Nolan regarding whether the bullying had ceased?

A Yes.

Q And he told you that he had not heard anything from Nolan, correct?

A Correct.

Q And in fact he didn't indicate that he had heard from any other source that the bullying had continued, correct?

A Correct.

Q But he promised to bring Nolan into his office and speak with him again, correct?

A Correct.

Q And you thanked Mr. Halpin at the end of that conversation, I think you had testified previously, correct?

A Yes.

Q And you did that, you thanked Mr. Halpin because at that time you felt that his concern for Nolan was sincere?

A Correct.

Q And you also thanked him because he promised to meet with Nolan in response to your concerns?

A Yes.

Q And to the best of your knowledge, Mr. Halpin did in fact subsequently invite Nolan to a meeting in his office, correct?

A He did, yes.

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Q And you know that because just a few days later Nolan told you that he met with Counselor Halpin that day that Nolan was telling you about this, correct?

A Yes.

Q Was that a yes?

A Yes.

Q Thank you. And to the best of your knowledge, on that occasion that Nolan met with Mr. Halpin following this soccer field discussion, Nolan told Mr. Halpin that nothing was wrong, everything was fine, correct?

A Correct.

Q And you know that that's what Nolan told Mr. Halpin because Nolan told you that during that same conversation that you had with him the day that he met with Counselor Halpin, correct?

A The day that he -- yes, he did.

Q In other words, Nolan told you that he told Mr. Halpin that everything was fine?

A Correct.

Q Now, on direct examination you were talking about how after the pencil jabbing, poking, stabbing incident that Nolan's demeanor changed; is that correct?

A Nolan's -- he was more withdrawn. His demeanor --

Q He was more withdrawn, he gave you indications he didn't want you to embrace him and those types of things; is

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that correct?

A Yes.

Q Following the pencil jabbing incident, did you notice that Nolan's demeanor changed only slightly or significantly?

A His demeanor changed after the pencil slightly.

Q Only slightly?

A [No audible response.]

Q But now, are you sure that his demeanor changed?

A I noticed certain things, but his demeanor was consistent. He had been stabbed. He was coping. He was withdrawn.

Q In other words, what I'm talking about is his demeanor before the pencil stabbing versus his demeanor after the pencil stabbing; is that how you understood my questions?

A No.

Q Okay. So let's start over again. If we compared Nolan's demeanor before the pencil stabbing and after the pencil stabbing, was it the same or different?

A Nolan's demeanor was consistent within the first couple days of starting school.

Q In fact, Nolan's demeanor never changed; is that correct?

A Nolan's demeanor never changed?

Q Yeah. After the pencil jabbing incident, his

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demeanor never changed at all; isn't that correct?

A It stayed consistent.

Q Which means it never changed; is that what you're saying?

A What do you mean by never changed?

Q From before the pencil jabbing incident. In other words, his demeanor before the pencil jabbing incident compared to his demeanor after the pencil jabbing --

A Correct.

Q -- incident, it never changed?

A Never changed.

Q Never changed?

A Never changed.

Q In fact, you, as Nolan's mother, had no indication or feeling that Nolan was hiding anything from you, correct?

A I had -- hiding he was stabbed in the penis, that's what his change was, what we noticed from being stabbed.

Q Would you please turn to page 61, in your deposition.

A [Complies.]

Q Starting at line 23, are you there?

A I am.

Q "Question. Did you think, did you have any indication or feeling that Nolan was hiding something from you?" And on the top of the next page 62, "Answer. No."

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Does that refresh your recollection that you did not have any feeling that Nolan was hiding anything from you?

A After the stabbing, no.

Q So let me clarify then. After the stabbing incident, so after September 13, 2011, is it correct that you had no feeling that Nolan was hiding anything from you?

A Correct. I didn't know until the 21st though. If you could be as specific as possible. I'm trying very hard.

Q Okay. So let's take then from September 13 to September 21, you had no feeling that Nolan was hiding anything from you?

A No.

Q And then you had the discussions of September 22 and 23, with the --

A September 21st he was stabbed, so.

Q Is that your recollection?

A No, is when I found out he was stabbed, on September 21.

Q Right.

A Right. So --

Q So you found out in between September 13 and September 21, if I misspoke earlier, I apologize. Between September 13 and September 21, until the evening of September 21, you had no indication that Nolan was hiding anything from you?

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A I did not, no.

Q And then you had the discussions that you've recounted in your home on the evening of September 21. You had the discussions with the school of September 22 and September 23, right?

A Mm-hmm.

Q So between September 23 and that approximate month period of time until you had your next discussion with someone from the school, which was Mr. Halpin at the soccer field, did you have any indication or feeling that Nolan was hiding anything from you during that period of time?

A No, I did not.

Q And in fact, as a result of your ballpark discussion with Mr. Halpin, you still didn't have any indication that Nolan was hiding anything from you, correct?

A I did not.

Q And so after that discussion with Mr. Halpin until, I think it was the day in January, was it, when you had another discussion with Nolan, during that period of time did you have any indication or feeling that Nolan was hiding anything from you?

A I did not.

Q Now, you formally withdrew Nolan from Greenspun Junior High School on February 1, 2012, correct?

A Correct.

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Q And he started up at the Explore Knowledge Academy or EKA approximately three to four days later, correct?
A Approximately, yes.
Q And just to be clear, Nolan had already started attending classes at EKA by the time Mary Bryan sent her February 7th email, correct?
A I have -- I don't recall, but it could be.
Q It could be or it was?
A I don't know the exact date that he started EKA, but it was within -- within a week of me pulling him out.
Q Would you please turn to page 174, of your deposition.
A [Complies.]
Q Are you there?
A I am, yes.
Q Starting at line 6.
"Q Wouldn't -- on February 7, you said he had already started attending a new school?
"A He did. Nolan was already at a different school."
And that different school was EKA, correct?
A Correct. He was at -- yes.
Q Does that refresh your recollection that by the time Mary Bryan sent her February 7th email, that Nolan had already started classes and was enrolled at EKA?

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A Correct.
Q And I think you indicated EKA is a charter school?
A It is.
Q And it's a charter school within the Clark County School District system?
A It's a state funded charter school, but I do think that they abide by the Clark County School District policies.
Q And you indicated, I want to be just clear, that when -- within just a very short period of time after Nolan made his transfer to EKA, he felt -- he felt happy and safe at his new school; is that correct?
A I felt he felt happy and safe.
Q Was that just an assumption on your part, or did he send you some signals or say something that led you to believe that?
A It was an assumption on my part.
Q And everything that Nolan said and did during that period of time was consistent with that assumption, correct?
A Correct.
Q Was there any tuition that your family had to bear for Nolan's attendance at EKA?
A There was not.
Q Was there any other kind of expense to your family for Nolan to attend EKA that would not have been also borne if you were still at Greenspun; for example, if he attended a

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dance he might have to pay a fee, or a fee for gym clothes or something like that, but any expense to your family that you would not have borne had he stayed at Greenspun or any other Clark County school?

A No.

Q You mentioned that you had a meeting with Andre Long and some others, and I think it involved Mary Bryan as well on February 7?

A Yes, and another family.

Q Okay. The Foster family, is it?

A Yes.

Q And who did you understand Andre Long to be at that time?

A I don't recall his position at that time.

Q He was not an on-site Clark County School District person; meaning he wasn't located at Greenspun, correct?

A He was not, no.

Q Did you understand that he was at the time the academic manager for the Clark County School District for the area that covered Greenspun Junior High School?

A At that time maybe, but I do now.

Q You at least understood that he was a higher up from anybody that was located at the school?

A Yes. Yes.

Q And during that meeting, it was asked if Ethan and

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Nolan could still participate in the Robotics Club at Greenspun Junior High School, because EKA was a small school and didn't have a robotics club, correct?

A Yes.

Q And Mr. Long told you that all the boys could still attend the Robotics Club if they wanted, correct?

A Yes, he did.

Q And to the best of your knowledge, the alleged harassment at Greenspun has not kept Nolan from participating in any classes that he wanted to participate in, correct?

A Can you repeat that?

Q Sure. Sure. To the best that you know, has Nolan been precluded as a result of the harassment that he experienced at Greenspun from participating in any class that he's wanted to participate in?

A Precluded? You're going to have to break it down a little bit more. But precluded -- just explain what you're asking again. I apologize.

Q Sure. Sure. What I'm trying to -- what I'm trying to find out is if it's your understanding that Nolan has been -- let me break it this way. Since Nolan withdrew, formally withdrew from Greenspun, has he been able to attend every class that he wanted to attend?

A Yes.

Q And to otherwise participate in those classes?

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A Yes.

Q Let me just sum up a few things then with some final questions. Prior to withdrawing Nolan on February 1, 2012, you had zero conversations with Dr. McKay besides saying hello or something like that?

A Correct.

Q Prior to withdrawing Nolan, you never expressed any kind of concern to Dean Winn, correct?

A Correct.

Q Similarly, prior to Nolan's withdrawal, you never expressed any concerns to Mr. Beasley, correct?

A Correct.

Q And prior to Nolan's withdrawal from Greenspun, did you ever communicate to anyone at the Clark County School District, and by that I mean whether it be anyone at the Greenspun Junior High School or anyone that is off campus that is associated with the Clark County School District that might be in higher-up administration --

A Higher to?

Q Let me start over again so --

A Please do. Thank you.

Q So when I talk about CCSD, I'm including both the on site and the off site people. Do you understand that?

A Okay. Yes.

Q Okay. So prior to Nolan's withdrawal, prior to

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February 1, 2012, did you ever communicate to anyone at CCSD that Nolan had been called a faggot?

A No.

Q Same parameters but different word --

A Prior to with February 1?

Q Correct.

A But not the 7th?

Q Not the 7th.

A Oh, okay. Prior to the 1st, correct.

Q Yeah. So --

A I'm sorry. Yes.

Q So at any time prior to -- at any time prior to, let's just cover that one more time. Prior to February 1, 2012 --

A Yes.

Q -- did you ever tell anyone at CCSD that Nolan had been called a faggot?

A I did not, no.

Q Did you ever tell anyone at CCSD within the same -- my next few questions are going to be during that same period of time, okay --

A Okay.

Q -- that he was called an F-ing faggot, except for the real thing?

A No.

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Q How about an F-ing fat faggot?
A No.
Q How about a gay wad?
A No.
Q How about a gay boyfriend?
A No.
Q How about a fag boy?
A No.
Q How about a cock sucker?
A No.
Q Same period of time, did you ever tell anyone at CCSD that another student had accused Ethan and Nolan of jacking off to each other?
A No.
Q From the time that Mary Bryan sent her October 19th email until Nolan formally withdrew from Greenspun, in fact, you never made any complaint of name calling to anyone at CCSD, correct?
A I did not.
MR. WAITE: No further questions, Your Honor.
THE COURT: Would you like a break?
THE WITNESS: No.
THE COURT: Redirect, please.
MR. SCOTT: Nothing further, Your Honor. No.
THE COURT: May we excuse the witness?

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MR. SCOTT: Yes.

THE COURT: Mrs. Hairr, you may step down. You're excused. Would either side like a recess?

MR. SCOTT: I don't think so, Your Honor. We are close to resting. We do not intend to call any other witnesses. I do believe that the deposition of Cheryl Winn was published; is that correct?

THE CLERK: Who?

THE COURT: Cheryl Winn. I believe we --

MR. SCOTT: Cheryl Winn.

THE CLERK: Yes.

THE COURT: -- published the deposition of all the witnesses.

MR. SCOTT: And before I rest, Your Honor, I would like to read into the record a portion of Cheryl Winn's deposition.

MR. POLSENBERG: Your Honor, Cheryl Winn's not a party.

MR. SCOTT: She's associated with a party.

THE COURT: You can include that in your closing.

MR. SCOTT: Thank you very much.

THE COURT: So did -- Plaintiff, do you have any other further witnesses, or are you resting your case?

MR. SCOTT: No, Your Honor. The plaintiffs rest.

THE COURT: Thank you. Defendants, please call your

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first witness.

MR. POLSENBERG: Your Honor, normally at this point I'd make a 50(a) or a 41(b) motion, and I'd particularly make one on the Title IX claims at this point.

THE COURT: You may proceed if you wish. It's not my inclination to determine the case at this time.

MR. POLSENBERG: Very good. Since it's a bench trial, we can -- no sense me going on and arguing it when we can just take it up when we brief all of the issues.

Your Honor, we would -- we want to use Connor's deposition and Dr. Faro's deposition.

THE COURT: And do you wish to read them in, or just publish them for the record?

MR. POLSENBERG: No. Just -- we've submitted them --

(Attorneys confer.)

MR. POLSENBERG: We've designated the portions that we intend to use and we've submitted that with the document we provided you with the other day and that we filed, I think, a week --

THE COURT: Right.

MR. POLSENBERG: -- or eight days ago.

THE COURT: So let's take up the Connor issue first. There's a request to publish the deposition of Connor?

MR. POLSENBERG: No. We're designating portions of

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the deposition to use at trial.

THE COURT: All right.

MR. POLSENBERG: And we've already done that.

THE COURT: All right. Is there any objection to the designated portions of Connor's deposition?

MR. SCOTT: No, Your Honor. We would just request that the entire deposition be considered.

MR. POLSENBERG: Your Honor, I was following proper procedure. I designated the portions we intended to use. They had the opportunity to designate other portions.

THE COURT: What I'll do is I'll publish the entire deposition for the record, noting the designated portions of the defendant.

MR. POLSENBERG: Very good, Your Honor.

THE COURT: And the second issue with regard to the doctor.

MR. POLSENBERG: Yeah. The doctor, as we've already, I think, established and I don't think it's contested that the doctor is making himself unavailable, a situation I have encountered with treaters many trials.

THE COURT: Sure.

MR. POLSENBERG: The Court did have reservations about the admissibility. I think it would actually take much less time just to admit it for what it's worth, than for me to have to go into an argument on admissibility. I think it's

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admissible for a number of reasons. The Court expressed -- and I think plaintiffs objected to it going to damages. I think it goes to other issues.

I think it goes to technically at the state of the pleadings at issue is whether the event occurred. His failure to report to a treater right after having told his parents goes to that issue, goes to the severity and what exactly happened, if something happened, and it also goes to the fact that Nolan's propensity not to report the event. So I think it's admissible for those three items. I'm not intending to use it for damages.

THE COURT: And your response, please.

MR. SCOTT: Your Honor, submit it. We -- our position that it's not relevant for any purpose, however leave it up to the Court to determine to what extent you want to consider.

THE COURT: And your reply, please.

MR. POLSENBERG: I'm sorry, Your Honor?

THE COURT: Do you have anything further?

MR. POLSENBERG: No, I don't.

THE COURT: All right. I find that the proposed deposition of the doctor is not relevant to the claims made by the plaintiff, is not admissible. But we'll mark it as a court's exhibit so that it's a part of the record.

MR. POLSENBERG: Very good then. That would be my

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offer of proof.

THE COURT: All right. So Defendants, do you have any other witnesses?

MR. POLSENBERG: No.

THE COURT: All right. Does the defense rest?

MR. POLSENBERG: Yes.

(Clerk confers with the Court.)

MR. POLSENBERG: I do have to make a record of the objection we had at the bench.

THE COURT: We do. Hang on just a second. The clerk is talking to me about a deposition that may not have been published that we thought -- so Cheryl Winn's deposition was not published. Does either side wish to make a motion to admit it or --

MR. SCOTT: Yes, Your Honor.

THE COURT: -- or to publish it?

MR. SCOTT: Plaintiffs move to publish, Your Honor.

THE COURT: Any objection?

MR. POLSENBERG: Yes, Your Honor. It's not a party opponent. It can't be used for any purpose. The ability to use the deposition of a non-party is limited. She was on the stand. They could have used it at that point.

THE COURT: Because it was used in her cross-examination, I'll go ahead and publish the deposition of Ms. Winn, considering only those portions brought up in her

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cross-examination.

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

THE COURT: Now let's talk about one, we have an issue to put on the record with regard to an objection. Are there other issues, and has all of the evidence been admitted at this point for the Court to consider?

MR. SCOTT: Yes, Your Honor, from the plaintiff's point of view.

MR. POLSENBERG: I think more. We actually admitted some things we never used, so.

THE COURT: Good enough. All right. Let's put your objection on the record.

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MR. POLSENBERG: Your Honor, one point. During the trial today, I approached the bench to make an objection that they were going into events involving non-parties, an objection I had made repeatedly throughout the trial. The Court indicated that it was going to give that evidence the appropriate weight under the circumstances.

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THE COURT: That's correct. Do you have anything to add, Mr. Scott?

MR. SCOTT: No, Your Honor. It was just offered to show context of how the conversation with Nolan started that day and for no other purpose.

THE COURT: All right. And I took a look at, you know, habit evidence under Nevada law, under NRS 48 and so on.

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I do not believe that the allegation of an attack against another student is relevant for my consideration, and I'll disregard that in making a decision.

MR. POLSENBERG: Thank you, Your Honor.

THE COURT: So now let's talk about how you wish to conclude at this point. I am assuming, we talked Friday about closing argument via brief?

MR. SCOTT: Yes.

MR. POLSENBERG: Yes.

THE COURT: What's a reasonable time frame and a briefing schedule, because normally there would be a plaintiff's close and then the defendant and then a reply. Mr. Lichtenstein.

MR. LICHTENSTEIN: Well, the first question is how long will it take to get the transcripts of [inaudible]?

THE COURT: Right. And had you guys not approached on Friday to get the schedules? No?

MR. LICHTENSTEIN: No, we hadn't.

THE COURT: Okay. Good enough. Let's take a brief recess so you can confer with the clerk with regard to transcripts. Let's -- ten minutes, unless you need longer. I'll be back at 11:40, unless you're ready earlier.

MR. POLSENBERG: Thank you, Your Honor.

(Court recessed at 11:27 a.m. until 11:35 a.m.)

THE COURT: So is there any type of agreement on the

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briefing schedule for your closing arguments?

MR. POLSENBERG: We have completely agreed, Your Honor.

THE COURT: Good.

MR. POLSENBERG: We think it'll be 30 days to get the transcript, 30 days for plaintiffs to do an opening brief, 30 days for us to do an answering brief, and 30 days for them to do a rebuttal.

THE COURT: All right. That takes us out four months from the close of evidence, so let's put those dates in the record then. Sixty days from today for the plaintiff's close.

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THE CLERK: Will be January 22.

THE COURT: January 22.

THE CLERK: I'm sorry. 23rd.

THE COURT: Twenty-three, 2017. Thirty days after that for the defendant' closing brief.

THE CLERK: Would be February 23.

THE COURT: February 23, for the closing brief for the defendant. And the reply, plaintiff's reply?

THE CLERK: Would be March 23.

THE COURT: All right. So I will put that on my chambers calendar the next Tuesday to verify all of the briefs have been filed, and to begin reviewing the transcripts at that point. I will re-read all of the transcripts that are

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filed with the court, as well as your briefs, and in consultation with my notes. Because I make notes along the way as well. Mr. Lichtenstein.

MR. LICHTENSTEIN: Just one, ask you a question, because these dates are the on or before dates.

THE COURT: Yes.

MR. LICHTENSTEIN: And if a particular brief is filed before, can we assume that the clock starts running on the dates filed as opposed to...

THE COURT: If you do, notify me, because when matters are filed, it does not come to my attention. I don't get a list of everything that's filed. And I will work on that chambers calendar to begin, so if I can start earlier, let me know.

MR. LICHTENSTEIN: Okay.

MR. POLSENBERG: Right. Although I have something in the beginning of February, so I'm not sure if they filed it early I could file ours early. But we can -- Allen and I can certainly talk in February and work something out.

THE COURT: Good enough.

MR. LICHTENSTEIN: We'll work it out. I mean, without inconveniencing anybody obviously the sooner we get this in the sooner --

MR. POLSENBERG: Your Honor, I know I speak for plaintiffs and the entire Clark County School District when I

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say I want to thank you for the hard work that you and your staff have put in.

THE COURT: Well, it was my turn to thank you guys. So let me clarify one thing. It'll be on my chambers calendar March 28, for me to review, make sure your briefs have been filed. This is a case of difficult subject matter for the court.

You have all shown the highest talent available of any lawyers I ever see in this courtroom. You show the highest skill and the utmost professionalism that I ever see. So all four of you, thank you for the manner in which you conducted this case.

MR. POLSENBERG: Thank you, Your Honor.

MR. LICHTENSTEIN: I thank you.

THE COURT: And I'd like to see counsel in chambers, please.

MR. POLSENBERG: Very good.

(Court adjourned at 11:38 a.m.)

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A Yes.

Q During any of those meetings in September or October, do you recall John Halpin bringing to your attention either the September 15th complaint in the email that you just looked at or the October 19th email?

A Mr. Halpin addressed the continuing issues with some boys in Mr. Beasley's class.

Q And when did he first raise issues in Mr. Beasley's class at these meetings; September or October or later?

A I don't recall when I became aware that there were some issues with a few boys in Mr. Beasley's class.

Q Do you recall if at some point in September or October Mr. Halpin brought to your attention the alleged stabbing of a student by another student in Mr. Beasley's class, a stabbing in the groin with a pencil?

A Mr. Halpin never addressed that with me. And when he did address me about the continuing issues that were happening, it was in the administrative meeting on or around October 19.

Q Okay.

A And he told me that the issues surrounding these two boys, which at the time I did not know who the boys were, I just knew they were a couple of boys, that they were still having issues. And knowing that these were the same boys from previously, I don't know where I got the information but I

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knew that there were some issues, that's when I voiced my insistence that this get handled.

Q And what did you understand the issues were?

A All I knew was there was general harassment of these boys. Never was there any issue of a stabbing, or a stabbing especially in the groin area.

Q And if that had been brought to your attention back in September by Mr. Halpin, what if anything would you have done?

A If I had known that there was an accused stabbing, then I would have taken a larger role in finding out exactly what was going on.

Q And what do you mean by that, a larger role?

A I would have probably asked to see the statements.

Q After you found out about this in February 2012, did you ask to see the statements?

A No. The boys weren't there anymore.

Q Well, did you ask to see the statements that should have been obtained back in September or October?

A No.

