Not that --

13 Q And did she mention the types of discipline that she
14 was imposing?

15 A No, she did not.

16 Q Even though you just said RPC?

17 A RPC, that's what she did, the required parent
18 conference, but I don't know if there was suspension after
19 that I wasn't aware of.

20 Q Okay. But RPC is a form of discipline?

21 A Yes, it is, sir.

22 Q What is the next involvement that you had with
23 anybody involving Ethan, Nolan or their mothers?

24 A I believe that Ms. Hairr was not happy with the
25 situation in class and took it to Ms. Winn, was not happy with

1 Ms. Winn, then came into my office and asked -- and spoke to
2 me about the situation.

3 Q Okay. Explain how Aimee Hairr would have gotten
4 from Cheryl Winn's office to your office. You said she came
5 into your office.

6 A Right. If they're not satisfied with what happened
7 in the dean's office, the next person they come to would be
8 me. And if they're not happy with what I have to say, they'd
9 go to Dr. McKay.

10 Q Okay. But how did Aimee Hairr and her son get from
11 Cheryl Winn to you?

12 A Ms. Winn brought them over to my office.

13 Q Okay. Brought them right over?

14 A Yes.

15 Q And she can bring people in to see you without an
16 appointment?

17 A That is correct.

18 Q And what was the substance of that discussion?

19 A About the situation in the bandroom. She was not
20 happy with how her boy was being treated and what --

21 Q And what did she want? Why did she come to you?
22 What relief did she seek from you?

23 A I was the dean's supervisor, so she came to me. She
24 wasn't satisfied, so she had asked me if what could we do.

25 Q Got that, Lenny.

1 A Okay.

2 Q And what was it, what relief was she trying to get
3 from you?

4 A We were trying to see if we could either one, make a
5 room change for a different class possibly to move the child
6 out. I believe he played an instrument. To move him to a
7 different area of the classroom, I believe that already took
8 place and [unintelligible] again, I'm assuming, because he
9 played specific instruments, they have to be together.

10 The other options, we had other electives were art,
11 or if those things weren't satisfactory to the parent, the
12 parent always has the right to move her child out of the
13 school and take him to another school if they choose to do so.

14 Q Okay. So if I'm understanding what you're saying is
15 that Aimee Hairr came in with her son, Nolan, and the two of
16 them came in and talked to you about the situation?

17 A I remember Mom. I believe, though I don't recall
18 Nolan was there. I can't recall. I know Mom was there
19 though, I believe that, with Ms. Winn.

20 Q And was the substance of the discussion what changes
21 can be made to get Nolan away from Connor?

22 A What can be done in the band class to stop the
23 situation with the child.

24 Q Okay. But did you also discuss the situation with
25 the children?

1 A No.

2 Q Did you discuss the things that were happening in
3 the band class? Was that what your conversation was, that she
4 came in to complain about the things that were happening?

5 A Yes.

6 Q And what things did she say were happening?

7 A That her child was being picked on, bullied,
8 harassed.

9 Q Did she say actually the things that were being
10 done?

11 A I'm trying to -- I don't recall. It had to be
12 pretty serious for her to leave Ms. Winn to come to my office,
13 so probably wasn't satisfied with what took place with Ms.
14 Winn and Mr. Beasley.

15 Q Okay. And so she was seeking something, some change
16 to be made from you?

17 A Yes.

18 Q And you -- to recap what you said, you already
19 explored moving Nolan within the room, but he'd already been
20 moved within the room?

21 A That was my understanding, yes.

22 Q And could he be moved further away in the room?

23 A That I'm not aware. That's a possibility. I'd have
24 to ask the band teacher if that would work out.

25 Q And did you make an assumption there whether he

1 could be moved?

2 A I made an assumption he already moved once and he
3 couldn't move him again because of the instrument he played.

4 Q So he has to sit with the other trombone players?

5 A Or wherever Mr. Beasley placed him, yes.

6 Q Okay. So what were the options that you gave Aimee
7 Hairr?

8 A We had an elective at that hour, we had art. There
9 was no other Beginning Band class, because Mr. Beasley only
10 taught it that hour. And there was other -- we had choir,
11 which wasn't interested, and we had orchestra, wasn't
12 interested.

13 Q Okay. So you're looking for another elective during
14 that same hour?

15 A Yes, I was.

16 Q And you explained what electives were available?

17 A Yes.

18 Q And how about moving the whole schedule around and
19 picking an elective at some other hour?

20 A That was a possibility, yes. That's an option too.

21 Q And did you explain that to Aimee Hairr?

22 A I believe I did, but I don't believe that was
23 viable.

24 Q And what was the other option that you explained?

25 A That if she wasn't satisfied with all these other

1 options she has the ability as a parent to remove her child
2 from our school to go to another school.

3 Q And was there any resolution of the issue in that
4 conversation that you had with Aimee Hairr?

5 A Not that I'm aware of. She wasn't happy, I believe,
6 and she left.

7 Q Okay. But she and you did not arrive at a
8 resolution of the situation?

9 A No, we did not.

10 Q And basically what you were talking about -- let me
11 ask you, was what you were talking about these potential
12 resolutions of where Nolan could physically be --

13 A Yes.

14 Q -- as opposed to what actions to take against
15 Connor?

16 A They were to move him away from Connor, yes, out of
17 the band class.

18 Q When was that conversation you had with Aimee Hairr
19 in your office?

20 A October maybe. I'm trying to -- I don't recall the
21 date.

22 Q Okay. Somewhere around there?

23 A Yes. It was before -- it was in 2011, yes.

24 Q Okay.

25 A At the later part.

1 Q And then you also were talking with plaintiff's
2 counsel about another incident where I think Mary Bryan had
3 called to complain about something that was happening with
4 Ethan in the lunchroom?

5 A Yes.

6 Q Is it called the lunchroom or a cafeteria?

7 A Either/or.

8 Q Okay. And what was it that Mary Bryan had called
9 you to complain about?

10 A She was concerned about other kids video-taping her
11 child while he was eating.

12 Q And do you understand that concern?

13 A Yes, I do. Kids these days tape things and put them
14 on the World Wide Web and who knows what they're going to do
15 with them, change faces. It's interesting the technology they
16 can do with phones.

17 Q Okay. Thank you. So whom did Mary Bryan call?

18 A She had spoken to Harriet, the dean's secretary.

19 Q The Dean Cheryl Winn's secretary?

20 A Yes.

21 Q Why didn't she talk to Dean Winn?

22 A From my understanding Ms. Winn was at lunchtime, was
23 already at the cafeteria doing her duties at that time.

24 Q Tell me about the cafeteria duties that you and
25 Ms. Winn and other staff and faculty had.

1 A Well, during the lunches you have the three
2 administrators there. You have a counselor that's with that
3 lunch depending on sixth, seventh or eighth graders, that
4 counselor would be there. You have two custodians that are
5 there, and you have two campus monitors also within the
6 cafeteria. Then when the kids start going outside the campus
7 monitors follow them outside to keep an eye on them.

8 Q Okay. And why are you watching the lunchroom?

9 A Make sure the kids behave and act appropriately.

10 Q And is that a common role that you had?

11 A Yes.

12 Q So how did the phone call come to you from Harriet?

13 A It didn't. I believe it came over the radio, if I'm
14 not mistaken.

15 Q Okay. What's that mean?

16 A We have radios that we carry around. That's how we
17 communicate on campus.

18 Q Right.

19 A So my understanding is that Harriet had called
20 Ms. Winn about the situation, and basically when I got in
21 there she pointed out the child, because I had never -- I
22 haven't met him before, because I --

23 Q Harriet pointed out the child, or Ms. Winn?

24 A No. Ms. Winn did.

25 Q Okay.

1 A Because I met Ms. Winn in the cafeteria, because she
2 was --

3 Q So who got the call? Did Dean Winn get the call on
4 the radio?

5 A I believe so. We all heard it though.

6 Q And you got it?

7 A We all heard it on the radio. Everybody hears the
8 radio.

9 Q Okay. And so tell me what happened then.

10 A At that time I walked in the cafeteria and I asked
11 Ms. Winn who the child was, and I kept walking around to see
12 if I could notice any kids doing anything with cellphones. I
13 didn't see any kids on any cellphones, walked to him, asked
14 him how he was doing. He said okay, I said thank you. And I
15 just kept walking around keeping a close proximity to see if
16 anybody would take out their phones in doing it.

17 Q Okay. So what was the situation in the cafeteria at
18 that point? What's it like in the cafeteria?

19 A It's very loud.

20 Q Very loud?

21 A You've got over 400 kids. We use a microphone to
22 talk. Sometimes we blow a whistle. It just -- they're kids.
23 They're being loud. They're burning up all the energy.

24 Q Okay. You went up to Ethan?

25 A Yes.

1 Q And what did you say to Ethan?

2 A Are you okay, and he said okay.

3 Q Well, how did you say it? Did you say it just like,
4 hey, how ya doin'?

5 A Yeah. How ya doin'. I put my hand on his shoulder.

6 Q So just like a greeting like I would say to these
7 guys in the jury box I've never met, hey, how are ya, or did
8 you actually go to him because you had gotten notice that his
9 mother had called and expressed an interest in knowing how he
10 was doing?

11 A His mother had called and was concerned about what
12 was happening in the cafeteria, and I asked him if he was
13 okay.

14 Q Right. And did you say it in a way that you were
15 concerned about how he actually was doing under the situation?

16 A Yes.

17 Q And how did he answer you? Did he answer you in a
18 way that you got an impression what he meant?

19 A Yes, that he was doing just fine.

20 Q And what were the circumstances at the time? Was he
21 at a table with other people?

22 A Oh, he was. Yes, he was at a table with a bunch of
23 kids.

24 Q And could the other kids hear what the two of you
25 were talking about?

1 A Maybe the two kids next to him heard me say how ya
2 doin', but everybody else couldn't it was so loud.

3 Q So all right. And was that an opportunity if Ethan
4 had wanted to talk to you further he could have said
5 something?

6 A If he chose to do so, yes. Or he could have -- I
7 went outside after and he could have walked up to me outside
8 in the courtyard and spoke to me privately if he chose to do
9 so.

10 Q What was your impression how Ethan was doing right
11 then?

12 A He was doing just fine. He was sitting with a group
13 of kids. I'm assuming he knew them all because they were
14 talking, eating lunch.

15 Q So when you asked him how everything -- or let me --
16 what did you actually ask him, the words you asked him?

17 A How are you doing.

18 Q Okay. Now, the next time that you had anything to
19 do with Ethan and Nolan, was that when you received the
20 emails?

21 A Yes.

22 Q So you hadn't received the September 15 email or the
23 October 19 email before February 7?

24 A Yes.

25 Q Now, counsel had asked you, he said about -- he

1 asked you about your depo on page 100. Let me direct you to
2 that again. I'm going to read it to you again, and I'm going
3 to ask you why you answered that question that way.

4 "Starting with the email September 15, 2011, from
5 Mary Bryan to Mr. Beasley and others, when did you first
6 become aware of this email, that this email was sent to Mr.
7 Beasley in September of 2011?" You say, "It was forwarded to
8 me by Dr. McKay or Ms. Winn. More likely Dr. McKay probably
9 sent this to me." And they ask you, Back in September of
10 2011? And you say, Yes.

11 A The email from September 15 was given to Mr.
12 Beasley. I interpreted that did Mr. Beasley give it to
13 anybody on September 11. I'm assuming --

14 Q So you were listening to both questions at the same
15 time when they said Mr. Beasley on September 11?

16 A Yeah, the September 15 email that was from Mr. Bryan
17 to Mr. Beasley, I assumed that was something he'd given to
18 Mr. McKay.

19 Q So you thought they were talking about what the
20 email was rather than when you received it?

21 A That is correct.

22 Q You got it probably, you say in here, from Dr.
23 McKay. When did Dr. McKay get it? Do you know?

24 A I'm looking to see who the To address is. On the To
25 list his name is not listed correctly, so it's a possibility

1 Mr. Beasley or possibly Mr. Halpin, who's named here, could
2 have given it to him.

3 Q So you weren't here when I covered this in opening
4 statement, the email going to Warren McKay email address, and
5 this is the September 15 email, that didn't actually go to
6 him?

7 A No, it did not.

8 Q Because his name's not typed in correctly?

9 A Yes.

10 Q And of course Mary Bryan wouldn't know that, but you
11 know that, right?

12 A Yes.

13 Q Do you know off the top of your head what his email
14 address actually is?

15 A There is a P in there.

16 Q Warren P. McKay?

17 A Mm-hmm.

18 Q So do you know when Dr. McKay actually got the
19 September 15 email?

20 A From my understanding, we all received it in
21 February.

22 Q But you know he didn't get it back in September
23 2011?

24 A Not that I'm aware of, no.

25 Q All right.

1 A Mr. Beasley did, I believe, yes.

2 Q Got that. All right. So when you received all
3 these emails, the -- sorry. My notes are wrong. When you
4 received the September 15 email, the October 19 email and the
5 February 7 email, did you receive them all on February 7?

6 A Yes.

7 Q What did you do then?

8 A Printed them and went and talked to Dr. McKay.

9 Q Okay. Went right to talk to him?

10 A Mm-hmm.

11 Q Okay. And what was the substance of that
12 conversation? Were you with other people?

13 A I believe Ms. Winn was in the room also.

14 Q So it was the three of you?

15 A Yes.

16 Q And what was the substance of that conversation?

17 A We read over the letters and went from there. Then
18 I believe we asked him what do we do now, and he said, just
19 hold tight until he finds out from his bosses what to do.

20 Q And how long did it take to hold tight?

21 A We got them on the 7th. I think I was called to his
22 office a few couple days later to do investigation.

23 Q And what did he tell you about doing the
24 investigation?

25 A He told me to get statements from the students in

1 the classroom.

2 Q And when you were talking with plaintiff's counsel,
3 there was a conversation about whether Dr. McKay said to you
4 take care of it. Was that in this meeting, or was that at an
5 administrative meeting back in October?

6 A Previous. Probably the administrative meeting back
7 in October.

8 Q And so here you had specific instructions to get
9 statements from the teachers -- sorry, from the students?

10 A Yes.

11 Q And you did that?

12 A Yes, I did.

13 Q And you testified that you got -- tell me how you
14 got the statements from the students. How many did you get
15 statements from?

16 A Probably about 20 kids in the classroom. I walked
17 into the classroom. The two boys had already withdrawn by
18 that time, and the two other boys had been moved into an art
19 class by then. I walked in, asked Mr. Beasley where that
20 section was. I asked him for a seating chart.

21 He pointed out this is where the trombones were.
22 Then I took the kids from that area and went out and asked
23 kids questions from that point out, that had been where they
24 would have been sitting, to see if they heard or seen anything
25 that took place in the classroom.

1 Q Okay. And so you did -- you did some trombone
2 players?

3 A I'm not too sure what instrument they played. I
4 just interviewed about 20 kids.

5 Q Okay. You took the section they were sitting in and
6 then some other students around that section?

7 A Yes, that is correct.

8 Q And how did you pick those?

9 A I had a seating chart. Trombones were here, so I
10 just started going outward and asking kids questions, their
11 statements.

12 Q And what time frame is this?

13 A This was after February 7, when I was told to do it.

14 Q And more than a couple days? More than one day
15 after February 7?

16 A It probably was. I probably started up -- I'm
17 assuming we got it on the 7th. I'm assuming probably a couple
18 days later Dr. McKay asked me to do something because he had
19 heard from his superiors what he needed to do, and so he
20 directed me to get statements.

21 Q When did Ethan and Nolan leave Greenspun Junior
22 High?

23 A I believe they withdrew in February of 2012.

24 Q I'm sorry?

25 A February of 2012.

1 "Q What did she say, I'm sorry?

2 "A She just said, How are things going
3 like.

4 "Q Just generally how are things going?

5 "A Yeah. And I said they were fine.

6 She said, Is the problem in band class being
7 resolved, and I said, Yes, I think so."

8 Does that refresh your recollection that when
9 Ms. Winn called you up to her office to discuss your situation
10 that you told her everything was fine and that the issue in
11 the band class was being resolved?

12 A Yes, I think so.

13 Q And similarly, when you were approached in the
14 lunchroom by Counselor Halpin or Assistant Principal DePiazza
15 and they asked how you were doing, you told that individual
16 everything was okay, everything was fine as well, right?

17 A I don't remember.

18 Q Would you please turn to page 142, of your
19 deposition.

20 A [Complies.]

21 Q Starting at line 23, are you there, Ethan?

22 A Yes.

23 Q "Question. Were there occasions when you were
24 approached in the lunchroom by the assistant principal or the
25 dean or the counselor or someone who was in the lunchroom on

1 any particular day, were there times when you'd be approached
2 and asked if everything was okay with you?

3 "A Yes."

4 And then there's some questions about the
5 videotaping and so forth, and -- sorry. Just a moment. Going
6 to the bottom of that page 143, line 25.

7 "Q So a gentleman who was either the
8 assistant principal or the counselor came up to
9 you and asked you how you were doing?

10 "A Yes.

11 "Q Is that kind of the words that they
12 used --

13 "A Yes.

14 "Q -- that person used?

15 "What did you tell them?

16 "A I told them that everything was
17 fine."

18 Does that refresh your recollection that when
19 Mr. Halpin or Mr. DePiazza approached you in the lunchroom and
20 asked how you were doing that you told them that everything
21 was fine?

22 A Yes.

23 Q And as it relates to Dante, you never told any
24 teacher, any faculty or staff member or administrator
25 regarding the conduct that Dante directed towards you,

1 correct?

2 A I don't think so.

3 Q You don't think that you ever did tell any of those
4 people, correct?

5 A Yes.

6 Q And to be clear, you never complained to any
7 Greenspun personnel about being called names, correct?

8 A I don't think I did.

9 Q And after the seating change that occurred following
10 the trombone scratching incident, so you remember yesterday we
11 were talking about, and I think you ultimately remembered that
12 there was a move that where you moved to right next to Connor,
13 and then there was a move where you moved further away from
14 Connor.

15 I asked you would you agree that you were moved
16 about as far away from Connor in the trombone section as you
17 could be and you said yes, it's that move that I'm talking
18 about. Okay. After the seat -- that seating change occurred,
19 you never made any complaint of any sort to any Greenspun
20 personnel, correct?

21 A I don't think so.

22 Q You don't think that you did make any complaints to
23 any person at any time thereafter; is that right?

24 A Yes.

25 Q You're agreeing with me.

1 MR. WAITE: Your Honor, that's all I have.

2 THE COURT: Redirect.

3 MR. SCOTT: Thank you.

4 REDIRECT EXAMINATION

5 BY MR. SCOTT:

6 Q Ethan, just a couple of questions, maybe one.

7 You've testified yesterday and a little bit this morning about
8 being suicidal in your life. Can you tell us when was the
9 first time in your life that you were suicidal?

10 A In the sixth grade.

11 MR. SCOTT: That's all I have. Thank you.

12 THE COURT: Any recross?

13 MR. WAITE: No, thank you.

14 THE COURT: And Mr. Scott, may we excuse the
15 witness?

16 MR. SCOTT: Yes.

17 THE COURT: Sir, you may step down.

18 MR. POLSENBERG: Your Honor, the parties agreed to
19 take a witness out of order, and the plaintiffs are going to
20 call Leonard DePiazza now. But before you get him, Marshal, I
21 want to make an objection.

22 I didn't object to the breadth of the questioning of
23 the two students, because I understand that's part of the res
24 gestae. But I think it's important to object and to realize,
25 as I've said repeatedly, this is not a bullying case. This is

1 a sex discrimination case.

2 THE COURT: Or deliberate indifference is what the
3 plaintiff said in their opening. You see it just a little
4 differently.

5 MR. POLSENBERG: Right. But they have -- both of
6 their remaining claims are based on sex, not on general
7 harassment.

8 And so I'm going to object to anything that's
9 general harassment as opposed to sex in whatever broad
10 category we're talking about, whether it's sexual orientation,
11 whether it's perceived sexual stereotype, whether it's even
12 perceived sexual orientation, because what happened in those
13 circumstances and more importantly here, when we're talking
14 about the district's personnel, what the district did about
15 general issues is irrelevant to their claims.

16 THE COURT: Thank you. And a response, please.

17 MR. SCOTT: Just one minor observation. I think the
18 Court is very familiar with the claims here, but just to
19 remind opposing counsel that our substantive due process claim
20 is not an equal protection claim.

21 The 14th Amendment has an equal protection prong and
22 a substantive due process prong. The equal protection prong
23 relates to discrimination. The substantive due process clause
24 does not relate to discrimination. It's deliberate
25 indifference in the absence of discrimination. Thank you.

1 THE COURT: Thank you.

2 MR. POLSENBERG: And Your Honor, that's --

3 THE COURT: And your response, please.

4 MR. POLSENBERG: We've repeatedly briefed this and
5 they've never raised that issue before. In fact, what they
6 have said is that they've got -- originally they said they had
7 a perceived sexual orientation claim, and then they came in
8 and said that they had a gender stereotyping claim, and we had
9 argued that that claim didn't exist. We had argued that they
10 didn't do discovery on that.

11 Now, if they're going -- and this is the reason I am
12 objecting to any of these issues coming in, because I don't
13 want to be deemed to have waived any notion that they can
14 amend to conform to the proof.

15 (Attorneys confer.)

16 MR. POLSENBERG: Paragraph 192, of their complaint,
17 which is their complaint for substantive due process under
18 Section 1983, they say, Pursuant to 42 U.S.C. Section 1983, a
19 student may raise constitutional claims against a school
20 district, its governing board and superintendent for an
21 inadequate response to peer-on-peer sexual harassment. And
22 they cite the Fitzgerald case from the United States Supreme
23 Court.

24 It's a sexual harassment case. It's a sexual
25 discrimination case under Title IX. They can't go beyond

1 that. And I object to anything that goes beyond that because
2 I don't want to be deemed to have waived that they can amend
3 their complaint, under Rule 15(b), to conform to the evidence,
4 because I don't think the evidence should come in.

5 THE COURT: The objection's overruled. I am not
6 going to limit the scope. There are two remaining causes of
7 action. I find that the second cause of action remaining is
8 not related just to sexual or perceived orientation or
9 perceived sexual harassment. So I am going to allow the
10 plaintiff to examine this witness.

11 And certainly, Mr. Polsenberg, if you have any
12 objections, raise them to the individual questions if you need
13 to make a further record.

14 MR. POLSENBERG: Very good. May I have a moment,
15 Your Honor?

16 THE COURT: You may. Did the parties want an early
17 recess to prepare for the witness?

18 MR. SCOTT: I'm ready.

19 (Attorneys confer.)

20 MR. POLSENBERG: Your Honor, if you are letting them
21 go beyond the briefing and the pleadings, I have to move for a
22 mistrial. Because you can tell from my opening statement our
23 defense is based on the two claims that they have stated.

24 THE COURT: I understand. I don't intend to grant a
25 mistrial this early. We've only concluded with two witnesses.

1 MR. POLSENBERG: Well, no. The mistrial is that
2 they're allowed to bring in claims that throughout the
3 pretrial phase and the briefing we have articulated what their
4 narrow claims are and they've come in and never disputed that.
5 And as you can tell from my opening statement, my defense is
6 based on they have to prove sexual discrimination under Title
7 IX or sexual harassment under 1983. And if you're letting
8 them go beyond that, I -- that's not what our defense is
9 prepared to do.

10 THE COURT: And the response, please.

11 MR. SCOTT: Your Honor, I'm almost speechless, but I
12 think simply -- I think it was quite clear through the motions
13 to dismiss and motion for summary judgment in this case that
14 the substantive due process claim, unlike the Title IX claim,
15 was not dependent upon sexual discrimination in any way.

16 And in fact, we briefed the substantive due process
17 deliberate indifference claim based on law that -- and
18 authority that does not relate to discrimination, because it's
19 under the substantive due process clause. We don't have an
20 equal protection claim.

21 Now, that counsel doesn't understand the difference
22 between the two, I'm at a loss for why he doesn't understand
23 the difference between the two, because under substantive due
24 process, an element of the claim does not include
25 discrimination.

1 THE COURT: Thank you. And your reply, please,
2 since it was your motion.

3 MR. POLSENBERG: Your Honor, this was completely
4 briefed. Mr. Scott wasn't there when we did these. We
5 argued. We even said, look, they shouldn't be allowed to
6 bring in this new idea of perceived -- or gender stereotyping,
7 that the Court said no, it wasn't going to preclude them from
8 basing their claim on that.

9 You gave us the option of extending discovery if we
10 wanted to go into discovery on gender stereotyping as opposed
11 to perceived sexual orientation. This is what the claim has
12 completely always been about. Yes, we do argue it's a
13 deliberate indifference case under sexual discrimination and
14 sexual harassment. That has always been what we have argued
15 this case was about. They have not disputed that. And now
16 they're changing what the case is about.

17 THE COURT: And I just thought my previous orders on
18 the issue were clear. Your request for a mistrial is denied.
19 Certainly as the questioning comes in, you have every right to
20 object. And rather than speaking objections, if we need to do
21 things at the bench or -- we can do that as well.

22 MR. POLSENBERG: Well, I'd have to object to most of
23 their questions. So what I'm just asking is now I object to
24 them going into those areas.

25 THE COURT: That's so noted.

1 MR. POLSENBERG: If you're overruling my objection
2 and just giving me a continuing objection, I don't have to
3 keep raising it.

4 THE COURT: So your continuing objection is noted
5 for the record.

6 MR. POLSENBERG: Thank you, Your Honor.

7 THE COURT: Mr. Scott, are you ready to proceed?

8 MR. SCOTT: Yes, Your Honor. The plaintiff would
9 call Leonard DePiazza. Your Honor, for the record, we're
10 calling him as an adverse witness under, I believe it's the
11 rule -- I'm used to saying evidence code.

12 MR. POLSENBERG: That's fine. I know what he's
13 going to say. I agree.

14 MR. SCOTT: Rule 50.115.

15 THE COURT: Very good. Permission is granted to
16 lead as an adverse witness.

17 LEONARD DEPIAZZA, PLAINTIFF'S WITNESS, SWORN

18 THE CLERK: State and spell your name for the
19 record.

20 THE WITNESS: My name is Leonard Anthony DePiazza.
21 L-e-o-n-a-r-d, A-n-t-h-o-n-y, D-e, capital P, i-a-z-z-a.

22 THE COURT: Thank you. Go ahead, please.

23 MR. SCOTT: Thank you.

24 DIRECT EXAMINATION

25

1 BY MR. SCOTT:

2 Q Mr. DePiazza, I think we met once before; is that
3 correct?

4 A Yes, sir. We have.

5 Q Nice to see you again.

6 A You too, sir.

7 Q Where are you currently employed?

8 A I'm employed at Cortney Junior High School, with the
9 Clark County School District.

10 Q At some time in your career did you work at the
11 Greenspun Junior High School?

12 A Yes, I did.

13 Q And when was that?

14 A I worked there from 12/08 to 2012.

15 Q Now, how old are you, sir?

16 A I'm 56 years old.

17 Q And how long have you been in education?

18 A Twenty-four years. This is my 24th year.

19 Q And when -- what year was it when you started in
20 education?

21 A 1993 to '98. Five years I was a teacher.

22 Q And prior to that time, can you briefly summarize
23 for us your work experience?

24 A Prior to getting an education I worked at the state
25 mental hospital and at Charter Mental Hospital, since my

1 degree's in psychology from UNLV.

2 Q And because you have a degree in psychology, do you
3 believe that helped you in your field in education?

4 A Yes, I do.

5 Q And what ways do you believe your psychology degree
6 assisted you in the educational field?

7 A With my experience working with mentally ill and
8 folks that were disturbed, I believe it prepared me to face
9 any situation I may face within educational system.

10 Q Including emotionally traumatized children?

11 A I worked on the adult unit.

12 Q Okay. Well, then how did that help you in
13 education, if you're working with junior high school kids?
14 How did working with mentally ill people on an adult locked
15 unit help you with junior high school students?

16 A It was the mental health facility. The
17 understanding of the person's ability and what they've learned
18 and how they act and react, that assisted me in my endeavors
19 as an educator.

20 Q And did you expect junior high school students to
21 act like adults?

22 A I expect them to act like junior high students.

23 Q Okay. In your mind, is a junior high school student
24 different than an adult?

25 A Yes, they are.

1 Q In your mind in what way?

2 A The junior high students are 10, 11 and 12 years
3 old. That's that fork in the road where they're learning to
4 become young adults. It's about hormones and so forth at that
5 age.

6 Q Any other differences?

7 A Size-wise, an adult to a 10, 11, 12 year, they're
8 much different in size, the stature, in their education and in
9 their ability and mentality, yes.

10 Q Mentality. What do you mean by --

11 A They're old --

12 Q What do you mean by --

13 A They're older. They're more mature. As an adult
14 they've already gone through school, at least high school, I
15 would assume. I'm working with junior high kids who still are
16 getting through junior high to go to high school.

17 Q And was it your experience working with junior high
18 school students that some of them were insecure?

19 A Yes.

20 Q Some of them would be bullied on occasion?

21 A Sometimes we'd have kids picked on, yes.

22 Q And sometimes kids who are picked on are reluctant
23 to complain about it; is that right?

24 A If they had a concern, they brought it to an adult
25 on our campus.

1 Q How do you know?

2 A That was what the policies were and that's what we
3 explain to the kids, that if there is an issue on campus, to
4 bring it to an adult on campus, either an administrator or
5 teacher, custodian, just an adult on the campus.