Q Did you try to find out why this September 15 incident had not been investigated during September or October?

A It was my understanding that that incident was investigated.

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Q Who told you that?

A When I ask my dean or my assistant principal to do something, I assume that it's being handled. Since I did not hear back about the incident at any one time, I assumed that it had taken place.

Q So you assumed that Mr. DePiazza either directly or through Dean Winn had these allegations investigated?

A I had confidence that my administrative team would do exactly as I asked them to do.

Q And you assumed that that would have -- those investigations would include obtaining statements?

A I would assume that they would take the necessary steps to get a clearer picture of what happened in the classroom, and to take action, the appropriate action to get it stopped.

Q And would appropriate steps include an investigation of the allegations of stabbing in the genitals?

A Obviously whenever we are talking about that kind of accusation, we would expect that statements are taken.

Q And in February, did you ask to see what statements were obtained back in September or October?

MR. POLSENBERG: Objection, Your Honor. Asked and answered.

THE COURT: He already answered the question. He said that he didn't ask to see them after February '12 --

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2012.

MR. SCOTT: Oh, sorry.

BY MR. SCOTT:

Q And in February 2012, did you ask Mr. DePiazza to do another investigation?

A Yes.

Q Why?

A Starting February 1, Mrs. Bryan started firing off emails to all kinds of people, including that February 7th email. So she emailed my supervisor, his supervisor and many of the trustees in the school district. So my supervisor and Jolene Wallace, who is -- was the assistant superintendent, came to my office to address the issues that were alleged in the February 7th email.

Q And if these issues raised in the February 7th email had already been investigated by Mr. DePiazza back in October when you asked him to take care of it, why did you believe it was necessary to conduct a second investigation?

A Because I was directed by Jolene Wallace to conduct another investigation.

Q And did Ms. Wallace ask to see what the results were of the initial investigation?

A She did not.

Q Did you attempt to determine what the results were of the first investigation?

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A I did not.

Q Did you ask Mr. DePiazza to supplement the initial investigation, or ignore it? Or if he'd already done one, what did you tell him he was supposed to do; just redo what he had already done?

MR. POLSENBERG: Can the question just be the last part?

MR. SCOTT: Yes.

THE COURT: Break it down.

MR. SCOTT: It was a bad question.

THE COURT: Break it down.

BY MR. SCOTT:

Q Did you ask him to redo what you thought he'd already done, or was this to supplement what he had already done?

A The February 7th email had so much more information in it, including the stabbing accusation, that we wanted to make sure and address that with any students that were in the area of the students. So Mr. DePiazza was directed to conduct another investigation specifically looking at points that might not have been talked about prior to.

Q And did you ask Mr. DePiazza to contact Ethan Hairr's [sic] parents to find out what information they provided to school administrators before February?

A I did not.

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Q Do you know what information Nolan Hairr's parents provided to the school administration before February?

A You mean the September 15th email that was addressed --

Q Or an October 19th email?

A -- addressed her concerns?

Q Or that, or conversations or meetings. Conversations or meetings they had with Mr. Halpin or Dean Winn or others.

A The report was that on September 13th Nolan was supposedly stabbed. Then on the 15th the email was sent. I did not receive that email. That was incorrect -- an incorrect email address. A week later the Hairrs showed up to meet with Counselor Halpin.

Q Okay. And did you understand at that point the Hairrs provided more information of the circumstances surrounding the stabbing, including words that were used?

A No. I was not given that information.

Q Do you know -- did you try to find out what information Mr. Halpin received from them?

A No.

Q And did you try to find out why as mandated reporters this email was not forwarded to you or why steps weren't taken to make sure that you received it?

A Mandatory reporters or any staff members on campus

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that if they assume that I've already been told -- because while it was my incorrect email address, it still said something to the effect of Warren McKay. So as the counselor, Mr. DePiazza, Ms. Winn, they all assumed that I had got that email.

Q Okay. And when did you first learn that Mr. DePiazza assumed you had received that email on October 19?

A February 7, when I addressed it with them and said, What's this all about.

Q And you don't recall John Halpin discussing that September 15th email on October 19, at a meeting with you and Mr. DePiazza?

A I do not recall a specific meeting with just me, Mr. Halpin and Mr. DePiazza.

Q No. The weekly administrative staff meeting where the three of you and perhaps others were attending, do you recall at that meeting around October 19th Mr. Halpin expressing concern that the September 15th email and the allegations therein had not been adequately addressed?

A I only recall him saying that there were continuing issues with the boys in Mr. Beasley's class.

Q And you just spoke generically about issues without being more specific?

A When my assumption is that it is normal, and I mean situations of students poking or that kind of thing is normal

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harassment where kids aren't getting along, I don't ask the details. I just say let's get it stopped. If I would have known that it was stabbing or something like that, that's a totally different situation.

Q And at that meeting of October 19th with your administrative staff, did you understand at that point from Mr. Halpin there was a pattern developing, that a student named Connor had essentially assaulted or gone after a student and then about a month later, October 18, another student was bullied?

A I don't recall that conversation.

Q You don't recall it being brought to your attention that there were two events here that involved the same student as a suspect in bullying and with violence?

A I'm confused about the question.

Q Well, at this October 19th meeting, when Mr. Halpin was expressing his concerns, did he indicate to you that there were two related incidents and both involved violence?

A I do not recall that conversation. I just remember him saying about the boys in Mr. Beasley's class.

Q And you don't recall him mentioning that there was one student who was the alleged suspect or aggressor in both cases?

A I do not remember that.

Q And do you recall him indicating that he was

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concerned about potential retaliation?

A I do not recall any of that, no.

Q And do you recall Mr. Halpin indicating that he was concerned the initial complaint that he received had not been adequately addressed?

A No. I -- no.

Q And if Mr. Halpin at that meeting had given you at least a summary of the information contained in the September 15th email, I take it you would have reacted differently?

A Absolutely.

Q Okay.

A That's why I was so shocked February 7, when I saw that. I was like, where is this coming from.

Q And did you expect that when Mr. DePiazza looked into the October 19th complaint in that email, that he would ask at some point what the reference was to a previous email?

A I would expect Mr. DePiazza to do a thorough investigation.

Q And that might start with talking to Mary Bryan to find out what information she had?

A It could.

Q Okay. And -- or it might not start there, but at some point would you expect Mr. DePiazza to talk to the parent who sent the email on October 19?

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A Back in 2011, it was not mandated that we address the parents, but good practice calls for us to do that.

Q Well, what about when it's a parent who sends you the email making the complaint, was it policy then to talk to the parent who is making a complaint?

A No.

Q All right.

A But at the same point, good practice says that you would reach out to try and address that in some way, shape or form.

Q And did you understand that the change in the law after 2011 was to make sure the parents were aware of complaints that they did not make when you learned that a student was being bullied not through the parent, but through another student, then you would want the parent to know?

MR. POLSENBERG: Your Honor, are we talking about legal standards adopted after the incidents?

THE COURT: Please clarify.

MR. SCOTT: Yes.

THE COURT: Please clarify and lay a foundation.

MR. SCOTT: Okay.

MR. POLSENBERG: If we are, we're going to object to that.

THE COURT: Well, I've just asked him to clarify it. As he lays his foundation, you can renew your objection.

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MR. POLSENBERG: Very good, Your Honor.

THE COURT: And I'll consider on the merits.

MR. POLSENBERG: It's just with my back, I didn't want to sit down and get back up again.

THE COURT: You're going to have to get up again.

MR. POLSENBERG: Thank you, Your Honor.

BY MR. SCOTT:

Q If I understood you correctly, sometime after --

THE COURT: Hang on just a second. We've been here all week. Don't assume that we're being flip. We all take the matter very seriously. So the fact that I've just been informal with one of the attorneys doesn't mean I don't take your case seriously, or that any of them take this less than seriously. Go ahead, please.

MR. SCOTT: Thank you.

BY MR. SCOTT:

Q I believe you said that after 2011, you understood it was mandatory to talk to parents when a complaint was made about bullying, correct?

A I don't recall when the law was changed. I thought it was a little bit later than that.

Q After 2011.

A After 2011.

Q Right. And it was probably about 2015, I think. But in 2011, you understood that if a parent made a complaint

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of bullying, that -- with some information in it, not just generic my child was bullied, but with some information, date, time, place, some specifics of what happened, you did not expect the person, the administrator investigating the complaint by the parent to talk to the parent; is that right, who made the complaint?

A No. Obviously good practice calls for us to communicate with our parents, just like I expect our parents to communicate with us. And so the bottom line is if a parent sends an email, then we should be responding to an email. If a parent gives a phone call, then we should be responding in a phone call. That's just common good practice.

Q And do you know what the school's response was, in October, to Mary Bryan's October 19th email?

A I think Mr. Halpin made a phone call.

Q Why do you believe that?

A Because I was told he did.

Q And did you understand Mr. Halpin was participating in an investigation?

A Well, in the October meeting I asked Mr. DePiazza and Mr. Halpin to get a handle on whatever situation was going on in Mr. Beasley's class.

Q And when you say get a handle on, what were you attempting to communicate to them? What were your expectations that you wanted to communicate?

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A That we had two boys that were being harassed in some way, shape or form. So with harassment, bullying, whatever you want to call it, they are not happy and the parents are reporting it, we need to stop it. We need to get to the bottom of it. We need to figure out how to stop it so that we don't have anymore issues.

Q And did you understand that the complaint of October 19 that was brought to your attention required an investigation to be done within ten days?

A In 2011?

Q Yes.

A No.

Q All right. That white binder you have up there, if you would turn to Tab No. 2, please.

A This one here?

Q Yes. Tab No. 2.

A [Complies.]

Q And if you'd look at the last page of that exhibit, Section 388.135, if you'd look at that, please.

A The last page of the section?

Q Yeah, of Exhibit 2. I think it was four pages.

A Mm-hmm.

Q If you'd look at the last page. At the top it says, NRS 388.1351. Do you see that?

A Yes.

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Q And do you see that it's dated 2011?
A Yes, at the front.
Q And would you take just a minute to look at it, please.
A Okay.
Q Does this refresh your recollection that in 2011, an investigation must be completed within ten days after the date on which the investigation is initiated?
A Yes, it does say ten days.
Q All right. So that refreshes your recollection?
A Yes.
Q And you understood that you and people who reported to you were expected to follow the law?
A Yes.
Q And to your knowledge, was an investigation completed within ten days of the complaint made in the October 19th email?
A I believe it was.
Q Okay. And who told you that?
A When I give a direction to my subordinates and ask them to act, they typically get that done pretty quickly.
Q So in the weekly administration meetings over the next two, three weeks, did you ask Mr. DePiazza what the outcome was of his investigation?
A I don't recall talking with Mr. DePiazza. I do

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recall informally meeting with Ms. Winn and asking her how the investigation was going and what she was finding.

Q And why did you believe Ms. Winn was conducting the investigation?

A Well, as part of the dean's office, I would assume that she was working with Mr. DePiazza.

Q And what did Ms. Winn tell you?

A She told me she was finding it difficult to find any students that corroborated the story.

Q Did she tell you she had obtained statements and interviewed students?

A That's basically what I asked her, so yes.

Q And would you be surprised to learn that she did not interview any students or obtain any statements?

A That would surprise me, yes.

Q Were there any checks and balances in place at that time to -- for you to confirm whether a dean was doing his or her job?

A Whenever one of our people are not doing their job, I typically learn pretty quickly that they're not.

Q And how do you learn that?

A Because I get reports from all kinds of people, teachers, staff members, parents. I typically won't get that kind of information.

Q And when you received that email on February 7, 2012

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from Mary Bryan, did that indicate to you that Ms. Winn had not done her job?

A No.

Q Did you ever attempt to find out after February 7 what if anything Dean Winn did to investigate the complaint made on October 19?

A I spoke with Ms. Winn at an -- informally.

Q Other than talking to her, did you ask to see her file, did you look in her dean's chrono, did you ask to see witness statements?

A No.

Q Did you do anything other than informally ask her what she did?

A No.

Q Why not?

A Based on what I -- the understanding that I had of what was going on in the classroom, I thought it was a matter that the dean's office could easily handle, and so a verbal confirmation that she was working on it and that she had statements, that she had done her job.

Q And as you sit here today, do you believe she obtained statements and did her job?

A I do.

Q And I take it you never learned that she thought Mr. DePiazza was doing the investigation so she didn't do it,

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because she thought Mr. DePiazza was doing it?

A I do not know that.

Q She never told you that?

A No.

Q And when you asked Mr. DePiazza to handle it, what did he tell you he did in that regard?

A In the administrators meeting, he acknowledged that he was going to work on it along with Mr. Halpin.

Q And did you later learn that Mr. DePiazza did nothing to work on it?

A I don't recall that.

Q Do you know as you sit here today what if anything Mr. DePiazza did to work on it?

A No.

Q Never tried to find out; is that right?

A Well, since my team was working on it, the dean's office, Mr. Halpin, the supervisor of the dean's office, and no emails were coming towards us saying that there were any issues at that point that I can recall, that it was handled.

Q So you assumed prior to February 7, since you weren't receiving any complaints directly, there was no problem; is that right?

A My assumption is always if they have done their job we shouldn't be getting any kind of indication that they didn't.

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Q And then after you received the email on February 7, you didn't do anything to try to determine if in fact they did their job, you just assumed they did, correct?

A Yes.

Q Okay. Now, at some point Mr. Long, Andre Long contacted you in February; is that right?

A Dr. Long and Jolene Wallace came to Cannon -- I mean, came to Greenspun.

Q And let's talk about Dr. Long first. Did he talk to you about this February 7th email?

A I believe that he was addressing all the issues in the emails from Mrs. Bryan. But while Andre was there, it was more Dr. -- I don't know if it's Dr. Wallace or Mrs. Wallace.

Q I know. I just want to talk about Dr. Long for now. Was he your immediate supervisor?

A Yes.

Q And did Dr. Long inform you that the police were doing an investigation?

A I don't recall who ordered the police investigation.

Q I didn't ask you who ordered it. Did he tell you one was happening?

A I don't recall that, no.

Q At some point did you learn there was a police investigation?

A When the officer showed up on our campus.

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Q And at some point after that you were told by Mr. Long to suspend Connor, correct?

A It was not Dr. Long.

Q It was not?

A It was Jolene Wallace.

Q Oh. And if you had not been told to suspend Connor, you would not have done it, correct?

A The evidence supported Connor's suspension. Dante's not so much. I expressed my concern about suspending Dante.

Q And why were you concerned about Dante's suspension?

A Because the evidence that was in the statements that I could see did not warrant him being suspended.

Q But you believed the evidence warranted Connor being suspended?

A All I remember is that when I read the statements in addition to the allegations, I felt it was appropriate that he was suspended.

Q Were you told to suspend him, or was that your decision?

A I was directed by Jolene Wallace to suspend both boys.

Q And was it brought to your attention in January 2012 that Ethan Bryan had missed classes, had not attended school for over two weeks?

A I do not recall that.

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Q And is that something, if a student is missing school for an extended period of time without a doctor's note or some explanation, is that usually brought to your attention?

A Typically after a number of consecutive days the registrar or the counselor will bring that kind of information to me.

Q And was it brought to your attention in January of 2012 that Ethan Bryan, the boy, the alleged victim in the October 19 email had missed over two weeks of school?

A No.

Q And was it brought to your attention in January 2012 that Nolan Hairr, the student who was the victim of the pencil stabbing in September, had missed over two weeks of school?

A I do not recall being told that.

Q And you understood that Mr. Beasley, all of this happened in Mr. Beasley's band class, correct?

A The harassment in Mr. Beasley's class in September and October?

Q Yes.

A Yes.

Q And you would have expected Mr. Beasley to have been aware that these two boys who had made complaints were now absent for an extended period of time?

A He would have been aware, yes.

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Q And would you have expected Mr. Beasley to have brought it to your attention?

A Not necessarily --

Q That these --

A -- my attention, but maybe someone's attention possibly. But there are also six teachers that are working with any one student, so if there had been any number of faculty, it could have been dean's office, it could have been --

Q How many emails does a parent have to send to Greenspun in order to get your attention?

MR. POLSENBERG: Argumentative.

THE COURT: The objection's sustained.

MR. SCOTT: Nothing further.

MR. POLSENBERG: Dr. McKay --

THE COURT: Hang on. It's been an hour. Give me an idea. We started --

MR. POLSENBERG: I'm going to try to get him out of here today so he doesn't need to come back.

THE COURT: That's my question. How are you holding up? Do you need a break? I usually take a break every hour. Do you want to go forward, or do you want a short recess?

THE WITNESS: Forward.

THE COURT: Go ahead. Does anyone need a comfort break? No. Then let's go forward.

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MR. POLSENBERG: Great. Thank you.

CROSS-EXAMINATION

BY MR. POLSENBERG:

Q Dr. McKay, when Lenny DePiazza was in here, he talked about the chain of command within the building. When we talk about things in the school district, we talk about things in the building and outside the building, right; in the building is the operation of the school itself?

A Correct.

Q What's the chain of command above you outside the building?

A I'd have an immediate supervisor which is our academic manager. The names have changed. Right now it's an assistant chief --

Q The title has changed?

A The title has changed, but basically the same.

Q All right. And I'm not -- normally I'd get into all of that, but we're going to try to get you out of here today. So your immediate supervisor in this time frame was an academic manager that was Dr. Andre Long. How about above him?

A My understanding that his supervisor was Jolene Wallace, the assistant superintendent.

Q All right. And there are a number of different people who hold positions between the academic supervisor or

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manager and the superintendent, right?

A Correct.

Q And what kind of positions are those?

A Well, after the assistant superintendent, then it might go to the superintendent directly, but we have had other, back in that day other supervisors. I couldn't tell you the structure back -- from way back then.

Q Fair enough. Probably doesn't matter for the purposes of our case, because it changes with such regularity. Who makes policy at the Clark County School District when it comes to bullying and discipline?

A That comes from the board of trustees.

Q Do you make policy?

A No.

Q What is your role in regard to policy in the Clark County School District?

A We enforce policy.

Q Are you allowed to make policy?

A No.

Q Change policy?

A No.

Q Modify policy?

A No.

Q How do you implement policy in cases?

A With regards to discipline?

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Q Yes, and bullying.

A When we are looking at any kind of disciplinary case, what we will do is we look at statements from the students. We look at progressive discipline that they've gone through possibly, if it had any similar instances of discipline before. We look at our own progressive discipline plan, which is a reflection of that policy set by the school board, and then impose judgment if discipline needs to be handed down.

Q And you're not the ultimate responsibility there, are you?

A No.

Q And how can cases of discipline go above you?

A A parent just walks to my -- calls my boss or goes to my boss's office or...

Q Okay. And there are appeals to --

A They can appeal to my boss. They can --

Q Appeals to your supervisor. And suspension -- I mean, expulsion as opposed to suspension is done by whom?

A Typically if we make a decision for suspension --

Q I'm sorry. Expulsion.

A Expulsion. We make a recommendation for expulsion, which will go out of the building and then ESD or the different organizations will then do their part. We can only make a recommendation.

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Q Very good. But you can't actually expel somebody, it has to be done by?

A It has to be done above us by the -- ESD is typically in charge of that.

Q And the board?

A And the board is -- obviously they're acting on behalf of the board.

Q And sometimes your superiors actually make discipline decisions?

A Yes.

Q And this is a case in point?

A Exactly.

Q You were directed by your supervisors to suspend Connor and Dante?

A Yes.

Q And that was based on the investigation that they ordered?

A I do not know who ordered the investigation.

Q Okay.

A Other than I mean, they told us to investigate, but if you're talking about the police investigation, I don't know who ordered that.

Q And do you know whether Connor's -- do you know whether Connor's suspension was based on the stabbing, jabbing, poking of Nolan back on September 13?

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A I believe it was, yes.

Q All right. And how about Dante?

A Dante I don't recall. I just remember that the evidence that was there through the statements, I had very serious concerns about that.

Q And you disagreed with that?

A Yes, I did.

Q But your supervisors were able to make that decision at the Clark County School District?

A She said, You will suspend both of those boys.

Q Very good. Let me cover some of the questions that Mr. Scott covered, and I'm going to try to do this pretty briefly. He was talking with you about reports made by sixth graders, and he said sixth graders don't factor in particulars. Would you consider stabbing, jabbing, poking to be a particular?

A That would be the one thing a student remembers.

Q Yeah. And if someone complained about being called duck bill Dave, do you think the dean has a duty to investigate to see if there had been a stabbing?

A As long as she was aware that there was a stabbing, she would, yes.

Q No, but I mean, just from a complaint about being called duck bill Dave, is it necessary to investigate a possible stabbing?

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A No.

Q You were in the Navy during the Reagan Administration. Counsel have used the phrase "Trust, but verify." Do you know what trust but verify means? Do you remember President Reagan saying that?

A I do not even recall that.

Q You don't?

A No.

Q All right.

A But I would assume it means trust them, but check up on them from time to time.

Q Do you know who he was talking about in that, in that particular?

A I do not. I am sorry.

Q All right. I'll handle that in argument. Thank you.

Counsel was trying to -- counsel and you were discussing whether you are ultimately the responsibility and whether you accept responsibility for the people you supervise. You said whether he's -- whether he is working within his job. What if an assistant principal or a dean were not following, not just they were off premises, what if they were on premises but not following Clark County School District policy? Do you accept responsibility for that?

A Well, that's not within the scope of their job, so

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obviously you have to be doing what's expected of you.

Q And you also talked about contacting parents not being the legal standard, but it's good practice. Are you talking about what we lawyers call best practices, going above and beyond?

A I would assume that, yes.

MR. POLSENBERG: The court's indulgence, Your Honor.

(Attorneys confer.)

BY MR. POLSENBERG:

Q The day after the February 7 emails, February 8, do you know that there was an incident on campus, just yes or no?

A Yes.

Q And where were you at the time?

A I was at a principal's training, or they would call it a principal's retreat.

Q Right.

(Attorneys confer.)

MR. POLSENBERG: Thank you, Your Honor.

THE COURT: Redirect, please.

MR. SCOTT: Nothing, Your Honor. Nothing further.

THE COURT: May we excuse the witness?

MR. SCOTT: Yes.