6 Q Is your testimony that every child on your campus
7 who is in sixth grade and was bullied brought it to the
8 attention of a teacher?

9 A I wouldn't be aware if they did or didn't.

10 Q Thank you. So you don't know how many students were
11 bullied and for a variety of reasons didn't report it to a
12 teacher or someone who worked at the school, correct; you
13 wouldn't know?

14 A That's a possibility, yes.

15 Q It's a possibility or it's a likelihood?

16 A If they took it to an adult, I wasn't aware of it.

17 Q Exactly. And based on your training and experience
18 and education and in psychology, were you aware of reasons why
19 a sixth grade student might be reluctant to report being
20 bullied or harassed to a teacher or someone else at the
21 school?

22 MR. POLSENBERG: Your Honor, is he asking for expert
23 opinion?

24 THE COURT: He said it was based on experience is
25 the call of the question.

1 MR. POLSENBERG: And that's why I --

2 THE COURT: Right.

3 MR. POLSENBERG: I'm objecting to using this witness
4 as an expert.

5 THE COURT: I don't believe that it's expert
6 testimony. The objection's overruled.

7 MR. POLSENBERG: Very good. Thank you, Your Honor.

8 THE WITNESS: Can you repeat the question, please.
9 I'm sorry.

10 MR. SCOTT: All right. I don't have a reporter to
11 read back, so I'll try to remember as best I can.

12 MR. POLSENBERG: I apologize.

13 THE WITNESS: Thank you, Mr. Scott.

14 BY MR. SCOTT:

15 Q Based on your experience in both mental health,
16 psychology and working with sixth graders, was it your belief
17 that there were reasons a sixth grade student would be
18 reluctant to report that he was being bullied?

19 A That's a possibility.

20 Q And you knew of occasions where a student didn't
21 complain but a parent complained?

22 A Yes.

23 Q Oh. And did you understand why a student might be
24 afraid to complain to someone at the school, but might share
25 that information with a parent?

1 A I'm assuming they had to share it with their parent
2 because that's their mom and dad and that's who they trust is
3 their parents. Speaking with somebody on the campus, that's a
4 choice the child made. I can't speak for why they won't talk
5 to an adult.

6 Q Well, let me ask you this. You're familiar with,
7 both as an adult and as a child, what we've referred to as
8 retaliation?

9 A Yes.

10 Q And you knew even as a child growing up, if you were
11 a tattletale, that would be what you would be referred to
12 because that would be a form of retaliation for complaining or
13 tattling on another student, correct?

14 A They may be called a snitch, but I don't know about
15 retaliation, sir.

16 Q Well, so you're aware of students being called
17 snitches?

18 A Some were. But most of the kids that if there was a
19 bullying incident reported the bullying incident to an adult.

20 Q But you only know about the ones who reported it,
21 correct, unless you observed it?

22 A That is correct.

23 Q And you never observed bullying, did you?

24 A Yes, I have.

25 Q You have?

1 A Mm-hmm.

2 Q Okay. And in addition to observing it, you've had
3 it reported to you directly or indirectly, correct?

4 A Yes.

5 Q So do you assume that no bullying occurs outside of
6 what is reported to you or what you see?

7 A I only can address what's reported to me. I can't
8 control what happens that I'm not aware of.

9 Q And therefore do you assume that if bullying isn't
10 reported that it's not happening?

11 MR. POLSENBERG: Your Honor, I need to object to the
12 relevance of these kinds of questions. None of that's an
13 issue here.

14 THE COURT: And the response, please.

15 MR. SCOTT: I'm sorry.

16 THE COURT: The response, please.

17 MR. SCOTT: He's the vice principal, Your Honor, who
18 was supervising the dean in charge of handling complaints of
19 harassment and bullying.

20 MR. POLSENBERG: Well, I knew all that. But that
21 still doesn't mean that the questions about how much bullying
22 we're going to assume takes place outside of being reported,
23 it being reported is a necessary element to both of their
24 remaining claims, even if they're not based on sexual
25 harassment.

1 MR. SCOTT: That's true.

2 THE COURT: I find that the whole issue is relevant
3 based upon the claims and defenses of the parties. The
4 objection's overruled.

5 MR. POLSENBERG: Thank you, Your Honor.

6 BY MR. SCOTT:

7 Q Now, Mr. DePiazza, can you summarize for us your
8 history and education, the 24 years where it began?

9 A I started as a teacher at Brown Junior High School.
10 Then from Brown I went to a dean to Green Valley High School.
11 Then from Green Valley High School I was an assistant
12 principal three more years there. Then from Green Valley High
13 School I was moved to Bob Miller Middle School. And from Bob
14 Miller Middle School, I went to Thurman White from 8/12 to
15 12/12 of 12/08. Then from there I went to Cortney Junior
16 High -- then went to Greenspun, then from Greenspun to
17 Cortney.

18 Q And I think you said you were at Greenspun --

19 A From 12/08 to 2012.

20 Q Right. And prior to 2008, when you got to
21 Greenspun, had you received any training, either as a dean or
22 a vice principal, in relation to bullying at schools?

23 A Before you become an administrator you go through
24 leadership classes. Those are two separate classes one
25 semester, the second semester, where you get to train to

1 become an administrator in the Clark County School District.

2 Q So you received training in one year. What year did
3 you start getting your training?

4 A You got the -- you get the beginning training when
5 you become an administrator. If you get into the pool and get
6 chosen, you go to trainings.

7 Q What year was that?

8 A That would be before I became a dean.

9 Q What year approximately?

10 A Probably I went from '93 to '98, when I first
11 started becoming a dean. Then of course you go through a pool
12 and if you're chosen to become an administrator or a dean,
13 then they select a school where you go to, to become a dean.
14 And then throughout the year, beginning of each year you go to
15 meetings and they address certain situations or new laws or
16 regulations that the school board has passed down to the
17 schools for us to learn.

18 Q And how often since 1998 did you receive that
19 training?

20 A We go to meetings the beginning of every school
21 year.

22 Q So annually at the beginning of the school year?

23 A Yes.

24 Q And how long does that training last?

25 A It's usually in the morning time.

1 Q A couple hours?

2 A Usually from 8:00 to 12:00.

3 Q So every year you have three, four hours of
4 training?

5 A We go to a meeting that's brought on by ESD, and
6 they discuss what's going on with any laws or new regs that
7 might have taken place this year.

8 Q And in those training sessions, is it your
9 understanding that there are laws that relate to school
10 districts and school administrators that you have to be
11 aware of?

12 A Yes.

13 Q And is your understanding that as a dean or a vice
14 principal you're responsible for following those laws?

15 A Yes.

16 Q And at any of these training sessions were you told
17 there were any exceptions to the rule that under certain
18 circumstances you had discretion not to follow the law?

19 A We were mandated to follow the regulations that are
20 passed down by the Clark County School District.

21 Q What about Nevada state law?

22 A Those also are talked about at those meetings too,
23 because that comes from Carson City and the legislature.

24 Q And at those meetings are you told that as a vice
25 principal or a dean you have discretion to not follow the law?

1 A We were told the follow the law, what they explained
2 to us at those meetings.

3 Q My question is: Were you told that you had the
4 discretion under certain circumstances not to follow the law?

5 A No.

6 Q And did you understand that as vice principal at
7 Greenspun Junior High School, that you were responsible for
8 supervising the dean?

9 A That is correct.

10 Q And you understood the dean at the time, Cheryl
11 Winn, was the primary person responsible for investigating
12 allegations or complaints of bullying and harassment?

13 A Or anything else that dealt with that type of stuff,
14 yes, that was the dean's responsibility.

15 Q And misconduct by children that could result in
16 anything from forms of discipline including suspension and
17 expulsion, it could also include referral or contacting the
18 police if a crime was alleged?

19 A The dean had a discretion to make decisions based on
20 information she collected.

21 Q And you understood your job as the dean's supervisor
22 was to see that she followed the law?

23 A My job is to make sure she did her job on a daily
24 basis to take care of the students on our campus.

25 Q Did that include following the law?

1 A Yes.

2 Q Oh. And you understood back in September 2011 there
3 was a law in Nevada that applied to school administrators,
4 including vice principals and deans relating to investigating
5 certain types of complaints within ten days; is that right?

6 A Yes.

7 Q And you understood that it was -- under the law it
8 was the principal's primary responsibility to see that those
9 investigations occurred within ten days and that the principal
10 could delegate that authority to someone, correct?

11 A Yes.

12 Q And in September 2011, Principal Mackey or McKay,
13 which one is it?

14 A McKay.

15 Q McKay, he had delegated the -- his responsibility to
16 investigate complaints such as bullying or harassment to Dean
17 Winn, correct?

18 A She was the dean on the campus. She took care of
19 all the disciplinary issues.

20 Q And you understood that legal responsibility of the
21 principals was delegated to the dean; is that right?

22 A He would direct us to take care of whatever
23 responsibilities he felt was necessary for us to do.

24 Q And I'm talking about a particular legal
25 responsibility to investigate within ten days complaints of

1 bullying or harassment?

2 MR. POLSENBERG: Judge, I'm just going to object
3 because it calls for a legal conclusion.

4 THE COURT: The objection's overruled.

5 MR. POLSENBERG: Thank you, Your Honor.

6 THE COURT: You can answer. You can answer the
7 question.

8 THE WITNESS: Dr. McKay made the discretion who was
9 supposed to do the investigation and we did our investigation.
10 BY MR. SCOTT:

11 Q And did you understand that every time a complaint
12 of bullying or harassment was made, Dr. McKay would decide who
13 would investigate it?

14 A No. He left that discretion to the dean.

15 Q And did you understand that discretion to the dean
16 was who it investigated, or whether it would be investigated?

17 A It was the dean's responsibility to investigate.

18 Q Every complaint of bullying, harassment as defined
19 by the law?

20 A She was responsible for doing all the investigations
21 on our campus unless I was directed by the principal to do it.

22 Q And you were a dean before you were a vice
23 principal, correct?

24 A Yes, sir.

25 Q And as a dean, as a vice principal, did you have

1 training in relation to what would be the minimum expected of
2 a dean in investigating a complaint of bullying or harassment?

3 A The trainings I received were when I was becoming an
4 administrator. And doing an investigation, that's up to the
5 dean's responsibility to take care of that.

6 Q The question is, did you have an understanding, in
7 terms of the legal obligation to conduct an investigation,
8 what would be the minimum a dean would have to do to
9 investigate a complaint?

10 A I would hope she would speak to all the parties that
11 were involved.

12 Q So that was discretionary, whether the dean in doing
13 an investigation would talk to the parties involved?

14 A That's usually how when I was a dean, that's what I
15 would have done. I'd talk to all the parties involved.

16 Q Did you understand that was discretionary or
17 mandatory in terms of conducting a minimum investigation?

18 A When I did an investigation we talked to all the
19 parties involved.

20 Q And did you understand you had discretion not to?

21 A I talked to all the parties involved.

22 Q Did you understand that was a minimum obligation of
23 yours?

24 A That was part of my job.

25 Q The minimum in conducting an investigation, correct?

1 A To talk to all the parties involved, yes.

2 Q You use the term "parties involved." What does that
3 mean to you?

4 A If you had, let's use a fight as an example, Johnny
5 and Tom got into a fight, I'd speak to Tom and I'd speak to
6 Johnny, get statements from them, decide what happened and go
7 from there.

8 Q And why would you get statements from them?

9 A To find out what caused the reason to start fighting
10 in the first place.

11 Q And that would be the beginning of the
12 investigation?

13 A Yes, it would.

14 Q And then you'd try to find out if there were
15 witnesses?

16 A They would usually list those on their statement,
17 yes.

18 Q And you would -- would you do anything other than to
19 ask the two boys to try to identify witnesses?

20 A I'd speak to the two boys and they'd list them, and
21 then once I had all my information I would probably -- I'd
22 place the two boys on required parent conference.

23 Q Well, what if this fight happened in an area where
24 other students were present and you could identify the other
25 students present, would you --

1 A I'd have them write a statement for me, yes.

2 Q Other than writing a statement, would you talk to
3 them to see if they had information that they might not
4 volunteer in writing a statement?

5 A After they wrote a statement, then I would sit down
6 and talk to them about what they put on pieces of paper, on
7 that statement to see if it was correct or if they change
8 their mind while we're having a one-on-one conversation.

9 Q And why would you sit down with students who were
10 witnesses of bullying and talk to them after they wrote a
11 statement?

12 A To see if [unintelligible] piece of paper, if there
13 is a connection or was [unintelligible] wasn't the same as
14 they put on paper.

15 Q And they might have very relevant important
16 information they didn't write down, correct?

17 A That's possible, yes.

18 Q And that's occurred to you on a number of occasions
19 where you got a statement from a student and then you talked
20 to the student and found out the student had a lot of
21 important information that the student for whatever reason
22 didn't write down?

23 A Then I'd hand the statement back to put it onto the
24 statement.

25 Q And you expect sixth graders to know what is

1 necessarily important in investigating a complaint of
2 bullying?

3 A Once I have the written statement I verbally talk to
4 them and by talking with them, if they didn't put the
5 pertinent information on the piece of paper, on that
6 statement, I'd ask them to put it on the paper form.

7 Q All right. And in doing your investigation, does it
8 involve or ever involve anything other than getting written
9 statements from students or interviewing them and asking them
10 to add additional information to those statements?

11 A I interview the students and ask them the questions,
12 and if they have more to report we add it onto the statement.

13 Q And as part of an investigation of a particular
14 event, do you try to find out if an event of bullying for
15 example, if there's been a history of it, or are you just
16 looking at an isolated incident?

17 A I would actually find out if the children have been
18 doing that to other students before.

19 Q And how would you try to find that out?

20 A I would look to see if there's any other further
21 documentation that they've done this previously.

22 Q Okay. So you would see if there were documented
23 complaints or something documented about prior incidents of
24 bullying?

25 A Well, if there is an incident where this child was

1 bullying other students, they've probably made a statement
2 about it and I would check to see his file, if there was
3 something else in it, yes.

4 Q And what about the witnesses to the incident, the
5 isolated incident you're investigating, would you ask the
6 witnesses or the students involved if they were aware of a
7 history of bullying?

8 A I don't believe they would know unless they knew the
9 child and witnessed a child bullying other kids on campus.

10 Q Well, they wouldn't -- you wouldn't know unless you
11 asked them, right?

12 A That is true.

13 Q Okay. So you ask students who are either a victim
14 or a predator in bullying or a witness what they know about
15 the history of bullying?

16 A I ask them if this child's been bothering them
17 previously or is this the first incident of them being
18 bothered by this child. That would prove that the child's
19 continually bullying them [unintelligible].

20 Q So you'd want to know if a student or a witness was
21 aware of a history of bullying, correct?

22 A I would ask the witness did they know if they were
23 bullied by me for instance and they know that I've bullied
24 other kids and have they seen me bully other students.

25 Q Okay.

1 A That would be the documentation. That's how I would
2 know if they've done previous bullying or caused any problems.

3 Q And you know based on your 24 years in education
4 that there are children who have been accused of bullying and
5 oftentimes those children who are accused of bullying have a
6 history of it, correct?

7 A Yes.

8 Q Oh.

9 THE COURT: Counsel, I'm going to ask counsel to
10 approach.

11 (Bench conference transcribed as follows.)

12 THE COURT: There was an objection with regard to
13 the hypothetical questions. This is going beyond foundation.

14 MR. SCOTT: All right. Very well, Your Honor.

15 THE COURT: So if you want to cut it off. I'm going
16 to grant his objection now.

17 MR. SCOTT: Thank you.

18 MR. POLSENBERG: Thank you, Your Honor.

19 THE COURT: Thank you.

20 (End bench conference.)

21 BY MR. SCOTT:

22 Q Mr. DePiazza, back in the school year 2011-2012, if
23 a child was found to have committed misconduct by the dean,
24 what was the policy in place in relation to discipline?

25 A The policies in place are provided by the Clark

1 County School Board and passed down to the schools. So the
2 dean would hopefully address the situation, talk to the kids,
3 more than likely RPC the students and get the parents in to
4 get resolutions of the problem.

5 Q And as the vice principal who supervised the dean,
6 did you participate in that process, the disciplinary process
7 once the dean had made a determination for example that
8 bullying had occurred?

9 A No. We left -- that was the dean's responsibility.
10 If she had a concern, she either brought it to myself or
11 Dr. McKay.

12 Q But the dean had the final word?

13 A The dean, yes, she did.

14 Q And so the dean's decision to discipline or not
15 discipline did not have to be reviewed or approved by you or
16 the principal; is that right?

17 A It wasn't regulated by us. It was mandated by the
18 school board who passed down what they can and can't do as a
19 dean. [Unintelligible] departments are to RPC and suspend.

20 Q And so if the dean --

21 A That's mandated by the board.

22 Q -- made a recommendation for discipline that you or
23 the principal did not agree with, you couldn't impact her
24 recommendation; is that right?

25 A Yes, we could.

1 Q And how could you do that?

2 A It depends on the situation. If she wanted to give
3 a suspension say for one day and Dr. McKay and I felt that it
4 was more egregious than just the one day, to give him more,
5 just depending on the situation.

6 Q And if you thought the one day suspension was too
7 much, could you change it to be less?

8 A Yes, I could.

9 Q Oh. So if I understand you correctly, the dean
10 would make a recommendation for discipline that would have to
11 be reviewed and approved by you and the principal and before
12 it went -- became final?

13 A No. I never said that it had to be approved. I
14 said that Ms. Winn had discretion on choosing her discipline.
15 If she had questions on the type of discipline she was going
16 to hand to the child, she would confer with Dr. McKay or
17 myself.

18 Q But if she didn't have questions and made a
19 decision, then you couldn't change that decision; is that
20 right?

21 A If she made the decision she sent a child home for
22 instance, on an RPC and was suspended for one day, we could
23 always call back the parents and say we looked it over, you
24 can bring the child back tomorrow to school. That's a
25 possibility.

1 Q Okay. Forgive me. I'm -- maybe I'm using too much
2 of lawyer talk here. But I'm just trying to understand to
3 what extent you as the vice principal could change or modify a
4 decision made by the dean in terms of what discipline to give
5 or not give once a determination was made that bullying
6 occurred.

7 A If the dean made a determination that Dr. McKay and
8 I felt wasn't warranted, we'd meet and we'd discuss it and
9 we'd make the change.

10 Q Thank you. And so for example, if the dean
11 investigated a complaint of bullying, and believed that the
12 appropriate discipline would be at the lowest level of parent
13 conference and you reviewed it and you thought it could be or
14 should be a suspension, you could change it from a parent
15 conference to a suspension?

16 A Required parent conferences happen first. And then
17 from there, after meeting with the parents to discuss the
18 situation and trying to remedy the problem that's occurred,
19 then there could be a consequence as a suspension after
20 required parent conference. It's not suspension then RPC.
21 That would be like the cart before the horse.

22 Q So before any suspension can occur there has to be a
23 parent conference?

24 A Usually a required parent conference is the first
25 line that we do, get Mom and Dad in, the parents in and

1 discuss the situation and go from there.

2 Q My question is not usual. My question is, is that
3 in all cases?

4 A The majority of the cases that I was trained to do
5 an RPC first before you do a suspension.

6 Q But there can be exceptions to the rule?

7 A Not that I'm aware of.

8 Q Fair enough. So the dean can have a parent
9 conference and then make the decision to suspend the student?

10 A If the dean feels the situation was warranted to
11 meet with the parents and at that time when she was going to
12 place the child on suspension, she should just give the
13 suspension at that time to the parents and the child.

14 Q And if the dean --

15 A Instead of sending a child -- instead of sending
16 them home and having them come back to the school, you just
17 take care of it all at once.

18 Q And if the dean had the parent conference and did
19 not suspend the child, is there a way for you to review it and
20 decide that no, a suspension should occur?

21 A I wouldn't be privy to that information unless she
22 brings it to my attention.

23 Q Oh.

24 A She's the disciplinarian. She does all the -- she
25 does RPCs and the suspensions. Dr. McKay and I sign off on

1 those.

2 Q Oh. So you would be in a position to lessen the
3 punishment, but not to increase it if it was just -- for
4 example, you couldn't increase it from a parent conference,
5 but you could, if she made a recommendation for suspension,
6 you could change that and lower it?

7 A The first thing you do is require parent conference
8 and the parents come in. If you're satisfied at that moment,
9 then they can go home. If you feel it's warranted to give a
10 suspension, the suspension would be handled at that time.

11 Q And based on your experience and training, does the
12 decision to do a suspension relate to what happened at the
13 parent conference?

14 A No. Related to the situation what happened with the
15 children on the campus.

16 Q Oh.

17 A So if there was a fight, and that's the situation
18 for the suspension, the required parent conference is to get
19 the parents in to discuss why did they get into a fight.

20 Q So when you say fight, there would, I guess in legal
21 terms, be an assault?

22 A No.

23 Q No. Is there a difference?

24 A Well, assault is basically it's like a battery,
25 someone comes up and clocked you. A fight is two kids get in

1 a disagreement and they start scruffing. They get into a
2 physical altercation. It's a fight.

3 Q Okay. What about an assault and battery, is that
4 just -- does the dean have discretion to decide just to do a
5 parent conference in that kind of a situation?

6 MR. POLSENBERG: Your Honor, I'm not sure that this
7 witness is going to know the legal definitions of A and B.

8 THE COURT: At the bench conference I went ahead and
9 granted the motion that had been raised with regard to
10 treating Mr. DePiazza as an expert, and contingent with the
11 hypothetical questions. So I'm going to grant --

12 MR. SCOTT: Fair enough.

13 THE COURT: I'm going to sustain the objection.

14 MR. SCOTT: Thank you, Your Honor.

15 THE COURT: Please move on.

16 MR. SCOTT: I'll move on.

17 BY MR. SCOTT:

18 Q Now, back in the school year of 2011-2012, when was
19 the alleged bullying of Nolan Hairr first brought to your
20 attention?

21 A It was brought to our attention on February 7, when
22 we received the email that had all every -- that had all three
23 emails from the same email.

24 Q So you didn't hear about Nolan Hairr being bullied
25 until February of 2012; is that right?

1 A That's when we got the documentation about that.

2 Q And so prior to February 2012, when you received an
3 email, you weren't aware that there was a complaint made that
4 Nolan Hairr had been stabbed in the groin by another student;
5 is that right?

6 A Yes.

7 Q Correct?

8 A Yes. I did meet with Ms. Hairr.

9 Q We'll get to that in a minute. But before February
10 of 2012, you were not aware of a complaint made that Nolan
11 Hairr had been stabbed in the genitals by another student; is
12 that right?

13 A I was made aware of a situation that took place in
14 the band room.

15 Q In February?

16 THE WITNESS: My leg is cramping. Do you mind if I
17 switch the chair.

18 THE COURT: No, that's fine.

19 THE WITNESS: I'll just move it over.

20 THE COURT: Would you like a recess?

21 THE WITNESS: No. I'll just move the chairs.

22 THE COURT: We started about an hour ago.

23 THE WITNESS: No. I'm good.

24 THE COURT: Are you good?

25 THE WITNESS: Just stretch the leg out.

1 THE COURT: Let's go forward then.

2 THE WITNESS: Okay. Thank you.

3 THE COURT: For anyone who couldn't hear, he had a
4 leg cramp and asked to move, so. I just want to make sure the
5 record's clear. Go ahead, please.

6 THE WITNESS: Thank you.

7 BY MR. SCOTT:

8 Q And so you weren't aware that Nolan Hairr had
9 complained or anyone had complained on behalf of Nolan Hairr
10 about bullying until February 2012?

11 A No. I mentioned that there was a situation in the
12 bandroom where I was told by Ms. Winn the situation was being
13 taken care of in that classroom.

14 Q And did you understand that situation had to do with
15 Nolan Hairr being stabbed in the groin with a pencil?

16 A There was a -- I was aware of an incident that took
17 place in the bandroom, yes.

18 Q In September?

19 A I don't believe I heard about it until, I think they
20 came in my office either end of September, beginning of
21 October is when I was privy to information that came into my
22 office.

23 Q And did you understand that that was related to
24 bullying?

25 A I was told it was about some boys harassing some

1 boys.

2 Q And based on your understanding of the term
3 "bullying," did you understand it fell within that definition?

4 A My understanding they were harassing the boys, I'm
5 not sure if it was bullying.

6 Q I see. In your mind what's the difference?

7 A Bullying is basically if someone has a pervasive to
8 be above that individual, show that they're superior of them.
9 Harassing is typical sixth graders calling each other names,
10 things like that.

11 Q So what was the bullying that you became of in
12 February 2012 that you were not aware of in September 2011?

13 A Well, the email that I came into 2000 -- the
14 February 12 -- 7th email outlined everything that had taken
15 place according to the parents that gave it to us.

16 Q But can you tell me, if you recall, what you learned
17 or found out in the February email that you didn't know in
18 September or October?

19 A I didn't know that it was continuing going on such
20 at a pervasive level.

21 Q You didn't know that a complaint, a second complaint
22 was made on October 19, saying that it was still going on?

23 A No, I wasn't aware of that until February 7.

24 Q And so it's your testimony that the -- well, let's
25 be more specific. Do you have a white binder in front of you?

1 A [Indicating.]

2 Q Thank you. Now, if you would please turn to Tab
3 No. 8, which has two emails in it, but the second one, the one
4 near the bottom of the first page is dated October 19, 2011.
5 Do you see that?

6 A Yes, I do.

7 Q And when did you -- well, did you during the school
8 year become aware of this October 19th email?

9 A In February.

10 Q Do you know a gentleman named John Halpin?

11 A Yes, I do.

12 Q And who is John Halpin?

13 A He's a counselor at Greenspun Junior High School.

14 Q And did you have contact with Mr. Halpin from time
15 to time during that school year?

16 A Yes.

17 Q And do you recall on October 19 having a meeting
18 with you, John Halpin and Principal McKay to discuss this
19 October 19 email?

20 A I don't recall having a meeting. I do recall having
21 administrative meetings weekly, it could have been brought up
22 then, but I don't recall specifically this document being
23 addressed at that time.

24 Q And do you recall a meeting, I believe, on
25 October 19? It may have been attended by others, but

1 certainly it was attended by you, Dr. McKay and John Halpin,
2 where he expressed concerns to you in relation to this October
3 19 email?

4 A I don't recall. It could have been brought up at
5 administrative meeting. We have those weekly.

6 Q Is it your testimony it didn't happen, or you just
7 don't recall?

8 A I just don't recall.

9 Q And do you recall during a meeting, an
10 administrative meeting on October 19, when Mr. Halpin was
11 expressing his concern about this October 19 email, that Dr.
12 McKay told you to take care of it?

13 A That I do not recall, those specific words, no, I do
14 not.

15 Q Is it your testimony it didn't happen?

16 A I don't recall him ever saying that to me.

17 Q So you're not saying it didn't happen, you just
18 don't recall?

19 A I just don't recall.

20 Q Now, if Dr. McKay had told you to look into a
21 complaint from a parent regarding bullying and harassment and
22 take care of it, what would you have done?

23 A I would have asked him first thing what would you
24 like me to do. I would have spoken to the dean and see if
25 she's done anything, then formulate a plan after that. If she

1 hasn't spoken with people, I need to speak to them.

2 Q Now, let's talk about -- let's go to Tab No. 4,
3 which is similar to 8, but it's -- we're just focusing on this
4 September 15 email at Tab No. 4. Do you see that?

5 A Yes, sir.

6 Q Okay. How was this September 15 email first brought
7 to your attention?

8 A I didn't see the September email until February.

9 Q I'm sorry?

10 A I didn't see this until February.

11 Q Oh.

12 A My name is not on the To list, so I never received
13 it.

14 Q Is your testimony that it was not forwarded to you
15 by either Dr. McKay or Ms. Winn, Dean Winn in September 2011?

16 A That is correct. It was forwarded in February. I
17 was mistaken previously.

18 Q Well, we'll get to that in a minute. You understood
19 when your deposition was taken you were under oath?

20 A Yes, I do. That was five years ago too.

21 Q What does five years have to do with anything?

22 A Five years, this incident took place five years ago.
23 I tried to recall to my best ability at that time, sir.

24 Q You understood that you were under oath?

25 A Yes, sir.

1 Q You understand there's a difference between saying I
2 don't remember and saying a lie? You understand the
3 difference?

4 A Yes, I do.

5 Q Okay. And so if you don't remember something, if
6 the truth is I don't remember, then you say I don't remember.
7 You understand that?

8 A Yes, sir.

9 MR. SCOTT: All right. Your Honor, I'd like to
10 refer to this witness deposition, please. I believe it should
11 be here.

12 THE COURT: Is it a request to publish the
13 deposition?

14 MR. SCOTT: Yes.

15 THE COURT: Is there any objection?

16 MR. POLSENBERG: No objection, Your Honor.

17 THE COURT: So the deposition of Mr. DePiazza will
18 be published. And actually, we -- I usually take a break
19 every hour. It's just been a little over an hour. And so
20 it's 2:15. I'd like to take a recess until 2:25. Sir, you
21 may step down during the recess. We'll give the clerk a
22 minute to get that deposition published.