THE COURT: Dr. McKay, thank you. You may step down.

THE WITNESS: Thank you.

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THE COURT: You are excused.

You guys, you still had 12 minutes.

MR. WAITE: What was that, Your Honor?

THE COURT: You still had 12 minutes.

MR. POLSENBERG: Can we tack it on Monday morning?

THE COURT: So let's talk about -- do you want a moment?

MR. POLSENBERG: Can I have just a second, Your Honor?

THE COURT: Yeah.

MR. WAITE: I think we can talk about Monday.

THE COURT: Let's talk about availability to continue next week.

MR. WAITE: We discussed, and Monday we're in agreement we are off.

THE COURT: We're off on Monday all day?

MR. SCOTT: Yes, and we give the Court permission also to take Monday off.

THE COURT: You know I work full time, so I know that you will be working Monday.

MR. POLSENBERG: Judge Gatto used to say, I get paid by the year, so we'll walk as long as you want.

MR. WAITE: But we still think that we're probably going to be done on Tuesday.

THE COURT: You think you can be done Tuesday?

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MR. SCOTT: Yes. I feel very confident.

THE COURT: All right. Let's start at 9:30 on Tuesday. I just need that chance in the morning to make sure everything's getting done around here, so.

MR. POLSENBERG: My exhalation actually had to do with, oh, gosh, another long day.

THE COURT: All right. So have a good weekend everybody. But let me talk to you about how we're going to conclude the matter. After you've finished the evidence, think about whether you want closing arguments or closing briefs.

I would assume that in this case I will order both sides to give me proposed findings of fact, particularized findings, and conclusions with the application of the law that you believe is applicable on some type of disk or drive, so that they can be adapted depending on how I decide the case. So be thinking about how you wish to conclude, and you can let me know Tuesday, or if you know now what you think.

MR. SCOTT: Your Honor, I don't know what the turnaround time here is for obtaining a transcript.

THE COURT: It depends on how much you pay, and there's a -- you can talk to the court recorder about that.

MR. SCOTT: All right.

THE COURT: Yeah.

MR. POLSENBERG: Which would you like to do?

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THE COURT: Do you want the chance to consult --

MR. SCOTT: Does the Court have a preference?

THE COURT: -- each other and your clients with regard to that? Because I am assuming that in order to prepare findings you would need transcripts.

MR. SCOTT: Yes.

MR. POLSENBERG: Right. And as long as we're getting the transcripts, I'm thinking we should brief it. Whether we brief it and argue it is the question.

THE COURT: Well, certainly if both sides want to brief and argue, I am going to -- it's your case. I am going to listen very patiently and be prepared for all of that. And if you disagree, I'll decide. So let me know on Tuesday morning, when I see you again at 9:30, how you wish to proceed post trial.

MR. SCOTT: Thank you, Your Honor.

MR. WAITE: Thank you, Your Honor.

THE COURT: You worked hard this week, gentlemen.

MR. WAITE: Thank you for your staff as well. It has been a long week.

THE COURT: All of you, I was going to -- all of you. I was going to wait until the end of trial to say this, but it's very rare that we have lawyers of the ability and skill that we've had in this case, and the level of preparation, so thank you all. Have a good weekend.

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MR. LICHTENSTEIN: Your Honor.

THE COURT: Yes.

MR. LICHTENSTEIN: We've just spoken, and I think we all have an agreement --

THE COURT: Oh, okay.

MR. LICHTENSTEIN: -- that we'll just do it on the briefs and forego arguing that --

MR. POLSENBERG: I think it's going to be easier rather than scheduling an argument and winding up arguing it in January.

MR. SCOTT: And that's our Christmas present to you, Your Honor.

THE COURT: Well, thank you all. However you choose, and we'll set timelines when we finish on Tuesday for everything, so that I can stay on top of it too.

MR. SCOTT: Very good.

MR. POLSENBERG: I understand, but it probably will depend --

THE COURT: I know. Just that I've got to calendar things internally to make sure I follow up on my own deadlines. Thank you.

(Court recessed for the evening at 4:46 p.m.)

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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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KIMBERLY LAWSON

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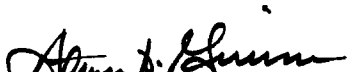

CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

MARY BRYAN, Plaintiff, vs. CLARK COUNTY SCHOOL DISTRICT, et al, Defendant.	CASE NO. A-14-700018 DEPT NO. XXVII **TRANSCRIPT OF PROCEEDINGS**

BEFORE THE HONORABLE NANCY ALLF, DISTRICT COURT JUDGE

BENCH TRIAL - DAY 5

TUESDAY, NOVEMBER 22, 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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I N D E X

WITNESSESS FOR THE PLAINTIFF:

AIMEE HAIRR

Direct Examination By Mr. Scott 3

Cross-Examination By Mr. Waite 34

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LAS VEGAS, NEVADA, TUESDAY, NOVEMBER 22, 2016, 9:32 A.M.

* * * * *

THE COURT: Calling the case of Bryan vs. Clark County School District, A700018. Appearances, please.

MR. SCOTT: Good morning, Your Honor. John Scott and Allen Lichtenstein for the plaintiffs.

THE COURT: Thank you.

MR. WAITE: Good morning, Your Honor. Dan Waite and Dan Polsenberg for the defendant.

MR. POLSENBERG: Good morning, Your Honor.

THE COURT: Thank you. All right. I believe the plaintiff, you will call your next witness.

MR. SCOTT: Yes, Your Honor. Plaintiffs call Aimee Hairr.

AIMEE HAIRR, PLAINTIFF'S WITNESS, SWORN

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

THE WITNESS: Aimee Hairr, A-i-m-e-e, H-a-i-r-r.

DIRECT EXAMINATION

BY MR. SCOTT:

Q Good morning, Mrs. Hairr.

A Good morning.

Q What is your relationship with the plaintiff, Nolan Hairr?

A He's my son.

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Q When -- I'm trying to think of a good way to put it. When did you adopt Nolan?

A We adopted Nolan in 2001. He was eight months old.

Q And do you know where Nolan was born?

A He was born in Russia in a region called Vladivostok.

Q And when you adopted Nolan at the age of eight months, were you living in Clark County?

A I was not.

Q I'm sorry?

A I was not.

Q Where were you living at that time?

A In Phoenix, Arizona.

Q And how was Nolan's health as a child, as a young child, a baby?

A He was -- he was a sick baby when we went over there. He had -- he was born with a condition called, on his left side, left bronchial stenosis, which closed off his left side of his lung. So for the first five years he struggled with breathing, and we had breathing machines and went to specialists, lung specialists.

And when he was five, we were told that there is a surgery that they could experiment, but we would have to fly back east to Johns Hopkins. So we did that and they were able to stretch out his lung on his left side. And since then he

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has progressively gotten better, and by the age of seven, eight, he no longer needed the breathing treatments.

Q When you say breathing treatments, what do you mean?

A It's like a little nebulizer that you give a child that helps to open up a little bit of their airways. He was relying more on his right side, so.

Q And as a baby and a young child, what was his behavior like?

A Nolan always, you know, he had obstacles obviously from the beginning, but he was always -- he was a brave little baby, a brave little boy. He never complained about anything. He was a good child.

Q Did he show his emotions?

A We never really saw Nolan cry as a baby. If he was hungry, he would just -- he would just wait. He was never a child that would throw tantrums or -- he just got it. You know, Mommy doesn't want to get that for you, we don't think that's appropriate, he would -- he accepted it.

Q And was there anything unusual about Nolan's years K through fifth grade, or what kind of a student was he?

A He was a very inquisitive little boy. He always wanted to understand why. He loved to read. Very kind.

Q Did he have any problems that you were aware of in kindergarten through fifth grade, whether as to behavior, learning, anything unusual that came up?

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A None that I could recall.
Q And when did you move from Phoenix to Clark County?
A He was around two years old.
Q And did he go to school in Clark County School District beginning at kindergarten or first grade?
A He did. He started kindergarten through, all through fifth grade he was at a Clark County school.
Q And what school did he attend through fifth grade?
A His first school was Cartwright. And then we moved houses closer to -- in a different area where the school he was zoned for is Estes McDoniel when he was in third grade.
Q At some point when Nolan went to sixth grade, you understood he was going to a new school?
A Yes.
Q And was Greenspun your local public middle school?
A Yes.
Q Or junior high school?
A Junior high school, yes.
Q And at that time, what was Nolan's relative size in relation to other sixth graders?
A He was -- he was a small boy. He was a small boy. He had longer hair. He was skinny, was very tiny.
Q All right. And at some point in September of 2011, when he was in sixth grade, did you get any information regarding anything unusual happening to Nolan at Greenspun

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Junior High?

A I was at a birthday party for one of my sons on the 21st of September, and during the party Mary was --

Q Mary who?

A Mary Bryan.

Q Okay?

A She was there with her children, and she approached me and asked if I had heard from the school.

Q Okay. And what did you say?

A I was a little surprised and I was wondering why, and she said that she had sent an email to the school and she had pulled it up on her phone. She let me briefly -- I briefly looked at it and was reading it, and she stated that Nolan had his -- had been stabbed in his penis in school.

Q Had Nolan reported that to you as of that date, September 21?

A He did not.

Q And after you got that information from Mary Bryan, how did it make you feel?

A I was a little -- a little -- I was shocked, kind of stunned at that moment. I was in a state of shock pretty much.

Q Did you, that same party that you mentioned you were at, do you recall what time of day it was?

A It was the evening.

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Q And later that evening did you discuss this information you just received with Nolan?

A I spoke with my husband, told him.

Q Did you talk to your husband first?

A I did. I actually went over and talked to him at the party. And when we got home, we put the other children to bed and we called Nolan out. My husband did most of the talking that night. He set him down and he told him that we found some information out and was there anything he wanted to tell us that had happened in school.

Q And what did Nolan say?

A He just sat there. He didn't answer right away. He just kind of sat there. And then my husband was like, "It's okay, buddy. You can talk to Dad. Did something happen to you in school that you want to talk about?" And he said that he was -- he said he was sitting at band class and he said out of the blue he felt this pain, he said that he saw a little boy named Connor put a sharp pencil to his penis, and he said that he screamed out in pain and that it was the worst pain he had felt.

Q Did he say anything else, or was he -- did you ask him if he had anything else to say?

A He waited a little bit and then he -- he broke down and he started crying.

Q Was it unusual for Nolan to cry?

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A Nolan, I think that that is the first time that me and my husband had ever really watched Nolan cry and in that much pain. He said that he -- he used the word "less" is what he said that night. He said he felt less. So I knew he was --

Q I'm sorry. L-e-s-s, less?

A Less. Less.

Q L-e-s-s?

A That's what he said.

Q Did you ask him what he meant by that, when he said he felt less?

A I don't know if Nolan could explain how he felt at that moment. I know the tears for us, knew that he was in pain. He was humiliated.

Q Did you talk to Nolan at that point about what -- well, did you ask him if he reported it to anybody?

A We didn't understand why Nolan hadn't reported it.

Q Did you ask him why he hadn't told you and your husband?

A Yes. His father both, and I asked, and he didn't come up with an answer, a good answer for us to understand. He said he was scared. He said he didn't know why somebody would stab him.

Q Did --

A He --

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Q Anything else you recall about the conversation you had with him that night?

A My husband kept questioning him, and he said that the kids, the little boy that stabbed him said he was checking to see if he was a girl.

Q Did you talk to Nolan that night about what he thought you should do or not do, or did you talk to him about trying to fix this?

A We sat down, my husband initially wanted to see what had happened, and Nolan, he didn't want me to touch him that night. That was the first time he ever pushed me away, because I wanted to give him a hug and tell him it was okay. But he went to the bathroom with his dad, and his father went in and was able to look and to see if anything was wrong. My husband didn't see anything.

We sat him down and asked him, do you want to go back to school. And he said that, yes, he was going to be okay and he liked his band class and he wanted to go back to school, and he told me it was going to be okay.

Q Now, I think you said this was the first time he had pushed you away when you wanted to hug him; is that right?

A Yes. That was the first time he's ever pushed me away.

Q How about after that day, did he resist you wanting to touch him or hug him after that?

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A He still does.

Q The next day, did you do anything to contact anyone at the school, at Greenspun?

A Yes. The next day me and his father made phone calls in the morning. His father started to make phone calls in the morning, and he couldn't get through. He had left some messages. And then I started calling as well. I got to a point where I spoke with -- they were student volunteers that were answering the phone, and I told them I need to speak with somebody or I'm going to come down there and wait. And so they put me on hold for about, I don't know, five minutes, and Leonard -- Vice Principal Leonard DePiazza picked up the phone.

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Q Okay. Do you recall approximately what time of day that was?

A It was in the morning.

Q And did you talk to Mr. DePiazza?

A I did.

Q Approximately how long did that conversation last?

A Ten minutes around.

Q You identified yourself?

A I told him I was Aimee Hairr, my son was a new student in the school, sixth grader. I told him that he was in band class with Mr. Beasley and that I'm aware that another mother whose student is in the school, she made a -- she sent

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out an email, about a week prior, to everybody in the administration to let them know that my son had been stabbed in his penis. And I explained he was not only stabbed, he was stabbed, but asked if he was a little girl. And he -- he didn't --

Q Did Mr. DePiazza indicate to you that he was aware of the email that was sent about a week earlier?

A He did not.

Q Did he -- did you probe to try to find out what if anything he knew about that email?

A I continued -- I asked him what he -- what he could do to protect my son. At that time I was worried that my son was in band class with another child that could potentially harm him again. He -- his responses were -- I don't recall everything detail-wise what he said, but there's certain things that he told me on the phone. He said that right now there was 1800 students and they had had two deans at the school and they were down now to one dean.

And I again reminded him I understand, but my son was stabbed, he was assaulted in your school in his band class, and he's just trying to learn. He's a little boy. He's got long hair. My son wants to be there. He's brave. You know, he's a brave little boy, he wants to be there, but my son didn't even tell me that he was stabbed. And he was -- he was a little agitated on the phone, I could tell. He said

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that --

Q Mr. DePiazza?

A Yes.

Q And what do you mean by that?

A Because when I told him my son was stabbed, it was as if I was saying my son was -- had his feelings hurt. And again, I had to remind him at least two or three times during that conversation I need to -- I'd like to know what type of steps I can take to protect him. I didn't want to -- I didn't want to make matters worse for my own child at that time.

Q And did Mr. DePiazza tell you what if anything he was going to do?

A He told me that this type of situation's handled with the dean. And I explained to him I already called the dean. I had also left a message with the guidance counselor. And he -- I asked --

Q Excuse me. Had you spoken with the dean?

A Not at this time, no. He was the first person I got ahold of that morning.

Q All right. Sorry to interrupt you. Anything else that you told him at that time?

A Yes. We continued to talk. I asked if I could go into the band classroom and approach the classroom and talk to them. And he said that wasn't at the time something that they did. And I said, "Well, then can I meet with like a round

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table meet with the principal."

I told him I knew the principal personally and if he could call the parents of Connor and we could all sit down to see if it was something maybe my son did, so we could try to resolve it as quietly as possible. I knew my son was humiliated a week prior and I wanted to basically keep my son safe.

Q And what did Mr. DePiazza say in response to that suggestion?

A Mr. DePiazza said that I had choices and that there were -- he told me I had choices. He could attend the school, or there were choices that I could pick a different school. To be truthfully honest, I hung up the phone in disbelief at the responses that he took.

Q Well, what were the options he told you that you had at that time?

A It is something that the dean handles.

Q Okay. So he told you the dean would handle it?

A Yes.

Q He told you, you could go to put Nolan in another school?

A He said I had a choice to choose a different school.

Q Did he tell you, you had any other options?

A No. Not that I can think of.

Q And did Mr. DePiazza indicate to you that he would

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follow up with you at some point, get back to you and let you know what he or the dean did to follow up on this?

A No. I just -- the last thing I asked him is if he could relay a message for the principal. He did mention that the principal was out that day, if I could get a call back from the principal in regards to that, to the issue.

Q So you asked that he contact the principal and so the principal would get back to you?

A Yes.

Q Mr. McKay -- Dr. McKay?

A Dr. McKay, yes.

Q Did Dr. McKay get back to you?

A He did not.

Q Did the dean contact you in September, late September or early October?

A No.

Q Did you talk to anyone else at the school at that time, on September 22 or close thereto?

A The very -- either that day, later that day, or it could have been the next day.

Q So later that day or the next day who did you speak to?

A I left a message with Counselor John Halpin, and I knew him personally. He was a patient of mine for three years.

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Q Oh, by the way, what's your occupation?

A I was a dental hygienist for 16 years.

Q Oh. And so you knew Mr. Halpin through your occupation as a dental hygienist?

A Yes.

Q And did Mr. Halpin get back to you?

A He did. He did. He called me back either later that day or the very next day, and I again, we kind of had small talk when he called. He did know Nolan was my son, and I was -- I related pretty much everything that Mr. DePiazza had told me.

Q And did you tell Mr. Halpin what you had told Mr. DePiazza?

A Almost everything, yeah, except I had -- Mr. Halpin at that time had read the email and he was aware, and I told him, I said, I'm very concerned because Nolan never in the past has ever kept anything from me, so I didn't understand why he didn't tell me about this. And Mr. Halpin said, You know, we are aware, I have brought Nolan in and I spoke with Nolan about this issue.

And I told him that, you know, he was stabbed in his penis in class to see if he was a girl, and that had I told Mr. DePiazza like three times and I didn't understand why nobody had called me back. And Mr. Halpin didn't -- he really didn't give me an answer either, just said he didn't know why.

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Q Did Mr. Halpin ask you why it was another mother who complained on behalf of Nolan instead of you?

A That was never brought up.

Q Did Mr. Halpin tell you that he had received that September 15 email from Mary Bryan?

A Yes, he did.

Q Did he tell you that he reported that to the dean and the principal?

A He said that everybody was aware of the email. He said that he had -- I told him I am waiting still for a call from the dean to either meet her or speak with her, and he said, "No, Ms. Hairr. We -- Ms. Dean already met with Nolan about this issue, and I spoke with Nolan and I had him fill out a form on what happened."

And then he said that he -- I'm not clear if it was him and the dean together, but he said that he had went into the bandroom with Mr. Beasley and that he assured me that the seats were moved. My main concern was that my son was at least within arm's way from the child, Connor, and he told me that he was definitely within an arm's distance from him and that it was taken care of. And he said -- before I hung up he said, "Make sure to talk to your son today and he'll tell you what we did."

Q And did you talk to Nolan later that day?

A I did.

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Q What did he tell you?

A He said that seats were moved. He said that Mr. Halpin, the school counselor, that was, I guess, the first time that Nolan had met him, brought him in his room and -- and then talked.

Q Okay. And did Nolan tell you he had left any information or had any contact with the dean?

A With the dean? Oh, he said he had met with the dean as well. Yes, he did.

Q He told you he had met with the dean?

A Yes. He met with both of them.

Q What did he tell you about that?

A I asked him did you, you know, did you let them know what happened, and he said, "Mom, they already know." And I said, Okay, so how do you like your new seating, and he said it was good. He said -- but he -- that was it. He didn't really go into too much more detail.

Q When is the next time you had any contact with someone from the school?

A About a month later I had met with -- in passing met with Mr. Halpin.

Q Was that at the school?

A That was at soccer field.

Q Okay. A soccer field at the school?

A Not at the school. It was at a league park. It

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was --

Q Oh. So you had a chance meeting with Mr. Halpin?

A Yes.

Q About a month later?

A Correct.

Q And did you talk to him?

A Yes. We stopped for about five, six minutes and we talked.

Q What do you recall him telling you?

A He said, you know -- he said -- I actually began the conversation by saying that I was still concerned, Nolan's still very quiet at home and, you know, still kind of see him withdrawing, like he seemed very withdrawn. And he agreed. He said, "Yes, I know. Your son's very quiet. I noticed that as well."

And I said, I realize that he was, you know, it's still been a month and I didn't at that time know how to handle the issue because my son didn't want to talk about it. So I knew that that was why he was so quiet possibly. But he assured me, "Ms. Hairr, I haven't heard anything. Nolan has not complained. He hasn't said anything, but I will make sure to talk to Nolan. I'm going to bring him in and talk to him."

And I said, Thank you. And I said, you know, I don't want Nolan to even see I'm telling you because I don't want to upset him anymore, but if you don't mind doing that

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for me, that'd be great. He also said, "If I hear anything, you know, if I see or hear anything at all, I'll call you." He promised he would call.

Q Were you aware that Mary Bryan sent an email to the school on October 19? Were you aware of it at about that time?

A At that time, no.

Q When did you first learn that Mary Bryan had sent the second email to the school on October 19?

A After -- after we had pulled Nolan out of school in February.

Q During this period of time in October and November of 2011, did you have much contact with Mary Bryan?

A Besides dropping the kids off to and from homes from the car pool, no, not that much.

Q Okay. And did anyone from the school contact you after October 19, asking you any questions in relation to an incident that happened to Ethan Bryan on October 18? Did anybody from the school contact you?

A Nobody ever called from the school.

Q Did Nolan ever bring to your attention in October or November of 2011, the incident that Mary Bryan complained about in the October 19th email? Did Nolan bring it up?

A No. He's never mentioned anything during that time period.

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Q And during this period of time, were you more carefully observing Nolan's behavior than you had been before September?

A Yes. It was the first time that I'd ever seen a change to this degree in my son.

Q And what change did you observe?

A He was more withdrawn. He was withdrawn from his brother and sisters. He stood in his room. He loved to read books all his life, but he seemed to be digging deeper into -- into books.

Q Was he spending more time in his room?

A Yes.

Q Did he have his own room?

A No, he did not.

Q Who did he share his room with?

A With his brother.

Q And other than spending more time in his room, did his interaction with you and his father change?

A He didn't -- he was definitely not as talkative as much.

Q Did any of his behavior patterns change that you noticed?

A He had -- he -- he started to wet his bed again, and he hid it from me.

Q I'm sorry?

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A He had started to wet his bed again. He'd had a problem since he was little with bed-wetting, and he had did great before he started at the junior high. But he would hide his sheets from me.

Q When did that start?