23 (Court recessed at 2:15 p.m. until 2:25 p.m.)

24 (Deposition of Leonard DePiazza published in open court.)

25 THE COURT: Mr. Scott, please proceed with your

1 direct of Mr. DePiazza.

2 MR. SCOTT: Thank you, Your Honor.

3 DIRECT EXAMINATION (continued)

4 BY MR. SCOTT:

5 Q Mr. DePiazza, do you have your deposition in front
6 of you?

7 A [Inaudible.]

8 Q Did you have a chance to read your deposition in
9 preparation for your testimony today?

10 A Yes, I have. This is my deposition in this book?
11 Okay.

12 THE COURT: It should be the blue bound document to
13 your left.

14 BY MR. SCOTT:

15 Q Now, Mr. DePiazza, do you recall your deposition
16 being taken?

17 A Yes, I do.

18 Q And you recall that after it was taken you had an
19 opportunity to make any corrections you thought needed to be
20 made?

21 A Yes, I do.

22 Q And you didn't make any corrections to your
23 deposition, did you?

24 A No, I did not.

25 Q Oh. And if you would -- if you would go to page 100

1 of your deposition, please.

2 A [Complies.]

3 MR. SCOTT: And I'll represent to the Court the
4 Exhibit 3 to the deposition, Your Honor --

5 BY MR. SCOTT:

6 Q Well, you have an exhibit to your deposition there,
7 correct; it has exhibit tabs?

8 A Yes.

9 Q And Exhibit 3 is the September 15 email, correct?

10 A Yes, Exhibit 3. I have --

11 Q Yes.

12 A -- it, yes.

13 Q And that's the September 15 email, correct?

14 A Yes, it is.

15 Q Thank you.

16 MR. SCOTT: And Your Honor, for impeachment
17 purposes, I would like to read from his deposition at page
18 100, lines 11 through 19.

19 THE COURT: The deposition's been published.

20 MR. SCOTT: Thank you.

21 BY MR. SCOTT:

22 Q Now, do you recall testifying --

23 "Q Starting with the email on September
24 15, 2011 from Mary Bryan to Mr. Beasley and
25 others, when did you first become aware of this

1 email, that this email was sent to Mr. Beasley
2 in September 2011?

3 "A This was forwarded to me by either
4 Dr. McKay or Ms. Winn. More than likely Dr.
5 McKay probably sent this to me.

6 "Q Back in September 2011?

7 "A Yes."

8 Is it your testimony here today that that is not
9 true?

10 A During my deposition, I read it over, and now that
11 after five years I realize that was the wrong date that I had
12 given you about the email.

13 Q So you've testified it was false or a mistake or
14 what?

15 A I testified that it was a mistake. I received the
16 email in February, not in September. It was four years, five
17 years. It's been quite some time. I do forget. I'm sorry.

18 Q And do you recall testifying that you -- that you
19 contacted Ms. Winn after you received this September 15 email,
20 correct? Was that a mistake?

21 A I contacted Ms. Winn and Dr. McKay after receiving
22 all the emails in February of 2012.

23 Q So when you testified that in response to receiving
24 the September 15 email in September that you contacted
25 Ms. Winn, that was not true, correct?

1 A I had forgotten how long it's been and the
2 recollection my memory lost, and now I recall that it was at
3 February 7 when we received these emails.

4 Q Okay. And so all the testimony you gave back on
5 January 25, 2016, regarding having received this September 15
6 email in September 2011 was not accurate; is that correct?

7 A That is correct. After -- it's been several years
8 and then my recollection came back.

9 Q And do you recall that on September 22, you got a
10 call from Nolan Hairr's mother, Aimee Hairr?

11 A Never received a phone call.

12 Q Is your testimony that you did not talk to Aimee
13 Hairr --

14 A I had a physical meeting with Aimee Hairr. I did
15 not have a phone call with Aimee Hairr.

16 Q Did you meet with Aimee Hairr on September 22?

17 A I believe I met with her in September and October,
18 yes.

19 Q Okay.

20 A I don't remember the exact date.

21 Q But you recall meeting with Aimee Hairr twice, once
22 in September --

23 A No, just once. Either it was in September or
24 October. I don't recall the exact date.

25 Q Okay. Where did that meeting occur?

1 A In my office.

2 Q Was anyone else present?

3 A I believe Ms. Winn was there. And I don't recall if
4 her son was there or not. I don't remember.

5 Q And do you recall at that meeting with Aimee Hairr
6 she was concerned about her son having been stabbed in the
7 genitals with a pencil?

8 A She was concerned about the situation in the band
9 class.

10 Q And did she mention to you that of those concerns it
11 included her son being stabbed in the groin with a pencil?

12 A She was concerned about the behavior of the boys in
13 that classroom.

14 Q I heard you the first time. My question is, did it
15 include her son being stabbed in the groin with a pencil?

16 A I don't remember, but she might have brought that
17 up. I don't recall. That's a possibility. There was a
18 situation in the classroom and she wanted her son removed
19 possibly, yes.

20 Q So if the concerns included her son being stabbed in
21 the groin with a pencil, that wouldn't be something that would
22 be memorable or would stand out in your mind?

23 A It'd be memorable that there was a situation in the
24 classroom Ms. Winn as the dean was taking care of.

25 Q All right. And why do you believe Dean Winn was

1 taking care of it?

2 A That's her responsibility. She's the dean. It
3 falls under her office and her responsibilities.

4 Q Well, other than assuming she was taking care of it,
5 do you have any personal knowledge of what if anything Dean
6 Winn did to take care of the complaint about the bandroom,
7 including Aimee Hairr's being stabbed in the groin with a
8 pencil?

9 A My understanding is she went in the classroom, spoke
10 to Mr. Beasley. Mr. Beasley made some adjustments as he
11 could. It is a band class and the boys played a specific
12 instrument. It's kind of hard to put a saxophone with a
13 clarinet. So my assumption is that he made the best of his
14 ability within his classroom to keep the boys away from each
15 other.

16 Q And did you understand that Dean Winn did an
17 investigation?

18 A Yes.

19 Q Why do you believe she did an investigation?

20 A For the simple reason I had a statement from
21 Mr. Beasley, so I'm assuming that she talked to others and got
22 statements from them also.

23 Q Other than your assumptions, do you have personal
24 knowledge that she did an investigation?

25 A No, I do not have personal knowledge except for the

1 statement I received from Mr. Beasley.

2 Q And the statement you got from Mr. Beasley, when was
3 it dated?

4 A That I don't recall.

5 Q Is it the February statement you got from him, or a
6 different statement?

7 A I don't recall the exact date when I got the
8 statement from Mr. Beasley. It was --

9 Q Did you get a statement from Mr. Beasley, or were
10 you aware of a statement from Mr. Beasley in September 2011?

11 A Mr. Beasley filled out a statement for Ms. Winn and
12 I received that statement. When that was done I don't recall.

13 Q And you don't know if it was done in September 2011
14 or February 2012?

15 A That is correct. I don't remember the date on that
16 statement.

17 Q And you investigated this allegation of the stabbing
18 in February 2012, didn't you?

19 A I investigated a situation in the bandroom with some
20 boys, yes.

21 Q And that included the allegation of Nolan Hairr
22 being stabbed in the groin with a pencil, correct?

23 A There was an altercation of somebody being stabbed
24 in the classroom, yes.

25 Q Did that altercation you're referring to include or

1 not include the allegation that Nolan Hairr was stabbed in the
2 groin with a pencil?

3 A My understanding, there was a situation in the
4 classroom and I was asked to get statements from the students.

5 Q Let me re-ask my question. Did you understand that
6 this altercation or incident included an allegation that Nolan
7 Hairr was stabbed in the groin with a pencil?

8 A My understanding is that there was a situation in
9 the classroom. I don't know if there was a stabbing that took
10 place. But I imagine something happened to have Mr. Beasley
11 fill out a statement and for me to get involved, yes.

12 Q So when you got involved in February of 2012, you
13 don't know if the allegations included Nolan Hairr being
14 stabbed in the groin with a pencil?

15 A My belief he was hit in that area. I don't know if
16 he was stabbed. I don't have that knowledge. I know there
17 was a situation about him getting -- in that area getting hit
18 by something.

19 Q Did you understand the allegation was that he was
20 stabbed in the groin with a pencil?

21 A Yes.

22 Q Thank you.

23 A That he was hit in the groin area.

24 Q Thank you. And you understood that was an
25 allegation, correct?

1 A I guess if that's what you want to call it, it's an
2 allegation, yes. If that's what you want to look at it, yes.
3 My understanding is that a situation took place in the
4 classroom and a young man was hit in that area.

5 Q And you attempted to investigate it in February
6 2012, correct?

7 A [Unintelligible.]

8 Q And why did you wait until February 2012 to
9 investigate this allegation?

10 A I was directed by Dr. McKay to get statements from
11 the kids.

12 Q Any other reason?

13 A Not that I'm aware of. It came from my boss. I do
14 what I'm told. Unless he was directed by his bosses, I am
15 not -- I don't know that.

16 Q And in your investigation, did you interview the
17 alleged victim, Nolan Hairr?

18 A They were no longer on campus at that time. Both
19 boys had withdrawn.

20 Q Did you get a statement or did you interview
21 Mr. Beasley?

22 A I took the statement that was already provided for
23 me by Ms. Winn from Mr. Beasley.

24 Q So you got a statement that Mr. Beasley gave to Dean
25 Winn?

1 A Yes.

2 Q Did you interview Mr. Beasley?

3 A No, I did not.

4 Q Did you get statements from other students?

5 A Yes, I did.

6 Q Did you interview those students?

7 A Yes, I did.

8 Q Did you do anything else?

9 A Once I got the statements, I gave those to Dr.
10 McKay, who turned them over to CCSD police officer Gary Abbott
11 [phonetic], to my understanding.

12 Q Oh. And why did you turn those statements over to a
13 police officer?

14 A That's what I was directed to do by my boss.

15 Q Do you know why you were directed to do that?

16 A When the principal asks you to do something, I do
17 what my superiors tell me to do. Maybe he was directed by his
18 bosses. I can't speak for Dr. McKay and what he's told by his
19 bosses. I wasn't privy to that information.

20 Q So would it be fair to say the answer is you don't
21 know why?

22 A That is correct, yes.

23 Q Thank you. Now, when you met with Nolan Hairr's
24 mother, Aimee Hairr, was she concerned about a pattern of
25 bullying her son was experiencing in the band class?

1 A Yes.

2 Q And she told you that, that this was not an isolated
3 incident, that there was a pattern that a student named Connor
4 and a sidekick named Dante were harassing and bullying her
5 son, Nolan, right?

6 A Yes.

7 Q Did you think she was making it up?

8 A No. If she took the time to come down to the
9 school, it must have been pretty serious.

10 Q And did you take her complaint or did you understand
11 she was making a complaint?

12 A She met with Ms. Winn and wasn't satisfied with
13 whatever happened with Ms. Winn and came into my office
14 afterwards.

15 Q All right. Did she tell you why she wasn't
16 satisfied with what Dean Winn did or did not do?

17 A She wasn't pleased with the situation in the
18 bandroom and not getting a resolution to the problem in there.

19 Q And did she indicate to you that she wasn't
20 concerned because the complaint had been made and things
21 hadn't gotten better?

22 A Yes. I was aware of that. Mr. Beasley had moved
23 the kids around as the best of his ability within the
24 classroom because of the musical instruments, and it continued
25 even after moving the kids, from my understanding.

1 Q And did you understand that the allegation about a
2 student being stabbed in the groin with a pencil could be the
3 basis for a suspension?

4 A You would first do an RPC conference first before
5 you do any suspensions.

6 Q Is -- was it your understanding at that time that if
7 a finding was made that the allegation was true, it could have
8 and should have resulted in a parent conference and a
9 suspension?

10 A It would have required at least to have had an RPC.
11 If there is a suspension, Ms. Winn would have given a
12 suspension. I wasn't aware if there was or wasn't. I just
13 sign the documents when they come across my desk or
14 Dr. McKay's desk.

15 Q And based on your understanding of the school
16 district's policies, did you understand an incident such as
17 this, an assault, a stabbing in the groin with a pencil would
18 justify suspending a student after a parent conference?

19 A That would make sense, yes, sir.

20 Q Thank you. And it would make sense because students
21 who commit that type of an act should receive some kind of
22 discipline other than a slap on the wrist, right?

23 A Depending on the circumstances, we base our
24 discipline on from the Clark County School District, the board
25 who brings it down to us, and we adhere to those consequences.

1 Q And what is the purpose of discipline such as a
2 suspension? What does it tend -- what are you trying to
3 achieve by that?

4 A A suspension, you remove the child from the
5 environment, that's a consequence. They move out. They miss
6 out on educational experience. You hope they learn their
7 lesson. And hopefully after the RPC conference meeting with
8 the parents we have an understanding of what the
9 administrative team and the parents, that we can resolve the
10 problem and hopefully it never happens again.

11 Q When you say they miss out on academic experience,
12 was that your term?

13 A Yes. They're no longer in the classroom. In
14 suspension the child goes home and they don't come back to
15 campus. So if I give you a one day suspension for tomorrow
16 for instance, you're going to miss direct instruction
17 tomorrow, aren't you, because you're not in the classroom.

18 Q And that's a punishment, correct?

19 A I wouldn't call it a punishment. I think it's a
20 deterrent [unintelligible] for the child to have to make the
21 work up, but unfortunately the child made a poor choice and
22 there was a consequence for their behavior mandated by the
23 school board.

24 Q You used the term "deterrents." In this context
25 what does the term deterrents mean to you?

1 A We're trying to change behaviors, and so they don't
2 continue making the same choices and the same decisions.

3 Q So the idea being if a student stabs another student
4 with a pencil and you suspend him, then that will act as a
5 deterrence, correct?

6 A I'm hoping it would send a message that that
7 behavior is no longer acceptable or tolerated, yes.

8 Q Right. That's the message you hope to send,
9 correct?

10 A Yes.

11 Q And if you don't suspend a student who stabs another
12 student in the groin with a pencil, what message is that
13 sending?

14 A That -- I can't answer that, to be honest with you.
15 I don't know what message you're sending. If a child does
16 that, there should have at least been a suspension.

17 Q And if that same student, the perpetrator commits a
18 second offense of assaulting, hitting another student with an
19 object, would you expect that complaint to be investigated?

20 A Yes.

21 Q I'm sorry?

22 A Yes.

23 Q Why?

24 A It was a situation took place where you were saying
25 this gentleman, Connor, caused another issue, then he'd be

1 investigated.

2 Q And if the student who was not suspended the first
3 time for striking a student with an instrument and then struck
4 another student within about a month or six weeks with an
5 instrument, would you expect if that complaint was
6 investigated and determined that in fact the alleged act
7 happened, that this student again struck another student with
8 an instrument --

9 MR. POLSENBERG: Judge, I'm afraid we're back into
10 expert hypotheses.

11 THE COURT: I recall the question is if. You can
12 ask with regard to adherence to policy.

13 MR. SCOTT: Thank you. Thank you.

14 BY MR. SCOTT:

15 Q In relation to policy, if a student who is suspended
16 for a first act of hitting a student with a, in this situation
17 we're talking about, a pencil, committed a second similar act,
18 under policy would the next level of discipline be something
19 more than a suspension?

20 A That's a possibility. Suspensions can go from one
21 day up to ten days. So you could suspend a child for one day,
22 a five day, an eight day or a ten day depending on the
23 circumstances.

24 Q Okay. And if the second incident -- if the first
25 and second incidents are serious enough, that could be a basis

1 for an expulsion also, correct?

2 A That would be the basis to recommend for expulsion.
3 The board does that. We don't. Then you'd also have CCSD
4 police involved too more than likely [inaudible].

5 Q And if the second incident resulted in let's say a
6 greater suspension, a five day suspension, would that be for
7 purposes of deterrence?

8 A You would hope. That's why you're giving the
9 suspension, to hope to send a message that behavior would stop
10 doing it.

11 Q So the idea is if you investigate a complaint of
12 bullying and it's determined that the student committed the
13 alleged act of bullying, that suspending the student will
14 deter him from engaging in similar behavior in the future,
15 correct?

16 A We're hoping so, yes.

17 Q Right. And if that student has two similar acts and
18 neither results in any discipline, what deterrence is being
19 accomplished?

20 A None. I mean, we needed the RPC, get mom and dad
21 in, then you go to suspension.

22 Q Would you expect in the second incident that the
23 parents would be called in again?

24 A Every time there is an issue parents get called in.
25 It's a separate incident. It's a different meeting. You said

1 it was a second incident.

2 Q So let's talk about what's called a dean's chrono.

3 A Okay.

4 Q You're familiar with that?

5 A Yes, sir.

6 Q And can you tell the Court, in back in the school
7 year 2011-2012, what the dean's chrono was?

8 A Basically every child that's enrolled into the Clark
9 County School District at every school has their name in this
10 database. And so we would pull up the child's name, if I
11 choose myself, they would pull up Lenny DePiazza, it would
12 show Lenny DePiazza, it'd have my name and if there was any
13 discipline issues within -- for me, if I had done anything I
14 wasn't supposed to, it would be listed in that chronology.

15 Q And if you wanted to find out if a complaint had
16 been made of bullying by a student against another student,
17 could you pull up the dean's chrono for that student and find
18 out what if anything was done by Dean Winn in response to the
19 complaint?

20 A The database is a database. It's an electronic
21 system. So I'd look in there. If there is nothing there, I
22 would go to the child's folder. If they'd been in the dean's
23 office they'd have a file, then maybe a paper copy of the
24 documentation in there and not inside the database.

25 Q In relation to Dean Winn, did you understand that by

1 policy, procedure and training she was supposed to document in
2 the dean's chrono everything she did in response to a
3 complaint of bullying or harassment?

4 A Yes.

5 Q And you understood if you wanted to know what Dean
6 Winn did or did not do in response to a complaint of bullying
7 or harassment, you could go to the database, look at the
8 dean's chrono, and that would tell you at least what she
9 documented that she did or did not do, correct?

10 A There would be documentation in there, but if there
11 was a piece of paper, for instance a voluntary statement, that
12 would not be in the system because you can't put that in, that
13 would be in a folder, so I would look both places.

14 Q Right. And when you in February were conducting
15 your investigation of the bullying that was alleged back in
16 September, October, did you go to Dean Winn's file to look for
17 statements?

18 A No, I did not.

19 Q Why not?

20 A I didn't think it was necessary. I assumed she did
21 a thorough job and she had everything buttoned up.

22 Q Well, if the student had given her a statement that
23 was different than the statement you got in February, you
24 didn't want to know that?

25 A I got my statements. I was directed to get

1 statements from all the kids. If that was the case, I would
2 have asked Ms. Winn for those. So I interviewed all the kids.

3 Q Did you ask Ms. Winn if she'd gotten statements from
4 the students back in September or October?

5 A No. I didn't bother. I was directed to get my own
6 investigation and get my statements by Dr. McKay.

7 Q And as part of your investigation, you didn't want
8 to know what information if any Dean Winn obtained in her
9 investigation?

10 A I assumed she did her investigation and brought that
11 information, if it wasn't to me, brought to Dr. McKay. And I
12 was asked further to do more investigation. I don't know why,
13 but that's what I was directed to do.

14 Q I heard that. My question is, as part of your
15 investigation, did you want to find out what information Dean
16 Winn obtained, if any, when she did her investigation?

17 A No.

18 Q And why didn't you want to know?

19 A I was asked by Dr. McKay to do an investigation on
20 my own, so I did my own investigation, which means I got my
21 statements from the students.

22 Q And when did you first learn that Dean Winn did not
23 investigate either the September 15 complaint or the October
24 19 complaint? When did you find that out?

25 A I was assuming she did her job.

1 Q When did you find out that she didn't do her job?

2 A I'm finding out right now. You're telling me this
3 right now, sir.

4 Q Oh.

5 A I have faith in Ms. Winn's ability in her job as a
6 professional.

7 Q So as you sit here today, you still believe that
8 Dean Winn did an investigation and obtained statements from
9 students regarding the September 15 complaint?

10 A That's my understanding, yes.

11 Q And as you sit here today, you believe Dean Winn
12 investigated the October 19 complaint and got statements from
13 students?

14 A I'm assuming she did, yes.

15 Q And you'd be surprised to learn now today for the
16 first time that she didn't get statements or investigate
17 either of those complaints; is that right?

18 A Yes.

19 Q Is there any checks and balances, or were there any
20 checks and balances at the school, Greenspun Junior High
21 School in the school year 2011-2012, to determine if Dean Winn
22 was doing her job and her legal mandates under the law?

23 A I did her evaluation.

24 Q All right. And in doing her evaluation, did you
25 review to determine if she had documented investigations of

1 complaints of bullying and harassment she had received?

2 A No, I did not.

3 Q And do you know if Ms. Winn did an investigation
4 regarding the allegations of October 19?

5 A I'm assuming she did. I don't know for sure.

6 Q Now, did you ever meet Nolan Hairr, have any contact
7 with him in the fall of 2011?

8 A I believe he came in with his mom. I could be
9 mistaken. I know Ms. Hairr came in my office with Ms. Winn.

10 Q Well, did you know what Nolan Hairr looked like in
11 the fall of 2011?

12 A No.

13 Q Did you ever make an effort -- I mean, there were
14 documents in the school files and records that had photographs
15 of students, correct?

16 A Correct. Yes.

17 Q And if you wanted to find out what a student looked
18 like, you could do that, right?

19 A Yes.

20 Q And if you wanted to know about a student's
21 appearance, you could talk to other people, correct?

22 A I looked -- I either looked at the database or
23 sometimes a yearbook with all the kids' pictures.

24 Q And when you did your investigation in February
25 2012, did you attempt to find out what Nolan Hairr looked

1 like?

2 A I tried to find out if there were statements by
3 Nolan Hairr [inaudible].

4 Q Did you try to find out what he looked like?

5 A No. He was no longer on our campus.

6 Q And that's why you didn't try to find out what he
7 looked like?

8 A There was no reason to find out what he looked like.

9 Q Okay. And did you know Ethan Bryan back in that
10 school year?

11 A Yes, I did.

12 Q And how did you know Ethan Bryan?

13 A His mother had called into the dean's office. I
14 believe it was in either, I want to say maybe December, about
15 video-taping with the phone. So I went in the cafeteria doing
16 my duties, which we do daily. It would be Mr -- Dr. McKay and
17 Ms. Winn, two custodians, the counselor, and I just did my job
18 surveying the area. I stood back a ways and went up and asked
19 if he was okay. I didn't notice any students video-taping.
20 And he said he was okay, and I just kept on doing my job
21 policing the area.

22 Q Is that the only contact you ever had with Ethan
23 Bryan?

24 A Yes.

25 Q Can you describe him for us, what he looked like

1 then?

2 A Back then he had blonde hair. He was a tall young
3 man. As I recall correctly, Mom played -- was a basketball
4 player if I recall, because she was actually tall herself. He
5 was a big kid for a sixth grader, very large.

6 Q And did you have any contact with his mother after
7 that?

8 A Yes, I did.

9 Q And you knew that his mother was working as a
10 volunteer, Mary Bryan was working as a volunteer at the
11 school?

12 A I was aware she was on campus helping. I don't know
13 if she was working specifically as a volunteer. We had
14 Watchdog Dads on our campus.

15 Q What's a watchdog?

16 A In elementary school we have watchdog parents, which
17 are usually moms or dads that will take some training and will
18 want to stay in for the day. They'll go to the school for the
19 day, go into a classroom, help out with either a homework
20 assignment or during recess and just be an extra set of eyes
21 on the campus.

22 Q And did Dean Winn tell you that she gave Mary Bryan
23 permission to do -- to be on the campus as a volunteer?

24 A From my understanding, she met with Ms. Bryan and at
25 the end of the conversation Ms. Bryan interpreted that she was

1 welcome to come on campus and assist.

2 Q And you were aware that Mary Bryan had made
3 complaints to Dean Winn about her son being bullied and
4 harassed?

5 A Yes.

6 Q Okay. And sometime, I believe, in early February
7 2012, you told Mary Bryan to leave the campus, correct?

8 A That is correct.

9 Q And this is after you knew she had been making
10 complaints about her son being bullied and harassed?

11 A No. This is after. She was outside and doing
12 duties during the lunchtime, where I was told by Ms. Winn she
13 had physically grabbed two students, one an autistic child,
14 and brought them up to her and said, These kids were bullied.

15 Q Right.

16 A Then at that time I was told to ask her to leave.

17 Q Understood.

18 A Ms. Bryan has no business touching other children --

19 Q Fair enough.

20 A -- except her own.

21 Q And at that time, were you aware that Mary Bryan was
22 the person who made both the complaint on September 15 and --

23 A Yes.

24 Q -- the complaint on October 19?

25 A Yes.

1 Q Thank you.

2 MR. SCOTT: That's all I have. Oh, excuse me. One
3 second, Your Honor.

4 (Attorneys confer.)

5 MR. SCOTT: I have nothing further. Thank you.

6 THE COURT: Cross-examination, please.

7 MR. POLSENBERG: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. POLSENBERG:

10 Q Mr. DePiazza, let me just -- you're the first
11 witness from the Clark County School District to testify. So
12 let me just go over some things for the judge, so that she
13 understands the people who are involved from the school
14 district's point of view. And I probably should have done
15 that in opening statement, but I'm going to let you do it.

16 First we have the teacher in the classroom, and when
17 we're talking about Beginning Band, who would that be?

18 A Mr. Beasley. He's the band teacher.

19 Q And Mr. Beasley's right here.

20 A Yes. He's the band teacher.

21 Q All right. And then above that you would have what,
22 the counselor?

23 A You would have -- well, you have the teachers, then
24 you have the counselors.

25 Q Okay. So the counselor that was involved in this

1 case, do you know who that was?

2 A Mr. Halpin.

3 Q John Halpin?

4 A Yes.

5 Q And then what would the level be right above that?

6 A Right above that would come to Ms. Winn, then above
7 Ms. Winn would be Dr. McKay.

8 Q Okay. So then you have the dean, who would be
9 Cheryl Winn?

10 A Yes.

11 Q And then you would have the assistant principal, and
12 that's you?

13 A Yes.

14 Q And then above that you would have the principal,
15 who was Dr. Warren McKay?

16 A Yes.

17 Q Okay. We went through that a little fast for the
18 judge to write that all down. I apologize.

19 THE COURT: I've been listening.

20 MR. POLSENBERG: I know, but you probably never
21 heard it all together at once, so that's why I wanted to get
22 it all in.

23 BY MR. POLSENBERG:

24 Q So your job as assistant principal is to do what?

25 A My job, I was assistant principal over curriculum,

1 attendance, discipline. I had the building. I did testing.
2 I did scheduling. I was in charge of social studies, science
3 department, PE department, kitchen.

4 Q Okay. You probably had more, and just to move the
5 trial along I'm not going to ask you about all of them. But
6 you and Dr. McKay split up some of the things?

7 A That is correct, yes.

8 Q And he takes music?

9 A He -- he supervises the performing arts, yes.

10 Q Right. And then but both of you supervise
11 discipline?

12 A Yes.

13 Q And you would have a management team too that would
14 include the two of you and whom else?

15 A Ms. Winn.

16 Q And how was your management --

17 A And the counseling.

18 Q Sorry. Did I interrupt you?

19 A Yeah. The counselors are also involved in that too.
20 They show up at the meetings.

21 Q Well, you talked about having admin meetings?

22 A Yes.

23 Q How often would you have those?

24 A Weekly.

25 Q And who would be involved in those primarily?

1 A Dr. McKay, Ms. Winn, the counselors, special ed
2 facilitator and myself.

3 Q All those people, or sometimes just the three of
4 you, the principal, the assistant principal and Dean Winn?

5 A It would be depending on the situation, what was
6 going on. It could be just the three of us. The majority of
7 the time it was all of us.

8 Q Okay. But the core group was the three of you?

9 A Yes.

10 Q And you were a good management team?

11 A Yes.

12 Q Quite successful?

13 A Yes. A five start school before we all left.

14 Q Hoorah. And you had one dean in your school?

15 A Yes.

16 Q Do some schools have two?

17 A Yes.

18 Q Why do you have one?

19 A We started out, when I first got there we had two,
20 then our numbers went down. It's based on the enrollment at
21 the time. So the higher your enrollment, the more bodies you
22 get. Just like for instance the assistant principals, when we
23 had more we had two assistant principals. But only had one
24 dean and one assistant, and the numbers kept dropping down.

25 Q And -- sorry. Go ahead.

1 A When I started there, there was two deans.

2 Q Okay.

3 A And she lasted one year, then we lost the numbers
4 and she moved to another school.

5 Q By lost numbers, you're talking about --

6 A Enrollment.

7 Q All right. So when you started in '08?

8 A Yes.

9 Q And in the time period from '08 to 2012, how many
10 students did you have in the student body?

11 A 1800, give or take.

12 Q Did you know them all?

13 A No, sir. I had issues knowing all the teachers.

14 Q Okay. But you knew Ethan?

15 A Yes.

16 Q Did you know Nolan?

17 A No, until his mom brought him in for --

18 Q Okay. So then you knew of Nolan?

19 A Yes.

20 Q All right. You talked -- I'm going to try and cover
21 some of this stuff in roughly the same order that plaintiff's
22 counsel did. You talked about being required to follow the
23 regulations of the Clark County School District. Were you
24 talking them about discipline in general or bullying?

25 A Discipline in general.

1 Q Okay. And but you also mentioned school district
2 policies regarding bullying?

3 A That is correct.

4 Q Okay. Who establishes policy at Greenspun Junior
5 High School, during the time frame that you were there, as to
6 bullying?

7 A The Clark County School Board does. They mandate
8 through legislature what goes on in Carson City, and it comes
9 down to the schools.

10 Q I'm going to fight with you now --

11 A Okay.

12 Q -- because the times I objected because of this --
13 the plaintiffs were asking you to do legal opinions. I don't
14 want you to do legal opinions. I don't think the Clark County
15 School Board legislates through Carson City.

16 A Right.

17 Q Okay. But they do establish their own policy within
18 the school district?

19 A Yes.

20 Q Okay. And is the principal allowed to change that
21 policy?

22 A No. He can modify it. What I mean by that,
23 instead of --

24 Q Yeah. What do you mean by that?

25 A Let's say for instance there's a fight and the two

1 kids don't know each other, that may be a three day
2 suspension. But if you and I are just friends and we get
3 ticked off and we get into a scrap, I may only give you a one
4 day suspension. But the policy recommends that every physical
5 altercation is a three day suspension.

6 Q Okay. So there is -- the school has a little bit of
7 latitude to implement established policy on a case-by-case
8 basis?

9 A Yes.

10 Q But not to define policy?

11 A That is correct.

12 Q How about the dean, how about Cheryl Winn, does she
13 have the ability to, as you say, change, modify? Is that
14 really modifying policy?

15 A No.

16 Q And I asked you two questions in one, and I really
17 apologize.

18 A Yes, you did.

19 Q But, you know, I'm probably the worst lawyer in the
20 room. So does the dean have the ability to modify policy?

21 A She has the ability discretionary to see if a three
22 day or a five day suspension, she has that ability.

23 Q To decide whether it's a certain number of days?

24 A Yes.

25 Q Or whether it's a required parent conference as

1 opposed to a suspension?

2 A A required parent conference would have happened no
3 matter what. That's required first.

4 Q Okay. That's a very good point. How about only an
5 RPC as opposed to a suspension?

6 A That's a possibility, yes.

7 Q Let me take you through, you've talked about a lot
8 of the things that you would do in situations if you were
9 investigating. Were you talking about your own personal
10 standards, or are you talking about the legal standards to
11 which all beings should be held in investigating an incident?

12 A It should be all to be held how we were trained.

13 Q It's how you were trained to handle things?

14 A Yes.

15 Q And who has -- you were asked about who had the
16 final word on the disciplinary process, and I think there's a
17 lot of confusion about that. How does that work? The dean
18 can -- an issue comes in front of the dean, the dean can
19 schedule an RPC, a required parent conference?

20 A Yes.

21 Q Right. A suspension though, could wind up going in
22 front of you or Principal McKay?

23 A The piece of paper that we'd sign off would go in
24 front of us. She would delegate the suspension of those, or
25 she could give out the suspension. The documentation takes

1 two signatures, the dean's signature, then either the
2 assistant principal's or principal's.

3 Q Okay. So the dean can't do it by herself?

4 A No. That document's got to be -- has two signatures
5 on it.

6 Q And are there other ways that those issues could get
7 in front of you or Principal McKay?

8 A That's a possibility, yes.

9 Q And what are those other ways?

10 A It depends if she's not concerned about the
11 situation or she wants --

12 Q And by she, we mean Dean Winn?

13 A Ms. Winn. Dean Winn, if she's got some concerns or
14 she's not too sure, she can ask advice through Dr. McKay or
15 myself.

16 Q How about parents, can they bring things in front of
17 the principal or the assistant principal?

18 A Usually the first line is they meet with the dean.
19 If they're not satisfied with the dean, they'll meet with me,
20 since I directly supervise her. If they're not happy with my
21 outcome, the next stop would be to Dr. McKay, the principal.

22 Q Okay. And is there any appeal above Dr. McKay?

23 A Outside the building, yes.

24 Q That's a very good distinction, because not
25 everybody probably knows about that structure. You have a --

1 and by structure, I didn't mean to pun. The chain of command
2 actually is within the school itself, and people usually talk
3 about the building, right?

4 A Yes.

5 Q And then there can also be supervision by or appeals
6 to authorities outside the building, right?

7 A Yes.

8 Q And that would be above them at the school district?

9 A Yes. That would either be with academic managers,
10 would be the supervisor over the principal and that's who
11 they'd meet with.

12 Q And how about the board?

13 A They meet his boss. Beg your pardon?

14 Q Things can get all the way to the board?

15 A That's a possibility, yes, sir.

16 Q Suspensions can go above the building, outside the
17 building?

18 A If the parent's not happy with what we have done in
19 suspension and Dr. McKay's okay with that, they can meet with
20 his boss, which would be the academic manager, to see if
21 there's any kind of resolution to that.

22 Q The academic manager who at that time was the
23 supervisor of the principals?

24 A That is correct, and that would be Mr. Long.

25 Q And that has had a lot -- that position has a lot of

1 different titles over the years?

2 A Yes, it has.

3 Q Okay. And it could -- and some issues can go to the
4 board, right?

5 A That's a possibility, yes.

6 Q And tell me what you mean by that's a possibility.

7 A Depending on the situation, let's say there's a huge
8 fight [unintelligible] and there's gang activity
9 [unintelligible] whether it's a possibility that could get to
10 the board.

11 Q Well, how does it get to the board? Can people
12 appeal the decision made by the principal and it can go up to
13 the school board?

14 A It goes from the principal to the academic manager
15 first.

16 Q Does it ever go from the academic manager higher?

17 A That's a possibility, but I'm not aware of that.

18 Q How about expulsions?

19 A Expulsions are meant -- are something that we
20 recommend to the school board who makes that determination.

21 Q Right. I think you had said that briefly on direct,
22 or whatever it is you recall that.

23 A Yes.

24 Q And the -- where it's only the school board can do
25 that?

1 A Yes.

2 Q And you were administered an oath to tell the truth
3 at that time, correct?

4 A Yes.

5 Q You were represented by counsel at the time?

6 A Yes.

7 Q And did you tell me the truth during that
8 deposition?

9 A Yes.

10 Q Would you agree that your recollection of the events
11 that are at issue in this lawsuit were clearer then, in
12 January of this year, than they are today?

13 A Yes.

14 Q Would you please turn to page 33.

15 A [Complies.]

16 Q Starting at line -- I'm going to read a few of
17 these. Starting at line 20.

18 "Q So when do you believe you withdrew
19 from Greenspun Junior High School? Do you know
20 what -- do you know a particular date?

21 "A I don't know the exact date, but I
22 believe it was in January."

23 Skip the page. Turn over to page 34. After a
24 little bit more exchange, at line 14, I asked the question.

25 "Q So does that confirm your belief and

1 understanding that you withdrew from Greenspun
2 in January 2012?

3 "A Yes."

4 Page 35, line 9 -- let's back up to line 6.

5 "Q I believe you came back from -- I
6 believe the first day of school in 2012, after
7 the Christmas break, was January 3 or January
8 4. Using that as a benchmark, can you identify
9 any more narrowly when you believe you withdrew
10 from Greenspun?

11 "A Towards the end of January, like in
12 the last week."

13 Does that refresh your recollection that you
14 formally withdrew from Greenspun in late January 2011 [sic]?

15 A Yes.

16 Q But you stopped attending classes about two weeks
17 before you formally withdrew, correct?

18 A Yes.

19 Q So that'd make it that you stopped attending classes
20 around the beginning of January 2012, very shortly after
21 returning from the holiday break?

22 A Yes.

23 Q And when you stopped attending classes in early
24 January you stayed home with your mother?

25 A Yes.

1 Q In the big binder, Nolan -- Ethan, would you turn to
2 Exhibit 617.

3 MR. WAITE: And Your Honor and Counsel, this is one
4 that has not been stipulated, but I only want to refer to
5 page 4 of this exhibit.

6 BY MR. WAITE:

7 Q So, Ethan, what I'm looking for is a page that looks
8 like this, if you can see on the screen there. Is that what
9 you have in front of you?

10 A Yes.

11 Q And is that page 4 of that exhibit?

12 A Yes.

13 Q It is your handwriting on this form; is that
14 correct?

15 A Yes.

16 Q You filled out this form and signed it on February
17 6, 2012; is that correct?

18 A [No audible response.]

19 Q I'll direct your attention down towards the bottom.

20 A Yes.

21 Q You did fill this out on February 6, 2012?

22 A Yes.

23 Q Everything -- did everything -- is everything on
24 this form that you filled out true and accurate?

25 A Yes, I believe so.

1 Q Looking at the third line, you wrote, "To assist,
2 the school moved Nolan to a different spot in the room." Do
3 you see where I read?

4 A Yes.

5 Q And did I read that correctly?

6 A Yes.

7 Q So you felt, as of February 6, 2012, that the school
8 moved Nolan to a different spot in the classroom in an attempt
9 to assist the situation, correct?

10 A Yes.

11 Q And you filled this form out after you had already
12 formally withdrawn from Greenspun, correct?

13 A Yes.

14 Q And that's because if you look towards the bottom of
15 the page, it looks like starting at line -- what is line 15 on
16 the left, there's a sentence that says, "The trouble never
17 stopped, so my parents eventually moved me to a different
18 school." Do you see that?

19 A Yes.

20 Q And you wrote that -- when you wrote this, you had
21 already transferred to EKA, correct?

22 A Yes, I think so.

23 Q Now, I will represent to you, Ethan, that February
24 6, 2012 was a Monday. So would you -- you indicated that you
25 formally withdrew in January, but at a minimum you would

1 agree -- because I think your mother may contest that. At a
2 minimum you would agree that you formally withdrew at least by
3 February 3, Friday, February 3; is that correct?

4 A I'm not sure, but that sounds right.

5 Q And in any event, you filled out this form about a
6 month after you stopped attending classes at Greenspun,
7 correct?

8 A Yes, I think so, around that time.

9 Q And I apologize if you indicated, but at the start
10 of the school year, Connor and Dante's name calling of you
11 mostly focused on your height and weight?

12 A Yes.

13 Q Things like jolly green giant, correct?

14 A Yes.

15 Q Then eventually Connor and Dante started calling you
16 names of a homosexual nature, correct?

17 A Yes.

18 Q This was in the band class, correct?

19 A Yes.

20 Q And nowhere else, correct?

21 A I didn't -- I didn't see them anywhere else besides
22 the band class.

23 Q So their name calling of you was limited to the band
24 class?

25 A Yes.

1 Q I'll remind you that Nolan indicates that he was
2 jabbed, stabbed in the genitals with a pencil on September 13,
3 2011. Using that date as a point of reference, you started
4 telling your mother that these boys were calling you
5 homosexual names shortly thereafter, correct?

6 A Yes.

7 Q And in the month, in approximately the month after
8 Nolan was jabbed with a pencil, you had approximately five to
9 six conversations with your mother where you told her the
10 specific kinds of homosexual names you were being called,
11 correct?

12 A I don't know how many conversations we had.

13 Q Would you please turn to page 75 of your deposition.

14 A [Complies.]

15 (Pause in proceeding.)

16 MR. WAITE: Judge, can you see this?

17 THE COURT: I can. Thank you.

18 BY MR. WAITE:

19 Q So if you would turn to page 75. Are you there?

20 A Yes.

21 Q Starting at line -- sorry. Starting at line 6.

22 "Q So how many conversations do you
23 recall having with your mother where you told
24 her that you were being called gay types of
25 names?

1 "A At first not that often, because I
2 was embarrassed a little bit, confused as to
3 what it meant, but afterwards I told her pretty
4 frequently."

5 And we asked some questions back and forth. And
6 then on page 20 -- 76 starting at line 13, I ask you, So --

7 "Q So let's just use a month time frame.
8 The month period after Nolan was jabbed with a
9 pencil, how many conversations with your mother
10 do you believe you've had where you
11 specifically told her that you were being
12 called homophobic types of names?

13 "A I don't remember exactly.

14 "Q Less or more than five?

15 "A Maybe that, more like five or six."

16 Does that refresh your recollection that in that
17 month period of time you had approximately five or six
18 conversations with your mother where you told her the specific
19 types of homosexual names you were being called?

20 A Yes, but that's just a guess, I think.

21 Q That was a guess then, or that's a guess now?

22 A It was a guess then.

23 Q It was a guess then.

24 A It kind of felt like you were telling -- you were
25 trying to get me to say like an exact number, so I just

1 guessed.

2 Q Okay. Well, don't ever guess. Regardless, you
3 never told anyone at the school that you were being called any
4 of these names, correct?

5 A No, I don't think so.

6 Q No, you -- let me ask it a little differently. Is
7 it correct that you never told anyone at the school that you
8 were being called these homosexual names; is it correct?

9 A Yes. I don't think I ever told anyone.

10 Q Let's talk a little more about the pencil jabbing.
11 You don't believe that Mr. Beasley saw Nolan being jabbed with
12 a pencil, correct?

13 A I don't know.

14 Q You don't know or you don't believe that he did see
15 it?

16 A I don't know if he did or didn't.

17 Q Would you please turn to page 111, of your
18 deposition.

19 A [Complies.]

20 Q Are you there?

21 A Yes.

22 Q Starting on line 16.

23 "Q Do you believe that Mr. Beasley saw
24 Nolan being jabbed with a pencil?

25 "A No, I don't think he did."

1 Does that refresh your recollection that it was your
2 understanding that Mr. Beasley did not see the pencil jabbing?

3 A Yes.

4 Q And you didn't report the pencil jabbing to
5 Mr. Beasley, correct?

6 A No, I did not.

7 Q And just to be clear, you didn't report the pencil
8 stabbing to anyone, correct?

9 A No, but I told my mom.

10 Q Okay. Other than your mom, you didn't tell anyone
11 about the pencil jabbing; is that correct?

12 A Yes.

13 Q And in fact, you're not even sure that you saw
14 Connor hit Nolan in the genitals with a pencil, correct?

15 A I didn't see the whole thing, but I did see like
16 near the end of it.

17 Q You don't recall a band class when Nolan freaked out
18 and screamed out in pain, do you?

19 A Yes, I do.

20 Q You do? Would you please turn to page 93, of your
21 deposition.

22 A [Complies.]

23 Q Are you there? Are you there, Ethan?

24 A Yes.

25 Q Starting at line 20.

1 "Q Do you remember, did Nolan scream out
2 in pain?

3 "A No."

4 And then if you'll turn to page 208.

5 A [Complies.]

6 Q Are you there?

7 A Yes.

8 Q Starting at line 4.

9 "Q And I think you previously said he
10 didn't scream out in pain either, correct?

11 "A Correct."

12 Does that refresh your recollection that in fact
13 Nolan did not scream out in pain?

14 A Yes.

15 Q So the best that you can recall, there wasn't a day
16 in band class where Nolan freaked out and screamed out in
17 pain, correct?

18 A Well, he didn't scream out in pain. He cried --
19 he -- I remember him making like a noise.

20 Q But you believe, you believe that you saw this
21 happen out of the corner of your eye?

22 A Yes.

23 Q You don't recall what hand Connor used to jab Nolan,
24 do you?

25 A No.

1 Q You don't recall whether Nolan was jabbed with the
2 pointed end or the eraser end, correct?

3 A No.

4 Q And when you're saying no, you're agreeing with me,
5 right, you do not recall?

6 A Yes.

7 Q You don't recall how long the pencil was, correct?

8 A Correct.

9 Q You don't recall whether the pencil was a wooden
10 pencil or a mechanical pencil?

11 A Correct.

12 Q You don't recall whether the pencil jabbing occurred
13 while instruments were being played or whether it was during a
14 quiet period?

15 A Correct.

16 Q The best that you can recall, you had only one
17 conversation ever with Nolan about the pencil jabbing, and
18 that was at your home a couple of days after it occurred,
19 correct?

20 A That sounds right.

21 Q And if you saw Nolan being stabbed with a pencil in
22 the genitals, that would be pretty shocking to you, correct?

23 A Yes.

24 Q Yet you didn't talk to Nolan about the pencil
25 jabbing incident during the class or at any time of the day it

1 allegedly happened, correct?

2 A Correct. But when I saw it, I kind of just saw like
3 the -- the end of it, and I didn't really -- I wasn't really
4 sure what happened or how to handle the situation.

5 Q Ethan, I'd like to have you do the same exercise
6 that I had Nolan do, and I'd like to give you a piece of paper
7 and have you -- I'd like to move into the seating change.

8 MR. WAITE: May I approach, Your Honor?

9 THE COURT: You may.

10 BY MR. WAITE:

11 Q And Ethan, before you start drawing, let me ask you,
12 as you sit back and recall, before the pencil jabbing incident
13 there was one seating arrangement, and then after the pencil
14 jabbing incident, after September 13, do you recall during the
15 course of time that you were at Greenspun that there was one
16 change or two changes after the pencil jabbing incident?

17 A I don't remember.

18 Q Okay. So I'm going to ask you to leave -- if you
19 would maybe divide your paper into thirds, and at the top draw
20 the before pencil jabbing and below that what you recall the
21 seating arrangement to be after the pencil jabbing.

22 And again, if you would indicate with first names
23 only to the best that you can recall where you sat at the
24 various times, where Connor, Dante and Nolan sat, and then
25 again, if you would also identify where Mr. Beasley was at in

1 the room, okay?

2 A [Complies.]

3 Q Just let me know when you're done.

4 A I don't -- I don't really remember the --

5 Q Are you done with your drawing?

6 A Yes.

7 MR. WAITE: May I approach?

8 THE COURT: You may.

9 MR. WAITE: Can I have this marked defendant's next.

10 THE CLERK: It will be marked as Exhibit 630.

11 BY MR. WAITE:

12 Q All right. Ethan, let me ask you a few questions
13 about this. At the top it says, First, and in the middle it
14 says, Second. So I assume from that, that the first means
15 this was the -- this is the seating arrangement as best that
16 you recall before the pencil jabbing incident, and where you
17 put second, this was after the pencil jabbing incident,
18 correct?

19 A Yes.

20 Q And you got Mr. Beasley to the right. Is that
21 because there was an aisle to the right of what you've drawn
22 and then other instruments were to the right of that what
23 would be maybe off the page to the right type of thing?

24 A Yes.

25 Q So you also agree with Nolan that Mr. Beasley was

1 conducting from the center of the front, correct?

2 A Yes.

3 Q In the second drawing you put a big question mark.
4 Is that just simply because you do not remember anything about
5 where anyone went?

6 A Yeah. I don't remember.

7 Q Would it assist you if I showed you your drawing
8 from your deposition?

9 A Yes.

10 Q You have the deposition. If towards the back you
11 would look to Exhibit B. I believe -- oh, there they are. Do
12 you have the page that looks like what I'm showing on the
13 screen?

14 A Yes.

15 Q And if you want to take a look at that for a moment,
16 I'm going to ask you if that refreshes your recollection of
17 where at least some people were after the seating change.

18 A Yeah. That looks right.

19 Q I'm going to give this back to you and I'm going to
20 ask you to fill in the portions that you recall after having
21 your memory refreshed. Are you done?

22 A Yes.

23 Q And Ethan, sometimes, just because there's a record
24 being made, I want to note for the record the changes that you
25 made here just now. On the second -- on the second depiction,

1 all of the names that you added, me, question mark, Dante,
2 Connor and Nolan, you just now added those after having your
3 memory refreshed from looking at the deposition exhibit,
4 correct?

5 A Yes.

6 Q Now, it sounds like you're not -- not sure that you
7 recalled correctly the seat assignments in your band class; is
8 that fair to say?

9 A Yes.

10 Q But there are some things that you're 100 percent
11 sure about, like that you sat to Nolan's left before the
12 pencil jabbing, correct?

13 A Yes.

14 Q And you're also 100 percent sure that Connor and
15 Dante were to Nolan's right before the pencil jabbing
16 incident, correct?

17 A Yes.

18 Q And the after or the second depicts your
19 recollection of the seating after September 15, when your
20 mother sent her first email, correct?

21 A Yes, but that's -- I'm not 100 percent sure on that
22 one.

23 Q You're not 100 percent sure about what?

24 A About the second seating arrangement.

25 Q I'm -- yes, I understand that, but whatever the

1 seating change was, the seating change was made shortly after
2 September 15, when your mother wrote her first email, right?

3 A I think so.

4 Q Would you please turn to page 118, of your
5 deposition.

6 A [Complies.]

7 Q Are you there?

8 A Yes.

9 Q Starting at line 11.

10 "Q So after the pencil jabbing incident
11 occurred, is that when the change to what
12 you've drawn on Exhibit B in the second box, is
13 that when the change occurred?

14 "A I believe so."

15 And then skip down to line 22.

16 "Q Was it very shortly in that time
17 frame, shortly after your mom wrote the email
18 that this change in seating occurred?

19 "A I do believe so."

20 Does that refresh your recollection that the seating
21 change that you indicated in the second box occurred shortly
22 after your mom wrote her first email?

23 A I do believe so.

24 Q And after that seating change occurred, you don't
25 recall, you don't have any recollection regarding whether

1 Connor's picking on you increased, decreased or stayed the
2 same, correct?

3 A Correct.

4 Q So just to be clear, as a result of the seating
5 change where -- let's hold that. Let's hold that for a little
6 bit.

7 Let's talk about the meeting with Dean Winn. You
8 had a meeting with Ms. Winn, Dean Winn, where she called you
9 in to her office, correct?

10 A Yes.

11 Q And in fact you did meet with her?

12 A Yes.

13 Q It was just the two of you?

14 A Yes.

15 Q Do you remember when your meeting with Dean Winn
16 was?

17 A No.

18 Q And she asked about the whole situation in band
19 class?

20 A I think so.

21 Q You don't recall?

22 A No.

23 Q Would you turn to page 122, of your deposition.

24 A [Complies.]

25 Q Are you there?

1 A Yes.

2 Q Line 5. "Question. All right. So what did she
3 say?

4 "A I don't remember exactly. She just
5 asked basically about the whole situation and
6 how it was occurring. But she was doing
7 something else and like typing on the computer,
8 writing something down, so I felt that she was
9 disinterested or she was only checking in
10 because she was required to, so I just told her
11 that everything was fine so I could leave and
12 go back to class."

13 Does that refresh your recollection regarding what
14 she asked you about?

15 A Yes.

16 Q She asked you about the whole situation in the band
17 class?

18 A Yes. But I think I'm like -- that she was kind of
19 vague about it when she was asking me. Like when I say the
20 whole situation, I kind of mean like that's similar to the
21 wording she used.

22 Q And meaning she was inviting you to tell about
23 anything and everything that was happening to you, that's how
24 you interpreted it?

25 A I'm not sure, but I think that's what she was

1 saying.

2 Q And you told her that everything was fine, correct?

3 A Yes.

4 Q She asked if the prior problems in the band class
5 were being resolved, and you said yes, correct?

6 A I think so, yes.

7 Q Well, would you look at page 123.

8 A [Complies.]

9 Q Starting at line 6. "What did she say, I'm sorry?

10 "A She just said, How are things going
11 like.

12 "Q Just generally how are things going?

13 "A Yeah, and I said they were fine. She
14 said, Is the problem in band class being
15 resolved, and I said, Yes, I think so."

16 Does that refresh your recollection of the
17 conversation you had with Dean Winn?

18 A Yes.

19 Q And then after your meeting with Dean Winn, you
20 believe you had another seating change in the band class,
21 correct?

22 A Kind of vaguely, but I'm not completely sure.

23 Q If you'd turn -- you believe that there was, you're
24 just not sure -- certain?

25 A Yes.

1 Q As a result of this seating change, you were moved
2 away from Connor, correct?

3 A I'm not sure.

4 Q I'm going to show you -- I'm going to put back up on
5 the screen here the exhibit from your deposition that you
6 created. Do you see in the second picture where you had a
7 question mark?

8 A Yes.

9 Q Do you recall indicating to me that that's where you
10 thought you were after the first change and that you were
11 fairly certain that that's where you were, that you had moved
12 next to Connor and that subsequently you moved to where you
13 have "Me" listed? Do you recall that?

14 A A little bit.

15 Q So looking at your Proposed Exhibit 630, or the
16 Proposed Exhibit 630, should we list you in this box here on
17 the second one that is next to Connor, that's where you moved
18 to after the -- as a result of the first change?

19 A Yes, but I'm not sure.

20 Q Okay. You just don't remember. At some point or
21 another however, you think you were next to Connor and then at
22 some later time or at some different time you believe you
23 moved to where you put Me and a question mark, correct?

24 A Yes.

25 Q So you have a recollection of sitting in both of

1 those locations?

2 A Yes.

3 Q Now, you testified that after the pencil jabbing
4 incident and the seating change, Connor's attention focused
5 towards you, right, his name calling and things like that?

6 A Yes.

7 Q And does that make sense, that you were sitting next
8 to him at that time?

9 A Yes.

10 Q So does that refresh your recollection that after
11 the seating change you moved to this box that I'm pointing to
12 which is directly to the left of Connor in the second set?

13 A Yeah, I think so.

14 Q And then at some subsequent time you moved to where
15 you have me and a question mark, correct?

16 A I think so.

17 Q All right. So I'm going to hand this back to you
18 and I'm going to ask you to put me where you indicated next to
19 Connor. And maybe if I could suggest if you would put in that
20 box a Me 1, and then append in the other one Me 2.

21 A [Complies.]

22 Q So now having your memory refreshed, Ethan, you
23 would agree that -- well, let me ask you. The best that you
24 can recall this move from the Me 1 seat to the Me 2 seat, did
25 that occur as a result of your meeting with Dean Winn?

1 A I don't know.

2 Q Or shortly after your meeting with Dean Winn?

3 A I don't remember.

4 Q In any event, you would agree that the move from Me
5 1 to Me 2 moved you about as far away in the trombone section
6 from Connor as you could be, correct?

7 A Yes, it looks like that.

8 Q And going to middle school was a new experience for
9 you of course, right?

10 A Yes.

11 Q And in the sixth grade you experienced anxiety, as
12 you testified, I can't remember the exact words that you used,
13 but due to the way that Connor and Dante treated you, correct?

14 A Yes.

15 Q But you experienced anxiety for reasons that had
16 nothing to do with bullying and Connor and Dante's behavior,
17 right?

18 A Yes.

19 Q During this same period?

20 A Yes, but that was mostly about grades and keeping up
21 with school.

22 Q Sure.

23 A And that wasn't new to sixth grade.

24 Q Sure. School pressures that had nothing to do with
25 bullying though, right?

1 A Yes.

2 Q In fact, you put a lot of pressure on yourself to
3 maintain good grades, right?

4 A Yes, that's fair to say.

5 Q I'm sorry?

6 A Yes. I think that's fair to say.

7 Q And in fact, truth be known, when you started
8 Greenspun you stressed out about going to a new school with
9 new students, correct?

10 A Yes.

11 Q You've always had an issue maintaining your weight;
12 is that correct?

13 A Yes.

14 Q And those experiences that we just talked about that
15 caused you stress, your weight, maintaining good grades, the
16 pressure you put on yourself, those don't have anything to do
17 with bullying, do they?

18 A They kind of do. Like my feelings towards my weight
19 were worse because of the bullying, and it kind of became
20 harder to like focus in class and pay attention.

21 Q But those things were -- you were experiencing those
22 kinds of feelings before you even started the sixth grade,
23 correct?

24 A Yes.

25 Q So your -- you felt pressured to keep up with your

1 homework and your grades and that caused you a lot of stress
2 during this Greenspun period of time in your life, right?

3 A Yes.

4 Q You would agree that around the time you started
5 sixth grade you were highly emotional?

6 A I don't remember.

7 Q Would you turn to page 272, of your deposition.

8 A [Complies.]

9 Q Page 272, line 21.

10 "Q If one of your doctors included in
11 notes or indicated that you were highly
12 emotional before the sixth grade, would you
13 agree with that?

14 "A Yes."

15 Does that refresh your recollection that you were
16 highly emotional even before you started middle school?

17 A Yes, but I think I was referring more to like way
18 before, not like directly before.

19 Q You would agree that at this same period of time you
20 overreacted to things a lot?

21 A Yes.

22 Q So the last day that you attended class at
23 Greenspun, that's the day that you spoke with your mother
24 about that you were thinking of committing suicide, correct?

25 A Yes.

1 Q And to be clear, you never attempted suicide, right?

2 A Yes.

3 Q Yes, that's correct?

4 A Yes, that's correct.

5 Q You were trying to come up with a plan when your mom
6 made you go to your brother's practice with her?

7 A I already had a plan.

8 Q You already had a plan?

9 A Yes.

10 Q Would you please turn to page 39 of your deposition.
11 Let me know when you're there.

12 A I'm there.

13 Q Starting at line 1.

14 "Q What happened when you came home?