A Later. I don't know exactly the time frame, but within the time frame after September up through January.

Q And when he was younger and wetting his bed, did he try to hide it from you?

A No. He would just -- he would just tell me. Any of those obstacles he would tell me. We worked together as a team to help fix the problem, and he was proud of himself that he had quit doing it. But this was the first time he had ever -- he ever kept it from me.

Q And during this period of time after September, during the rest of that year, October, November into December, did you frequently ask Nolan how things were going at school?

A I asked Nolan every day, every day when he got in the car he did. He would say, Fine, Mom, it's okay.

Q And during that period of time, October, November, December 2011, did you have any information from any other sources, such as Ethan Bryan or Mary Bryan, in terms of how Nolan was doing or how Ethan was doing?

A No.

Q Now, at some point and after the holidays in January

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of 2012, do you recall learning that Ethan had -- Ethan Bryan had stopped going to school?

A When Nolan started back at school over the Christmas holidays, periodically he would say that Ethan didn't attend school. And there went a period of time where it was probably anywhere from a week to two where Nolan just said Ethan hadn't been going to school. And --

Q And when you heard that, did you contact Ethan's mother, Mary, and inquire about it?

A I did. I called Mary and it was -- I gave her a call and asked her how things were going, and she told me that Ethan is -- he's not feeling well and that he is -- she's not going to have him go back to school.

Q And was she more specific?

A She didn't really go into detail of why. I think at that moment was a moment for me --

Q What do you mean?

A Because I had noticed Nolan was being so withdrawn that I needed to talk to my son.

Q And was there an unusual event that happened later in January in terms of your communications with Nolan?

A It was around that time period. Nolan came in the car and he was talking about the same little boy.

Q I'm sorry?

A He said the same little boy that had -- Connor, that

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had stabbed him grabbed another little boy in his penis area.

MR. POLSENBERG: Your Honor, may we approach?

THE COURT: You may.

(Bench conference transcribed as follows.)

THE COURT: Got to have all four of you here. All right.

MR. POLSENBERG: This is non-parties.

THE COURT: I understand. And I will give it the weight that it's entitled to. So let's move on to the next subject, please. At the next break, if you wish to make a record --

MR. POLSENBERG: I can do it later in the day.

THE COURT: Good enough.

MR. POLSENBERG: Thank you, Your Honor.

(End bench conference.)

THE COURT: Mr. Scott, please proceed.

MR. SCOTT: Thank you.

BY MR. SCOTT:

Q After Nolan shared that information with you, what did you do?

A I pulled the car over and we sat in the car and we talked for about an hour.

Q And during that hour, did you and Nolan talk about his experience at Greenspun?

A Yes.

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Q And was it hard or difficult to get him to share information with you?

A It -- Nolan at that moment, he had a weird, I won't say breakdown, but he was definitely not looking at me, and he just kind of zoned out and stared. And I said, Nolan, what is -- I got to know what's going on. You've been withdrawn. You've just said the same little boy had grabbed another --

Q We won't talk about that person. Let's talk about Nolan, okay?

A Okay.

Q So when you said he had kind of a breakdown, what do you mean?

A I've never seen Nolan that way, where he just -- he wouldn't look at me. I asked him to look at me several times, please look at me. And I -- can you just look at Mom and tell me what's going on, you know. Mom feels something's going on at school and you got to tell me something. And he -- I asked him, Are you being bullied, is this continuing, is something happening. And he just nodded his head and that was it for that moment.

Q Did he open up at all during that time you were talking to him in the car?

A He just nodded his head. He conferred that something was --

Q When you say nodded, nodded yes?

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A He nodded. Mm-hmm.

Q Well, you can nod side to side or up and down.

A I'm sorry.

Q What did you understand he was communicating by his nodding?

A That yes, he was in pain.

Q And did you ask him to be more specific?

A At that moment, no. I wanted to go home, sit down with him and also with his father.

Q So what happened next?

A My husband came home and we sat down and we asked him to tell us what happened in that incident that he was talking about, and then he -- we told him, Nolan, we're going to -- we have to report this and we need to know what happened to you, you need to tell us, and you need to open up what has been happening to you. So he said that he -- he said that he had been -- said that he had been bullied almost every day.

Q Was he more specific?

A He said that kids were -- there was Connor and then there was another little boy that was in -- that was the first time I'd heard of the other little boy, Dante.

Q And was he more specific in terms of what they were doing to him?

A He said that they were pulling on his hair, saying names every day, saying things that were, in his words, "Were

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really bad, Mom." And I said, "You're going to have to tell Mom what those words are, Nolan. You're going to have to tell Mommy what those words are." And my husband had him write it down, so he wrote out --

Q What did he write?

A Fucking faggot on a piece of paper. And he said that he remembers that every single day that he was at school that kids were doing that to him in the band class.

Q Did you ask him why he hadn't told you or your husband about it sooner?

A Yes, I asked him.

Q What was his answer?

A He didn't know. He said he was scared. That's the only thing he could tell me at that moment.

Q Did you -- did Nolan go back to Greenspun after that? Did he go back the next day?

A He never returned.

Q Did you talk to Nolan about his returning to Greenspun?

A I didn't at that point give him a choice anymore. Me and my husband knew we had -- we had a child that was traumatized. We didn't know how to -- I didn't now how to even move forward at that point. I didn't know how to move forward. I just know he needed to be out -- okay. I knew he needed to be out of the school, and that was it.

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Q How soon -- well, at some point did you officially withdraw Nolan from Greenspun?

A I did.

Q And about how much later? Are we talking days, weeks?

A No. It was the very next day.

Q Now, did you ask Nolan if he'd been going regularly to band class?

A At that time, like at that moment?

Q At around that time.

A Nolan -- it probably took about a couple weeks and he said towards the end of his month at Greenspun he avoided the lunchroom, and sometimes he would not even go to band class. He would skip it, he said. And I asked where he went, and he said that he would sometimes hide out in the library, and then sometimes he would just sit in the bathroom.

Q After Nolan opened up to you and your husband on the night of January 21, did you take any action in response other than withdrawing him from school?

A I made a phone call within that time frame. I made a phone call to the -- I'm not sure if it was the Clark County police or Henderson police, but I made a report.

Q To?

A The police department.

Q All right. When was that report in relation --

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A Around the same --
Q I'm sorry?
A Around the same time.
Q When was it in relation to Nolan opening up to you on the 21st that you contacted the police?
A That day.
Q And that contact to the police, how was it made?
A I called.
Q And after -- how soon after that phone call did you have the next contact with the police?
A Probably within a couple days, two or three days, we met with the police with the Bryans and the Fosters and me and Nolan.
Q And where did that meeting take place with the police?
A It was at Estes McDoniel Elementary School. It was at the same zoned school that Nolan had went to elementary school.
Q And what time of day was this meeting with the police?
A During the -- I don't know the exact time, but during the day. It was during the day in the afternoon.
Q And what happened during that meeting with the police at the elementary school?
A They brought each child in, into a room separate and

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took a statement from them.

Q And did you talk to the police?

A I spoke to the police briefly, but I let my son do the -- all the talk -- like do the statement.

Q And when Nolan was interviewed by the police, were you present?

A I don't think I was in the room with him, but we were there standing outside.

Q Right. You were in the building, but were you in the room during the interview?

A You know, I don't recall.

Q Did you ever hear from the school district after that?

A We had a few days later, closely around that time frame we met with -- I don't know his position, but it was Andre Long and then another -- another lady that -- I don't even recall her name, but her.

Q Did you ever -- after you contacted the police, did you ever talk to anyone from Greenspun; for example, did you have any contact or communication with Dr. McKay?

A Not that I can recall. Maybe a hi, how are you. The last day when I came in to pull Nolan out or to officially withdraw him, the counselor, Halpin, did approach me and --

Q I'm sorry?

A The counselor.

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Q Yes.

A Mr. Halpin approached me while I was pulling Nolan out from school, and he apologized and said that he did not know any of this was happening to Nolan. He was not aware that any of this was happening to Nolan.

Q Did you have any contact with anyone else from Greenspun after you -- after Nolan withdrew?

A I did not.

Q And after that one meeting with people -- with Andre Long and another woman from the school district, did you have any subsequent contact with anyone from the school district?

A After that meeting?

Q Yes.

A They said that they were going to get back with us, but --

Q Did they?

A No, they didn't.

Q I wanted to clear something up. At some point did you separate from your husband?

A Yes, I did.

Q And when was that?

A Nolan was 12. It was his seventh grade year.

Q And do you recall the year and the month approximately?

A It was closer to the holidays. So around November,

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December of 2012, I think that would be the date, yes.

Q Oh. And during the sixth grade school year, did you and your husband live together with the children?

A We did, yes.

Q And have you and your husband reconciled?

A We have, yes.

Q Where did Nolan attend sixth grade after he left Greenspun?

A We moved him to a charter school called Explore Knowledge Academy.

Q And did Nolan complete junior high school at the charter school?

A He did. He completed up through eighth grade.

Q And did you see any change in his behavior after he left Greenspun?

A I think initially moving Nolan within the first three months, yes. It was a definite improvement. I could see -- I could see an improvement within the first three months of moving, and he was safe in that -- it was a huge difference between where he had been to placing him into that different environment.

Q And where does Nolan currently go to school?

A He is at Green Valley Christian.

Q And how long has he been there?

A Almost a year now.

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Q What grades?
A He's a junior.
Q Okay. And what year did he start there?
A He started there last year.
Q As a sophomore?
A A sophomore, yes.
Q Where did he go for ninth grade, his freshman year?
A Lake Mead Christian Academy.
Q Is that where he is now?
A No. He's at -- we moved him logistic wise with my other four kids. We moved him closer to where I could get him and be able to get all the other kids timewise.
Q And did you consider sending Nolan to a public high school in the school district?
A Nolan -- it would never be a consideration for my son, Nolan, to ever go back to a Clark County School District school.
Q Why?
A Because my son was sexually assaulted in school, the administration knew it, they had the opportunity to make the choice of giving me a courtesy phone call, but they chose not to. Mr. DePiazza knew, the vice principal knew that my son was sexually assaulted, and he did nothing.
My friend, Counselor John Halpin, who worked for the school district, brought my son into his office and allowed

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him to say he was okay while he's staring at an email that he had been stabbed in his penis. He never ever looked in that bandroom to see the seat change, because he would have noticed Nolan was sitting directly in front of his bully. I failed my son because I trusted the school district, that's why.

Q And where your son is currently going to high school, the private school, is there a tuition for that?

A There is, yes.

Q What is the approximate cost?

A Anywhere from 8 to 10,000.

Q A year?

A Mm-hmm.

Q That's a yes?

A Yes.

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

THE COURT: Let's take a recess. It's 10:32. Ten minutes or longer if you need it. Let's plan to come back at 10:45. If anyone needs a longer recess, let me know, and I'll delay the start back up of the trial.

(Court recessed at 10:33 a.m. until 10:49 a.m.)

THE COURT: Cross-examination, please.

MR. WAITE: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. WAITE:

Q Good morning, Mrs. Hairr.

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A Good morning.

Q A little bit of background. You've never met Connor; is that correct?

A I have never, no.

Q And the same with Dante, you've never met Dante either?

A I have not, no.

Q So just to be clear, everything that you know about what Connor or Dante allegedly did, you've learned through the observations of others that have been shared with you, correct?

A Correct.

Q And you've never spoken with Dean Cheryl Winn; is that correct?

A I have never.

Q You've never communicated directly with Mr. Beasley either, correct?

A Correct.

Q So similarly, everything that you know about what Dean Winn or Mr. Beasley allegedly did or did not do you have learned through the observations of others that have been shared with you, correct?

A Correct.

Q Let's talk a little bit about the September 21st pencil jabbing incident, which you had indicated you learned

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from Mary Bryan on the evening of September 21, right?

A Correct.

Q And you indicated that what Nolan told you that evening was that he was stabbed with a sharp pencil, correct?

A Yes.

Q In fact, when you returned home -- I got a little ahead of myself. When you returned home from the birthday party where you learned about this incident, you had a discussion with your husband, put the kids to bed, and then you called Nolan out and had this discussion with Nolan where he told you that he was stabbed with a sharp pencil, right?

A I had the discussion at the birthday party with my husband.

Q No, no. I'm sorry. You had the discussion with Mary at the party.

A Right.

Q You came home that evening. You had a --

A I spoke with my husband -- I let my husband know at the birthday party.

Q Oh, okay.

A I had read that.

Q Okay. So then you come home, you put the kids to bed, you get Nolan back out and have this conversation with Nolan?

A Correct.

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Q Approximately what time of night is it that you're having this conversation with Nolan?
A 9:30, 10:00.
Q And you had indicated that Nolan was inspected, for lack of better words, by his father, and I think you indicated that his father said he didn't see anything; is that right?
A Correct.
Q That in reality your husband told you that everything looked fine, right?
A From what he could see, yes.
Q To be clear, your husband didn't see any bruising; is that right?
A He did not.
Q He didn't see any puncture marks?
A He did not.
Q He didn't see any scabs?
A He did not.
Q Or any redness or swelling?
A No.
Q From and after September 13, did Nolan appear to you to walk any differently?
A He did not.
Q Did he appear to you to sit differently?
A He did not.
Q Did Nolan appear to you, after this pencil jabbing

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incident, to groan or cry out in pain when he was sitting or moving?

A He did not. Are we talking about before?

Q No. After the pencil jabbing incident. In fact, let me just ask the follow-up question. Isn't it true, Ms. Hairr, that after this pencil jabbing incident occurred, you had no external indication that Nolan was in any pain whatsoever, correct?

A No.

Q No, that's not correct, or that is correct?

A I had no indication that he was in any pain.

Q And Nolan told you nothing in regard to pain during that period, correct?

A During which period?

Q After from the -- between the time of September 13 until you found out on September 21.

A Oh. No, he did not.

Q You indicated you had a conversation, a telephone conversation the next day with Mr. DePiazza, right?

A Yes.

Q And that would be the morning of September 22?

A Correct.

Q And during the time that Nolan was enrolled at Greenspun Junior High School, that was the one and only conversation you ever had with Mr. DePiazza, correct?

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A Correct.

Q And I think you said that during that conversation you asked Mr. DePiazza what kind of steps could be taken to protect Nolan; is that right?

A Yes.

Q And Mr. DePiazza explained that you had choices or options that were available to you, correct?

A Mm-hmm.

Q Is that a yes?

A Yes.

Q And one of those options he explained to you was that you could transfer Nolan to another Clark County School District school, correct?

A Yes.

Q And another option that he explained was that a change could be made in Nolan's class schedule as well, correct?

A No. I don't recall that.

Q You don't recall that?

A No.

Q You indicated to Mr. DePiazza that you wanted to have a round table discussion, I think is what you called it, with the principal and Connor's parents and would involve you and your husband as well, correct?

A Correct.

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Q Were you concerned in making that suggestion that such a meeting with Connor's parents might result in retaliation against Nolan?

A No. I didn't think at that time, no.

Q The next day, on September 23, you had a discussion with Mr. Halpin, correct?

A Either later that day or the next day, correct. Yes.

Q And during that conversation he told you that Nolan's seat in the band class had already, meaning past tense, had already occurred, correct?

A Yes.

Q And I think he told you that he himself had already met with Nolan, correct?

A Correct.

Q As had Dean Winn, Mr. Halpin also told you that Dean Winn had already met with Nolan?

A Yes.

Q From that conversation did you conclude that Mr. Halpin, Mr. Beasley and Dean Winn had been in communication about the issues raised in Mary Bryan's September 15th email?

A Yes.

Q And as a result of your September 23 discussion with Mr. Halpin, you felt that your concerns had been addressed as

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of that moment, correct?

A I did, yes.

Q And after your September 23 discussion until -- with Mr. Halpin until your next discussion with Mr. Halpin sometime in October, you had no communications with anyone at Greenspun Junior High School; is that correct?

A Correct.

Q No -- just to be clear, no emails, no phone calls, no phone messages, nothing?

A No.

Q And is that because Nolan didn't mention any teasing or bullying during this period?

A Correct.

Q So you assumed that the problem had been resolved; is that correct?

A I did, yes.

Q And I think you indicated that you asked Nolan every day how things were going at school and he said things were fine; is that right?

A That's right.

Q And when you say every day, did you really ask him every single day?

A Every single day.

Q And every single day Nolan told you that he was fine?

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A Every single day.

Q Did you ever suspect that he was not being honest with you?

A I thought Nolan was coping with being stabbed a month prior.

Q When Nolan told you every single day that he was fine, you thought he was fine, right?

A I thought he was fine.

Q Let's jump forward then into October, when you had that next conversation with Mr. Halpin that was at the soccer field, I believe you said.

A Correct.

Q Was that on a weekday -- excuse me, a weekday or a weekend day?

A It would have had to have been on a weekend.

Q And that was an approximate five minute conversation you had on the sidewalk as you were coming and he was going or vice versa, watching your respective children play a soccer game?

A Correct.

Q You'd had some small talk, and then you asked how he thought Nolan was doing, correct?

A I voiced my concerns that -- but yes, correct. Yes.

Q You asked Mr. Halpin specifically if he had heard anything from Nolan regarding whether Nolan was still being

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bullied, correct?

A Not necessarily from Nolan, but from any -- any source.

MR. WAITE: Could I have Ms. Hairr's deposition published, please.

THE COURT: Any objection?

MR. SCOTT: No objection.

THE COURT: The deposition of Ms. Hairr will be published.

(Pause in proceeding.)

(Deposition of Aimee Hairr published in open court.)

MR. WAITE: May I approach, Your Honor?

THE COURT: You may.

BY MR. WAITE:

Q Ms. Hairr, if you would turn, please, in your deposition to page 95. As you're doing that, let me just ask you, do you recall having your deposition in this action on January 8, 2016?

A Excuse me?

Q You had your deposition taken in this lawsuit on January 8, 2016, correct?

A Yes.

Q You came to my office and one of the attorneys associated with my law firm examined you for some period of time?

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A Yes.
Q You were represented by your attorney?
A Yes.
Q And you were sworn to tell the truth?
A Correct.
Q And to the best of your knowledge and recollection, you told the truth during that deposition?
A Yes.
Q Okay. Do you feel that your recollection of events was clearer then, on January 8, 2016, or today?
A Then.
Q Would you -- are you --
A What page again?
Q Ninety-five.
A Ninety-five.
Q And I'll direct your attention to the lines preceding 18, where you're talking about your discussion with Mr. Halpin. And then at line 18, you say, "We had small talk and I just, you know, again voiced my concerns. I wanted to make sure, how do you think Nolan is doing, have you -- is there anybody in -- have you heard anything from Nolan that he's being bullied or did that situation cease. And he said, Yes, I haven't heard anything."
Does that refresh your recollection if on that occasion you asked Mr. Halpin if he had heard anything from

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Q Why would a student who's a witness be afraid of being identified?

A Well, if it's a true bully, maybe they don't want to be bullied as well.

Q Okay. And so I take it when you're doing your investigations and talking to people, including the bully, there's nothing you can do to prevent retaliation; is that it, your hands are tied, you're powerless?

A My hands are not tied. We try our best as adults on our campus to make sure that kids make the right choices. But everyone has their own free will and when they come to school, I don't know what they're going to do. We try to put things in place where they're not going to come back and retaliate. But if they do, I tell them there are consequences for retaliation.

Q Okay. And have you ever suspended a bully for retaliation?

A Yes.

Q How many times?

A Numerous times. And the event that I told you just a few minutes ago was retaliation.

Q How did you know it was retaliation?

A Because I'd already had an event from that same student, and so I knew that it was in retaliation.

Q And so because there was an initial event that got

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complained about and then the bully retaliated against someone because of the first report, then you were able to conclude it was retaliation?

A Yes. And that's how the student felt, that it's because something was said. And did -- were we aware that that was going to happen; no, because we had everything in place to avoid that. But this was not -- we were not aware of where this would take place, so it took place and it was reported.

Q And that student, that bully who retaliated and you substantiated retaliation, what was the level of discipline?

A On that one?

Q Yes.

A It was removal from -- it was a behavior school.

Q I'm sorry?

A It was a behavior school removal.

Q So that student was basically expelled?

A Expulsion is different than behavior school.

Q Okay. What is behavior school?

A Behavior school, they do return to our campus, but they are gone from four to nine weeks and unless they -- the victim does -- the victim and the parent does not want them returned, and then they would go to a different school.

Q So after the four to nine weeks in behavior school, you'd ask the victim if the victim felt comfortable with the

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bully coming back to school?

A Right. And that discussion would happen before the student would come back to school.

Q And if the victim and the victim's parent said no, I won't be comfortable, then that student can't come back to the school?

A That student would be -- it would go back through educational services division and the student would be placed at another school.

Q And why would you take that level of discipline against a bully who retaliated?

A Because I could not -- if the parent feels like it might happen again, then we would feel like it could be a safety issue for that student.

Q Even if the bullying didn't involve violence or physical injury?

A On this particular one, we weren't sure what level this student would take it next, so.

Q But there was no violence involved?

A There were threats. Mm-hmm.

Q Just verbal threats?

A Verbal.

Q But nothing physical?

A No.

Q Okay. Now, would it be fair to say that it's been

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your experience at Greenspun that students who complain about bullying or witness it are often afraid of retaliation?

A Some are and some are not.

Q Right. And some are even afraid to report it in the first place, right?

A I couldn't really give you a solid answer on that, because I don't know if they're afraid to tell me. I only get reports that are coming to me.

Q Well, you know Mr. Halpin, correct?

A Yes.

Q And I assume from time to time you've had conversations with him and worked with him in issues involving students and misconduct and bullying and the like?

A We usually work more together with student academics.

Q All right. And would you agree with him that a common symptom of victims of bullying is that these students become withdrawn, depressed and withdrawn?

MR. POLSENBERG: Your Honor, I don't think she can agree with him because she doesn't --

MR. SCOTT: I'll rephrase it.

MR. POLSENBERG: Thank you.

THE COURT: Rephrase.

MR. SCOTT: I'll rephrase it.

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BY MR. SCOTT:

Q Based on your experience and training, has it been -- has it been your experience that many students who are victims of bullying become depressed and withdrawn?

A I don't see all victims become withdrawn, so I --

Q There's nothing -- no all is here.

A I don't know many.

Q I said some.

A There might be a few, yes.

Q You think it's what, 2 percent?

A I couldn't even put a percentage on it.

Q You can't tell me whether it's more or less than 50 percent?

A When I work with junior high kids, I see them happy on campus, and so when I -- I really couldn't tell you a percentage.

Q And you couldn't tell me if it's a common phenomenon among victims of bullying that they become depressed and withdrawn?

A When I read research, I did read some of that. But on the Greenspun campus, when I see kids, I don't see kids that are coming -- that are out in the cafeteria and around the school with a depressed look on their face and acting depressed. And if they are sad, I would go up to them or visit with them about that. So I couldn't put a percentage on

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that in our school.

Q Well, you aren't aware of children who put on a happy face while they're suffering inside?

MR. POLSENBERG: Judge, I need some foundation on that one.

THE COURT: Your objection is noted. And I'm going to sustain that subject to foundation.

MR. SCOTT: Thank you.

THE COURT: We've gone for a little over an hour. I try to take a break every hour because I know it is hard work for all of you. So it's 1:45. Let's come back -- it's 1:46. Let's come back at 1:56. And you may step down during the break.

(Court recessed at 1:46 p.m. until 1:59 p.m.)

THE COURT: Please proceed.

MR. SCOTT: Thank you.

DIRECT EXAMINATION (continued)

BY MR. SCOTT:

Q Mrs. Winn, let's talk about Nolan Hairr. Do you know Nolan Hairr?

A Yes.

Q Do you recall when you first met him?

A I know he was our student in 2011. I don't recall when I first met him.

Q And what did he look like?

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A I know he had blonde hair.

Q Was he tall, short, skinny, fat, short hair, long hair?

A I know he had beautiful blonde hair. It was a little bit longer, like right here [indicating].

Q Okay. Down to his shoulders?

A Yeah, about.

Q And what was his build, and was he big, medium, small?

A He was medium to small in sixth grade.

Q And do you recall him first coming to your office in early September to make a complaint about being bothered or harassed or bullied in his band class?

A I do remember that I received a statement from him on September 22.

Q But do you recall maybe as much as two weeks earlier him coming to your office, leaving a statement and then meeting with him?

A No, I do not.

Q You don't recall?

A I don't remember meeting with him at all.

Q You don't recall meeting him before September 22?

A Correct.

Q You may have, you just don't recall?

A I don't -- I don't think I -- I don't think I met

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with him.

Q Fair enough. And now, if you would turn to the small white binder, Tab No. 4, an email dated September 15, 2011.

A Okay.

Q Do you recognize that email?

A I do now.

Q When's the first time you saw it?

A Sometime in October.

Q Are you sure about that?

A I didn't receive it in September, no.

Q Do you recall previously testifying at your deposition that you were not aware of this email until the following year?

A I didn't see it until after this lawsuit or after all this, yeah.

Q So the first time you saw this email, this September 15, 2011 email that's part of Exhibit No. 4, was after this lawsuit was filed?

A Correct.

Q Oh. And was the substance of this email, a complaint that Nolan Hairr was stabbed in the genitals with a pencil, was that brought to your attention in September of 2011?

A No, it was not.

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Q Was that complaint brought to your attention in October of 2011?

A No.

Q And would it be fair to say that if you had been aware of this email or the allegations in this email in September of 2011, you would have reported it to the police?

A For if it said stabbing --

Q Yes.

A -- to the groin?

I would have called his parent, yes.

Q Do you recall previously testifying that if you were aware of this complaint of a student being stabbed in the genitals you would have reported it to the police?

A Yes. Yes.

Q Oh. And do you want to change that testimony now?

A I would think that I would notify the parent before I would call the police to make sure the parent was aware of it.

Q And why would you call the parents before contacting the police?

A I would want the parent to know that I was calling the police.

Q All right. And so you would -- if you had received this information that's in this email of September 15th in September 2011, you first would have called the parents, then

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you would have called the police?

A I believe, just to be fair to the parent, I would want them to know that I was --

Q We understand.

A -- looking -- you know, that in real time, I don't know exactly what I would do at that time. I would -- I'm not sure exactly what I would do, but I would try to call the parent first.

Q But you do recall testifying at your deposition on November 3, 2015, about a year ago, that if that email had been brought to your attention in the fall of 2011, you would have reported it to the police?

A Right.

Q And do you want to change or modify that answer today?

A Well, I think modifying it would be the police would be contacted, but also parents would need to be contacted as well.

Q Fair enough. And why would you contact the police with an allegation of a student being stabbed in the groin with a pencil?

A Well, when I see the term "stabbed," that's alarming to me, but I would have to make sure that the parent was aware of it. And at the time when I was asked about this a year ago, I wasn't sure what the -- what you were asking me and

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I -- looking at what -- I just feel like the parent would need to know first.

Q I understand.

A As a parent, I would need to know that that happened, and then I would call the police.

Q Okay. So you'd contact the parents and you'd call the police.

A Mm-hmm.

Q Is that because you think this was a little bit too serious for you to investigate?

A I don't know that it would be too serious, because we've had students come to the office and say this student stabbed me on the hand with something, but I could see the student's hand. And on this one I wouldn't be able to see the student in this particular area, and I wouldn't want to look in this particular area. This would be something that would be out of my realm of investigation.

Q Oh. And you see that this email of September 15 was addressed to Mr. Beasley and Mr. Halpin and Dr. McKay, correct?

A Yes.

Q And you would have expected Mr. Beasley, as a mandated reporter, to have brought this allegation to your attention, correct?

A As a mandated reporter, I do know that it has to do

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with students that are abused or neglected, and on this one, with Beasley and John Halpin seeing that Warren McKay's name was there, then they would see that he was notified of that, and he is the principal of our school.

Q So you believe because it was improperly addressed to the principal they no longer had an obligation to report it to someone to see if it was being handled?

A I'm -- I don't know what they thought. I have no way of knowing what they thought, and I wouldn't know whether that was his address or not.

Q Do you recall at your deposition a year ago testifying that both Mr. Beasley and Mr. Halpin had a legal obligation to report this September 15 email?

A Correct. And I would --

Q Thank you.

A -- report it to him.

Q They should report it to Dr. McKay, not you?

A And Dr. McKay was on there, yes.

Q Okay. Now, if you would turn to tab -- well, before we do that, at some point you became aware from, I guess, Mr. Halpin that Nolan Hairr was being bullied?

A No, I didn't hear from Mr. Halpin that he was being bullied.

Q And didn't Mr. Halpin bring to your attention that he met with Nolan Hairr on November -- I'm sorry, on September

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22, and escorted him to your office?

A No. I didn't know that.

Q And you did -- if you turn to Tab No. 9 in that binder, and do you recognize this voluntary incident report dated 9/22/11, signed by Nolan Hairr?

A Yes, I recognize that.

Q Did you receive it on or about November 22?

A Yes, and I worked on this.

Q So when you received this statement from Nolan Hairr, did you contact him and talk to him?

A I -- I don't know if I called him in to the office, it's been so many years ago. But I did RPC the other student.

Q We'll get there. Okay.

A All right.

Q My question right now is, did you talk to Nolan Hairr?

A I'm not 100 percent positive that I called him in to the office that day.

Q Did you contact his parents?

A I do not recall.

Q In the normal course of business, would you have talked to Nolan Hairr and contacted his parents?

A On something like this, I don't know if I would have contacted the parent on it just right away until I talked to the student and everything, so I don't know.

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Q And do you recall talking to Nolan Hairr and him telling you that he had been stabbed by another student in the genitals?

A Never.

Q Okay. And do you recall talking to Nolan Hairr on or soon after September 22?

A I do not recall when I would have talked to him.

Q You would document it, correct?

A Not necessarily document that I talked to him, no.

Q Why not?

A Because sometimes I just talk to students, but I don't put it in there I talked to the student today.

Q Well, if you're investigating an allegation of potential bullying or a child being somehow harassed, doesn't that require you to do an investigation?

A Correct.

Q And as part of investigation, aren't you required to interview the victim?

A Correct.

Q Okay. And if you interview a victim as part of an investigation, your training is to document it in what's called the dean's chrono, correct?

A Right.

Q All right. Now, you did a dean's chrono for Nolan Hairr?

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A Yes.

Q And let's see if we can find it here. Give me a second. If you would look at Tab No. 5, Exhibit 5.

A Okay.

MR. SCOTT: Your Honor, confirming this is in evidence.

THE COURT: Yes.

MR. SCOTT: Thank you.

BY MR. SCOTT:

Q And do you recognize Exhibit No. 5?

A Yes.

Q And is this the -- what is referred to as a chrono, short for chronological of behavior that you maintained for students at Greenspun Junior High School in 2011?

A Yes.

Q Did you have a chrono for every student?

A Only students that had been in the dean's office or have had tardies or dress code.

Q And what does tardy mean?

A They've been late to school.

Q Okay. So if a child is late to school, you make a record of that?

A Right. Or they're late to class, then that would go down as a tardy.

Q And what about if a student, instead of being late

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for class, just misses classes for days on end, for one week, two weeks or more at a time, do you document that?

A That doesn't go down in the dean's chronology. That would be in attendance.

Q And do you keep track of that?

A The attendance secretary does.

Q I thought you were in charge of attendance?

A She would keep me apprised of the students who would miss so many days, and then she would notify me of that.

Q And how many days would a student have to miss before you'd be notified, talking consecutive days?

A Consecutive days. If they're out -- she notice -- she would notify me if they were ready to have a letter sent home if they're tardy more than so many number of days, to have a letter sent home, three to five days --

Q Three to five days?

A Yeah.

Q So after three to five days you'd send a letter home?

A Right. And the attendance secretary would call if she's not getting letters in, or the excused absences coming in.

Q And what if -- what if this attendance problem of more than five days relates to a student who had complained or reported to you previously that he or she had been bullied,

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does that raise any red flags?

A Well, in Nolan's case, he didn't report any other cases of bullying to me.

Q So one isn't enough to be concerned?

A Well, after this, it looked like it had been taken care of. He didn't report any and I don't see any absences on him on here.

Q Right. There wouldn't be any absences on here, would there?

A Right. No.

Q All right.

A And she didn't come to me with any information about that.

Q Fair enough. Now let's look at what you -- the entry you made on September 22. This would have been sometime after you received that handwritten statement that's marked as Exhibit No. 9, correct?

A Correct.

Q And so you wrote this on that same day, the 22nd, correct?

A Is it Exhibit 5 or 9?

Q Five. Five.

A Okay. Right.

Q And this is so you could document when it's fresh in your mind what you did that day, correct?

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A Correct. And I usually go off of what their statement is, so it will help me recall what's happening.

Q Okay. Now, where it says here, Nolan reported to the dean, you were referring to his statement, correct?

A Correct.

Q You never met with him and talked with him that day or you would have included it in here, right?

A Correct.

Q Okay. So instead of talking to Nolan, you wrote, "Nolan reported to the dean that someone was calling him names, messing with his hair, kicking his band instrument and blowing in his face. Nolan's mother also contacted administration that some student," we believe Connor, "continues to bother Nolan in band after Mr. Beasley talked to him about his behavior."

So was it your understanding at that time that Nolan's mother had contacted administration that day, or on an earlier day?

A I don't recall on that one.

Q But at least as of the 22nd, you were aware that Nolan's mother had contacted administration to report that Connor was continuing to bother Nolan, correct?

A Right. After he'd talked to -- after she talked to Mr. Beasley.

Q Right. And so you interpreted this as retaliation

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that she had reported talked to Mr. Beasley about harassment or bullying, and that now Nolan was complaining at some time after his mother had talked to Mr. Beasley?

A I didn't read -- I didn't -- I don't see it as retaliation on here.

Q Well, if Nolan's mother complained to Mr. Beasley about Connor, and Mr. Beasley talked to Connor --

A Okay.

Q -- and the bullying continued, and then Nolan complained about it, why didn't you see it as retaliation?

A That's why he came and filled out a statement that this is what the boy is doing.

Q Right. And you understood within the context of continuing to do it after his mother had complained to administration?

A Correct. But --

Q Okay.

A -- this is just now coming to me.

Q I understand that. So now you've got a student making a complaint. You have information that before you received the complaint the student's mother complained to administration, correct?

A That the student had talked to Mr. Beasley about it, so now is the time for me to meet with the student.

Q Why not meet with Nolan?

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A And I'm not sure if I talked to Nolan at that time or not. I can't remember if I talked to him or not. It said that he reported to me, but I don't remember if I spoke to him or not.

Q And were you aware at that time that his mother had talked to administration about the stabbing?

A No.

Q And this information about the mother having contacted the administration, where did you get that from?

A I am not sure.

Q Okay. And why didn't you put a name in here instead of just saying administration?

A I'm not sure. It's been so long ago, I don't remember.

Q All right. Now, if you had talked to Nolan or his mother and determined that this involved a stabbing and retaliation, would you have handled this differently?

A Going back in real time, it would have been something with different circumstances. I believe I would have handled it much differently, yes.

Q I'm talking about these exact circumstances in September 2011. If you had spoken to Nolan and/or his mother and learned that there was a complaint of stabbing and that his complaint on November 22 appeared to be retaliation for complaining about the stabbing, would you have handled this

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differently?

A Knowing about stabbing?

Q Yes.

A I believe I would, yes.

Q And let's add the retaliation for reporting the stabbing. Would you have handled that differently than just --

MR. POLSENBERG: Your Honor, may we approach?

THE COURT: You may.

(Bench conference transcribed as follows.)

MR. POLSENBERG: I think --

THE COURT: Everybody has to have room.

MR. POLSENBERG: Yeah. He doesn't.

THE COURT: He doesn't.

MR. POLSENBERG: I think saying that this is retaliation is argumentative, so getting her to assume it's retaliation rather than just to assume the fact.

THE COURT: I'm going to overrule it. So at the next break make sure we put that on the record --

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

THE COURT: -- outside the presence of the witness.

MR. POLSENBERG: Thank you. That's why I came up.

(End bench conference.)

THE COURT: The objection is overruled. We'll put that on the record at the next break.

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MR. POLSENBERG: Thank you, Your Honor.

THE COURT: Go ahead, please.

BY MR. SCOTT:

Q Do you have the question in mind?

A Tell me -- tell me where we are.

Q I'll try to rephrase it.

A Yes.

Q Hopefully I can remember it.

A Okay.

Q I think the question was asking you if back in September of 2011 you talked to Nolan or his mother and determined that his complaint on November 22 was retaliation for a complaint made earlier about being stabbed, if you had talked to Nolan or his mother and found that out, would you have handled this situation differently on November 22?

A If I knew about a stabbing, but I didn't know it at this time.

Q And you didn't know about it because you didn't talk to Nolan, correct?

A I don't know if I had talked to Nolan.

Q And you didn't talk to his mother, correct?

A I don't remember talking to her.

Q Do you remember being informed that Nolan's mother contacted school administrators that day about the stabbing?

A No.

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Q Nobody shared that with you?
A No.
Q So apparently you did talk to people in the administration on or before November 22, but whoever you talked to in the administration did not mention the stabbing; is that right?
A I didn't know anything about the stabbing.
Q Okay. And then based on receiving this September 22 written report, incident report from Nolan, you decided to talk to Mr. Beasley, correct?
A Yes, about reassigning their seats in band.
Q And that would have been that same day, at November 22 -- I'm sorry, September 22?
A That day or the next. I'm not sure.
Q So you could have made an entry on September 22 that included things you did after September 22, or you could go back and change the entry?
A It just says, Mr. Beasley reassigned the seating chart. And so it could have been that same day. I'm not sure.
Q Well, can you go back in this program a day or a week or a month later and change an entry you made previously?
A Yes.
Q All right. So you could have gone back after September 22 and changed or modified this entry?

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A Yes, but on this one I wouldn't have any reason to change it.

Q Unless you talked to Mr. Beasley after September 22?

A And again, I wouldn't know why I would change it.

Q Oh. And when you talked to Mr. Beasley about reassigning Connor in the seating chart, did he mention the stabbing that in an email he had received seven days earlier?

A No.

Q Know of any reason why Mr. Beasley would not have mentioned a stabbing that was reported to him to you as the dean?

A I don't know why -- why he did anything. I don't know. I don't know.

Q All right. And do you believe you got this information from someone other than Mr. Beasley in terms of Connor being reassigned or Nolan or someone being reassigned in the seating chart?

A It would probably have been from Mr. Beasley that he had been reassigned.

Q And do you recall talking to Mr. Beasley about that?

A I do remember sometime during that week or day or sometime that going out and checking where the boys had been reassigned.

Q Was that before, after or on September 22?

A It wouldn't have been before.

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Q All right. So either on the 22nd or sometime after the 22nd you remember speaking to Mr. Beasley about the reassigning?

A Yes.

Q So you may have spoken to him twice about it?

A I could have, but I'm not sure how many times -- I know I was in the bandroom at least once to see where the trombone players were.

Q So in these conversations you had with Mr. Beasley in September 22 about a complaint made by Nolan Hairr and his mother to the administration, Mr. Beasley never mentioned the stabbing; is that right?

A Not to me.

Q And the last thing you wrote here is that Dean Winn will meet with Connor, presumably, and his parent to discuss the issue. Do you see that?

A Yes.

Q And so your solution was to meet with Connor and his mother?

A Yes. I put him on an RPC the very next day, and I met with her on the 27th.

Q Okay. We'll get to that. Now, did you conduct an investigation of these allegations made by Nolan that Connor was calling him names, messing with his hair, kicking his band instrument and blowing in his face?

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A No, I didn't do an investigation on that.

Q Now, if this said that the calling of names included faggot and things like that, would you have investigated that?

A He didn't say that. He wrote on his statement what the names were.

Q All right. And you didn't ask him to find out, talk to him to find out if there were any other names, correct?

A There were no other names listed on there except duck bill Dave and Phil the fail.

Q And so you assumed that was it?

A That was it.

Q And you didn't want to talk to him to find out if there was anything more, because you assumed this 11-year-old boy put an accurate and complete and thorough description of everything that happened on this one piece of paper?

MR. POLSENBERG: Argumentative.

THE COURT: Overruled. You can answer.

THE WITNESS: I again, I don't remember speaking to Nolan, and I believe that it's just been in my practice and the way I -- when I see something like this to talk to students, but I don't remember talking to him. Okay.

BY MR. SCOTT:

Q And this wasn't a serious enough of a complaint to warrant you doing an investigation; is that correct?

A No. He just told me what was bothering him, and I

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wanted to meet with Connor's parent, because it's the beginning of year for sixth graders and it's not appropriate to touch people's hair. Students don't like their hair touched. And with calling people names and these two names, I've not heard students say those two names before, and I needed to visit with Mom.

Q And did you believe -- now that you know about this September 15, do you believe it was reasonable for Nolan to assume that you had that information on September 22?

A I don't know what Nolan assumed that I believed. I do not know.

Q Okay. Because you didn't ask him, right?

A No. I didn't ask because I didn't know about it.

Q Right. Now, if you could look at Tab No. 7, and I believe this is a chrono for Connor.

A Mm-hmm.

Q And there is an entry you made.

MR. SCOTT: And Your Honor, I believe this is admitted.

THE COURT: It is.

BY MR. SCOTT:

Q You made an entry on September 23, and it says that this was referred to you by Doug Beasley, teacher?

A Mm-hmm.

Q And is that the same Robert Beasley we've been --

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A Yes. We go by Doug at school.

Q Fair enough. So this would have been the next day on the 23rd that Mr. Beasley made a referral to you regarding harassment of Nolan Hairr by Connor?

A Right.

Q Okay. So when you decided to do an RPC, it wasn't because of Nolan's complaint or his mother's complaint to the administration, it was because Mr. Beasley made a referral to you, correct; that's what you documented?

A Correct.

Q All right. So now you've got information from three sources there's a problem; from Nolan, Nolan's mother's contacted the administration, Mr. Beasley's made a referral to you. And given all of that information, you decided to do an RPC without talking to Nolan or his mother, or Mr. Beasley?

A And on this one and this is coming from the teacher, and that was I just cut out and pasted over on this one what the complaint was.

Q Right.

A And --

Q You pasted the complaint from the day before.

A Yeah, over here, and Mr. -- what Mr. Beasley is saying and that the infraction was, and so we retyped those. They were handwritten in 2011, and so those would have been retyped. And so I would have written down what the teacher

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had said and it would have been very much the same what the student had said.

Q So it says here that the infraction reported by Mr. Beasley was harassment and hazing. Do you see that?

A Because the harassment and hazing, we didn't have name calling on something that we could pull on our database at the time.

Q What about stabbing?

A There's no mention on stabbing on this.

Q Right. And is that because when Mr. Beasley made this report there wasn't the right button to push for stabbing, or for some other reason?

A Because he didn't report stabbing to me.

Q Okay. What did he report to you?

A He reported that the same thing, that this boy was touching his hair and kicking his instrument and calling him those names. Actually, he called him one name and another boy another name.

Q Okay. So on September 23, Mr. Beasley reported to you name calling and blowing on hair, but did not mention stabbing; is that right?

A That is correct.

Q Okay. And if Mr. Beasley had mentioned a stabbing on September 23, you would have referred this to the police?

A I would have referred it to his parent and the

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police.

Q Okay. So now apparently this documents a meeting you had with Connor and his mother on September 27; is that right?

A Yes.

Q And do you have a recollection of that meeting as you sit here today?

A I do.

Q Okay. What time of day was it, do you recall?

A I don't remember what time of day.

Q What do you recall about the meeting?

A Both of them were there, the student and the parent. She had to rearrange her schedule to be there. It was a required parent conference, so we scheduled it for her to be in attendance. And she was supportive. And then she listened to what was being said. And she talked to her son as I talked to her son.

And I went over the rules and regulations of our school. Some students, they get their agenda that has all the rules and regulations in it, but they don't always use it adequately, and so I went over that with her. And then also she told me that she would certainly go over this again with him at home, that using those -- to call people names isn't appropriate.

And she did say that he calls people Phil when they

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get together for family events, and she said, He even calls me Phil. So that was something he was kind of stuck on with the family and everything. So she said that she would meet with him about that.