15 "A I came home and my younger brother
16 had a basketball game or some kind of event, so
17 my mom wanted us all to go, and then afterwards
18 she said she'd take us all to dinner, me and my
19 brothers. But I said I wanted to stay home, I
20 didn't feel like going.

21 "And so they started to leave,
22 but then my older brother told my mom that he
23 didn't think I should be left home, he thought
24 I was acting strange. So my mother came back
25 in, and I think I was in my room or somewhere

1 trying to come up with a plan for how to kill
2 myself, and my mom made me go with her."

3 Do you see where I read from that?

4 A Yes.

5 Q Does that refresh your recollection that at that
6 time on that day when you had the discussion with your mom
7 that you were coming up with the plan?

8 A Yes, but I still think -- or I know that I already
9 had a plan.

10 Q So in your deposition you were not testifying
11 accurately?

12 A No. It was accurate. I think it was like I was
13 coming up with a plan and then by the time she like came to
14 get me, I already figured it out.

15 Q But on that particular day, nothing specific
16 happened that day to cause you to contemplate suicide,
17 correct? In other words, there was no significant tipping
18 event that had occurred on that particular day, right?

19 A I don't remember.

20 Q Would you look at page 40.

21 A [Complies.]

22 Q Starting at line 23.

23 "Q As opposed to was there something
24 that happened that day, was there something
25 that happened that day that just was like,

1 that's it, I'm going home and I'm going to take
2 my life?

3 "A I don't think there's anything
4 specific. I think I was just overwhelmed and
5 fed up with it."

6 Does that refresh your recollection that nothing
7 specific occurred that day?

8 A I don't think there was anything specific.

9 Q Indeed, you hadn't been dwelling on suicidal
10 thoughts for a period of time prior to that day that you told
11 your mother, correct?

12 A Yes.

13 Q Yes, that's correct?

14 A Yes, I had been dwelling on that.

15 Q I'm sorry?

16 A Yes, I had been dwelling on those thoughts.

17 Q You had been dwelling?

18 A Yes.

19 Q I'm a little unclear, Ethan. Is your testimony that
20 prior to that day that you told your mother you had or had not
21 been dwelling upon suicide?

22 A I'm pretty sure I told her that I had been.

23 Q I'm sorry, were you done?

24 A I'm pretty sure I told her that I had been.

25 Q Okay. My question was a little bit different; not

1 what you told your mother, but what in reality you were
2 thinking and feeling. Prior to the day that you told your
3 mother about that you were thinking of taking your life, had
4 you actually been thinking about it prior to that and dwelling
5 upon it for that period of time?

6 A Yes, I think so.

7 Q Would you turn to page 172, of your deposition.

8 A [Complies.]

9 Q Actually, turn to page 171.

10 A [Complies.]

11 Q Are you there?

12 A Yes.

13 Q Starting at line 24.

14 "Q In other words, you don't recall
15 whether you recall that you had thoughts that
16 particular day of taking your own life, but you
17 don't recall whether that kind of the first day
18 that you got serious about these thoughts?

19 "A Right.

20 "Q You don't recall thinking about it,
21 dwelling upon it for a period of time prior to
22 the day that you told your mother?

23 "A Right."

24 Does that refresh your recollection that prior to
25 the day that you told your mother you had not been dwelling

1 upon it for a period of time prior to that day?

2 A I don't recall dwelling upon it.

3 Q Okay. And prior to the day you told your mother
4 that you were coming up with a plan, you hadn't done any
5 research about suicide in general, had you?

6 A No, but I remember seeing something about it on the
7 TV show. That was where I got my plan from.

8 Q And when your mom found out that you were coming up
9 with a plan, that you were coming up with a suicide plan, she
10 was angry with you, correct?

11 A Not really angry, but like she was concerned and
12 worried.

13 Q Could you turn to page 42, of your deposition.

14 A [Complies.]

15 Q Are you there?

16 A Yes.

17 Q Line 1. "Question. The best you can recall, what
18 did your mom say?

19 "A She was angry with me. She made me
20 go with her. She dropped off my two brothers
21 somewhere and then me and her took a walk and I
22 was angry with her for stopping me, and
23 eventually I started talking to her and we just
24 had a heart-to-heart, I guess."

25 Does that refresh your recollection that your mom's

1 response to your telling her that you were thinking of taking
2 your life was that she was angry with you?

3 A That was how I perceived it. That doesn't mean that
4 she was actually angry with me.

5 Q Okay. That's all I'm asking is how you -- what you
6 perceived. So when you -- when you told your mom about the
7 names that Connor and Dante were calling you, you told her
8 some of the names, but you didn't tell her all of the names
9 that they were calling you, correct?

10 A I don't remember.

11 Q Do you remember not feeling comfortable telling your
12 mom some of the names they were calling you?

13 A Yes, but that didn't -- that doesn't mean I didn't
14 tell her. I'm still not comfortable saying most of those
15 things they called me.

16 Q Sure. You told your mom that Connor and Dante were
17 calling you names like fat, dumb and stupid; is that correct?

18 A Yes.

19 Q But you didn't feel comfortable telling your mom
20 that they were also calling you a fat faggot or a dumb ass; is
21 that correct?

22 A Yes, but it's also just because I wasn't comfortable
23 with saying it doesn't mean I didn't.

24 Q I understand. I'm just asking you didn't tell your
25 mom those kinds of things, correct?

1 A No. I'm pretty sure I told her. I don't remember.

2 Q Now, when Mr. Scott was asking you questions on
3 direct about your suicidal thoughts and he was asking, if I
4 understood the exchange correctly, he was asking you about
5 after you left Greenspun if you've had any suicidal thoughts,
6 was your testimony that no, you have not had any suicidal
7 thought episodes after leaving Greenspun?

8 A No, I have.

9 Q You have --

10 A Yes.

11 Q -- in fact?

12 In fact, occasionally even after you left Greenspun
13 you thought -- you thought about suicide even long after you
14 were gone from Greenspun, correct?

15 A Yes.

16 Q And there has been at least one such occasion while
17 you were at the Explore Knowledge Academy and another after
18 transferring to the Lake Mead Christian Academy, correct?

19 A Yes.

20 Q And I apologize, Ethan, if we've gotten in the
21 record, if we have I have forgotten, how long did you attend
22 EKA?

23 A For the rest of sixth grade and then seventh grade.

24 Q Okay. So from about February of 2012 to the end of
25 your sixth grade year?

1 A Yes.

2 Q And then through the end of when?

3 A Seventh grade.

4 Q Seventh grade. And then you transferred to Lake
5 Mead Christian Academy for the eighth grade, starting the
6 eighth grade?

7 A Yes.

8 Q And are you there still today?

9 A Yes.

10 Q What grade are you in today?

11 A Eleventh grade.

12 Q Good. Congratulations. Focusing on the incidents
13 at EKA, that had nothing to do with bullying, right? You had
14 just hit a low spot in your life?

15 A Yes.

16 Q And that one instance that where you had a suicidal
17 episode or thoughts about suicide was during the seventh
18 grade, not the remainder of your sixth grade while at EKA,
19 correct?

20 A I think so, but I don't remember.

21 Q I'm sorry?

22 A I think so, but I don't remember.

23 Q Would you turn to page 246, of your deposition.

24 A [Complies.]

25 Q Are you there?

1 A Yes.

2 Q Line 20, starting at line 20.

3 "Q So where in your EKA career did this
4 incident occur?

5 "A The beginning of seventh grade."

6 Does that refresh your recollection that this --
7 these thoughts of suicide that you had while at EKA was in the
8 seventh grade, not the sixth grade?

9 A Yes, but I'm still not certain.

10 Q But you were more certain back on January 21st of
11 this year, when your deposition was taken, than you are today,
12 correct?

13 A Yes.

14 Q Now turning to the instance at Lake Mead Christian
15 Academy, you had a recurring incident when you were in the
16 ninth grade, correct?

17 A I think so.

18 Q You don't recall?

19 A No.

20 Q Would you turn to page 247?

21 A [Complies.]

22 Q Are you there?

23 A Yes.

24 Q Line 4. "Question. Well, I guess I wasn't ruling
25 out having a thought as an incident, but you had an event

1 where you had some suicidal thoughts while you were at LMCA,
2 correct?

3 "A Correct.

4 "Q Tell me about that experience.

5 "A That was during the ninth grade, and
6 again, I don't know if anything specific
7 prompted it. If there was, I'm unaware of it.
8 Just kind of the same situation, but two years
9 later."

10 Does that refresh your recollection that the second
11 incident after Greenspun was in the ninth grade?

12 A Yes, but I'm still not sure.

13 Q And again, nothing specific occurred to trigger that
14 episode, you just, similarly to when you were in the seventh
15 grade, hit a low spot in your life?

16 A Yes, I think so.

17 Q I'm sorry. I --

18 A Yes, I think so.

19 Q One of the problems, Ethan, when you get a little
20 bit older is your hearing starts to go, and so I have a hard
21 time sometimes hearing you.

22 THE COURT: It's been an hour and five minutes. Is
23 this a good time for a short recess?

24 MR. WAITE: A great time.

25 THE COURT: Any objection?

1 MR. SCOTT: No objection.

2 THE COURT: All right. So let's -- it's 4:15. Any
3 estimate on how much longer you have and how much redirect
4 you'll have?

5 MR. SCOTT: I don't think I'll have anymore direct,
6 Your Honor.

7 THE COURT: Very good.

8 MR. WAITE: If I finish at 5:00, it'll be close. I
9 may or may not.

10 THE COURT: That's fine. We'll need to stop by 5:00
11 every day. So but we start back tomorrow at 1:00 o'clock. So
12 thank you. You may step down, sir. And we'll come back at
13 say 4:25. Please be prompt.

14 (Court recessed at 4:16 p.m. until 4:24 p.m.)

15 THE COURT: Mr. Waite, please proceed.

16 MR. WAITE: Thank you, Your Honor.

17 CROSS-EXAMINATION (continued)

18 BY MR. WAITE:

19 Q Ethan, again, let's change scenery a little bit.
20 Let's talk about some of the emails that your mother wrote.
21 She wrote an email in September, September 15, 2011, to be
22 exact, and another one on October 19, 2011, and sent them to
23 some people at the school. You've seen those emails, correct?

24 A I think so, yes.

25 Q And you feel that your -- you believe that your

1 mother felt very strongly about the topic of bullying,
2 correct?

3 A Yes.

4 Q And that as a result she used exaggerations in her
5 emails to get her points across, correct?

6 A In all of them, or just are you referencing just
7 one?

8 Q No, I'm just saying generally speaking your
9 mother -- your mother exaggerated at times in some of the
10 things she said in her email, in her September 15 and/or
11 October 19 email, correct?

12 A She could have.

13 Q She could have or she did?

14 A She could have.

15 Q Could you turn to page 104, of your deposition.

16 A [Complies.]

17 Q Actually, let's start with 103. All right.

18 Page 103. Starting at line 21. Are you there?

19 A Yes.

20 Q "Question. Your mother wrote an email to the school
21 where she said you were twice the size of CL." And that's
22 Connor, right? CL is Connor?

23 A Yes.

24 Q "Was that true?

25 "A No, not exactly true.

1 "Q And when she said that you were not
2 afraid of CL, you've also indicated that wasn't
3 true either, correct?

4 "A Correct.

5 "Q Has it been your experience regarding
6 things that your mother writes that she is
7 frequently not truthful or accurate in things
8 that she writes about?

9 "A Well, it's not that she's not
10 truthful. It's that it's her assumption of
11 these things, and when she was saying that I'm
12 twice as height, it was more of an exaggeration
13 than a blatant lie.

14 "Q Is it your experience in dealings
15 with your mother that your mother is prone to
16 exaggerate things?

17 "A No. I just think she felt very
18 strongly about this certain topic --"

19 MR. POLSENBERG: Move the page. Dan, move the
20 page up.

21 MR. WAITE: Oh, sorry.

22 BY MR. WAITE:

23 Q "Answer. No, I think she felt very strongly about
24 this certain topic and that she wanted something to be done,
25 so she used metaphors and exaggerations to get her point

1 across."

2 Does that refresh your recollection that your mother
3 made exaggerations in her emails to the school, at least that
4 was your feeling or impression in January of this year, when
5 you had your deposition taken?

6 A She made an exaggeration. I don't know if she made
7 more than one. I didn't read the whole email.

8 Q All right. But just to be clear, I was going to say
9 I don't mean to quibble but maybe I do mean to quibble, in
10 your deposition at page 104, line 16, you indicated she used
11 metaphors plural and exaggerations plural to get her point
12 across, right?

13 A Yes.

14 Q The trombone poking incident, that happened once,
15 right?

16 A Yes.

17 Q You don't recall when it occurred; is that correct?

18 A Yes.

19 Q You don't recall where in the classroom it occurred;
20 is that correct?

21 A It was in the trombone section.

22 Q You would call that in the band classroom this
23 occurred in the trombone section?

24 A Yes.

25 Q Would you turn to page 158, of your deposition.

1 A [Complies.]

2 Q Starting at line 8. Are you there?

3 A Yes.

4 Q "Question. Did you keep your trombone cases next to
5 you in your seats, or where the case is somewhere else such
6 that you had gotten up and were in a different part of the
7 classroom when this occurred? I guess that's my question.
8 Where in the classroom did this incident take place?

9 "A I don't remember."

10 Does that refresh your recollection that you really
11 don't remember where this occurred, or do you now remember
12 that it occurred in the trombone section?

13 A I think it was in the trombone section, but I don't
14 remember.

15 Q You went on to say at line 14, "We either kept
16 them -- kept the cases for the trombones outside of the aisle
17 or we kept them with us, but I'm not sure which one it was, so
18 I don't know where it occurred." That was your testimony in
19 January of this year, correct?

20 A Yes.

21 Q And your recollection of the events then was better
22 than it is today?

23 A Yes.

24 Q You don't recall whether this incident occurred when
25 you were sitting or standing?

1 A No, I don't.

2 Q You don't recall whether Connor was sitting or
3 standing when it occurred?

4 A No, I don't.

5 Q You don't even recall whether Connor scratched your
6 left or your right leg, correct?

7 A No, I don't remember.

8 Q And when Connor scratched you, he didn't say
9 anything to you, did he?

10 A I don't remember.

11 Q In other words, he didn't call you some homophobic
12 name or anything like that when he scratched you, correct?

13 A I don't remember.

14 Q He didn't say that he wanted to see if you were a
15 boy or a girl or anything like that, correct?

16 A I don't remember.

17 Q Would you look at page 159, of your deposition. Do
18 you see that? Are you on page 159?

19 A Yes.

20 Q Line 21. "Question. So you're putting your
21 trombone away and tell me what happens. Does CL say anything?
22 Does Connor say anything, or he just poked you, what?

23 "A He just -- he doesn't say anything.

24 He just scratched me with it."

25 Does that refresh your recollection?

1 A Yes.

2 Q That Connor didn't say anything to you when he
3 scratched you, right?

4 A Yes.

5 Q He just -- as some might say, he just up and
6 scratched you, right?

7 A I believe so, yes.

8 Q Did you provoke Connor in any manner before he
9 scratched you with his trombone slide?

10 A No, I don't think so.

11 Q Did you ever engage in tripping Connor in the band
12 class?

13 A No, I don't think so.

14 Q Did you and Nolan ever talk about Connor and look at
15 him and laugh?

16 A I don't think so.

17 Q Did you or Nolan, to the best of your recollection,
18 ever call Connor an Asian Justin Bieber?

19 A I don't think so.

20 Q And I've been saying scratched and there was some
21 discussion while Mr. Scott was asking you a question. That's
22 how you would describe what Connor did, right, he scratched
23 you?

24 A Yes.

25 Q And in fact, he did not hit you -- even though

1 Mr. Scott kept asking you questions and you finally said,
2 Well, he hit me, that's not what he did, was it?

3 A No.

4 Q And after this happened you didn't go to the school
5 nurse, correct?

6 A No, I didn't.

7 Q But you knew there was a school nurse available to
8 you, correct?

9 A Yes.

10 Q So during this whole episode, Connor doesn't say
11 anything to you and you don't say anything to him, right?

12 A I don't remember. I think so.

13 Q What's that?

14 A I think so.

15 Q Best that you can recall, this just happens in
16 silence at least as between you and Connor; that's your best
17 recollection?

18 A I don't remember.

19 Q Would you turn to page 162, of your deposition,
20 line 6.

21 "Q Did you say anything to CL, Connor?

22 "A No.

23 "Q As you're walking away did he say
24 anything to you?

25 "A I don't think so.

1 "Q So during this whole episode he
2 neither says anything to you and you don't say
3 anything to him, correct?

4 "A Right."

5 Does that refresh your recollection that during this
6 trombone scratching incident that neither you said anything to
7 him and he didn't say anything to you?

8 A I don't think we said anything.

9 Q And you didn't say anything to him either, right?

10 A I don't think so.

11 Q You never reported this trombone scratching incident
12 to Mr. Beasley, right?

13 A No.

14 Q No, you did not? You're agreeing with me that
15 that's correct, you did not report it to Mr. Beasley?

16 A Yes.

17 Q Nolan [sic], in the big book, the big black book,
18 would you turn to Trial Exhibit 506.

19 MR. WAITE: And Your Honor, I believe this is
20 another one that has been stipulated.

21 THE COURT: Is that correct?

22 MR. SCOTT: No objection.

23 THE COURT: 506 will be admitted.

24 BY MR. WAITE:

25 Q Do you have that in front of you, Ethan?

1 A Yes.

2 Q Okay. This is a Greenspun Junior High voluntary
3 incident report that is in your hand -- the handwriting that's
4 on there is your handwriting, correct?

5 A Yes.

6 Q And you filled this out on October 19, 2011?

7 A Yes.

8 Q Regarding an incident that occurred the day before,
9 on October 18?

10 A Yes.

11 Q So the event that you wrote about would have been
12 pretty fresh in your mind at the time that you filled out this
13 form?

14 A Yes.

15 Q Would you please read out loud what you wrote in the
16 middle section.

17 A "I had apparently sat where --"

18 Q There's a name blanked out; is that Connor's name?

19 A I think so. "Where Connor wanted to place his
20 instrument while he wasn't there. When he returned he started
21 hitting me with his trombone. When the teacher walked in he
22 immediately stopped."

23 Q Is everything you just read accurate?

24 A I believe so.

25 Q So you got the impression that Connor scratched you

1 with his trombone because of where you sat?

2 A Yes, I think so.

3 Q It had nothing to do with your appearance or
4 anything like that, correct, it was where you sat?

5 A I don't know.

6 Q Well, that's what you wrote in any event, that --
7 strike that.

8 And Connor told you to move, but you didn't move,
9 right?

10 A I don't remember.

11 Q Did you tell your mom that Connor told you to move
12 and you didn't move?

13 A I don't think so.

14 Q So if your mother wrote in one of her emails that
15 Connor told you to move but you didn't move, would that be an
16 exaggeration or a fabrication by your mother?

17 A I don't know.

18 Q And did Connor call you a big fat ass at that -- in
19 conjunction with this trombone scratching incident?

20 A I don't remember.

21 Q Did you tell your mother that Connor called you a
22 big fat ass in conjunction with this trombone scratching
23 incident?

24 A I don't remember.

25 Q And when Connor scratched you with the trombone

1 slide, Mr. Beasley was not in the room, correct?

2 A No, I don't think so.

3 Q In fact, that's what you wrote is that when he
4 returned -- let's see. "Then the teacher walked in and he
5 immediately stopped." So was it true that when Mr. Beasley
6 walked into the room Connor immediately stopped?

7 A I believe so.

8 Q So in this instance you got the impression that
9 Connor wanted to hide his behavior from Mr. Beasley, right?

10 A I don't know.

11 Q Would you turn to page 170, of your deposition.

12 A [Complies.]

13 Q Are you there?

14 A Yes.

15 Q Line 8. "Question. So in this instance you got the
16 impression that CL wanted to hide his behavior from Mr.
17 Beasley seeing him?

18 "A Yes."

19 Does that refresh your recollection that -- at least
20 during at the time of your deposition earlier this year, that
21 it was your impression that Connor wanted to hide his behavior
22 from Mr. Beasley?

23 A I think so.

24 Q And do you have any reason to believe that
25 Mr. Beasley saw this incident occur?

1 A No, I don't think so.

2 Q You don't believe that he did see it, correct?

3 A No, I don't think so.

4 Q You don't believe that he -- you're agreeing with
5 me?

6 A Yes.

7 Q And when you filled out this incident report, this
8 was an opportunity for you to advise the school about the bad
9 behavior that was directed towards you, correct?

10 A I'm not sure.

11 Q You could have written whatever you wanted on this
12 form, right?

13 A Yes.

14 Q And no one told you to limit what you put on this
15 piece of paper; is that correct?

16 A Yes.

17 Q Yes, that's correct?

18 A Yes.

19 Q On this form that you filled out you didn't mention
20 anything about being called names, even though by this period
21 of time you were being called names on a daily basis, correct?

22 A Yes.

23 MR. WAITE: One moment, Your Honor.

24 (Attorneys confer.)

25 MR. WAITE: Thank you.

1 BY MR. WAITE:

2 Q Ethan, was there a time -- was there a time that you
3 reported to your mother that a boy in the lunchroom was using
4 his cellphone to record you eating?

5 A Yes, I think so.

6 Q Did that event occur?

7 A I believe so.

8 Q You don't recall when that occurred though?

9 A No.

10 Q You don't even recall what month it occurred?

11 A No.

12 Q You don't know who was taping you?

13 A No.

14 Q I'm sorry?

15 A No.

16 Q You don't know what grade the boy was in?

17 A No.

18 Q While you don't know who was taping you, you do know
19 that it was not Connor or Dante, correct?

20 A I think so.

21 Q You think so? You think it was Connor or Dante?

22 A I think it was not.

23 Q You think it was not or you know that it was not?

24 A I think it was not. I don't remember.

25 Q Would you turn to page 136, of your deposition.

1 A [Complies.]

2 Q Are you there?

3 A [No audible reply.]

4 Q Starting at line 9.

5 "Q How many cellphones do you recall
6 seeing that were video-taping you?

7 "A Just one.

8 "Q Fair to say though, that it was not
9 Dante or Connor that was video-taping you,
10 correct?

11 "A Correct."

12 Does that refresh your recollection that it was not
13 Dante or Connor that was video-taping you with the cellphone?

14 A Yes.

15 Q Now, during lunch periods when you were at
16 Greenspun, there's several adults walking around the
17 lunchroom, correct?

18 A I don't remember.

19 Q You don't remember? Did you generally eat your
20 lunch in the lunchroom?

21 A Yes.

22 Q And you don't recall whether there were several
23 administrators, teachers walking around trying to keep peace
24 and order and all that kind of stuff?

25 A No, I don't.

1 Q And the boy that was video-ing you, you didn't know
2 who he was. He was sitting at a neighboring table, correct?

3 A Yes, I think so.

4 Q And he asked you if you wanted his food, or the boys
5 at the table next to you asked you if you wanted their food,
6 correct?

7 A I don't remember.

8 Q Would you turn to page 138, of your deposition?

9 A [Complies.]

10 Q Line 15. "Question. So these boys that you didn't
11 know asked you if you wanted their food?

12 "A Right."

13 Does that refresh your recollection that that's what
14 started this, that the boys at the table next to you asked you
15 if you wanted their food?

16 A Yes.

17 Q And you told the boys that you didn't know that,
18 yes, you wanted their food, correct?

19 A Yes.

20 Q And you took their food and started eating it,
21 correct?

22 A I think so.

23 Q And then after that they said, Hey, or Turn around,
24 or Look, or something like that?

25 A Yes, I think so.

1 Q Why don't you put the deposition transcript down.
2 Okay. You want to just put the deposition transcript...

3 And when you turned around and looked, it appeared
4 that one boy was taking a video of you with his cellphone,
5 correct?

6 A Yes.

7 Q You then left the lunchroom, correct?

8 A I think so.

9 Q And it was a very short encounter that day in the
10 lunchroom?

11 A Yes.

12 Q And you've never seen a video of you eating on
13 YouTube or anywhere on the Internet since then; is that
14 correct?

15 A Yes.

16 Q Now, when this occurred, cellphones were off limits
17 in the lunchroom at Greenspun, weren't they?

18 A I don't know.

19 Q Would you please turn to page 141, of your
20 deposition.

21 A [Complies.]

22 Q Starting at line 21.

23 "Q But in the lunchroom cellphones were
24 off limits, right?

25 "A Yes.

1 "Q And the students knew that?

2 "A Yes."

3 Does that refresh your recollection that cellphones
4 were off limits in the school lunchroom and that the students
5 were aware of that policy?

6 A Yes.

7 Q And students, if a student was caught using a
8 cellphone in the lunchroom there were consequences, right?

9 A I don't know.

10 Q Would you turn to page 142, of your deposition.

11 A [Complies.]

12 Q Starting at line 1. I'll let you get there. Are
13 you there?

14 A Yes.

15 Q "Question. And if you were caught using your
16 cellphone in the lunchroom, what were the consequences?

17 "A I'm not sure.

18 "Q But you understood that there were
19 consequences?

20 "A Yes."

21 Does that refresh your recollection that not only
22 were cellphones off limits in the lunchroom, but there were
23 consequences associated if you were caught using a cellphone?

24 A Yes.

25 Q And the day that this allegedly happened, you didn't

1 report this to anyone at Greenspun, did you?

2 A I don't remember.

3 Q For example, you didn't report it to any of the
4 adults who were monitoring the lunchroom to point out the
5 offenders who had done this, who had videoed you?

6 A No, I don't think so.

7 Q And again, I apologize. I have to just make sure
8 the record is clear. You're agreeing with me that you did not
9 point out the offenders to any adults in the lunchroom?

10 A I don't think that I did.

11 Q Within a few days of this video incident, you were
12 approached in the lunchroom by either Assistant
13 Principal DePiazza or Counselor Halpin, who asked how you were
14 doing and if everything was okay, right?

15 A Yes.

16 Q And you told the assistant principal, DePiazza, or
17 the counselor, Halpin, that everything was fine, right?

18 A Yes.

19 Q But everything wasn't fine, was it?

20 A No. But it was also a weird situation because I was
21 sitting at a table with other students that probably didn't
22 know what was happening, so I didn't feel comfortable --

23 Q In the lunch --

24 A In the lunchroom.

25 Q In the lunchroom at Greenspun Junior High School

1 while you were there, did the students have assigned seating
2 in the lunchroom?

3 A No.

4 Q So they would sit wherever they wanted from day to
5 day, right?

6 A Yes.

7 Q And when Mr. DePiazza or Mr. Halpin approached you,
8 it was a few days after this videotaping event, correct?

9 A I don't remember.

10 Q Well, that's what you just said. You just said it
11 was a couple days afterwards. Do you recall that?

12 A No. I don't remember saying that.

13 Q In fact, the reason that you told Assistant
14 Principal DePiazza or Counselor Halpin that everything was
15 fine was because you were sitting with some of your friends
16 from elementary school, and you didn't feel comfortable
17 opening up right there in front of them, correct?

18 A Yes.

19 Q Afterward did you ever go up to whoever this person
20 was, whether it was Assistant Principal DePiazza or Mr.
21 Halpin, and say, hey, you know what, I need to talk with you,
22 I didn't feel comfortable at that moment talking to you, but I
23 need to talk to you? Did you ever do anything like that?

24 A No.

25 Q Let's talk a little bit about your transfer from EKA

1 to Lake Mead Christian Academy. Now, you have an older
2 brother. I think Jake is his name; is that correct?

3 A Yes.

4 Q He's two years older than you?

5 A Yes.

6 Q And was there a period of time while you were
7 attending EKA that Jake was attending Gorman High School?

8 A Yes.

9 Q And your older brother didn't want to go to EKA; is
10 that correct?

11 MR. SCOTT: Objection. Relevance.

12 THE COURT: What's the relevance?

13 MR. WAITE: Your Honor, it goes to the transfer and
14 the reason for the transfer. It goes to damages. One of the
15 things that they are asking in this lawsuit is the cost of the
16 education. They went from a charter school that was publicly
17 funded to a private school, and I'm trying to bring out the
18 reason why that was. It had nothing to do with bullying.

19 THE COURT: The objection's overruled.

20 BY MR. WAITE:

21 Q Your older brother, Jake, didn't want to go to EKA,
22 correct?

23 A I think so, yes.

24 Q And so your family decided to transfer both of you
25 to Lake Mead Christian Academy the same year, right?

1 A Yes.

2 Q We'll explore that more with your mother.

3 Let's talk about some of the educational benefits
4 and opportunities that you've had. Since transferring away
5 from Greenspun, you've played for your school's basketball
6 team, right?

7 A Yes.

8 Q And you played center, the position of center on the
9 basketball team?

10 A Yes.

11 Q And that's usually reserved for the tallest player;
12 is that right?

13 A Yes.

14 Q You also played for your high school's football
15 team, correct?

16 A Yes.

17 Q You played offensive and defensive tackle on the
18 football team?

19 A Yes.

20 Q And those that play tackle are generally the biggest
21 kids on the team?

22 A I don't --

23 Q Some of the bigger kids, you would agree?

24 A I'm not sure.

25 Q Since leaving Greenspun you feel that you've

1 succeeded academically, correct?