Q You said she was supportive?

A Yes.

Q And what do you mean by that?

A She came in, she was glad that I had called and had her come in. Parents, when they take off work to come in, it's -- RPC conferences are a big deal and they -- it's a time that we can meet with kids and their parents.

And parents really are so vital to kids and they work with them at home on manners and getting, you know, to for maturing and growing up and stopping some of their activity, you know, calling kids names and that kind of stuff. And so she was very supportive and she said that she would work on those things at home, yes.

Q And so this RPC basically boiled down to Connor's mother telling you that he jokes around a lot, he calls other people Phil, and she would tell him not to joke around anymore, and that was the result, correct?

A She did say that in our conversation. We had a conversation about kicking his band instrument, you don't need to be doing that. He was new at school just like the other sixth graders in band. I didn't know him and know him well

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yet. Just like all the sixth graders, they come in new to me. And, you know, we don't need to be playing around in class. And so we had a good discussion. It was like she was getting onto him and I was getting onto him at the same time.

Q And I guess in hindsight, now that you know about the stabbing, it appears from Connor's point of view he was being scolded for calling people names like Phil, but not for stabbing another student; is that how Connor saw it?

A I don't know how Connor saw it, because I didn't know about the stabbing.

Q Right. Now, soon after or about this time or within days, did Mr. Halpin contact you about Nolan Hairr --

A I'm not --

Q -- because of his concern?

A He just asked me something about did he get a suspension, and I said, I didn't have enough evidence to do a suspension on what I had.

Q And when you said that to Mr. Halpin, did he mention to you that the complaint had to do with stabbing, he had received an email on stabbing?

A No.

Q Okay. So when he asked you -- or when he asked you if it resulted in a suspension, what did you think Mr. Halpin was talking about?

A I had no clue, because it just didn't make any sense

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to me.

Q Right. So because it didn't make any sense, you must have said to him something like what are you talking about?

A I don't know what I said to him at the time.

Q And but he didn't mention the stabbing, correct?

A He did not.

Q But he wanted to know if you had suspended Connor?

A Yes.

Q Oh. And during that conversation the stabbing never came up; is that right?

A That is correct.

Q Now, if you would turn to Tab No. 6. And this is a chrono for Ethan Bryan. Do you see that?

A I do.

Q And do you recall on October 19 meeting with Ethan's parents?

A I -- let me see. I don't recall meeting with them on October 19.

Q Is it your testimony you did not meet with Mr. and Mrs. Bryan, Ethan's parents, on October 19?

A I know I met with them sometime about tardies, but I don't know what date it was.

Q When did you become aware of the October 19 email that Mary Bryan sent to the school and that's Tab No. 8?

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A Number 8.

Q It looks like it was sent about 4:30 in the morning. When did you first become aware of this October 19 email?

A I don't remember knowing about when I would have received this, because my name's not on this.

Q I understand. My question was, when did you first become aware of this October 19 email?

A I don't recall.

Q Was it after this lawsuit was filed?

A I would say yes.

Q So during October, November, December of 2011, this October 19 email was never brought to your attention; is that right?

A I don't recall this in October.

Q And you don't recall meeting with Ethan's parents on October 19 or about that time about the subject matter in this email?

A I do not -- it says here kids were video-taping. I don't remember meeting with them about video-taping.

Q I'm talking about in the chrono. Let's go back and look at Exhibit 6, your chrono for October 19. It says, "First Ethan's parents reported to the counselor that he was being harassed in band class." Do you see that?

A Okay.

Q And do you know who his counselor was?

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A It would be the same one that Nolan would have, so that would be Mr. Halpin.

Q Mr. Halpin. And Mr. Halpin received the email of October 19, correct?

A I believe so.

Q Okay.

A Yes.

Q And so when you got information from Mr. Halpin on or about October 19, did he provide you information that was contained in the email of that same day?

A On the same day, I don't recall him telling me about this the same day.

Q Do you recall Mr. Halpin ever discussing this October 19 email with you?

A It would have been later on, but I don't remember.

Q After this lawsuit was filed?

A It may have been included in something that I received and saw in February.

Q All right. So you may have heard about this in February --

A Okay.

Q -- correct?

A Yes.

Q But not before then; is that right?

A I don't recall knowing about that this day, and when

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I found out about everything, just that this victim statement came in.

Q And the information you have here in your chrono for October 19, what is the source of that information?

A Ethan filled out a statement, and it was about a trombone, somebody put a trombone in his seat and when he came back a boy was hitting him with the trombone.

Q And you understood that was Connor?

A Yes.

Q And that was the Connor you had the parent conference with about three weeks earlier?

A Correct.

Q So did that raise any red flags in your mind that now here's Connor acting out to another victim?

A It would raise red flags to me, yes.

Q Okay. And did it raise enough red flags for you to talk to Ethan?

A On this particular incident?

Q Yes.

A Dr. McKay talked to -- I was -- I understood that Mr. DePiazza was taking this over.

Q Taking what over?

A This matter with the trombone.

Q Who told you that?

A I believe it was Dr. McKay.

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Q When did he tell you that?
A I don't know exactly what date.
Q Well, was it in October or February or later than February?
A Probably in October, but I didn't do any of the investigation on it.
Q Okay. But Dr. McKay told you that Assistant Principal DePiazza was taking over the investigation of the complaint by Ethan about the trombone?
A Yes.
Q Okay. And that's why you did nothing to investigate it; is that right?
A Right.
Q Did you ever ask Mr. DePiazza what the results were of his investigation?
A I did not.
Q Did you tell Mr. DePiazza that you had had an RPC with Connor and his mother three weeks earlier?
A I don't know if I did or not, but he would have been aware of that if he looked in the dean's chronology. And I don't know if I told him or not.
Q And in his investigation you would expect Mr. DePiazza would have spoken to the counselor, Mr. Halpin, referred to here?
A I don't know if he spoke to him or not.

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Q And you would expect him to talk to Mr. Beasley, the teacher where this was occurring?

A I cannot determine what Mr. DePiazza would do.

Q Okay. And then at the end of your entry on October 19, you say, quote, Dean Winn will speak to the other boys involved, period, unquote. Do you see that?

A Right. And on that particular day, that's what I thought I would do, but after I was told that I was not involved in this, that it was Mr. DePiazza, then I didn't do that.

Q And you don't know what if anything Mr. DePiazza did; is that right?

A Correct.

Q And if Mr. DePiazza investigated this, you would expect him to have documented his investigation?

A I don't know if he would have documented it in the dean's database or if he -- he didn't ask me to document it.

Q Right. But you would expect him to document his investigation somewhere somehow, correct?

A I wouldn't expect him to do -- I don't know what I would expect him to do.

Q All right. Now, my understanding is back in the fall of 2011, you attended weekly meetings of the administrative staff?

A Yes.

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Q And that included Dr. McKay, Leonard DePiazza and the counselors, including Mr. Halpin and yourself?

A Yes.

Q And what day did those meetings usually occur?

A Monday or Tuesday, maybe Wednesday. I'm not positive on that.

Q Whatever. If you don't remember, you don't remember it.

A Yeah. One of those days.

Q That's okay. But once a week?

A It was set. A set date.

Q And at any of these meetings you attended with Mr. DePiazza and Mr. McKay on a weekly basis with Mr. Halpin present, did the issue of this investigation of Connor's alleged treatment of Ethan, was that ever discussed and the progress of Mr. DePiazza's investigation?

A Not -- not when I was there, no.

Q And did -- when you were there, did -- do you recall Mr. Halpin being asked what he knew about Connor and any pattern of misbehavior?

A No.

Q And do you recall Mr. DePiazza reporting to you and others what the outcome was of his investigation?

A No.

Q Do you know if Mr. DePiazza did an investigation?

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A I know just from my deposition seeing some papers on that, but not before that.

Q But you learned that he did an investigation in February 2012, correct?

A Correct.

Q Do you know why he waited until February 2012 to do his investigation?

A I would have no idea.

Q And you're not aware of any information or evidence that would indicate Mr. DePiazza investigated this October 19 complaint until February, right?

A I have no idea what Mr. DePiazza did.

Q That's my point, you don't know. As far as you know, he did nothing to investigate it until February based on what you know?

A I don't know what he did or what he didn't do.

Q My question is, you have no information that he did an investigation before February, correct, one way or the other?

MR. POLSENBERG: Judge, I think that's asked and answered.

THE COURT: Overruled. You can answer.

THE WITNESS: I did not know if he did an investigation.

THE COURT: Is this a good time for a break?

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MR. SCOTT: Thank you. I'm almost done, Your Honor, but it's a good time for a break.

THE COURT: All right. During the recess -- we'll take a recess until 3:05. And during the break you may step outside.

(The witness exits the courtroom.)

THE COURT: Counsel, the room's clear. So there was an objection to put on the record.

MR. POLSENBERG: Thank you very much, Your Honor. I objected because I think it is --

THE COURT: Why don't you restate the elicited testimony for the record that you objected to.

MR. POLSENBERG: And that's -- I can't remember exactly what the question was, and that's why I'm wording it this way. Counsel was making the assumption within a question that was phrased as a hypothetical to the witness that the conduct after the September 15 email was -- just because it was continued conduct or other conduct, that it was retaliation.

I think that is a stretch enough to be a factual question rather than an assumption, and so I thought it was argumentative. I objected to it being argumentative. I did it at the bench so I wouldn't suggest to the witness that it was argumentative and that she would say, oh, no, no, I think that's something else.

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THE COURT: And is there a response to that, Mr. Scott?

MR. SCOTT: Your Honor, I thought I had established in the previous question that the facts, that the timing and history of this, given that it was a September 15 complaint and now an October 19 complaint, or actually, even as of September 22, remained in prior complaints that there was a factual basis to ask the question. This is cross-examination of an adverse witness. She agreed to the potential factual basis. She just wasn't aware of the facts.

THE COURT: And you reply, please.

MR. POLSENBERG: And just because it's a factual issue whether this is retaliation -- actually, to make my position clear, I don't think there's enough of a support to make the case that it's retaliation. But even if it were a factual issue and the witness admitted that it did not say, yes, it was retaliation, it's improper to have the question assume that it's retaliation in asking a hypothetical.

THE COURT: All right.

MR. POLSENBERG: Thank you, Your Honor.

THE COURT: And I overruled the objection for the reason that a sufficient foundation had been laid with regard to the scope of her duties, the scope of her duties related to this case, and for that reason I overruled the objection.

Now, with regard to the issue of the depositions,

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there's no objection to eliciting the testimony of Connor by affidavit. And I have decided that I want to hear the entire plaintiff's case before I decide on the doctor, whether that testimony will be relevant, because I need to keep an open mind as to -- but I haven't heard the whole case yet.

MR. POLSENBERG: We totally agree.

THE COURT: All right.

MR. POLSENBERG: And I'm not asking now for you to decide on the admissibility.

THE COURT: Right. But I had told you we'd take it up after lunch, and then I had made that decision during the lunch hour after I read the brief. I just needed to let you know.

MR. POLSENBERG: Thank you, Your Honor. But what I'm -- I'm not asking you to make the decision on admissibility. I'm just saying either way you decide on admissibility can we use the deposition instead of --

THE COURT: We will have a complete record on the issue. If I allow it, it comes in. If I don't, I'll make sure it's a court's exhibit so at least it's part of the record.

MR. POLSENBERG: Right. But I mean, all I'm asking you to do is allow me either way to use the deposition instead of having the marshals come and bring Dr. Faro into the courtroom.

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THE COURT: Yes. Yes.

MR. POLSENBERG: Thank you, Your Honor.

THE COURT: Make sure that the record's complete.

MR. POLSENBERG: Excellent. Thank you, Your Honor.

THE COURT: Certainly. All right. And then the last thing is can you guys give me a couple of minutes about timing? Let me know how you're going. It's Friday at 3:00 o'clock. You've been going hard all week. This is hard work. I understand that. We are tired too.

MR. POLSENBERG: Mr. Scott doesn't hear this, but I think he's doing very well on the timing.

MR. WAITE: He is doing a good job.

THE COURT: So can you give me any estimate of today, Monday, Tuesday, if you're going to need to come back? I've been looking at my calendar for December. It is jam packed. It's trial after trial after trial, so.

MR. SCOTT: Well, Your Honor, this witness is going a little longer than I anticipated, but I'm almost done with her. I don't know how long their examination is going to be. We have left Dr. McKay, who I don't think he'll be a very long witness. There's Andre Long, who I think will be a short witness.

I think Dr. McKay's about a half-hour direct. I think he is going to give much more succinct, short answers, direct answers. I think Andre Long will give short direct

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answers. And Mrs. Wright, who we believe we'll call on Tuesday, she's about a half-hour witness. And then we have Aimee Hairr, and we think her direct will be about an hour.

THE COURT: All right. So are you then not calling Kyle Bryan or Heath Hairr?

MR. SCOTT: Yeah. As of right now we will not.

THE COURT: Because they were on your list of witnesses. And then without holding you to it?

MR. POLSENBERG: If all goes as planned, we might be just doing the two depositions and one other witness, one of the student trombone players.

THE COURT: You had designated three minor students.

MR. WAITE: We've only been able to serve one. We're still trying to serve the others, but as of this point we anticipate one.

THE COURT: Okay. Good enough. And with -- you have covered your direct on any of the school district employees and they've been called by the plaintiff?

MR. POLSENBERG: Yes.

THE COURT: All right. Just want to be clear on that. So keep in mind if you're not done by Tuesday afternoon, we're going to have to look -- it's going to be really hard to find you another date. I want to do it as soon as possible to make sure the facts are fresh in my mind. Yes.

MR. WAITE: And you had mentioned Monday and

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Tuesday.

THE COURT: Monday and Tuesday.

MR. WAITE: We had originally had Monday and Tuesday and Wednesday, and then I thought we had blocked off Monday and Wednesday and only going Tuesday, but we could -- are we --

THE COURT: I still have it down for Monday, the 21st.

MR. WAITE: What's that?

THE COURT: I still have it on the calendar for the 21st. If that works for you, great, if not -- if not, I'm not going to make you guys go if you're not available on that day.

MR. POLSENBERG: Well, we had already scheduled not to go Monday. But I'm thinking, I mean, at the pace Mr. Scott is going, we may be done evidence on Tuesday.

MR. WAITE: With everything without going on Monday.

THE COURT: With everything. Why don't you guys discuss that during the break, if you can. And if you need an extra few minutes to make sure that you have a comfort break during that time, we can start at ten after 3:00.

MR. POLSENBERG: Thank you, Your Honor.

THE COURT: Because I told the witness 3:05. Okay. Good enough.

MR. POLSENBERG: We'll tell her.

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THE COURT: Thank you both. When I say both, it means all four. It just means both sides. Thank you.

(Court recessed at 3:00 p.m. until 3:12 p.m.)

THE COURT: Please proceed, continued direct.

MR. SCOTT: Thank you, Your Honor.

DIRECT EXAMINATION (continued)

BY MR. SCOTT:

Q One last question or line of questions, Ms. Winn. Now, when you became aware of the complaint of Ethan's on October 19, if you were aware at that time that there was an allegation Nolan Hairr had been stabbed in the groin with a pencil by Connor, when you heard about the complaint made by Ethan Bryan about Connor, would you have handled this situation differently on October 19 with that information?

A I would have done something about it. I don't know exactly what I would have done, but I would have done something about it, yes.

Q Or expected Mr. DePiazza to do something about it?

A I can't speak for Mr. DePiazza.

Q What would you have done differently?

A I would have -- looking back with more of the information, I would have considered it very important to get involved in it right away.

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

THE COURT: Cross-examination, please.

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MR. WAITE: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. WAITE:

Q Ms. Winn, I want to follow up on a few things that Mr. Scott was asking you about. Would you turn in the white book, exhibit book to Exhibit 6.

A Okay.

Q You got that open?

A I do.

Q Just a question here. Up at the top right -- and this is the dean's chrono for Ethan Bryan, correct?

A Yes, it is.

Q Up at the top right it says, Withdraw date. What does that mean to you?

A That's when a student would withdraw from our school, come to the registrar or actually be taken out of Greenspun.

Q And so from the information that is listed here, what date do you conclude that Ethan Bryan withdrew from Greenspun Junior High School?

A On this date it says February 1, 2012.

Q Thank you. Would you turn to Exhibit 7, the next tab.

A Okay.

Q I want to direct your attention to the entry on

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9/23, that you were testifying about before.

A Okay.

Q There's a section that begins with up at the top, it talks about referred by Doug Beasley, teacher, and there's three lines in total. I want to direct your attention to that section, okay?

A Mm-hmm.

Q Did you enter this information into the dean's chronology, or did Mr. Beasley?

A At that time we didn't have Infinite Campus, and so all of the referrals came handwritten and we would have to type them in, and I would do that or my secretary. And so on these I would type them in.

Q Okay. So you typed in this information?

A Mm-hmm.

Q And where it says, Infraction, harassment, hazing, and then there's -- it says 31 after it, is there any significance of 31?

A Those are codes. Like for battery it has a code, for tardies it has a code, and you'll see that indifferent lines for referrals, yes.

Q And as you're putting this into the computer, do you know what a drop-down menu is?

A Yes.

Q Do you insert this information as a result of a

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drop-down menu and options that are available to you?

A It is a drop-down, and we're limited to maybe 15 to 20. And on this particular one, you have to choose the best that goes along with what you're looking at. And it's -- since it had calling names and kicking his band instrument, it came most to harassment, and it has a slash, hazing. And that second part, you can't get rid of that. It's all attached. Hazing is attached to that. And so it's not disruption of classroom, it's not -- it wasn't tardy, it wasn't whatever. That's the closest to --

Q So based on the information that you had --

A Right.

Q -- based on the facts that you had, this was the description you selected that most closely fit the situation?

A Right. Right.

Q You had indicated on your direct examination that when Nolan -- excuse me, when Connor and his mother came in for the RPC, that you spoke to them about the rules and regulations. Do you recall that?

A Yes.

Q And in fact, in your RPC conference notes on that same exhibit, it says, "A conference was held with Connor and his mother where the incident was reviewed and the school's rules and regulations were explained." What rules and regulations did you explain to Connor and his mother that day?

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A On this particular one, I explained about name calling, being in a classroom and giving student the right to learn without being disrupted with kicking somebody's band instrument, those kind of things. But we go over that in an assembly that we talk about it, and dress code and everything. But this particular conference needed to hone in on what he was doing inappropriately while his mom was there.

So we talked more about using appropriate ways to speak with people, not calling someone names and teasing, and not everyone thinks you're funny when you call them Phil. And so those are rules and the regulations, hands-off policy, we went over that. And so we went into details about what the rules are at school and where to find it.

Q So if I understood what you said and let's break it down, at the beginning of the school year the students get information regarding what the school's rules and regulations are?

A Right.

Q And that's said in assembly attended by all of the students?

A We do three assemblies, sixth grade, seventh grade and eighth grade assemblies. Then we also have it in an agenda book and every student receives an agenda book and the rules are in there as well.

Q But notwithstanding that information previously

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having been disseminated to the students, you wanted to make sure that Connor and his mother knew specifically about those rules?

A Yes.

Q And is that because you wanted them to be without excuse if there were an incident were to repeat itself?

A Correct. Because I didn't want continuation of name calling and him being inconsiderate of another student on our campus.

Q Staying on this entry, looking at the 9/23 date and the reference to referred by Doug Beasley, I am unclear from your previous testimony. Was 9/23/2011 the date that Mr. Beasley referred Connor to you, the date that the RPC issued or both, or something else? Could you clarify that?

A He could have sent it over to the office the day before, but when I actually put it in was the next day and it would have recorded it the 23rd.

Q So the conversation with Mr. Beasley may have been a prior date?

A Right. He could have told me on the 22nd, because it's hand-written and it's left in my office with my secretary.

Q All right. Very good. Now, Ms. Winn, there's been testimony in this case that you had been told -- let me strike that, start over a different way.

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I'm going to show up on the screen, you're going to see something appear on your screen there.

A Okay.

Q And I'll represent to you what it is, is it's from the first amended complaint that is filed -- that has been filed in this lawsuit. And let me zoom in just a little bit here. Can you see that okay, paragraph 2?

A Yes.

Q In paragraph 2, you are going to see a bunch of words in quotes that most of them I prefer not to say. There are some words that have homosexual connotations to them in that paragraph. Do you see that?

A I do.

Q Before Nolan and Ethan formally withdrew from Greenspun Junior High School, did anyone ever inform you that those boys were being called -- those boys, Ethan or Nolan were being called any of those homosexual types of names?

A The homosexual names were not brought to my attention. I would have remembered that 100 percent.

Q Why is it that you would have remembered that 100 percent?

A I have a gay niece that came to live with our family in 2005 as a mid 20-year-old that has been bullied and harassed and followed and gawked at her entire life, and she -- she came to live with our family. Sorry. She's had a

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rough time, a rough go of it, and she came broken to us. And we have four children of our own. We've heard people say gay to her and say all kind of rude things to her.

With -- with her, she lived with us several years. She is just like my daughter and my husband's daughter, my four children, having raised her. And it would break my heart for people to say things like this to her, and I wouldn't tolerate it for anybody else in our school to go through those things. And I love her dearly -- excuse me, and she has gone through a lot in her life.

And with our family's support and our unconditional love to her, she has become an outstanding woman. She is now a mother of a biracial child and a fabulous mom. She is -- she owns her own home in Anthem, she -- she has a full-time job, and she loves unconditionally. And so I know for a hundred percent that those names were not told to me or I would have done something about that, because I wouldn't allow that to happen on our campus. That's upsetting.

Q And if those names had been told to you, you would have remembered that because of your --

A Absolutely.

Q -- prior life -- or your then ongoing life experience, correct?

A Yes. And she's still with us. You know, we see her, she lives close to us. And I know tattletale and dumb

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ass, I hear those kind of things, and fat ass, I see that. But those other words are not acceptable, not acceptable.

Q Did this niece of yours, was she living in you and your husband, your family's home in 2011?

A She was not in our home at that time, but she lived close to us and my husband is -- he goes up and helps her learn how to fix her plumbing and do all those kind of things that dads do, because her father has died. And we -- she's our child.

THE COURT: Now, I'm just going to offer you a break if you'd like one. Do you want a short recess to get your composure back?

THE WITNESS: Yeah. Just a second.

THE COURT: We'll take five minutes or ten minutes if you need it.

THE WITNESS: Sorry.

THE COURT: Do you need a few minutes?

THE WITNESS: Yeah, just a second.

THE COURT: Let's just take a recess.

MR. WAITE: I think the judge is asking if you want to take --

THE COURT: To step out.

THE WITNESS: No. I'm okay. No.

THE COURT: We want your best testimony.

THE WITNESS: Okay. I didn't think I would do that.

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Okay. I'm ready.

MR. WAITE: Are you sure?

THE WITNESS: Yeah.

THE COURT: If you change your mind, let me know.

THE WITNESS: Okay. I will. Sorry.

MR. WAITE: And thank you, Your Honor. I'm going to change the scene here a little bit.

THE WITNESS: I hadn't seen those.

BY MR. WAITE:

Q I want to -- does the date of February 8, 2012 stand out in your mind for any reason?

A Yes.

Q And what reason is that?

A That's the day that Ms. Bryan brought a student with autism to me and told me that he was being bullied.

Q Okay. So let's get a little more details. So can you just explain in a little more detail what occurred? I assume -- let me just kind of set the stage with you, if I may. There's been testimony that there was -- that Ms. Bryan was volunteering in the lunchroom that day and something occurred where she saw a boy trip another boy. Can you pick it up from there and explain what you saw and what you did as it relates to that event?

A The event didn't actually happen in the cafeteria. It happened in the quad, and there are a lot of kids out

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there. We have 400 to 500 kids at each -- at each lunch period, because -- and sixth graders are mainly together that third lunch.

And this young man, because some of our special ed kids go with their teacher sixth period -- I mean, with the sixth grade lunch, he was out there with some of the other special ed kids too. But, no, it wasn't sixth grade lunch. It was eighth grade lunch.

Q Would that be the first lunch?

A Yeah.

Q Okay.

A So it was the first lunch. And she came across the quad holding his arm, and he was very upset. And he's a student that I've worked with a lot. And she came across and she brought him to me, and I was closer to the cafeteria door. And she said, "This child -- this -- he is being bullied." And I said, "What's happened?"

And he's a kid that the teachers would send him out to sit with me in my office. I have a calm demeanor and I could calm him down. And so he said, "I wasn't bullying anybody. I wasn't bullying anybody," and he was all upset and getting upset. And he was taller than I am. And I said, "What's going on?" And she said, "He was being bullied." And I said, "What's happening here?"

And when he would get so upset, he would start

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cursing, and he would say things that you wouldn't want to repeat anywhere, and he would -- and he was getting very agitated. And I -- and he said, "I was just -- I don't know why, you know, what's happening or whatever." But he was there and Mr. DePiazza came over to us, and he said, "What's going on, Cheryl?" And I said, "She brought him over. He's upset."

And she did have her arm -- his hand -- her hand on his arm as she walked him over, which some students with autism, they don't like to be touched. And he was one that he didn't like to be touched. And he thought he was in trouble. And then the other boy that came up that was with him, he's also special ed, but he doesn't appear to be special ed. But he said, "He does what he usually does."

And I'm like, What's going on? And he said, the boy I'm talking to, he said, "He tripped me over." So what had happened in all of this is that the big boy, he liked to jump out and scare kids. And that's -- he just -- he liked that. And those were his friends. And so they were sitting around outside someplace and he jumped out at them, and he got tangled up on one of them's foot.

And so Ms. Bryan thought that he was being bullied, and so she comes up with him. And that's when Mr. DePiazza said, "You've got to leave campus because you're interfering." And she was -- she went on up to the front office with

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Mr. DePiazza. I had this big kid with me, and he wrote a statement and so did the other one.

Mainly because his mom, she would -- she wants to know what happens to him at school, and when he gets all flustered like that, he would lash out. And so I had him write his thoughts down, and so we do have his statement.

Q Thank you. I think you've answered the question.

A All right.

Q Let me just ask you another question. I just want to make sure, did you personally see Ms. Bryan take her arm and touch this autistic boy?

A Yes, I did. Yes.

MR. WAITE: Okay. I have no further questions, Your Honor.

THE COURT: Redirect.

MR. SCOTT: I have nothing further, Your Honor.

THE COURT: May we excuse the witness?

MR. SCOTT: Yes.

THE COURT: Mrs. Winn, you may step down and you are excused.

THE WITNESS: Thank you so much.

THE COURT: Plaintiff, please call your next witness.

MR. SCOTT: The next witness is Warren McKay, Your Honor, calling him as an adverse witness.

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WARREN MCKAY, PLAINTIFF'S WITNESS, SWORN

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

THE WITNESS: Warren McKay, W-a-r-r-e-n, M-c-k-a-y.

THE COURT: When you're ready.

DIRECT EXAMINATION

BY MR. SCOTT:

Q Dr. McKay, good afternoon. Thank you for being here.

A Hi there.

Q Can you summarize for the judge your educational background starting with college?

A Went to the University of Utah, Salt Lake City, under an NROTC scholarship while I was in the Navy. That was from 1984 until '88. And then went to a teacher licensure at UNLV from -- when I got out of the Navy, from '91 to '93. Grad school from '93 to '95. And then my doctorate from '96 to 2000.

Q Thank you. What was your doctorate in?

A Educational leadership.

Q Dr. McKay, can you tell the Court your work history after you graduated from college?

A After I graduated from college, I was in the Navy, so I was a naval officer.

Q Thank you for your service, by the way.

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A Thank you. So I was in the Navy until '91, and then left and then went to go get my teacher licensure at UNLV, so I could teach. So I gained employment with the school district in '93 as a math teacher at Dell H. Robison Middle School, and I spent a year there. And then I went to Durango High School for 6 1/2 years.

While I was in at Durango High School I got my administrative endorsements, also went through the leadership program through the district, and then secured an administrative appointment in January of 2001.

Q What appointment was that?

A Dean of students at Greenspun Junior High School.

Q And can you summarize your career with the school district since then?

A I was the dean of students from '93 to about '95. Then I was the assistant principal from '95 to '98 -- or no. I take that back.

I was the dean at Greenspun from 2001 to 2003, 2004. Then I became the assistant principal at Greenspun from about 2004 until 2008. And then from 2008 to 2012, I was the principal. And then from 2012 to today I'm the principal at Cannon Junior High School.

Q Thank you. And as you know, my questions today are going to deal with Greenspun Junior High School, the school year 2011-2012. So unless I say otherwise, assume all of my

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questions, that place during that time, all right?

A Okay.

Q Thank you. There's been a little testimony here about fashion week, but nobody's -- no witness has really explained what it is. So as the principal, can you tell the Court when you were at Greenspun what fashion week was for the administrators?

A Fashion week?

Q Right. The week before school started, maybe everybody --

MR. POLSENBERG: Your Honor, can we approach?

THE COURT: You may.

MR. SCOTT: I'm sorry. I'll withdraw the question.

MR. POLSENBERG: No, no. That's okay.

THE COURT: You may.

(Bench conference transcribed as follows.)

THE COURT: Hang on. I have to have everybody. Okay.

MR. POLSENBERG: Just for background, before this case, I'd never heard of fashion week and nobody I've ever talked to has ever heard of fashion week.

MR. SCOTT: Okay. Then I'll --

THE COURT: They do it every fall in New York for the designers.

MR. POLSENBERG: Right. I know. We know what the

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real one is.

MR. SCOTT: There were some other witnesses that talked about it.

MR. POLSENBERG: Yeah, I know, but --

MR. LICHTENSTEIN: Everybody else seemed to know what it was.

MR. POLSENBERG: I know.

THE COURT: It's been a long week, guys. All right. Thank you.

MR. POLSENBERG: Thank you, Your Honor.

(End bench conference.)

THE COURT: Go ahead, please.

BY MR. SCOTT:

Q Dr. McKay, forgive me. At the beginning of the school year at Greenspun, was there usually some type of orientation or training for the administrators a week or so before school started?

A Typically and normally the school district holds trainings for different people through that week before school starts. So --

Q Right.

A -- assistant principals and deans will go to discipline meetings and that -- so what you were referencing before is a fashion show.

Q Oh.

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A The fashion show --

Q Fashion show.

A -- is a meeting where all the administrators gather and the superintendent addresses us and gives us pertinent information.

Q My mistake. I apologize. And do you recall attending these fashion shows during the time you were at Greenspun as either a dean, assistant principal and principal?

A All administrators went to the fashion show.

Q And that included -- did that include deans, assistant principals and principals?

A Deans, assistant principals and principals, yes.

Q What did you understand to be the purpose of this training session?

A Once again, the fashion show is just kind of a meeting where we're kicking off the school year with the superintendent, so it's kind of a pep talk. You know, rah, rah, rah. It might give us a little bit of information on big items that are coming down, but typically not. During the week --

Q Please.

A -- of trainings, when we actually have trainings from ESD or other types of trainings, that's when they get down and give us specific information.

THE COURT: I have to ask. What is ESD?

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THE WITNESS: Educational services division --
THE COURT: Thank you.
THE WITNESS: -- which has to do with discipline, so.
THE COURT: Thank you.
BY MR. SCOTT:
Q And did most of the training typically focus on discipline?
A Through ESD, yes, progressive discipline.
Q And how much of the training, during this week or so of activities, how much of the training focused on discipline as opposed to other administrative matters?
A The training for the ESD was specific to discipline, so in its various different forms; progressive discipline, documentation, use of whatever electronic means might be used to record any dealings you have, that kind of thing.
Q Did it include training on conducting investigations of bullying and harassment?
A I think it touched upon those things, about making sure that you have statements and making sure that you document within the database, yes.
Q And either as a dean, vice principal or principal, did you receive training, at any time before 2011, regarding how to conduct an investigation of bullying?
A At previous to 2011 all the way back to how --

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Q Whenever you first started getting it. I'm just trying to understand during that period of time if collectively or cumulatively by 2011 you had received some training on how -- what would be the minimum expected in conducting the investigation of bullying.

A When we first -- before we became administrators, we had to go through a leadership course through the district, and they went through all kinds of information with us. One of the components of that is discipline. So they would have us do simulated types of activities.

They might have a packet of information which simulates statements from a student, where we go through that and look at a progressive discipline plan, established by the school and supported by the district, that we try to match up where we would be, a chronology of where the student is. So there were some -- some training there.

And then obviously once you become an administrator, the dean and the assistant principal every year prior to the start of that year goes to the training. Just typically the assistant principal and the dean are responsible for discipline within the school.

Q And did -- as of 2011, as the principal, did you have in your mind what was the minimum required of the vice principal or dean in terms of investigating a complaint of bullying?

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A I would say that I wouldn't know what a good investigation looks like --

Q All right.

A -- if I saw it. But did I check every case of bullying or every --

Q I'm not asking if you checked anything. Just in your mind what would have been a good investigation?

A Statements that reflect students that were close to the area of where whatever was reported was, interviews with maybe a teacher or other staff member that might have been in the area, looking at the progressive discipline of students that are involved. If wrongdoing is found or if parents need to be informed of different things, communication with parents.

Q Fair enough. And when we talk about getting statements from students, would that necessarily include or not include interviewing students who are either witnesses, victims or alleged predators?

MR. POLSENBERG: Your Honor, could we maybe use a different word?

MR. SCOTT: Fine. What word would you like to use?

THE COURT: Is it the word "predators" that you had a problem with?

MR. POLSENBERG: Yes, Your Honor.

THE COURT: Rephrase.

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MR. SCOTT: Okay.

BY MR. SCOTT:

Q The alleged person who committed the bullying, would typically you expect the investigation include interviewing that suspect?

A Absolutely.

Q And would you expect -- and it might include or might not include getting a written statement from the suspect?

A Yes.

Q The same for the victim, it would include interviewing the victim and possibly getting a written statement from the victim?

A Yes.

Q And why would you expect the investigation to include an interview of the victim?

A Well, you want to have statements from all the students. We can remember a lot of things when we're investigating, but when we have to use that information to come up with a conclusion, obviously we want to have that information to back up our decision.

Q Well, why not just let students make written statements without interviewing them?

A Typically you can glean a lot of information from a student, and when you're interacting with them personally,

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things come up and you're able to maneuver your questioning to fit whatever is happening, so.

Q So would it be fair to say if there's an allegation or a particular incident, you don't expect a sixth grader to necessarily know what is -- what an investigator or dean may think is important when that student writes down or reports the incident?

A Right. What they might recall doesn't factor in particulars. So you're able to ask questions that draws attention to that, so that they can recall and then give you a completer picture.

Q And would that go -- be the same for student witnesses who were identified; you would find out if there were student witnesses, get statements, also interview them if they had information?

A Yes.

Q And how would you or the vice principal know if the dean was in fact doing that? If the dean was investigating a complaint of bullying, how would you or the vice principal know if in fact that was done?

A Well, first of all, we have to have trust amongst our administrators. So we trust that they know exactly what's expected of them, and from time to time we might look at an investigation or maybe we might have to put something into a file that lends us to seeing if they're doing things the right

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way. But in my honest opinion, we do our jobs, we know how to do our jobs and we trust that they're doing them right.

Q Not exactly trust, but verify, you just trust and occasionally may double-check?

A I wouldn't call it a double-check. I would say that when the occasion happens that we're going through a file or entering some information in a file, that that gives us support of there's no red flags that I need to speak with the dean or maybe even the assistant principal on whatever task they're charged to do.

Q And do you recall if in 2011 at Greenspun there was a practice in place for auditing investigations that were done, whether it would be random or maybe a case came up that you wanted to look at, anything like that?

A I do not recall any of that.

Q Do you know -- well, back in 2011, Dean Winn was under your supervision, at least not directly, but through Assistant Principal DePiazza; is that correct?

A Correct. As the principal I'm over both administrators, but under areas of responsibility, the dean is -- the dean is underneath the assistant principal. The assistant principal was given the responsibility of the dean's office.

Q And back in 2011, you understood under Nevada law that if a complaint of bullying was made, either the principal

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or his designee was responsible for investigating that complaint?

A Yes.

Q And who did you designate in 2011 to investigate such complaints?

A Any administrator is designated as the principal's designee, so either Ms. Winn or Mr. DePiazza or myself.

Q And did you understand ultimately it was your responsibility?

A As a principal of the school, it is ultimately a responsibility.

Q In other words, the buck stopped at your desk?

A Well, it doesn't always stop at my desk.

Q Okay. When doesn't it?

A It can obviously go above my head, so.

Q But in terms of not above your head, but people who reported to you, administrators who reported to you at Greenspun, you were ultimately their supervisor and to the extent you delegated your responsibilities to them, you were accepting responsibility for what they did or did not do?

A Within the school I am responsible for the actions of my administrators, as well as teachers and staff.

Q And so you accept responsibility for the conduct of Leonard DePiazza?

MR. POLSENBERG: Judge, he's asking a witness to

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accept responsibility. That's not just a legal conclusion, that's an improper question.

THE COURT: I don't think it goes to the legal. I think he's talking about -- the question was confined to things that happen at the school. I don't think it went --

MR. POLSENBERG: Not that last one.

THE COURT: -- to legal liability, and I don't take it that way.

MR. POLSENBERG: All right. Thank you, Your Honor.

THE COURT: I'm going to allow the question to be answered.

BY MR. SCOTT:

Q As the principal in 2011, did you accept responsibility for what your vice principal, Mr. DePiazza, did and did not do?

A As long as he was acting within the bounds of his job.

Q Fair enough. I meant that.

A Yes.

Q As obviously if he's not at the school or doing something that wasn't job related, obviously it would have nothing to do with you. But if he's doing his job at the school, you would accept responsibility for what he did?

MR. POLSENBERG: Your Honor, I think that mischaracterized what the witness just said.

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THE COURT: I'm going to go ahead and sustain the objection.

MR. SCOTT: Fair enough.

THE COURT: Let's move on.

BY MR. SCOTT:

Q And how would you compare your responsibilities as the principal with the responsibilities of the assistant vice principal back in 2011?

A Can you rephrase the question?

Q Yeah. I'm trying to understand. I'm assuming there's a lot to do at the school, and you have the authority to some extent to decide what responsibilities you're going to focus on, and other responsibilities, administrative responsibilities at the school you're assigning to an assistant vice principal or dean or someone else, correct?

A Correct.

Q Okay. And back in 2011, how did you divide responsibilities at the school that you were focusing on compared to Mr. DePiazza?

A For myself, when I choose the areas of responsibilities for my assistant principal as well as my dean, I look at their strengths and I make a decision on what they should focus on.

Q All right. And can you give us a summary of based on Mr. DePiazza's strengths what you were focusing on compared

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to what he was focusing on back in September 2011?

A Obviously Mr. DePiazza cared, was good at supervising the teachers he was assigned. I also felt he was strong in discipline and investigations. I focused more on the curriculum and overall professional development of the school. So I took more of the curriculum role and he took more of the discipline and campus security role.

Q Now, there should be a small white binder up there in front of you. Do you see it?

A [Indicating.]

Q Perfect. If you would turn to Tab No. 4, please.

A [Complies.]

Q And first I would like to direct your attention to an email at the top of the page dated September 15, 2011. Take a minute to look at it, please.

A Which one did you say again?

Q The one at the top. It says September 15.

A September 15. Okay. Yes, I see it.

Q When is the first time you saw that email?

A I saw this email for the first time on February 7.

Q Of 2012?

A Of 2012.

Q And when is the first time the substance of the information contained in this email was brought to your attention?

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A On February 7, when I got the email.

Q And now if you turn to Tab 8, and this has a second page, because I want to direct your attention to an October 19 email that starts near the bottom half of that page and goes on to the second page. When is the first time you saw that email?

A In the same email on February 7.

Q Do you recall attending weekly administrative meetings when you were the principal at -- back in 2011?

A Yes. I would hold weekly meetings, usually on Fridays.

Q And as the principal, what did you understand the purpose to be of those meetings?

A The meetings were to go over calendar items, what was coming up in the school, talking about the various activities that had to be planned for making sure all of our job responsibilities were being met, satisfied, and then to bring up any other topics that might come up.

Q And did Mr. DePiazza as the vice principal typically attend those meetings?

A Yes.

Q And did Dean Winn typically attend those meetings?

A Yes.

Q And did the counselors, including John Halpin, typically attend those meetings?

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Case Nos. 73856 & 74566

In the Supreme Court of Nevada

Electronically Filed
Jun 04 2018 09:58 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

CLARK COUNTY SCHOOL DISTRICT,

Appellant,

vs.

MARY BRYAN, mother of ETHAN BRYAN; and AIMEE HAIRR, mother of NOLAN HAIRR,

Respondents.

APPEAL

from the Eighth Judicial District Court, Clark County
The Honorable NANCY ALLF, District Judge
District Court Case No. A-14-700018-C

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Docket 73856 Document 2018-21007

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64	Trial Exhibit No. 560 – N. Hairr Grades		9	2241
58	Trial Exhibit No. 8 – October 19, 2011 Email		9	2228–2229
59	Trial Exhibit No. 9 – September 22, 2011 N. Hairr Incident Report		9	2230

A Yes.
Q -- correct?
Where did that conversation take place?
A I believe in the hallway outside my room.
Q Was anyone else present?
A No, not that I know of.
Q Was this between classes?
A More than likely, yes.
Q And how many minutes between classes?
A At that time I believe we had four minutes.
Q All right. And how long did the conversation last?
A I couldn't be specific. It could have lasted past passing time right outside my room.
Q You don't recall?
A No.
Q What do you recall about the conversation you had with Dean Winn after October 19?
A I believe she asked me what I had done as far as moving seats around and how that had worked.
Q And what did you tell her?
A That I thought it had worked. After the 15th of September email, I had not heard anything. I had no complaints from the boys. I thought everything had been fixed simply by moving them around and having a talk.
Q And after the October 19 email, did you still think

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that?

A No. After the 18th -- the October email I was very disturbed to find that it's still happening.

Q And did you say anything else to Dean Winn other than the fact that you had moved some seats around and you thought the problem was resolved and now you were disturbed to learn that the problem was still going on?

A I would probably tell her what else I was doing after the October email. I would -- when the -- Connor and Dante would come into our hallway and into my room, I would practically just walk with them the entire time, just really being very observant of what they do, making sure they didn't go near the other boys, just really kept my eyes on them so I knew that they weren't causing any trouble at that point.

Q After October 19?

A Yes.

Q Would this be during the entire class?

A It would be during a free time. In the -- at the beginning of class students have time to put their instruments together, get their books ready, you know, get prepared for class. And then at the end of class there's also the packing up time and the free time then.

Q And after October 19, where was Nolan seated in relation to Connor?

A After the 19th, I'm not exactly sure, but I know it

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would not be next to him and more than likely would not be in front of him either.

Q You're not sure?

A Not specifically, no.

Q So you're not sure if when you were watching Connor and Dante very closely after October 19, whether Nolan sat in front of Connor or some distance away?

A Well, I'm sure it was some distance away.

Q Okay. And other than watching them closely at the beginning of the class and at the end of the class, did you focus on them during the class?

A Yes.

Q And did you understand on the October 19 complaint that the alleged hitting with the trombone by Connor of Ethan was done when you were outside the class, and that it stopped when you came in?

A Yes. That's what I understood.

Q Why weren't you in the class watching Connor?

A Between classes the teachers are encouraged to be in the hallways to monitor the students as they pass. We have a double door that opens up to my rooms and I'm also able to see into the classroom for the majority of the room.

Q So there was an opportunity when you were in the hallway between classes that Connor could bully Nolan without you seeing it?

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A Yes. There's -- I can't see everything.

Q I think we can all agree to that. I don't know anyone who can. And so this conversation that you had with Dean Winn after October 19 for a few minutes outside of your classroom, other than you telling her what you were doing, did you talk about anything else?

A Not that I know of.

Q Did you understand she was going to be investigating the October 19 complaint in the email?

A Yes.

Q And why did you believe she would investigate that?

A Because of the nature of the complaints.

Q And you understood that if that investigation determined that Connor did in fact strike -- intentionally strike Ethan with the trombone, that could result in consequences to Connor, correct?