2 A Yes.

3 Q And your grades have stayed about the same since you
4 left Greenspun, correct?

5 A Yes.

6 Q And since leaving Greenspun, in fact you've made the
7 dean's list or honor roll on a regular basis; is that right?

8 A No.

9 Q Would you please turn to page 226, of your
10 deposition.

11 A [Complies.]

12 Q Are you at page 226?

13 A Yes.

14 Q Starting at line 15.

15 "Q Have you been on that dean's list or
16 honor roll?

17 "A Yes.

18 "Q Is that something that you make
19 because of your grades on a regular basis?

20 "A Yes."

21 Does that refresh your recollection that you've been
22 on the dean's list or honor roll on a regular basis, at least
23 as of January 21, 2016 of this year?

24 A Not on a regular basis, no.

25 Q Is there a reason you said yes during your

1 deposition?

2 A You were asking me what the dean's list was, not
3 whether I was on it on a regular basis.

4 Q In the big book, would you turn to Exhibit 555.

5 MR. WAITE: Which is another stipulated exhibit,
6 Your Honor.

7 THE COURT: Is that correct, Mr. Scott?

8 MR. SCOTT: I believe so, Your Honor. Let me
9 double-check. Yes. No objection.

10 THE COURT: Exhibit 555 will be admitted.

11 BY MR. WAITE:

12 Q Ethan, this is a true and accurate copy of your
13 schedule and transcript for period of time that you attended
14 Greenspun, correct?

15 A Did you say 555?

16 Q Yes.

17 A No.

18 Q Something that looks like this.

19 A No.

20 Q No.

21 A Oh, sorry. I was [inaudible].

22 Q Okay. Do you have 555 now in front of you?

23 A Yes.

24 Q Is this your schedule and transcript for the brief
25 period of time that you were at Greenspun?

1 A Yeah, it looks right.

2 Q Sorry. I got to get to my page. And it looks like
3 sure enough you had Beginning Band in third period, and it
4 looks like you had grades of an A, a B, an A and an A. Can
5 you see that?

6 A Yes.

7 Q Is that your recollection of the grades that you
8 received in Mr. Beasley's band class while you were at
9 Greenspun?

10 A Yes.

11 Q And during the approximate five months that you were
12 enrolled at Greenspun, isn't it true that you always felt that
13 you had equal access to the school's activities and functions?

14 A While I was at Greenspun?

15 Q Yes.

16 A Yes.

17 Q During that same period you always felt you had
18 equal access to Greenspun's resources, right?

19 A I think so.

20 Q You think so, or...

21 A I think so.

22 Q You would agree, correct, that while you were at
23 Greenspun you felt that you had the same access as everyone
24 else to Greenspun's resources, right?

25 A I think so.

1 Q While at Greenspun you always felt that you had
2 access to all the same educational opportunities that were
3 available to the other students?

4 A Probably, yeah.

5 Q When you say probably, I have to follow up on it.
6 Would you turn to page 192.

7 A [Complies.]

8 Q In fact, I think as we approach 5:00 o'clock, I'm
9 going to finish my last two questions in one fell swoop right
10 here. Are you at page 192?

11 A Yes.

12 Q Looking at -- well, starting at line 22.

13 "Q Did you feel that there were any
14 opportunities that were offered at Greenspun
15 that you didn't have the same access to that
16 other students had?

17 "A No.

18 "Q You always believed then that you had
19 the same access, equal access to all of those
20 opportunities and benefits that the other
21 students had?

22 "A Right."

23 Was that truthful testimony that you gave in
24 January 21, 2016?

25 A Yes.

1 Q And do you still feel the same way today?

2 A Yes.

3 MR. WAITE: I have -- I do have more questions, but
4 I think that this is probably a good breaking point, Your
5 Honor.

6 THE COURT: It's 4:59, so we'll go ahead and recess
7 for the day. And Mr. Bryan, we've been calling everyone by
8 their first name. So Ethan, you may step down.

9 All right. And court will be in recess until
10 tomorrow at 1:00 p.m. Now, before we do that, did either of
11 you have anything you wish to put on the record before we
12 recess today?

13 MR. WAITE: I just want to give the clerk the
14 proposed exhibits that have not been admitted yet.

15 THE COURT: Yeah. Mr. Scott.

16 MR. SCOTT: No. No, Your Honor.

17 THE COURT: Very good. Thank you. Have a good
18 night everyone. See you tomorrow.

19 (Court recessed for the evening at 5:00 p.m.)
20
21
22
23
24
25

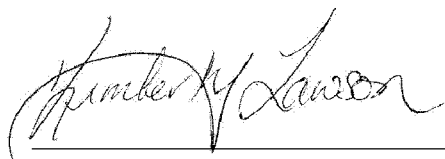
CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

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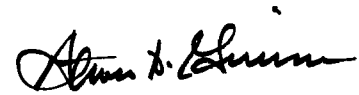

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24

24

TRAN



CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

MARY BRYAN,	)	
	)	
Plaintiff,	)	CASE NO. A-14-700018
	)	DEPT NO. XXVII
vs.	)	
	)	
CLARK COUNTY SCHOOL DISTRICT,	)	
et al,	)	
	)	
Defendant.	)	TRANSCRIPT OF
	)	PROCEEDINGS

BEFORE THE HONORABLE NANCY ALLE, DISTRICT COURT JUDGE

BENCH TRIAL - DAY 2

WEDNESDAY, NOVEMBER 16, 2016

APPEARANCES:

For the Plaintiff:	ALLEN LICHTENSTEIN, ESQ.
	JOHN SCOTT, Pro Hac Vice
For the Defendant:	DAN R. WAITE, ESQ.
	DANIEL F. POLSENBERG, ESQ.

RECORDED BY TRACI RAWLINSON, COURT RECORDER
TRANSCRIBED BY: KARR Reporting, Inc.

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1 **LAS VEGAS, NEVADA, WEDNESDAY, NOVEMBER 16, 2016, 1:03 P.M.**

2 * * * * *

3 THE COURT: Calling the case of Bryan vs. Clark
4 County School District. Appearances, please.

5 MR. SCOTT: Your Honor, John Scott and Allen
6 Lichtenstein for the plaintiffs.

7 THE COURT: Thank you.

8 MR. WAITE: Good afternoon, Your Honor. Dan Waite
9 and Dan Polsenberg for the defendant.

10 THE COURT: Thank you. And I note the presence of
11 your clients as well. All right. Is there anything we need
12 to take up before we begin with the continued
13 cross-examination of Ethan?

14 MR. POLSENBERG: No, but I have something right
15 after that.

16 THE COURT: Okay. Very good.

17 MR. POLSENBERG: Thank you.

18 THE COURT: And normally I take a break about one
19 hour after lunch. Ethan, will you please come back to the
20 stand.

21 THE COURT: And you're under the same oath you took
22 yesterday. There's no reason to re-swear you.

23 ETHAN BRYAN, PLAINTIFF'S WITNESS, PREVIOUSLY SWORN

24 Go ahead, please, Mr. Waite.

25 //

CROSS-EXAMINATION - (Continued)

BY MR. WAITE:

Q Welcome back, Ethan. The bad news is you're here for a second day. The good news is we're almost done, I think. Yesterday afternoon late we were talking. I was asking you some things about the honor roll. We were talking about some of the educational benefits and opportunities that were available to you at the school. And I was specifically asking you about the honor roll, and I want to ask a follow-up question or two about that.

If I limited my question to from when you left Greenspun, so the rest of the sixth grade through and including the eighth grade, all right, is it true that you made the honor roll at your school for all but one period during that period of time?

A I'm not sure.

Q Do you still have the -- is the deposition transcript in front of you?

A No.

THE COURT: Mr. Waite, will you please approach.
Mr. Waite, please approach.

MR. WAITE: Oh, I'm sorry.

BY MR. WAITE:

Q And Ethan, if you would turn to page 226, of your deposition.

1 A [Complies.]

2 Q Are you there?

3 A Yes.

4 Q You'll see at line 21.

5 "Q Has there been a time since leaving
6 Greenspun that you recall when you were not on
7 the honor roll?

8 "A Yes.

9 "Q Can you elaborate," and I continue
10 with my question. "If it's easier to say when
11 you were on the honor roll and all other times
12 you were not, or if it's easier to say I was
13 not on the honor roll this one time, otherwise
14 I was always on the honor roll, whatever is
15 easiest for you to explain, just give me an
16 idea about your qualifying for the academic
17 honor rolls.

18 "A I think I wasn't on the honor roll
19 the second half of sixth grade, and ninth grade
20 I wasn't."

21 Does that refresh your recollection that through the
22 seventh grade and eighth grade you were on the honor roll?

23 A I think so.

24 Q So you didn't make the honor roll in the ninth
25 grade. Let's stay in the ninth grade for a moment. Yesterday

1 we were also talking about some of the suicidal thoughts that
2 you had when you were -- one instance was when you were in the
3 seventh grade and another instance was in the ninth grade, and
4 I want to move to the ninth grade incident.

5 Now, there came a point in time when you were having
6 these thoughts that you shared your thoughts with your mother,
7 correct?

8 A Yes.

9 Q And I'm talking about the ninth grade. And in
10 response your mom freaked out and you felt that she
11 overreacted; is that correct?

12 A I don't remember.

13 Q Would you please turn to page 249, of your
14 deposition.

15 A [Complies.]

16 Q Looking at line 4.

17 "Q And when you told your mother about
18 the ninth grade experience, what did she say?

19 "A That time I think she was a little
20 bit more nervous because it had been so long
21 since the last one, I guess, so she kind of
22 freaked out a little bit more than I thought
23 she should have. But other than that, I just
24 talked to my current therapist about it." You
25 mention the name. "And she gave me some

1 helpful tips about how to deal with stuff like
2 that also."

3 Line 16.

4 "Q You indicated you felt like your mom
5 freaked out about it was your words?

6 "A Uh-huh.

7 "Q Did you feel like that was -- was
8 that a surprising response from your mother?

9 "A Yes."

10 Does that refresh your recollection regarding
11 whether when you told your mother that you were having
12 suicidal thoughts in the ninth grade that she freaked out and
13 reacted in a manner that was surprising to you?

14 A I'm not sure.

15 Q Was your testimony truthful when you answered those
16 questions on January 21, 2016, in deposition?

17 A Yes.

18 Q I want to ask a similar question to you that I did
19 of Nolan. And I'm showing on the screen here your complaint,
20 and I want to direct your attention to paragraph 31. This
21 regards the seating change, the first seating change where you
22 moved to being seated right next to Connor. Do you recall
23 that move?

24 A I think so.

25 Q And in your complaint, paragraph 31, it says, "On

1 September 19, 2011, Defendant Instructor Beasley moved Nolan's
2 seat." Is that your recollection as well? Do you believe
3 that that's an accurate statement of when the move occurred?

4 A I don't remember when the move occurred.

5 Q Do you have any reason to believe that this is not
6 an accurate statement?

7 A No.

8 Q When you were at McDoniel, is it, Elementary School?

9 A Yes.

10 Q In the fifth grade, do you have -- did you have just
11 one teacher throughout the day in fifth grade?

12 A No.

13 Q Ethan, during this period of time that you were at
14 Greenspun, did you experience social anxiety? Was that
15 something that you experienced in your life during this period
16 of time?

17 A I don't remember.

18 Q You don't recall whether you experienced social
19 anxiety from being in groups of people?

20 A I don't remember.

21 Q Do you experience social anxiety now? I don't mean
22 like right this moment, but in your life in general is that
23 something that you experience now?

24 A Sometimes.

25 Q From an educational standpoint, you feel that moving

1 from Greenspun was academically good for you, correct?

2 A Yes.

3 Q And since transferring from Greenspun you've been
4 able to participate in the extracurricular activities that you
5 wanted to, right?

6 A Yes.

7 Q You've never had any problems reading at your grade
8 level; is that correct?

9 A Yes.

10 Q Yes, that's correct?

11 A Yes, that's correct.

12 Q You've never had any problems expressing yourself in
13 writing, correct?

14 A No. Or yes, that is correct.

15 Q Thank you. And you've never had any problems doing
16 math at your grade level; is that correct?

17 A Yes.

18 Q And isn't it true that your interactions with Connor
19 and Dante have not kept you from participating in any
20 activities that you wanted to; that's true as well, isn't it?

21 A I don't remember.

22 Q Would you please turn to page 227, of your
23 deposition.

24 A [Complies.]

25 Q Are you there?

1 A Yes.

2 Q And at the very last line, 25, the question starts.

3 "Q Has your interactions with Connor and
4 Dante kept you from participating in any
5 activities that you wanted to?

6 "A I don't think so."

7 Does that refresh your recollection that your
8 interactions with Connor and Dante did not preclude you from
9 engaging in any activities that you wanted to?

10 A I don't think it did.

11 Q And your prior interactions with Connor and Dante
12 have not kept you from participating in any classes that you
13 wanted to participate in either, correct?

14 A I don't know.

15 Q Well, let's stay right where we were at, page 228,
16 and if you look at line 4.

17 "Q Has your historical interactions with
18 them kept you from participating in any classes
19 that you wanted to?

20 "A I don't think so."

21 Does that refresh your recollection that your
22 interactions with them did not preclude you from participating
23 in the classes that you wanted to take?

24 A I don't think they did.

25 Q And to the extent that you put forth effort, you

1 believe that you can do anything in life that you want to do
2 and become, correct?

3 A Yes.

4 Q All right. Ethan, just kind of in summary some of
5 these final questions, do you have any reason to believe that
6 any faculty or staff member at Greenspun Junior High School
7 perceived you as being gay?

8 A I don't know.

9 Q Would you please turn to page 119, of your
10 deposition.

11 A [Complies.]

12 Q Starting at line 19.

13 "Q Do you have any reason to believe
14 that any of the faculty or staff or
15 administrators at Greenspun perceived you as
16 being gay?

17 "A No."

18 Does that refresh your recollection that you did not
19 believe that any of the faculty or staff or administrators at
20 Greenspun perceived you as being gay?

21 A Yes.

22 Q Do you have any reason to believe that any other
23 Clark County School District employee not working at Greenspun
24 ever perceived you as gay?

25 A I don't know.

1 Q Let's stay on that page, starting at line 23.

2 "Q Do you have any reason to believe
3 that any of the CCSD off site people that are
4 employed by CCSD but not located at the school,
5 do you have any reason to believe any of them
6 perceived you as gay?

7 "A No."

8 Does that refresh your recollection that you did not
9 believe any of the other CCSD employees outside of Greenspun
10 perceived you as gay?

11 A Yes.

12 Q And you've never had any gender identity issues in
13 your life; is that correct?

14 A No.

15 Q No, that's not --

16 A Yes. Yes, that is correct.

17 Q And you never told any of your teachers that Connor
18 was picking on you, correct?

19 A I don't think so.

20 Q You don't -- you're answering in the affirmative,
21 you did not tell any of your teachers that Connor was picking
22 on you?

23 A I don't think I did.

24 Q And you never told any of your teachers that Connor
25 was calling you names, correct?

1 A I don't think so.

2 Q And again, I -- are you agreeing with me that you
3 did not tell them that?

4 A I'm saying I don't think I did.

5 Q All right. And I mentioned teachers, but you never
6 told any of those things, that you were being picked on, that
7 you were being called names, any of those kinds of things to
8 any of the administrators or anyone else at Greenspun Junior
9 High School, correct?

10 A I don't think so.

11 Q Ethan, turn to page 95, of your deposition, if you
12 would.

13 A [Complies.]

14 Q Starting at -- I'm sorry. Let me know when you're
15 at page 95. Are you there?

16 A Yes.

17 Q Okay. Starting at line 25.

18 "Q And you never told any of your
19 teachers that Connor was picking on you,
20 correct?

21 "A Correct.

22 "Q You never told any of your teachers
23 that Connor or Dante were calling you any
24 names, correct?

25 "A Correct.

1 "Q And I mentioned teachers, but no
2 teachers, administrators, no one at your school
3 did you tell any of those things, correct?

4 "A Correct."

5 That testimony from your deposition that I just
6 read, was that all truthful?

7 A Yes.

8 Q And that reflects your true and honest opinions?

9 A Yes.

10 Q And in fact, when Ms. Winn, the dean, called you to
11 her office, asked how things were, you told her everything was
12 fine and you thought the problem in the band class was being
13 resolved, correct?

14 A I don't remember what I said.

15 Q Would you please turn to page 123, of your
16 deposition.

17 A [Complies.]

18 Q Are you there?

19 A Yes.

20 Q Line 1. "Question. How long did the meeting last
21 with Ms. Winn?

22 "A Maybe about five minutes max.

23 "Q She called you up, she asked you to
24 tell her what happened?

25 "A No. She --

Case Nos. 73856 & 74566

In the Supreme Court of Nevada

CLARK COUNTY SCHOOL DISTRICT,
Appellant,

vs.

MARY BRYAN, mother of ETHAN
BRYAN; and AIMEE HAIRR,
mother of NOLAN HAIRR,
Respondents.

Electronically Filed
Jun 04 2018 09:57 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPEAL

from the Eighth Judicial District Court, Clark County
The Honorable NANCY ALLF, District Judge
District Court Case No. A-14-700018-C

**APPELLANT'S APPENDIX
VOLUME 3
PAGES 501-750**

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1 substantive due process claim where, as you've read in the
2 briefs, there has to be affirmative conduct, and yet this case
3 is all about what they did not do.

4 THE COURT: And I am going to overrule the
5 objection. It goes to the sense -- the present sense
6 impressions he formed at that time, so the objection's
7 overruled.

8 BY MR. WAITE:

9 Q So again, Nolan, you believe that what Dean Winn did
10 was that she failed to take appropriate action in disciplining
11 Connor and Dante, correct?

12 A Yes.

13 Q And that through her inaction that she directly
14 allowed the bullying to continue, right?

15 A Yes.

16 Q Counselor Halpin, you believe he failed to use his
17 powers to protect you and Ethan from Connor and Dante's
18 harassment, correct?

19 A Yes.

20 Q So like Dean Winn, you also believe that Counselor
21 Halpin, his inactions indirectly allowed the bullying to
22 continue?

23 A Yes.

24 Q Assistant Principal DePiazza, you believe that he
25 failed to contact your parents about what was happening to

1 you, correct?

2 A I couldn't answer that.

3 MR. WAITE: Okay. Your Honor, I'd like to have
4 Nolan's deposition published.

5 THE COURT: Any objection?

6 MR. SCOTT: No objection.

7 THE COURT: The deposition of Nolan Hairr will be
8 published. Just as a matter of housekeeping while we're
9 waiting on the clerk, I usually do not have witnesses go
10 longer than an hour. He started 11:10 and it's now 12:02, so
11 I'll be looking for a recess for lunch shortly, to let you
12 both know.

13 Mr. Waite, you may approach.

14 MR. WAITE: Thank you.

15 (Deposition of Nolan Hairr published in open court.)

16 MR. WAITE: Okay. May I approach the witness, Your
17 Honor?

18 THE COURT: You may.

19 BY MR. WAITE:

20 Q Nolan, do you remember giving a deposition in this
21 action on December 22, 2015?

22 A Yes.

23 Q And you came to my office on that day?

24 A I did.

25 Q And your attorney was present?

1 A He was.

2 Q You were sworn under oath to tell the truth just
3 like you were today?

4 A Yes.

5 Q And did you tell the truth during that deposition?

6 A Yes.

7 Q If you'd turn to page 22 of the deposition, and
8 starting at line 18, do you remember a question, "What do you
9 believe Mr. DePiazza did wrong? And your answer, "He did not
10 try to contact my parents about what was happening or how long
11 it had been happening even though he had been informed
12 numerous times.

13 "Q What else do you believe Mr. DePiazza
14 did wrong?

15 "A That is all."

16 Does that refresh your recollection that that's what
17 you believe Mr. DePiazza did wrong in this case; namely, that
18 he failed to contact your parents about what was happening to
19 you?

20 MR. SCOTT: Your Honor, I'd like to make an
21 objection that he is not speaking on behalf of his attorney or
22 what the plaintiff's theory is. This is a child who's
23 answering a question on a legal -- they're trying to turn into
24 a legal issue. And I object to the extent this is calling for
25 a legal opinion or stating the plaintiff's theory of the case.

1 THE COURT: Objection so noted. The only thing that
2 I can take from any witness's testimony is the facts that are
3 elicited, because I'm the finder of fact and I will also apply
4 the law. So the objection's overruled. You can answer the
5 question.

6 BY MR. WAITE:

7 Q Last question in this regard, Nolan. Isn't it fair
8 to say that regardless of who we're talking about at the Clark
9 County School District or on site at Greenspun Junior High
10 School, that you believe that they failed to take action to
11 protect you from Connor and Dante?

12 A Yes.

13 Q All right. Let's get a couple of dates in our
14 chronology. You formally withdrew from Greenspun on
15 February 1, 2012, correct?

16 A Correct.

17 Q But you stopped attending classes a few weeks before
18 that, right?

19 A Yes.

20 Q Now, I was a little unsure. Did you stop attending
21 all classes a few weeks before then, or only a few classes?

22 A It would vary.

23 Q Okay. You came back from the holiday break in very
24 early January 2012, and attended classes for only about
25 four -- four or five, six days, right?

1 A That is correct.

2 Q And you estimate that you stopped attending classes
3 somewhere around January 12, 2012?

4 A To the best of my memory, yes.

5 Q When you stopped attending classes, you were still
6 going to school, but you were trying to hide from your
7 teachers so that they wouldn't see you, correct?

8 A That is correct.

9 Q And do you believe you were largely successful, that
10 they did not see you?

11 A Yes.

12 Q Then in late January your parents asked how school
13 was going, and that's when you told them that you had stopped
14 attending classes, right?

15 A Yes.

16 Q And the reason that you told your parents that you
17 had stopped going to classes is because the bullying had
18 continued; is that right?

19 A Yes.

20 Q And you believe, your perception was that your
21 parents were very surprised to learn that the bullying had not
22 stopped but in fact had continued, right?

23 A That was my understanding, yes.

24 Q And in truth, you had not given your parents any
25 sign that the bullying had continued, right?

1 A That is correct.

2 Q Indeed, even though you contend the bullying started
3 from almost day one and continued every single day, you were
4 trying to hide that information from your mom and dad, right?

5 A Yes.

6 Q Now, at some point, Nolan, your parents separated;
7 is that correct?

8 A Yes.

9 MR. SCOTT: Objection. Irrelevant.

10 MR. WAITE: Your Honor, it goes to the time frame of
11 their separation and how other factors in his life were
12 affecting him.

13 THE COURT: And --

14 MR. SCOTT: It's irrelevant.

15 THE COURT: Counsel, approach.

16 (Bench conference transcribed as follows.)

17 THE COURT: All right. So is there some relevance?
18 And the reason I called you up is both of you in your
19 objections, some of that triggers the witness's testimony. So
20 if we need to put anything on the record, we will. But I just
21 need to know why you think this is relevant.

22 MR. WAITE: They're going to claim that all of the
23 emotional distress that he experienced during this time period
24 was due to the bullying, and --

25 MR. SCOTT: No --

1 THE COURT: When did the parents separate?

2 MR. SCOTT: He will testify that they separated in
3 November of that year.

4 THE COURT: And -- all right. Good enough. I'm
5 going to overrule your objection. On the next break, make
6 sure you explore it fully for the record.

7 MR. SCOTT: All right.

8 THE COURT: Thank you.

9 MR. POLSENBERG: Thank you, Your Honor.

10 (End bench conference.)

11 THE COURT: For the record, the objection's been
12 overruled. Which means you can answer the question. And
13 Nolan, I owe you an apology. I called you Ethan by mistake.
14 That was unintentional.

15 Go ahead, Mr. Waite.

16 MR. WAITE: Okay. I'll ask the question again, and
17 I'll actually rephrase it.

18 BY MR. WAITE:

19 Q Nolan, did your parents separate in November 2011?

20 A I believe so, yes.

21 Q So approximately three months into your sixth grade
22 year is when your parents separated, correct?

23 A Yes.

24 Q Your mom moved out of the house and took you and
25 your siblings with her, correct?

1 A Yes.

2 Q So for the rest of your sixth grade year, you were
3 with your mom outside your family home?

4 A False.

5 Q I'm sorry?

6 A That is incorrect.

7 Q Could you clarify for me then how -- you were out of
8 the home for a period of your sixth grade year, but you moved
9 back in before the sixth grade was over? What was it about my
10 statement that was false?

11 A Oh, I apologize. I thought you meant I had been
12 only with my mom the rest of the sixth grade year.

13 Q No. You were --

14 A Just --

15 Q You were with your mother and your siblings outside
16 of your family home for the rest of your sixth grade year
17 after about November, correct?

18 A Yes.

19 Q Did your parents' separation and your move cause you
20 stress at that time?

21 A No.

22 MR. WAITE: Your Honor, this might be a good point
23 for a break if you are looking for one.

24 THE COURT: It's 2:11. Normally I give you until
25 1:15 or 1:30, at your choice. Anybody have a preference for

1 the length of your lunch recess? No. All right. Let's come
2 back then at 1:15. And Nolan, you may step down. You are
3 excused. Court will be in recess until 1:15.

4 (Court recessed at 12:11 p.m. until 1:16 p.m.)

5 THE COURT: Recalling the case of Bryan vs. Clark
6 County School District, A700018. Noting the appearance of
7 counsel and their clients.

8 MR. LICHTENSTEIN: Your Honor, just one housekeeping
9 matter very briefly.

10 THE COURT: Sure.

11 MR. LICHTENSTEIN: Today I am doing a presentation
12 at the Inns of Court over in the federal courthouse, and it
13 starts at 5:00 o'clock. So if I get up a few minutes before
14 that to give myself a chance to walk over there, it's no
15 disrespect to the Court.

16 THE COURT: Certainly.

17 MR. LICHTENSTEIN: I just want to alert you to that.

18 THE COURT: That's fine. And there's no objection?

19 MR. POLSENBERG: Well, he -- Allen already told me
20 about it.

21 THE COURT: Very good. Thank you all. All right.
22 Please continue then with your cross of Nolan.

23 MR. WAITE: Thank you, Your Honor.

24 CROSS-EXAMINATION (continued)

25

1 BY MR. WAITE:

2 Q Nolan, I want to go to the seating change that
3 occurred in the band class. After you reported that Connor
4 and Dante were bothering you, you asked Mr. Beasley for a
5 seating change, correct?

6 A Correct.

7 Q And a few days later Mr. Beasley changed the seating
8 arrangement, correct?

9 A Correct.

10 Q The date of that seating change was September 19,
11 2011, correct?

12 A Yes.

13 Q Nolan, just before -- just before you went up there,
14 you'll see a blank piece of paper to your left on that -- yes,
15 right there. What I'd like to have you do is -- do you have
16 something to write with?

17 A I do not.

18 MR. WAITE: May I approach, Your Honor?

19 THE COURT: Go ahead.

20 BY MR. WAITE:

21 Q What I'd ask you to do, Nolan, is maybe draw a line
22 halfway in between or something to designate, and I'd like for
23 you to draw out -- you went through this exercise during your
24 deposition.

25 I'd like for you to draw both the before and after

1 seating assignment; meaning before you went to Mr. Beasley how
2 the trombone section, where they -- where the individuals were
3 seated, and then after the change occurred where everyone was
4 seated, and to the extent that you can identify you, Ethan,
5 Connor and Dante, where they were seated. You may identify
6 others if you can remember them, but at least those four. And
7 then also, in relation to your drawing, where Mr. Beasley
8 stood, where the front of the class was, all right?

9 A All right.

10 (Pause in proceeding.)

11 BY MR. WAITE:

12 Q Are you done?

13 A I am.

14 MR. WAITE: May I approach, Your Honor?

15 THE COURT: You may.

16 MR. WAITE: Can I have this marked as defendant's
17 next proposed?

18 THE COURT: Make sure Mr. Scott can hear you.
19 Mr. Scott.

20 MR. WAITE: I'm going to have this marked as
21 defendant's next proposed.

22 MR. SCOTT: All right.

23 THE CLERK: It will be Exhibit No. 629.

24 MR. SCOTT: What number is that?

25 THE CLERK: 629.

1 MR. SCOTT: Thank you.

2 BY MR. WAITE:

3 Q Let me see if I can figure this out. Can you see
4 that okay, Nolan, on the -- on your screen over there --

5 A Yes.

6 Q -- or on the screen there?

7 All right. I just need to take a look at it here a
8 second. I notice on the before change on the top here, you
9 have where you and Connor were sitting, but you have not
10 marked where Dante or Ethan were sitting. Did you just forget
11 that, or do you -- do you not remember where they were
12 sitting?

13 A I could not definitely tell you where they were
14 sitting.

15 Q And on the after change you've identified all four
16 of them. Where is Mr. Beasley? Where is his podium or his
17 stand in this picture?

18 A He is towards the bottom of the halves. So the
19 bottom of the page on the bottom half, and the bottom of the
20 half --

21 Q Can I just give this back to you and have you write
22 where --

23 A Absolutely.

24 Q Nolan, I notice that you put Mr. Beasley kind of to
25 the left of what you drew. Is that because there is an aisle

1 here along this left-hand side of your picture, and there are
2 other instruments that are even to the left of that aisle?

3 A There are.

4 Q So Mr. Beasley is -- where you've drawn Mr. Beasley,
5 he's essentially standing in the middle of the classroom?

6 A Yes.

7 Q Up front?

8 A Yes.

9 Q Okay. While you may not be able to recall
10 specifically where Dante and Ethan were sitting before the
11 change, do you recall whether they moved as a result of the
12 change as well?

13 A They did.

14 Q They did?

15 A Yes.

16 Q Okay. So just to be clear, after Mr. Beasley was
17 informed that Connor and Dante were bothering you, Mr. Beasley
18 moved Connor, Dante, you and Ethan?

19 A He moved the entire class, correct.

20 Q He moved the entire class, or just the trombone
21 section?

22 A It was all the instruments were rearranged.

23 Q After the seating change that you drew here, your
24 view is that the bullying not only continued, but it
25 increased; is that correct?

1 A Yes.

2 Q But you never told anyone that the bullying
3 continued, correct?

4 A That is correct.

5 Q Nolan, I want to direct your attention to
6 September 13, 2011, which is the day that you've identified
7 that you were poked in the groin with the pencil. Now, on
8 that morning you received a written tardy warning for being
9 late to first period, correct?

10 A That is correct.

11 Q And in fact, do you have a big binder that's -- a
12 black binder?

13 A I do.

14 Q Okay. If you would turn to Exhibit 512 that's in
15 there.

16 MR. WAITE: And Your Honor, I believe this is a
17 stipulated exhibit.

18 THE COURT: Is that correct, Mr. Scott?

19 MR. SCOTT: I'm sorry?

20 THE COURT: Is this a stipulated exhibit, 512?

21 MR. SCOTT: I'm not sure. What number is this? I
22 believe it is stipulated to.

23 THE COURT: Exhibit 512 will be admitted.

24 (Defendant's Exhibit 512 admitted.)
25

1 BY MR. WAITE:

2 Q Do you have that in front of you, Nolan?

3 A I do.

4 Q And to the best of your recollection, is this the
5 first written tardy notice that you've received?

6 A Yes, to the best of my memory.

7 Q And just to set the stage, you allege that
8 approximately two periods after this tardy warning, Connor
9 jabbed you in the genitals with a pencil, correct?

10 A That is correct.

11 Q And I just want to be clear, that is your signature
12 up at the top of this exhibit?

13 A That is.

14 Q Had you ever previously had to sign for a tardy
15 warning or anything like that in school before?

16 A Not before Greenspun, no.

17 Q Essentially was this your first brush with school
18 discipline?

19 A No. Concerning tardies, no.

20 Q Okay. Concerning tardies. If you'll turn the page,
21 Nolan, to Trial Exhibit 513, which is also a stipulated
22 exhibit. This is a second tardy warning that you signed for
23 two days later on September 15, correct?

24 A Exhibit 513?

25 Q 513, yes.

1 A I have the -- a different date than the 15th on
2 this.

3 MR. WAITE: Can I approach?

4 THE COURT: You may. And let's clarify 512 was
5 admitted. Is 513 stipulated, Mr. Scott?

6 MR. SCOTT: Yes, Your Honor.

7 THE COURT: Thank you. So if I wasn't clear, 513
8 will be admitted.

9 BY MR. WAITE:

10 Q So you have Exhibit 513 in front of you now?

11 A I do.

12 Q So two days later, on September 15, 2011, you signed
13 for your second tardy warning, correct?

14 A That is correct.

15 Q And that also was for the first period class?

16 A Yes.

17 Q And this date is the same date that you were at
18 Ethan's house and had the conversation that Mrs. Bryan
19 overheard about the pencil jabbing, correct?

20 A Quite possibly, yes.

21 Q Is it possible, or is that what you recall?

22 A It is -- I don't recall what specific day it was
23 that I was at Ethan's house.

24 Q Nolan, did you make up the pencil jabbing story to
25 cover for these tardy warnings?

1 A I did not.

2 Q Did you maybe exaggerate the story a little to draw
3 attention away from your tardy warnings?

4 A No.

5 Q In any event, you intentionally did not discuss
6 these tardy warnings with your parents, correct?

7 A That is correct.

8 Q And I think you previously testified, but I just
9 want to be clear, when the pencil jabbing occurred, Connor was
10 sitting directly to your left, correct?

11 A Correct.

12 Q Do you believe that Mr. Beasley was watching and saw
13 when Connor jabbed you with the pencil?

14 A I couldn't answer.

15 Q Isn't it true you got the impression that Connor
16 poked you at a time when Mr. Beasley was not looking?

17 A I did get the impression that I was stabbed when
18 Mr. Beasley was not looking.

19 Q And on that particular day, September 13, 2011, you
20 did not tell Mr. Beasley that it happened, correct?

21 A I did not.

22 Q In fact, you never told Mr. Beasley that you were
23 jabbed in the genitals with the pencil, correct?

24 A That is correct.

25 Q Now, when you were -- when Connor poked you with the

1 pencil, you freaked out and screamed out in pain, correct?

2 A Yes.

3 Q On a scale of one to ten, one being it hurt just a
4 little, ten being the worst pain you've felt in your life, you
5 felt the pencil jabbing was about a seven, correct?

6 A Correct.

7 Q After the pencil stabbing you did not go to the
8 school nurse, correct?

9 A I did not.

10 Q But prior to September 13, 2011, in your school
11 career, for lack of better words, you had sought care from a
12 school nurse on about four prior occasions, correct?

13 A Yes.

14 Q Including for a scraped knee?

15 A Yes.

16 Q And on those prior occasions when you went to the
17 school nurse, you felt the school nurse helped you, correct?

18 A I did.

19 Q When the band class was over on September 13, 2011,
20 you didn't ask to borrow anyone's phone to call your mom and
21 dad, correct?

22 A I did not.

23 Q You didn't go to the office to call your mom and
24 dad, correct?

25 A I did not.

1 Q You didn't tell your mom or dad later that day that
2 it occurred?

3 A I did not.

4 Q Nor did you tell your mom and dad the next morning
5 before you headed out to go back to school?

6 A No.

7 Q Is that -- it did not occur, correct?

8 A That is correct, it did not.

9 Q So you believe that Connor jabbed you in the
10 genitals with a pencil in retaliation for the report that you
11 had made to Dean Winn?

12 A That is correct.

13 Q And you got the impression that as a result of the
14 report that you made to Dean Winn, Dean Winn spoke to Connor?

15 A Yes.

16 Q Do you know that however?

17 A Yes. I visually saw the dean speak to Connor.

18 Q You saw Dean Winn speak to Connor?

19 A Yes, in the band room.

20 Q In the band room, and when was that in relation to
21 the pencil jabbing?

22 A That was the day of, to the best of my recollection.

23 Q I'm sorry?

24 A The day of, I believe.

25 Q So September 13?

1 A Yes, I believe so.

2 Q Now, you identified the conversation that you had at
3 Ethan's house a few days later. I think you had indicated a
4 few days, but let's try to be a little bit more specific of
5 the date. The date that you had the conversation with Ethan
6 about the pencil jabbing in Ethan's home was September 21,
7 2011, correct?

8 A No, that does not sound correct.

9 Q Would you please turn to page 226 of your
10 deposition.

11 A [Complies.]

12 Q I'm sorry. You know what. Let me correct that.
13 The date of the conversation with -- that you had at Ethan's
14 house was on September 15, that's the correct date, right?

15 MR. SCOTT: Objection. Asked and answered.

16 THE COURT: Overruled. You can answer.

17 THE WITNESS: Yes, that sounds very correct.

18 BY MR. WAITE:

19 Q And when you had that conversation with Ethan in his
20 home where you discussed the pencil jabbing, you got the
21 impression that Ethan did not know about it until you told
22 him, right?

23 A That is my interpretation, yes.

24 Q In fact, you believe it was your impression that he
25 seemed very surprised when you told him about it, right?

1 A He did seem surprised, yes.

2 Q In fact, he seem very surprised, right?

3 A Yes, to me.

4 Q And he asked you questions about the event,
5 including when it occurred, right?

6 A I can't recall.

7 Q Would you please turn to page 100 in your
8 deposition.

9 A [Complies.]

10 Q Starting at line 12, you may recall that I asked you
11 the question, What was his reaction or his response? Your
12 answer was, He was kind of surprised, like, oh, what happened
13 and when did that occur -- or when -- excuse me. Let me start
14 that over. His answer was, "He was kind of surprised, like,
15 oh, what happened and when did that happen. And then I told
16 him, oh, it happened this day, it was with a pencil, and then
17 it was very short, you know, like."

18 Does that refresh your recollection that Ethan asked
19 you at that time when the pencil jabbing occurred?

20 A It does.

21 Q Then it was on the 21st -- I had my dates mixed up.
22 It was on the 21st of September when your parents found out
23 about the pencil jabbing incident, correct?

24 A That is correct.

25 Q And you had a conversation with your mom and dad in

1 your home?

2 A Yes.

3 Q And as part of that conversation, your father took
4 you into the restroom and checked you out, correct?

5 A That is correct.

6 Q And you eventually saw a doctor in response to the
7 pencil jabbing several weeks later, correct?

8 A Yes.

9 Q Do you remember the name of the doctor you saw
10 regarding the pencil jabbing incident?

11 A I do not.

12 Q But you do remember that it was not Dr. Faro
13 [phonetic], correct?

14 A Yes.

15 Q Yes, that it was not Dr. Faro?

16 A Correct, that it was not.

17 Q When you saw the doctor several weeks later, did he
18 tell you that anything was wrong?

19 A No.

20 Q No, he didn't tell you, or he told you nothing was
21 wrong?

22 A He did not say that anything was wrong.

23 Q Did the doctor schedule any follow-up visits with
24 you?

25 A He did not.

1 Q Did he prescribe any medications for you?

2 A He did not.

3 Q Did he prescribe any kind of therapy for you?

4 A No.

5 Q In fact, do you recall the doctor telling your
6 mother that all is well?

7 A Yes.

8 Q And that the doctor said there were no long-term or
9 lasting effects?

10 A Yes.

11 Q That he said that your privates were normal?

12 A Yes.

13 Q Now let's go to the meeting you had with Dean Winn.
14 At some point in early to mid September you had such a meeting
15 with Dean Winn in her office, correct?

16 A Correct.

17 Q And shortly after that meeting with Dean Winn,
18 Mr. Beasley implemented his seating change that you have
19 diagrammed for us, correct?

20 A That is correct.

21 Q To be clear, the frequency of the touching and name
22 calling and the intensity of the touching and name calling all
23 decreased after you met with Dean Winn, correct?

24 A Relative to what it was, yes.

25 Q To the extent that Connor continued to bother you

1 after meeting with Dean Winn, it consisted of simple pushing
2 and shoving as you walked into or out of the classroom,
3 correct?

4 A Yes.

5 Q And this was done by Connor when no adults were
6 present, correct?

7 A Yes.

8 Q And to the extent that Connor continued to bother
9 you after your meeting with Dean Winn, you continued to
10 purposely hide this information from your parents?

11 A That is correct.

12 Q Let's move a little bit forward to September 22. As
13 of September 22, the pencil jabbing incident had occurred just
14 approximately eight days earlier, correct?

15 A Yes.

16 Q And your conversation with your mother and father
17 had occurred just the night before --

18 A Yes.

19 Q -- on September 21?

20 And in fact, the main focus of your discussion with
21 your parents on the evening of September 21 was the pencil
22 jabbing incident, correct?

23 A Yes.

24 Q That you had been stabbed, as you say, in the
25 genitals with a pencil, right?

1 A Yes.

2 Q And of all the things that had occurred to you at
3 Greenspun as of September 22, the thing that was most severe
4 in your mind was being stabbed by Connor in the genitals with
5 a pencil, correct?

6 A Yes.

7 Q So the next day, September 22, you filled out a
8 voluntary incident report when you went to school, correct?

9 A Yes.

10 Q And you were able to write down whatever you wanted
11 to write on the voluntary incident report, correct?

12 A Yes.

13 Q No one limited you and said you can't write about
14 this or that or anything else; you could write whatever you
15 wanted?

16 A That is correct.

17 Q Would you please turn to -- I guess we can use --
18 let's use Plaintiff's No. 9, which is also stipulated. So in
19 the white, in the white binder.

20 THE COURT: Mr. Scott, is that correct; is Number 9
21 stipulated?

22 MR. SCOTT: Yes, Your Honor.

23 THE COURT: Exhibit 9 will be admitted,
24 Plaintiff's 9.

25

1 BY MR. WAITE:

2 Q And so -- do you have that in front of you, Nolan,
3 Exhibit 9?

4 A I do.

5 Q This is your Greenspun Junior High Voluntary
6 Incident Report that we were just talking about?

7 A Yes.

8 Q There's a little bit of information that's blacked
9 out. Your student number is blacked out. There's a witness
10 number that's blacked out. But otherwise this is all your
11 writing?

12 A Yes.

13 Q And you filled out this form on September 22, as it
14 says down at the bottom, because the night before your parents
15 had confronted you about the pencil jabbing incident, correct?

16 A I can't recall.

17 Q You don't remember if you filled this out because of
18 the conversation you had with your parents the night before?

19 A I could not definitely say that.

20 Q Okay. Would you please read out loud what you wrote
21 in the middle section there as you described what the incident
22 was, would you please read that out loud?

23 A "He was messing with my hair, kicking the instrument
24 and also blowing air in my face. He called me Duckbill Dave
25 and another kid Phil the Fail."

1 Q Does this look complete for what you filled out?

2 A Yes.

3 Q And you didn't mention any name calling of any
4 homosexual nature, correct?

5 A No.

6 Q That's correct, you did not mention --

7 A That is correct, that I did not.

8 Q And you didn't mention anything about the pencil
9 jabbing incident?

10 A I did not.

11 Q You could write about anything that you wanted, but
12 you left off the most severe thing that had occurred to you.
13 Do you have an explanation for that?

14 A My parents had already been informed, and I didn't
15 see a need to bring it up again.

16 Q Do you believe that you filled out this voluntary
17 incident report as part of a meeting you had in September 2011
18 with Counselor Halpin?

19 A I couldn't say.

20 Q Could be?

21 A It could be, it could not.

22 Q Well, let's go. You did have a meeting with
23 Counselor Halpin in September 2011, correct?

24 A I did.

25 Q In fact, while you were at Greenspun you had two

1 separate meetings with Counselor Halpin, right?

2 A That is correct.

3 Q The first was just a couple of days after you told
4 your mom and dad about the pencil jabbing, correct?

5 A Yes. That sounds correct.

6 Q So on direct examination, when Mr. Scott was asking
7 you about that and you said that it was before you told your
8 mom and dad about the pencil jabbing, you were mistaken,
9 correct?

10 A Possibly, yes.

11 Q Because it in fact, the first meeting happened
12 after, after you told your mom and dad about the pencil
13 jabbing, correct?

14 A It could have, yes.

15 Q Would you please turn to page 127 of your
16 deposition.

17 A [Complies.]

18 Q Do you recall, starting at line 22, I asked the
19 question, "Approximately what was the date of the first one,"
20 meaning the first meeting with Counselor Halpin? And your
21 answer was, "The first meeting I had with him was a couple
22 days after my parents found out, so possibly the 24th or 25th
23 of September 2011." Does that refresh your recollection that
24 your first meeting with Counselor Halpin happened after you
25 told your parents of the pencil jabbing incident?

1 A It does.

2 Q And in that meeting, that first meeting that you had
3 with Counselor Halpin, he asked you about the whole situation
4 with the bullying and everything, right?

5 A Yes.

6 Q He asked you if everything was okay in your classes?

7 A Yes.

8 Q And you told Mr. Halpin that everything was okay and
9 everything was fine?

10 A I did.

11 Q In other words, in -- Counselor Halpin, he responded
12 and followed up with you to make sure that you were -- you
13 were good, right?

14 A Yes.

15 Q Was your statement to Mr. Halpin true?

16 A No.

17 Q You had a second meeting with Counselor Halpin, was
18 somewhere around October 20, 2011, correct?

19 A Yes.

20 Q Like the first meeting, Mr. Halpin called you up to
21 his office for the second meeting, correct?

22 A That is correct.

23 Q In other words, you didn't just walk into his
24 office; he took the initiative and he called you in to his
25 office, right?

1 A He did call me up, yes.

2 Q And during the second meeting Counselor Halpin again
3 said he wanted to check up on you and make sure you were doing
4 okay, right?

5 A Yes.

6 Q To make sure everything was going well in school and
7 band and everything, right?

8 A Yes.

9 Q And in response, you again told him that everything
10 was continuing to be okay and everything was good, right?

11 A Yes.

12 Q And was that response of yours truthful?

13 A No.

14 Q Were you purposely trying to mislead Mr. Halpin?

15 A Yes.

16 Q You were purposely trying to mislead him into
17 believing that the mistreatment from Connor and Dante had
18 stopped --

19 A Yes.

20 Q -- when in reality it had not?

21 A That is true.

22 Q In other words, by telling Mr. Halpin that
23 everything was good between you and Connor and Dante, you were
24 hoping that he would not follow up with those two boys, right?

25 A That is correct.

1 Q Now let's go to you transferred schools after you
2 left Greenspun and you went to, was it the Explore Knowledge
3 Academy?

4 A That is correct.

5 Q And sometimes referred to as EKA?

6 A Yes.

7 Q So if I refer to it, you'll know what I'm talking
8 about?

9 A I will.

10 Q And how long were you at EKA?

11 A For the remainder of sixth grade, all of seventh
12 grade and all of eighth grade.

13 Q Is eighth grade -- was eighth grade considered high
14 school at EKA?

15 A No.

16 Q So in the beginning of your high school you
17 transferred away from EKA?

18 A Correct.

19 Q And you went to the Lake Mead Christian Academy?

20 A Yes.

21 Q And you liked both EKA and the Lake Mead Christian
22 Academy better than Greenspun, correct?

23 A Yes.

24 Q And can we sometimes refer to maybe shorthand, if I
25 refer to the Lake Mead Christian Academy as LMCA, you'll know

1 what I'm talking about?

2 A I will.

3 Q All right. You feel that EKA provided you with a
4 better educational experience than Greenspun, correct?

5 A I do.

6 Q And your opinion is based on your grades, your
7 improved mood, your relationship with your friends and your
8 ability to make new friends?

9 A Yes.

10 Q Now, you've never had any problems in school with
11 reading at your grade level, have you?

12 A No.

13 Q In fact, you've always read above your grade level,
14 correct?

15 A Yes.

16 Q And you know that because you take yearly tests on
17 your reading level and you've always tested above your grade
18 level, correct?

19 A Yes.

20 Q You've never had any problems expressing yourself in
21 writing either, correct?

22 A No.

23 Q That's correct, you have not?

24 A That is correct, that I have not had any problems.

25 Q And you've done academically well in math classes,

1 correct?

2 A Yes. As can be expected, yeah.

3 Q And more specifically, you've never had any problems
4 doing math at your grade level, correct?

5 A No.

6 Q Is that correct, that --

7 A Correct.

8 Q Comparing Greenspun and after Greenspun, so at EKA
9 and Lake Mead Christian Academy, you participated in about the
10 same number of activities after Greenspun as you did while at
11 Greenspun, correct?

12 A Yes.

13 Q And you would agree that your interactions with
14 Connor and Dante never kept you from participating in any
15 classes that you wanted to participate in?

16 A No.

17 Q No, you --

18 A I disagree.

19 Q Would you please turn to page 248 of your
20 deposition.

21 A [Complies.]

22 Q Okay. You'll see starting at line -- on page 248,
23 line 24, "Question. Going back, I was asking you about
24 whether your interactions with CL and DM," that's Connor and
25 Dante, correct --

1 A Yes.

2 Q -- those initials?

3 "Going back, I was asking you about whether your
4 interactions with CL and DM kept you from participating in any
5 activities that you wanted to." And then you said, Similar
6 question -- actually, I think the -- I'm sorry. That's me
7 still speaking.

8 "A similar question, has your interactions with them
9 at any time kept you from participating in any classes that
10 you wanted to participate in?" And you asked a question back,
11 "At that time?" And I said, "At any time." And you said, "At
12 any time." And I asked, "At any time has your interactions
13 with them precluded you from taking a class that you wanted
14 to?"

15 You asked another question, "Does a class also
16 include extracurricular activities?" I said, "No. I think
17 we've already talked about the activities. I'm talking about
18 a class at this point. Has that --" And you answered, "No."
19 Do you see that?

20 A I do.

21 Q Does that refresh your recollection that in fact
22 your prior interactions with Connor and Dante did not keep you
23 from participating in any classes that you wanted to
24 participate in?

25 A Yes.

1 Q And Nolan, you believe that you can be anything that
2 you want to be, correct?

3 A Yes.

4 Q As long as you exert yourself and so forth, you can
5 accomplish whatever you want to accomplish, right?

6 A Yes.

7 Q While at Greenspun did you generally eat lunch with
8 Ethan?

9 A Sometimes.

10 Q Just sometimes? Out of a week, how many times would
11 you eat with Ethan during the lunch period?

12 A It varied every week, but I'd say during the
13 beginning of the year maybe twice a week.

14 Q Would you please turn to page 158, of your
15 deposition.

16 A [Complies.]

17 Q Are you there?

18 A I am.

19 Q Starting at line 25, I asked the question, "Did you
20 generally eat lunch with Ethan at Greenspun?

21 "A Yes."

22 Does that refresh your recollection that you
23 generally ate lunch with Ethan during lunch --

24 A Yes.

25 Q -- the lunch period at Greenspun?

1 Did you ever witness anyone using their phone to
2 video Ethan while he ate during the lunch hour?

3 A No.

4 Q And Ethan never talked to you about such an
5 incident, did he?

6 A No.

7 Q No, he did not?

8 A No, he did not.

9 Q Regarding the name calling that you observed that
10 was directed toward Ethan until he withdrew from Greenspun,
11 much of the name calling directed towards Ethan made fun of
12 his stature and the clothes that he wore, correct?

13 A Relative to me, yes.

14 Q What do you mean, relative to you?

15 A Well, compared to me, that was a lot of it. If you
16 compared how much I was called those names compared to how
17 much he was called those names, it was increased, yes.

18 Q Okay. But what you observed Ethan being called was
19 mostly about his stature, how big and tall he was, and about
20 the clothes that he wore, correct?

21 A Yes.

22 Q He was called things like big fat ass?

23 A Yes.

24 Q Jolly green giant?

25 A Yes.

1 Q Things that made fun of his height and weight?

2 A Yes.

3 Q And those are the only kinds of name callings you
4 ever heard Ethan called, correct?

5 A I -- no. I disagree.

6 Q Would you please turn to page 173, of your
7 deposition.

8 A [Complies.]

9 Q Are you there?

10 A I am.

11 Q Okay. Starting at line 13.

12 "Q As the name calling regarding
13 stature, what kinds of name calling did you
14 hear Ethan being called?

15 "A I heard Ethan being called things
16 like big fat ass or jolly green giant or big
17 boy, anything that could make fun of his height
18 or weight.

19 "Q Was he a big boy?

20 "A Yes. For his age he was above
21 average height and above average weight, I'd
22 say, yes.

23 "Q Anything else as far as name calling
24 that he was called that you heard?

25 "A Not that I heard."

1 Does that refresh your recollection that name
2 calling regarding things having to do with his height and
3 weight is all that you heard?

4 A It does.

5 Q Let's talk about being poked with the trombone
6 slide. There came a point in time where Connor hit you with
7 his trombone slide; is that correct?

8 A Correct.

9 Q And but you never reported that to any adult,
10 correct?

11 A Correct. I did not.

12 Q To the best of your knowledge, Connor never hit
13 Ethan with his trombone slide, correct?

14 A Not that I saw.

15 Q Your testimony, or is it your testimony that Dante
16 hit Ethan with the trombone slide?

17 A Yes.

18 Q Do you know if Ethan ever reported his incident to
19 anybody?

20 A I do not.

21 Q And you never reported Ethan's leg scratching to
22 anyone, correct?

23 A I did not.

24 Q And you and Ethan never talked about it, correct?

25 A That is correct. We never did.

1 Q In any event, as a result of the seating change
2 implemented by Mr. Beasley, Ethan was moved further away from
3 Connor than he was before the seating change, correct?

4 A As I don't remember where they were to begin with, I
5 could not give you a definite answer on that.

6 Q Would you please turn to page 175. You would agree
7 that when you had your deposition taken almost, well, 11
8 months ago, in December of last year, that your memory of
9 these events was fresher then?

10 A Today, yes.

11 Q Would you please turn to page 175.

12 A [Complies.]

13 Q At line -- are you there?

14 A I am.

15 Q Line 22. "And as a result of the seating change
16 that you've identified, he, meaning Mr. Beasley, actually --
17 I'm sorry, he being Ethan, actually moved further away than he
18 originally was from CL, meaning Connor, correct?" And your
19 answer was, Yes.

20 Does that refresh your recollection that in the
21 seating change that Mr. Beasley moved Ethan further away from
22 Connor than he was before the seating change?

23 A Yes.

24 Q Let's switch gears a little bit. You believe --
25 it's your belief that Connor perceived you as straight, not

1 gay, correct?

2 A Yes. It was my -- yes, that was my guess, yes.

3 Q And you also believed that Dante perceived you as
4 straight, not gay, correct?

5 A Yes, if I had to guess.

6 Q You believed that the teachers and administrators at
7 Greenspun perceived you as straight, not gay, correct?

8 MR. SCOTT: Objection. Calls for speculation.

9 MR. WAITE: I'm asking for his belief.

10 THE COURT: Overruled.

11 MR. SCOTT: It's speculation.

12 THE WITNESS: I couldn't answer. I had nothing to
13 point me in either direction.

14 BY MR. WAITE:

15 Q Would you please turn to page 205 of your
16 deposition.

17 A [Complies.]

18 Q Are you there?

19 A I am.

20 Q Starting at line 20.

21 "Q Do you have any reason to believe
22 that any Greenspun teacher or administrator
23 perceived you as gay?

24 "A No.

25 "Q Do you believe to the contrary that

1 the teachers and administrators at Greenspun
2 perceived you as straight?

3 "A I believe, yes, the teachers and
4 administration perceived me as straight."

5 Does that refresh your recollection that you
6 possessed a belief that the teachers and administrators at
7 Greenspun did not perceive you as gay, but instead perceived
8 you as straight?

9 A Yes.

10 Q Would you turn in the big black binder to
11 Exhibit 547.

12 MR. WAITE: Which I believe is also a stipulated
13 exhibit, Your Honor.

14 THE WITNESS: [Complies.]

15 MR. SCOTT: So stipulate.

16 THE COURT: 547 will be admitted.

17 BY MR. WAITE:

18 Q Do you have that in front of you, Nolan?

19 A I do.

20 Q This is something that you filled out in your
21 handwriting; is that right?

22 A That is correct.

23 Q And up at the top left it says, "Year 2012-2013,"
24 but that was a mistake. It should be 2011-2012; is that
25 correct?

1 A Yes. Yes.

2 Q And it's titled My Bullying Experience at Greenspun
3 Junior High School?

4 A Yes.

5 Q It's dated February 8, 2012, do you see that?

6 A I do.

7 Q So this -- you wrote this approximately one week
8 after you formally withdrew from Greenspun?

9 A Yes.

10 Q Do you know who asked you to write this?

11 A A police officer that represented the Clark County
12 School District.

13 Q Are you sure about that?

14 A No.

15 Q In fact, you don't recall who asked you to write
16 this; is that --

17 A I could not give you a definite answer, no.

18 Q You can't recall why you wrote it; is that correct?

19 A That is correct.

20 Q You can't recall what you did with this statement
21 after you wrote it, correct?

22 A I do not recall.

23 Q In any event, let's look at some of the things that
24 you wrote. You wrote that you asked Mr. Beasley to move your
25 seat and you were moved the next week. Do you see where you

1 say that?

2 A I do.

3 Q And was your statement true?

4 A Yes.

5 Q Directing your attention down towards the -- if you
6 look at the bottom of this first page, one, two, three, four,
7 five, five lines from the bottom on the left-hand side, where
8 it says, This time I told the dean, do you see that, where I'm
9 referring to?

10 A Yes.

11 Q You say, "This time I told the dean even though it
12 had ceased in band, he would still call me names and/or bump
13 into me as we left the band room." What is the it you
14 referred to; that's the bullying, right?

15 A Yes.

16 Q The harassment that you were experiencing?

17 A Yes.

18 Q The name calling and everything that you were
19 experiencing?

20 A Yes.

21 Q And the he, is that Connor?

22 A Yes.

23 Q And you say that it ceased. Was that a true
24 statement?

25 MR. SCOTT: Objection. Misstates the evidence.

1 THE COURT: Overruled.

2 THE WITNESS: Yes, I believe.

3 BY MR. SCOTT:

4 Q I think maybe to counsel's point, it had ceased in
5 band, correct?

6 A Yes.

7 Q So as of your meeting with Dean Winn, the bullying
8 had ceased in band, correct?

9 A Yes.

10 Q Nolan, just a few more questions here just kind of
11 to wrap up. It was your perception that when Connor and Dante
12 misbehaved in class, they did so when Mr. Beasley was not
13 looking, correct?

14 A That is correct.

15 Q And other than the one instance with Mr. Beasley,
16 you never told any other Greenspun teachers that Connor and
17 Dante were picking on you, correct?

18 A That is correct.

19 Q And following your one discussion with Mr. Beasley,
20 you saw that he called them up, had a conversation with them,
21 and a seating change occurred in the trombone section just a
22 few days later, correct?

23 A That is correct.

24 Q Other than one instance with Ms. Winn, Dean Winn,
25 you never told any other Greenspun administrator or staff

1 member that Connor and Dante were picking on you, correct?

2 A That is correct.

3 Q And following your one discussion with Dean Winn,
4 the bullying ceased in band, correct?

5 A Yes.

6 Q While you were at Greenspun you purposely hid the
7 frequency and intensity of the continuing bullying acts even
8 from your parents, right?

9 A Yes, to prevent the bullying.

10 Q And each time Mr. Halpin, Mr. DePiazza or anyone at
11 the school asked how things were going, asked if you were
12 okay, each time you told them that everything was fine,
13 correct?

14 A Yes.

15 MR. WAITE: Your Honor, I'd move to admit the
16 exhibits that -- the Proposed 629.

17 MR. SCOTT: No objection.

18 THE COURT: 629 will be admitted.

19 (Defendant's Exhibit 629 admitted.)

20 MR. WAITE: I think -- I think the others were all
21 stipulated.

22 THE COURT: So 629, 512, 513. Did we admit
23 Exhibit 9?

24 THE CLERK: Yes.

25 THE COURT: Plaintiff's Exhibit 9 is in.

1 MR. WAITE: I think that is stipulated.

2 THE COURT: And then --

3 MR. WAITE: Plaintiff's Exhibit 9?

4 THE COURT: Yes.

5 MR. WAITE: Yes, that was stipulated.

6 THE COURT: And then the 547 are all admitted.

7 Redirect, please.

8 MR. SCOTT: I have nothing further, Your Honor.

9 THE COURT: May we excuse the witness?

10 MR. SCOTT: Yes.

11 THE COURT: Nolan, you may step down.

12 Plaintiff, please call your next witness.

13 MR. SCOTT: The plaintiff calls Ethan Bryan, Your
14 Honor.

15 ETHAN BRYAN, PLAINTIFF'S WITNESS, SWORN

16 THE CLERK: State and spell your name for the
17 record.

18 THE WITNESS: My name is Ethan Bryan. It's
19 E-t-h-a-n, B-r-y-a-n.

20 DIRECT EXAMINATION

21 BY MR. SCOTT:

22 Q Good afternoon, Ethan. Ethan, what's your date of
23 birth?

24 A June 29, 1999.

25 Q I'm sorry. June 29?

1 A 1999.

2 Q 1999. And where were you born?

3 A Henderson, Nevada.

4 Q And where did you attend grammar school?

5 A Estes McDaniel.

6 Q I'm sorry?

7 A Estes McDaniel.

8 Q All right. And at some point did you attend

9 Greenspun Junior High School?

10 A Yes.

11 Q And when was that, what grade?

12 A Sixth grade.

13 Q And what year was that?

14 A 2011, I think.

15 Q And prior to attending Greenspun, did you know Nolan

16 Hairr?

17 A Yes.

18 Q And how did you know him?

19 A From elementary school.

20 Q And where did he live at that time in relation to

21 you?

22 A Just a couple houses down the street.

23 Q And when you went to Greenspun for sixth grade back

24 in 2011, did you know other students there from sixth grade

25 other than Nolan?

1 A There were a few, I think, yes, that also came from
2 Estes.

3 Q And at that time when you started school, was Nolan
4 a friend of yours?

5 A Yes.

6 Q And when you started sixth grade, what was your
7 approximate size at that time?

8 A I'm not sure.

9 Q And what was your size at that time compared to
10 Nolan's?

11 A I was a lot taller than him.

12 Q I'm sorry?

13 A I was a lot taller than him.

14 Q And do you recall what classes you took at
15 Greenspun?

16 A Yes.

17 Q And what classes did you take?

18 A I took computers, English, math, science, band. I
19 don't remember what else.

20 Q Fair enough. And did you know any teachers at
21 Greenspun before you got there?

22 A No.

23 Q Do you recall who your band teacher was in sixth
24 grade?

25 A Yes.

1 Q And who was it?

2 A Mr. Beasley.

3 Q And why did you attend band class?

4 A I just always wanted to learn how to play an
5 instrument.

6 Q And did you have any experience with instruments
7 before sixth grade?

8 A No.

9 Q And what instrument were you attempting to learn?

10 A The trombone.

11 Q And as you were attending band class back at the
12 beginning of that school year in the sixth grade, did -- was
13 Nolan also in the class?

14 A Yes.

15 Q Do you know what instrument he was taking?

16 A He also played the trombone.

17 Q Do you recall where you sat in relation to him at
18 that time?

19 A I was sitting next to him.

20 Q Okay. And did that ever change?

21 A Yes.

22 Q Do you recall when it changed?

23 A Not the exact date, no.

24 Q And do you know why your seating arrangement with
25 him changed?

1 A Yes. He had requested it be changed to the teacher.

2 Q And why do you believe that?

3 A Because he told me. I noticed that he changed seats
4 and I talked to him about it.

5 Q And when he changed seats, did you change seats?

6 A I think so, yes.

7 Q Okay. And during the beginning of that school year
8 in band class, did you observe any behavior by students
9 towards Nolan that you thought was unusual?

10 A Yes.

11 Q What did you observe?

12 A He was being bullied in the band class.

13 Q And can you be more specific?

14 A Things like name calling and hair pulling and I
15 guess just like harassment.

16 Q Is that something you could observe?

17 A Yes.

18 Q And when this -- do you -- do you recall which
19 student or students were doing that to Nolan?

20 A Dante [omitted] and --

21 Q Don't use last names, just first names.

22 A Sorry. Dante and Connor.

23 Q And at that time do you know where they were seated
24 in relation to Nolan?

25 A Next to him.

1 Q And so at the beginning of the school year you were
2 all seated generally close to each other?

3 A Yes.

4 Q And can you be specific in terms of kinds of names
5 that Connor and Dante were calling Nolan?

6 A A lot were addressing him because he had long hair,
7 so it was about him being a girl and a lot of names about
8 being gay and things along those lines.

9 Q And at that time was there any name calling directed
10 toward you?

11 A Yes, but not as much in the beginning of the year.

12 Q And what kind of name calling -- and we're talking
13 about Connor and Dante, or anyone else?

14 A Connor and Dante.

15 Q Was there ever name calling from any other students?

16 A Not that I can remember.

17 Q And at the beginning of the school year, what kind
18 of name calling were you subjected to?

19 A It was mostly directed at my height and my weight.

20 Q Can you give the judge examples of types of names?

21 A Like fat ass and fat, things like that, jolly green
22 giant.

23 Q Now, at some point did you notice that the behavior
24 of Connor and Dante toward you changed in any way?

25 A Yes.

1 Q And do you recall when that was approximately?

2 A Around the time Nolan was stabbed with a pencil,
3 that sort of became like directed more towards the both of us,
4 about us being gay with each other.

5 MR. SCOTT: Your Honor, we've been going, I think, a
6 little over an hour. Would this be a good time for a break?

7 THE COURT: Sure. It's 2:18. I'd like to take
8 about a five minute -- let's just make it 2:25, if everyone
9 will please be prompt. And sir, you may step down. Court
10 will be in recess until 2:25.

11 (Court recessed at 2:18 p.m. until 2:29 p.m.)

12 THE COURT: Mr. Scott, please proceed.

13 MR. SCOTT: Thank you.

14 DIRECT EXAMINATION (continued)

15 BY MR. SCOTT:

16 Q Ethan, getting back to Greenspun in September of
17 sixth grade, did -- at some point did you observe or learn
18 that Nolan had been poked or stabbed in the groin with a
19 pencil?

20 A Yes.

21 Q And did you -- were you at school that day?

22 A Yes.

23 Q And where were you sitting in relation to Nolan when
24 that occurred?

25 A To the left of him.

1 Q And do you know where Connor sat in relation to him?

2 A To the right.

3 Q And you sat directly to his left?

4 A Yes.

5 Q And at some point during class did you observe
6 anything -- Nolan react in any way to some behavior by Connor?

7 A I kind of saw like the -- his reaction and like I
8 saw like out of the corner of my eye what happened.

9 Q And what did you observe? When you say his
10 reaction, what do you mean by that?

11 A Like he kind of flinched and bent over and made a
12 noise.

13 Q And when -- what drew your attention to him when you
14 say he flinched and bent over and made a noise?

15 A Because he was stabbed with the pencil.

16 Q But what was it that made you turn in his direction?
17 Do you recall?

18 A Yeah. I saw like the -- I saw him get stabbed.

19 Q Okay. And when you say you saw him, were you
20 looking right at it, or did something draw your attention to
21 it?

22 A No. I saw it like out of the corner of my eye.

23 Q And then what did you observe Nolan do?

24 A He kind of like made a noise and, I guess, like --

25 Q I'm sorry?

1 A He made a noise and like flinched away.

2 Q And what's the next thing you recall after that?

3 A I don't know. I was just kind of like -- I wasn't
4 really sure what just happened, so I didn't really do anything
5 about it.

6 Q And at some point and later that day did -- at
7 school did you talk to Nolan about it?

8 A Not at school. It was -- I don't know if it was the
9 same day, but it was later at my house he told me what
10 happened.

11 Q And so it wasn't at school, but it was later at
12 whose house?

13 A My house.

14 Q Do you recall if it was that day or another day?

15 A I don't remember the day.

16 Q And do you recall when it was in proximity to the
17 day that it happened? Are we talking days, weeks?

18 A It would have been either the day of or like the
19 next day.

20 Q And when you were -- was this at your house when you
21 talked to Nolan about it?

22 A Yes.

23 Q And what did he say to you?

24 A I don't remember exactly, but he just kind of gave
25 me the details of what happened.

1 Q All right. And how did you respond or react to
2 that?

3 A I kind of already knew, because like I sort of saw
4 it, but I just knew more.

5 Q Well, how did you react? What if anything did you
6 say to him?

7 A I don't remember.

8 Q Do you remember anything about how you reacted to
9 that, anything you said or did?

10 A No.

11 Q Okay. And at some point did you have any
12 conversation with your mother about that?

13 A She overheard us talking about it and kind of, after
14 Nolan went home, was talking to me about it.

15 Q And what did you tell your mother?

16 A Well, I told her about what happened and that we
17 were having problems with Connor and Dante at school.

18 Q Did you give her anymore specifics in terms of what
19 the problems were?

20 A I told her some of the names like they were calling
21 me and some of -- then some of the names they were calling
22 Nolan.

23 Q And after that did you receive any information from
24 anyone at the school about any complaint that had been made?

25 A I don't remember.

1 Q Do you remember any -- let's start with Dean Winn.
2 Do you recall being contacted by Dean Winn to ask you about
3 what you knew?

4 A I remember having a meeting once with Dean Winn, but
5 I don't remember what it was about or when it was.

6 Q Well, do you recall if it was in relation to this
7 September incident with Nolan, or something else?

8 A I'm not sure.

9 Q And this one meeting you had with Dean Winn, where
10 did that take place?

11 A In her office.

12 Q And what do you recall about that meeting?

13 A She asked me like what was going on and I just kind
14 of gave her like the small details, but I was kind of like --
15 she seemed very dismissive and like --

16 Q Well, do you recall what she asked you?

17 A She asked like what was happening with like the
18 bullying situation.

19 Q The what situation?

20 A The bullying situation.

21 Q Okay. And what did you tell her?

22 A I don't know. I was kind of nervous, so I told her
23 that everything was fine.

24 Q And why did you tell her that?

25 A I don't know. I was just very nervous and she was

1 being very dismissive and looked like she had -- she was doing
2 something else like on her computer, so I -- I just -- I don't
3 know. I didn't feel comfortable telling her.

4 Q Other than Dean Winn, did you talk to anyone else at
5 the school? Let's start with Mr. Beasley. Did you ever talk
6 to Mr. Beasley about the bullying?

7 A I don't think so.

8 Q Did he ever ask you about it?

9 A I don't remember.

10 Q Do you know who Mr. Halpin is?

11 A I recognize his name, but I don't think I'd
12 recognize him.

13 Q Do you recall if you ever talked to Mr. Halpin about
14 any of the bullying?

15 A No, I don't remember.

16 Q I'm sorry?

17 A I don't remember.

18 Q You don't remember that happening?

19 A No.

20 Q And what about Mr. DePiazza, the vice principal, did
21 you ever talk to him? Did he contact you or did he ever
22 contact you or talk to you about the bullying?

23 A I don't think so.

24 Q And what about the principal, Dr. McKay, did he ever
25 contact you or ask you any questions about the bullying?

1 A I don't think so.

2 Q Now, at some point after the stabbing incident of
3 Nolan, going forward from there, did the behavior of Connor
4 and Dante toward you, did that change over the next few weeks?

5 A Yes.

6 Q And how did it change?

7 A It felt more like directed towards me, as like
8 before it was kind of I guess Nolan was their main target and
9 I just kind of got some of it, but then it felt more towards
10 me and also like harsher with what they were saying.

11 Q And when you say more directed towards you and
12 harsher, can you be more specific?

13 A Just it seemed like a lot meaner, I guess.

14 Q Can you be -- well, let's talk about names that you
15 were called, did that change?

16 A Yes.

17 Q And how did that change?

18 A It went from just being like about my height and
19 weight to like me being gay with Nolan.

20 Q I'm sorry?

21 A To me being gay with Nolan.

22 Q And what types of things did they say in that
23 regard?

24 A Like they called us faggots and stuff like that, and
25 they asked us if we jerked off together, things like that.

1 Q Well, when you say things like that, I'm not sure if
2 anybody in this room, most importantly the judge, knows what
3 you mean by that. So can you be a little bit more specific?

4 A I don't know.

5 Q Okay. But they asked you about jerking off
6 together?

7 A Yes.

8 Q And during this period of time after the seats were
9 moved, where were you seated in relation to Nolan?

10 A I was in the row behind him.

11 Q So you were some distance from him instead of being
12 right next to him?

13 A Yes, I think so.

14 Q I'm sorry?

15 A Yes, I think so.

16 Q And when this name calling towards you kind of took
17 a different course after the seats were rearranged, could you
18 tell whether Nolan was in the vicinity to be able to hear what
19 Connor or Dante were calling you?

20 A I don't think so.

21 Q Why do you say that?

22 A He was just like further away.

23 Q And at some point in October of that year, did
24 anything happen to you of a physical nature in the band class?

25 A Yes.

1 Q What happened?

2 A One of the other students was scratching me with one
3 of the trombone pieces.

4 Q When you say scratching you, what do you mean?

5 A Like they took off one of the like rubber stoppers
6 on the instrument and was like scratching my legs with it.

7 Q When you say scratching, can you kind of be more
8 specific what types of movement was being made, if you were
9 able to see it or what you felt?

10 A No. I don't remember.

11 Q You don't know, you didn't see it?

12 A No. I saw it, but I don't know how to be more
13 specific. It was just like [indicating] scratching.

14 Q Well, and you're using the term "scratching." What
15 do you mean by that?

16 A They were hitting me with the sharp piece.

17 Q Okay. Now, when you say hitting you, most of us
18 think there might be a difference between hitting and
19 scratching. So can you be a little more specific in terms of
20 what it was that you saw?

21 A I don't know how to be more specific. It was just
22 they were scratching me with the piece on my legs.

23 Q And how many times?

24 A I don't know.

25 Q More than once?

1 A Yes.

2 Q And did it hurt?

3 A Yes.

4 Q And did it cause any kind of injury or anything that
5 you could observe to your skin?

6 A It broke the skin, but there wasn't any like
7 bleeding.

8 Q And were you able to tell who was doing it?

9 A I'm pretty sure it was Connor, but I don't remember
10 if it was Connor or Dante.

11 Q And when you say Connor or Dante, do you know if
12 they were together at that time?

13 A No, I don't.

14 Q And your recollection is that it was who?

15 A Connor.

16 Q And when that happened during band class, do you
17 recall if the class was in session or if it was during a break
18 or the end of class, beginning of class, have any
19 recollection?

20 A I think it was more towards the beginning of class,
21 before class began.

22 Q And what was your response to this when it happened?

23 A I'm pretty sure I just moved away from him. I think
24 I told him -- I told him to stop and then moved away.

25 Q And did you report it to anyone at school that day?

1 A No.

2 Q Why not?

3 A I don't -- I didn't know how to react, or I didn't
4 know what to do. I was just -- I must have thought like
5 because I was a lot bigger than him then they would have just
6 said like -- or they might not have taken me seriously because
7 I was bigger.

8 Q So you were bigger than Connor and Dante?

9 A Yes.

10 Q And did you ever consider getting physical with them
11 or challenging them physically because of your size advantage?

12 A No.

13 Q Why not?

14 A Well, like first of all, I didn't want to get in
15 trouble with the school and -- I don't know. I'm just not
16 like a -- that just didn't seem like an answer to me.

17 Q Okay. Fair enough. Now, at some point did your
18 mother become aware of what happened at school that day?

19 A Yes.

20 Q And how did that happen?

21 A When I came home there was marks on my leg and she
22 asked me what those were and I told her what happened.

23 Q And when you told your mother what happened, did you
24 understand and believe she was going to report it to the
25 school?

1 A I don't know.

2 Q Did you at some point learn that she did report it?

3 A Yes.

4 Q And were you concerned or worried about the fact
5 that she had reported it to the school?

6 A A little bit, yes.

7 Q And what do you mean by that, a little bit?

8 A Well, because earlier in the year when Nolan had
9 reported something they -- we were -- we noticed it becoming
10 like more frequent and like they retaliated.

11 Q And what -- how did you learn that the incident with
12 Nolan being stabbed was reported? How did you learn about
13 that?

14 A He told me.

15 Q Okay.

16 A Well, I don't know if that, if the stabbing incident
17 was reported, but he reported something and it just got worse.

18 Q When you say -- so at some point you learn that
19 Nolan reported something --

20 A Yes.

21 Q -- correct?

22 A Yes.

23 Q And you learned that from Nolan?

24 A Yes.

25 Q And this one time you met with Dean Winn, did you

1 understand she was asking you about Nolan, or something else?

2 A I thought she was asking about me.

3 Q All right. And when you say things got worse after
4 Nolan reported something, what do you mean by that?

5 A It just became -- like the name calling got worse
6 and the -- I don't know. They just -- that's what caused him
7 to stab Nolan.

8 Q I'm sorry?

9 A That's what caused him to stab Nolan, was like he
10 said something. He knew about the report and that's why he
11 stabbed Nolan.

12 Q And how did things get worse for you?

13 A Like around that point is when they started the
14 names towards me about gay and like us jerking each other off
15 and faggot and stuff like that.

16 Q Now, after -- in October, and I believe -- I don't
17 think there's a dispute it was October 19, or thereabouts that
18 the trombone incident happened to you. Did anyone from the
19 school contact you to like interview you about what happened?

20 A I don't remember. I think someone came and tried to
21 talk to me in the lunchroom, but I don't remember who.

22 Q Do you recall if that was October or some other
23 time?

24 A I don't know.

25 Q Did anyone tell you that this was being investigated

1 and that you were being interviewed as a witness in an
2 investigation?

3 A I don't remember. No, I don't think so.

4 Q And now after, after this trombone incident on
5 October 19 occurred, did behavior of Connor and Dante towards
6 you, did it change?

7 A I don't remember.

8 Q Well, you don't remember if it got worse, better,
9 stayed the same as we get into November, December?

10 A It kind of stayed the same.

11 Q And what did you -- what did you do in response to
12 this name calling? What if anything did you do?

13 A Like while it was happening?

14 Q Yes.

15 A I don't know. I just ignored them.

16 Q All right. And how did it make you feel?

17 A Terrible, I guess --

18 Q I don't want you to guess. Can you tell us -- I
19 know this is five years ago and you were 11 years old, but as
20 best you can recall, how did you feel at that time when you
21 were being called those names?

22 A Not good. I don't remember.

23 Q Is it you don't remember or it wasn't good?

24 A It wasn't good.

25 Q And looking back on it five years, you know, five

1 years ago, looking back on it, did -- do you believe it
2 impacted your self-confidence?

3 A Yes.

4 Q And why do you believe that?

5 A It's just hearing things like that every day makes
6 you start to like believe them, so I started to think that way
7 about myself.

8 Q What way?

9 A That I was fat and I was weird for being tall, and
10 not -- not the gay stuff, but just things about my physical
11 appearance made me feel self-conscious.

12 Q Okay. And how did -- how did it make you feel to be
13 called a faggot?

14 A I was initially confused because I didn't really
15 even know what being gay was at the time, so I remember I had
16 to ask my mom about a lot of what they were saying meant.

17 Q Once your mother told you what it meant, how did
18 that make you feel?

19 A I was more confused than hurt, I guess. Like I
20 was -- initially I didn't know like what about me made me seem
21 gay to them or -- I don't know.

22 Q And did you notice -- well, let me ask you this. At
23 some point did this conduct by Connor and Dante impact your
24 going to school?

25 A Yes.

1 Q And when was that?

2 A In the second semester I stopped going to school
3 almost completely, but before that I tried to fake being sick
4 and I'd ask my mom all the time if I could stay home.

5 Q This was before Christmas?

6 A Yes.

7 Q So in November/December, you tried to fake being
8 sick?

9 A Yes.

10 Q Why?

11 A So I could not go to school.

12 Q Why didn't you want to go to school?

13 A So that I wouldn't have to deal with the harassment.

14 Q I'm sorry?

15 A So that I wouldn't have to deal with it.

16 Q Deal with what?

17 A The harassment.

18 Q And were there times you did things to try to make
19 yourself sick?

20 A Yes.

21 Q What was that?

22 A I tried to do things like make myself throw up.
23 Like I'd eat paper so that it would like make me feel sick and
24 I'd throw up.

25 Q And this is in November/December?

1 A Yes.

2 Q And why were you eating paper to make yourself sick
3 to throw up?

4 A Because it -- I wanted to not go to school.

5 Q Now, after the holidays in January, did these
6 feelings continue?

7 A Yes.

8 Q Did they get worse?

9 A Yes.

10 Q Now, when you went back to school in early January,
11 you still went to the band class?

12 A I believe so, yes.

13 Q And were you still being harassed by Connor and
14 Dante?

15 A Yes.

16 Q And how did that make you feel?

17 A It was kind of like in the first semester, like
18 before Christmas break I just -- like having it constantly
19 kind of, I guess, made me used to it, but then not having to
20 deal with it over the Christmas break I'm going back to
21 dealing with it again was kind of like a lot to deal with, so
22 I was going to try to kill myself.

23 Q And why were you going to do that?

24 A Because I didn't see any like other options.

25 Q And had you come up with a plan in terms of how you

1 were going to kill yourself?

2 A Yes.

3 Q What was your plan?

4 A I was going to drink cleaning chemicals.

5 Q And was there a day and a time when you planned to
6 do that?

7 A I don't remember.

8 Q And do you know why you didn't follow through?

9 A I -- my -- the day I was going to do it my younger
10 brother had a basketball game, and I was going to stay home
11 and do it while everyone was away, but my mom made me come
12 with her. She, I guess, thought something was wrong with me,
13 so she told me to go with her and while him and my other
14 brother were at the game she talked to me about it.

15 Q About what?

16 A About what was wrong, and I told her that I was
17 going to try to kill myself.

18 Q Did you go back to school after that?

19 A No.

20 Q Do you recall approximately when this was; January,
21 early, mid, late, any idea?

22 A It was within the first week back from Christmas
23 break.

24 Q And so after that event did you ever go back to
25 Greenspun?

1 A No.

2 Q And at some point did you transfer to another
3 school?

4 A Yes.

5 Q And what school was that?

6 A Explore Knowledge Academy.

7 Q And when did you go to that school?

8 A I don't remember when.

9 Q Since you left Greenspun, have you had any
10 experiences at other schools that you could compare to your
11 experiences at Greenspun?

12 A No.

13 Q At any events and since then that have --

14 A Like for anything?

15 Q For anything, any reason have there been events
16 where you were eating paper or committing suicide because of
17 what was going on at school?

18 A No.

19 Q Or other things going on in your life?

20 A No.

21 MR. SCOTT: That's all I have. Thank you.

22 THE COURT: Before we do the cross-examination,
23 would you like a break?

24 (No audible response.)

25 THE COURT: Let's take about a ten minute break.

1 It's 3:00 o'clock. Let's start back at 3:10. And sir, you
2 may step down.

3 (Court recessed at 2:59 p.m. until 3:09 p.m.)

4 THE COURT: Ethan, are you ready to proceed?

5 THE WITNESS: [No audible response.]

6 THE COURT: Mr. Waite.

7 MR. WAITE: Your Honor, on the break I provided
8 plaintiff's counsel and would like to provide the Court with
9 calendars for 2011, 2012, just so the Court can take judicial
10 notice of various dates. May I approach?

11 THE COURT: You may. Was there any objection to
12 that?

13 MR. SCOTT: No, Your Honor.

14 THE COURT: Thank you.

15 CROSS-EXAMINATION

16 BY MR. WAITE:

17 Q Good afternoon, Ethan. I want to cover just a
18 couple of points in your direct examination before kind of
19 starting over and asking you things from my outline. When you
20 were talking about Connor stabbing, jabbing, poking Nolan in
21 the genitals, you indicated, if I understood correctly, that
22 you were to Nolan's left, and Nolan was to Connor's left,
23 correct?

24 A Yes.

25 Q So from left to right was you, Nolan and then

1 Connor?

2 A I think so, yes.

3 Q You also indicated a couple of times that in your
4 meeting with Ms. Winn, Dean Winn, that she looked dismissive
5 to you. Could you be more specific? What did you mean by
6 that?

7 A I don't know. Just the way she spoke and like the
8 things she was doing made it seem like she was -- like she had
9 other things that -- to do.

10 Q Because she was typing into her computer?

11 A Yes, I think so.

12 Q Do you know what she was typing?

13 A No.

14 Q Do you know if she was typing notes of your
15 conversation with her?

16 A No.

17 Q In sixth grade, for those few months that you
18 attended Greenspun Junior High School, you were approximately
19 5-foot-7, correct?

20 A Yeah.

21 Q As a sixth grader?

22 A I think so.

23 Q And weighed approximately 200 pounds?

24 A Yes.

25 Q Would you please stand and tell us how tall you are

1 now and how much you weigh now.

2 A I'm 6-foot-7, and I weigh about 320 pounds.

3 Q Thank you. You were one of the -- one of the
4 biggest kids in the sixth grade at Greenspun Junior High
5 School?

6 A Yes.

7 Q Both in height and weight?

8 A Yes.

9 Q In fact, you were the tallest boy in Mr. Beasley's
10 third period band class, correct?

11 A I think so.

12 Q And I said boy. I shouldn't limit. You were the
13 tallest student in the class, correct?

14 A I think so.

15 Q And you indicated that you were bigger than Connor,
16 but in reality you were much bigger than Connor at that time,
17 correct?

18 A Yes.

19 Q Some of the similar questions you heard me ask of
20 Nolan. Prior to entering Greenspun Junior High School, you
21 didn't know any of your sixth grade teachers, correct?

22 A No.

23 Q Is that correct, you did not know them?

24 A Yes.

25 Q Nor did you previously know any of the staff or

1 administrators at Greenspun; is that correct?

2 A Yes.

3 Q So again, fair to say that as you entered the sixth
4 grade, you were getting to know the school personnel, the
5 teachers, the staff, the administrators, and they were getting
6 to know you as well, correct?

7 A Yes.

8 Q And again, I want to just rule out something here.
9 You don't contend that at any time any of the teachers, staff
10 or administrators bullied you or harassed you in any manner,
11 correct?

12 A Yes.

13 Q Is that correct?

14 A Yes.

15 Q You previously testified that both Connor and Dante
16 were in your third period class, band class. Did you have any
17 other classes with Connor or Dante while you were at
18 Greenspun?

19 A No.

20 Q Did you know Connor prior to the sixth grade?

21 A No.

22 Q And to you this lawsuit is about how the school
23 district failed to correctly handle the situation with you and
24 Nolan, correct?

25 A Yes.

1 Q To you it's about what the Greenspun staff did not
2 do, its failures to act as opposed to what they did do,
3 correct?

4 A Yes.

5 Q Now, you formally withdrew from Greenspun in late
6 January 2011; is that correct?

7 A I don't -- I'm not sure of the exact date.

8 MR. WAITE: Your Honor, I'd ask that Ethan's
9 deposition be published.

10 THE COURT: Give the clerk just a moment. Any
11 objection to that, Mr. Scott?

12 MR. SCOTT: No objection, Your Honor.

13 (Pause in proceeding.)

14 THE COURT: Mr. Waite, please approach.

15 MR. WAITE: Thank you. May I approach the witness,
16 Your Honor?

17 THE COURT: Please.

18 (Deposition of Ethan Bryan published in open court.)

19 BY MR. WAITE:

20 Q Ethan, do you remember having your deposition taken
21 in this lawsuit?

22 A Yes.

23 Q On January 21, 2016 --

24 A Yes.

25 Q -- you came to my office and I asked you questions?