A Correct.

Q In fact, you expected there to be consequences, correct?

A Yes.

Q Such as moving Connor out of the class, that would have been one possible solution?

A I would not expect that, because he musically was doing okay.

Q Oh. So because he was doing okay musically, moving

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him out of the class was not a solution?

A Never had people moved out just because of behavior issues. It's always been in conjunction with their inability to read the music and play.

Q Oh. So there's a certain amount of tolerance for misconduct if you know how to play an instrument?

A I don't agree with the way you're phrasing it, but I mean, we're a public school and we want to give everybody opportunity. We don't just move them out of a class without other considerations.

Q So the other option would have been a suspension, correct?

A If that's what she determined.

Q And you expected that Connor would be suspended for this, correct?

A I don't know what I expected.

Q Did you expect that nothing would happen?

A Oh, no.

Q Why did you expect that nothing -- why did you not expect that something would happen? Let me rephrase that.

A Okay. Thank you.

Q Yeah, I got all -- I'm a little still waking up. Forgive me. What did you expect to happen at a minimum?

A I expected that Connor's behavior would be corrected.

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Q And did you expect that you would be part of that solution?

A Part of the solution? Yes.

Q Okay.

A But not part of determining that solution when it comes to -- you mentioned suspension. That wouldn't be my call.

Q I understand. But whatever the solution was, you expected that Dean Winn would coordinate with you in trying to come up with an appropriate solution to fix the problem?

A I don't know if she would take my opinion, but I'm sure she would let me know what her decision was.

Q And what did she tell you her decision was?

A I don't recall.

Q Do you know if she made any decision?

A I don't remember.

Q Okay. So whatever her decision was, she did not communicate it to you, correct?

A Well, she may have. I just don't remember.

Q Do you -- okay. But you don't -- as you sit here today, you don't remember Dean Winn notifying you of what remedial steps she was taking in response to the October 19 complaint, correct?

A No, I don't.

Q And you expected that she would?

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A Yes.

Q At some point in January 2012, did you notice that Ethan stopped coming to class?

A Yes. Lots of absences.

Q And in fact, you noticed that days and then weeks went by when he didn't come to class, correct?

A I believe -- well, it was extended. I don't know how many days.

Q Though it's pretty noticeable if you've got what, nine trombones and one person's missing, you notice that?

A Yes.

Q And then shortly thereafter you noticed a few days later that Nolan stopped coming to class?

A Yes.

Q And did it occur to you at that point that both Ethan and Nolan, who were well behaved disciplined children, good students, that they stopped coming to your class for a reason?

A I'm hesitant to say, because I just don't know if I can be clear. There's so many instances where students all of a sudden aren't there, they're sick along points in time. And I specifically don't remember what I thought about their absences. I didn't know how -- if it was involved with this.

Q Right. You didn't know?

A Right.

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Q And you were curious to find out, weren't you; to find out if there is some relationship possibly with the complaints that were made in September and October and now here we are in January and both of them are not coming to class?

A I don't know if I made a connection, because it was, I believe, about two months afterwards.

Q Okay. And so it never occurred to you that their not coming to your class any longer might be related to the bullying that was complained about in September and October; is that correct?

A I can't say it never occurred to me. It was a possibility.

Q And you, in recognizing it was a possibility, did you make inquiries to try to find out why Ethan was no longer coming to your class?

A I don't remember if I contacted the registrar or not.

Q What about Ethan's mother?

A I did not contact her.

Q Was that an option?

A It was.

Q And did you consider making inquiries to find out why Nolan was no longer coming to your class?

A I don't remember inquiring on him either.

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Q You had contact information for his mother, correct?
A That was available.
Q And did you try to contact her?
A No.
MR. SCOTT: That's all I have. Thank you.
THE COURT: It's been a little over an hour. Good time for a break. Mr. Beasley, we'll take a break until, let's make it ten minutes -- or to 10:55. You may step down. The court will be in recess until 10:55.
(Court recessed at 10:44 a.m. until 10:57 a.m.)
THE COURT: Cross-examination, please.
MR. WAITE: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. WAITE:
Q Mr. Beasley, Mr. Scott did a great job of getting some background information from you. Let me just get a little bit more from you. I'm not going to hash through the stuff that he did go through. But in going through your background, of all the years that you've been teaching band, how many years have you taught a sixth grade Beginning Band class?
A Every year. All 33.
Q A little bit more about you personally. Do you perform professionally in any symphonies or orchestras?
A Yeah. I still play professionally. I'm a member of

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the Las Vegas Philharmonic, several different groups, play on the Strip when needed.

Q And what instrument do you play in the symphony?

A I'm a French horn player.

Q French horn is a brass instrument?

A Yes.

Q So while you teach all of the instruments, your specialty is in the brass instruments?

A Yes.

Q And a trombone is a brass instrument as well?

A It is.

Q Could you just please explain to the Court how you go about teaching a class at the beginning of the year? Begin as -- let's use a sixth grade Beginning Band class, how you go about arranging seating, and just how does your year begin from that standpoint?

A When the sixth graders come in, most of them don't know what they want to play. At Greenspun they've been put into like classes though; a flute class, a brass class and a clarinet and sax class. Inside of those classes the instruments are still different.

So with the brass class, the trumpets and French horns, they play in one clef. They play certain notes. And the other instruments, the trombones, baritones and tubas play a different set of notes in the bass clef. And so that's why

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they're separated.

At the very beginning of the year, since we don't know what we're playing yet, I will talk about how to get a sound. Because producing the sound on all the brass instruments is the same. You buzz your lips and use air. The first couple of days of class I will demonstrate all the instruments to them so they can make a decision.

And those who can't make a decision, I'll try to guide them towards an instrument that they might be best at. Not everybody's meant to play high notes. Their lips don't -- aren't formed for that. Some people need to play lower instruments because their lips are a little different.

Once they've started deciding, then I'll split them up with the high brass on one side, that's the trumpets and horns, and then the low brass on the other side. We'll learn the note names on the board. Because they don't have instruments yet. We don't get instruments until at least middle of the second week. And once they do have instruments, then we start learning how to just produce the sound.

We're not using any music. It's all about buzzing on the mouthpieces, trying to get the proper sound on the instrument, which takes quite a while. It's nothing like they've ever done before. They've got to -- the way they form their mouth is critical. So it takes a lot of practice, a lot of teaching, a lot of repetition. It takes a while. Once we

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get the sound on the instrument, then we start putting that sound with the notes on the staff.

Q And while you're going through this just demonstrating, this period of time demonstrating each of the instruments, is there a seating arrangement that you have in class?

A No. I don't start arranging the seats until they've decided what they're going to play.

Q As it relates to the brass instruments in your beginning brass band class, is there any noticeable difference between the trombone and all of the other brass instruments?

A The trombone uses a slide. They change the notes by moving the instrument. The other instruments are valve instruments, where they just have to press the valves up and down. So it's noticeably different.

Q Are there any teaching or learning purposes for having -- you had indicated that you arrange the instruments, like instruments together, you seat them together. Are there, sorry to use a big word, but pedagogical reasons for keeping those similar instruments together?

A If there's something we're working on with the trombone, if they're all in the same area I can teach them, and same with the tubas on the other -- in the back. They hear each other better. I can just discuss that concept with that group. I can't even imagine if they are all interspersed

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with each other how that would work.

Q In your experience both professionally and teaching, have you ever seen a situation where they were all interspersed, different instruments amongst each other?

A No.

Q Now, you had testified in answer to Mr. Scott's questions that when you moved the boys the first time, that you moved Nolan from sitting next to Connor to in front of Connor. And you explained that the rows in a band class, there's more separation between the rows than in a normal class because you have a music stand and so forth. Is there any difference between the rows of trombones and other instruments?

A The trombone, since they have to extend the slid outward, they usually have -- they'll have more room in between them and the people in front of them.

Q In a beginning band class, would it be your practice to require the students to come to their seats with a writing instrument?

A It's not required, no. At that point we're just learning how to make sounds. We're not doing anything that would require a pencil.

Q You say a pencil. What about a pen?

A We don't use pen in band. You can't erase a pen.

Q Have you ever canceled or modified a concert program

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because of misbehavior of a student?

A No.

Q Is the -- after you've gone through this period of time at the beginning of the year where you've taught them the instrument, you're teaching them notes, they make their selection, they're starting to learn sound and so forth, is the first concert of the year, is it generally a Christmas or a holiday concert?

A Yeah. Our first concert, I traditionally schedule mine one week before the winter break.

Q And when in the course of that school year, that fall, when do you start passing out the music that will possibly be played at the program?

A With the beginning band, the way I work it, we'll play a lot of songs that are in their Beginning Band book, so they've had the music. And occasionally I will pass out a song that we'll learn just for the concert. And that usually comes out maybe a little before Thanksgiving.

Q Do you generally perform all of the music that you rehearse for the holiday concert?

A Yes. Generally we do.

Q And is the concert that you have, is it just your brass band -- your brass class rather?

A No. I put all my beginning classes together, so we've got the brass class, the flute class and the woodwind

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class. We meet together that morning. And I've been teaching them the music all along. But we finally combine that one time and then we perform that night.

Q Do all of your groups of instrument musicians, do they all play the exact same thing; in other words, they're all playing the melody of albeit different notes maybe on the staff, but are they playing all the exact same thing?

A In general, yes.

Q Have you ever had occasion where some groups of instruments for whatever reason progressed faster on a piece of music than another group of instruments?

A Always. Some instruments are easier to start on, so the kids progress faster. Other instruments, it takes a while to get them going, so they're always seemingly behind the other class.

Q And has that ever resulted in you deciding to select a particular piece of music in their band book to play at the concert and to cut a different -- to cut another piece of music?

A Oh, yeah. I want to show the audience what we can do, not what we can't.

Q So fair to say that while you have -- I apologize if I asked you this. I don't remember, so I'm going to ask you again. Have you ever altered a program, a holiday concert program because of the misbehavior of any of your students?

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A No.

Q And more specifically, to the extent that you remember the holiday concert of 2011, do you recall making any adjustments to the program that year as a result of any behavior of any students?

A No.

Q But from your testimony, I assume you may have cut some pieces because of how they were -- how they were being rehearsed, how they were being developed?

A Yes. I've also -- we may be planning on doing -- that we're going to maybe plan to do one of the more advanced pieces, and if one of the classes can't play it, then I would have the other class play it but not them. Maybe feature the flutes on a piece, feature the clarinets on another piece.

Q Some of my questions, I'll just tell you, I've cut some of my questions because they already came out. But I'm filling in some gaps, so there might appear to be some disjointedness.

But best that you can estimate and that you can recall, approximately how many new students did you have at the start of the 2011-2012 school year that you did not previously know at all? And I'm not limiting it just to sixth grade students. Any of your students, approximately how many new to you students did you have that school year?

A I would say between 100 and 120.

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Q At any time in the fall of the -- well, let me not limit it then. At any time in the 2011-2012 school year, did you ever holler out or speak out in the class to Connor or Dante that they should stop bullying?

A No. I would never say that.

Q Why, or why not?

A It's -- it's just not acceptable to say that. I mean, in -- when I would talk to a child, first of all, it would be separately. It wouldn't be in class. And I would talk about a specific behavior. So and it's -- that just doesn't sound like me.

Q Let's go to the September 15 email, which in the white binder is Exhibit 4. And I think you had indicated that you saw that Dr. McKay was identified as a recipient.

A Yes, sir.

Q At that time did you have Dr. McKay's email address memorized?

A No.

Q Did you believe that Dr. McKay received Ms. Bryan's September 15 email as reflected in this exhibit?

A I did.

Q At some point did you learn that Dr. McKay did not receive this email?

A I did.

Q When did you learn for the first time that Dr. McKay

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did not receive Ms. Bryan's September 15 email?

A I didn't find out until this lawsuit started.

Q Until after this lawsuit as a result of this lawsuit?

A Yes.

Q Did you ever forward Dr. -- did you ever forward this email to Dr. McKay?

A No.

Q Why not?

A I assumed he already had it.

Q Now, I want to provide you an opportunity, you were asked several questions, but I'd like to ask you, can you kind of summarize, if you will, the things that you recall doing in response to the September 15 email?

A I specifically remember re-seating the boys by separating Connor and Nolan, moving Connor -- excuse me, Nolan to the front of the room right in front of me, and Connor behind him, both students on the aisle where I had a good view. There was nothing on their right to distract me, or to hide them. And I also put Ethan next to Connor.

Ethan is a big boy, and I thought Connor might be a little intimidated by him because of his size. He's also very quiet, and I knew -- I assumed that he would not become someone Connor would talk with and get in trouble with, you know. When I separate students who are being disruptive, I

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want to try to put them by someone who I know will not be disruptive.

You don't want to create more fire by putting two disruptive students together. So I put Dante at the other end of the section, completely as far away from Connor as I could, because those two together, really distracting.

Q That's -- you made a move. Let me just follow up on that before I ask you to finish if there was anything else that you did in response to this September 15 email. But when you made the move, moving Nolan to the front and moving Ethan next to Connor, at that time did you have any understanding whether there was a relationship between -- and let me be a little more specific because of some of the allegations in this lawsuit.

Let me change that word relationship to friendship. Did you have any understanding whether there was a friendship at that time between Connor -- between Nolan and Ethan?

A Yes. I knew they were friends because it was stated in the email.

Q Did that knowledge that they were friends factor at all into your decisions of who to place where?

A A little bit. You're going to put one boy's friend next to the problem student, he could also hopefully would let me know if there was a problem, and again, he would not -- definitely wouldn't be someone that would get in trouble with

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the other boy, with Connor.

Q Okay. We may come back and visit the move a little bit more, but let's try to complete this. So my question was, what did you do in response to the September 15 email. So you made a move that we've talked about.

A Made seating changes. And I'm sure I would have spoken to the boys individually.

Q When you say the boys, who do you mean?

A I think all four of them. Well, no, that's not true, because I don't think I would have spoken to Ethan. He seems to be someone who's outside of the problem. I would have talked --

Q That was your understanding at the time?

A Oh, yes. Yes. I would have talked to Connor and Dante. I would have either called them up, either talked to them after class when other students had left, or maybe talked to them in the hallway after students have left. And I think I would have talked to Nolan to get his perspective.

Q Do you recall in this instance whether you spoke with Connor and Dante after receiving the September 15 email?

A I'm almost positive I did.

Q Do you recall what you discussed with Connor and Dante on that occasion?

A That the behavior that had been described as -- if I -- don't recall exactly what I said of course. But I

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probably wouldn't specifically talk about the email simply because if, in my opinion, they think they've been ratted out as it were, by someone else, that that might cause more problems.

So probably just generally talking about their poor behavior and disturbing other students. I don't know if -- I'm sorry. I just don't know if I addressed each specific claim in the email.

Q Would your memory be refreshed if you were to look at your deposition?

A Probably.

MR. WAITE: May I have his deposition published, Your Honor?

THE COURT: Any objection?

MR. SCOTT: No objection.

THE COURT: The deposition of Mr. Beasley will be published.

(Pause in proceeding.)

(Deposition of Robert Beasley published in open court.)

BY MR. WAITE:

Q Would you turn to page 61, of your deposition?

A All right.

Q And would you read to yourself from lines 14 through 16, and let me know when you're done?

A All right.

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Q Does that refresh your recollection of what you discussed with Connor and Dante?

A Yes.

Q And what did you discuss with them in general?

A That I believe touching someone else, whether it's physically touching someone else is inappropriate. We don't want to disrespect their space, and any kind of physical altercation, use that word, is not acceptable.

Q And more generally you had a discussion with them about what was appropriate and what was inappropriate behavior?

A Yes.

Q The September 15 email was written late at night. I think you -- maybe I'm missing -- confusing testimony. Did you see the September 15 email on September 15?

A No. It was written late at night, and I testified that I don't know when I opened it. So I don't know exactly when I did actually see it.

Q Do you know what day of the week September 16, 2011 was?

A The 16th, either Thursday or Friday. I'm sorry, I don't.

Q Do you recall -- if you do, it will be remarkable, but I'm going to ask anyway. Do you recall the move that occurred on September 19, 2011, do you recall what day of the

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week September 19, 2011 was?

A No.

Q All right. Let's talk a little bit more about the seating assignment or the re-seating, I think, as you called it. And counsel was asking you some questions about whether you talked to Dean Winn about that seating change or consulted or had a discussion, and I'm not sure that there was a distinction between a period of time.

After you made the seating change, in the period following that, did you ever discuss with Dean Winn that you had made that change? Did you ever inform her that you had made that change?

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A Could you clarify which change?

Q I'm sorry. Yes. So the September -- let's do this. You've seen that I've asked people to draw the drawing, and I'm going to ask you to do the drawing as well. And what I'm going to ask you to draw, do you recall the seating chart as it existed immediately prior to September 15?

A Before the 15th?

Q Yeah.

A No.

Q Do you remember how the boys or how the trombones were arranged immediately after the 15th, or as of the change of the 19th?

A I remember most of it, yes.

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Q Okay. Now I'm going to give you this piece of paper, if I can approach.

THE COURT: You may.

BY MR. WAITE:

Q And I'll ask you to draw the -- draw the entire classroom, if you would, how the sections were laid out. I think you've indicated there was aisles. But particularly with the trombone section, if you would draw the seating chart identifying to the extent that you can recall Connor, Dante, Nolan and Ethan, where they sat, and then where you were in relation to this room.

A [Complies.]

MR. WAITE: Can I get this marked?

THE CLERK: 631.

MR. WAITE: Your Honor, I'd move for admission of 631.

MR. SCOTT: No objection.

THE COURT: Exhibit 631 will be admitted.

(Defendant's Exhibit 631 admitted.)

BY MR. WAITE:

Q All right. Just for a little bit of clarification here, I see that you've -- you've listed all the sections, and here are -- these squares represent the seats in the trombone section?

A That is the trombone section.

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Q C is Connor; is that correct?
A That's correct.
Q E is Ethan?
A Yes.
Q N is Nolan?
A Yes.
Q D is Dante?
A Yes.
Q And we see where you're at. Now, in some of the other drawings, you've been here and you saw the drawings from both Ethan and Nolan, they actually had a third row in the front. Did you have a third row of trombone players?
A I don't see how I could have an extra row in the front, because there's just too many of them.
Q Your recollection is that there was nine trombone players in two rows?
A Yes.
Q And this chart, just for clarity, this represents how the boys were seated following the September 19 move, correct?
A Yes.
Q Now, where you've listed Nolan here in this, this spot, did he stay in that seat for the rest of the semester even?
A I don't know if he stayed there that long. I do

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seating changes several times a semester.

Q Let me cover that. Let me ask you that. When you made this September 19 change, did you only move people in the trombone section?

A No. When I do a change, I'm going to change a lot of students.

Q And why --

A Trumpet players --

Q Excuse me.

A A couple of different reasons.

Q I'm sorry.

A I'm sorry.

Q I apologize for interrupting you. So I want you to finish, but then I have to ask my question. So were you finished?

A When I do seating changes, it usually would involve a lot of students.

Q And on this occasion, September 19, why did you move all of the students as opposed to -- so you were making this move in response to Mrs. Bryan's email, correct?

A Yes.

Q So why didn't you on this occasion just move the boys in the trombone section?

A I'm afraid if I move just certain students it kind of signals them out, say, oh, I wonder why he's just moving

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us, something must be up. So I took the opportunity to also move the rest of the kids around to try to -- you know, by this time I've identified kids who when they sit next to each other, talking a little too much, so I used this opportunity to also move them around as well.

Q Okay. Now let's come to the question, the best of your recollection, how long after September 19 was Nolan in that seat that's depicted there closest to you?

A As far as I remember, he was there at least until the October email. I can't remember after that. I don't know -- I can't be specific. I don't know.

Q Do you -- now, you received the October email and in that email you saw that there was issues now that had developed between Connor and Ethan, right?

A Yes. Yes.

Q All right. And so you made a change as a result of that October 19 email?

A Yes.

Q Do you recall where you moved the boys after that October 19 email?

A Not specifically, but I know I moved Ethan a long ways from Connor.

Q Were there any other factors that went into your subsequent move, what I'll call your post October 19 move?

A One of the things when I re-seat, I have to consider

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who I don't want next to each other. I don't want to put them next to each other, like Connor and Dante should not be sitting together. So that's why they're separated as well. It's like a chess game.

Q So what I hear you saying is when you made the move after the October 19 email, you knew that Connor had had problems with both Ethan and Nolan by that point in time?

A Yes.

Q And that Connor and Dante sitting next to each other was not a good mix?

A Correct.

Q And all of that factored into your move after receiving the October 19 email?

A Yes.

Q You just don't recall where you placed the boys subsequently?

A No, I don't.

Q Going back to the September 15 email and the move that's depicted here, did you believe that you had corrected the problem between the boys after the September 15 email?

A I did.

Q And why is that?

A I never heard any -- any complaints after that.

Q All right. Let's go to the October 19 email again. You made -- well, I want you to again just kind of summarize.

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Mr. Scott went through various things that you did. Would you just kind of collectively summarize what all you recall doing in response to the October 19 email. You've already indicated that you made a move. We don't need to rehash that. What else did you do?

A When I received that email, it was very upsetting to know that now Ethan was involved in this situation, which I didn't know before. And I realized that Connor and Dante just needed to -- I needed to watch them.

So not just in class, in their way in, on their way out, during the free time in class when they were getting their instruments out, putting their instruments away. I would walk near them as they came in. I would stand near them when they put their instruments together and put them away. Almost like a shadow. I just didn't -- I was so upset that it was still going on.

Q Anything else that you recall doing in response to the October 19 email?

A Well, talking to them again, I'm sure.

Q You talked to -- you talked to who's them?

A Connor, Dante.

Q Do you recall what you said to them on this occasion after the October 19 email?

A No, not specifically.

Q Did you talk to anyone else, any colleagues?

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A I believe we, not immediately after, but we -- yeah. We talked with Mrs. Winn, the dean.

Q You were addressing that in the direct examination. Okay. Anyone else?

A Since Mr. Halpin was involved, I'm assuming I talked to him. I don't have any direct memory of it, but I would say I would talk with him.

Q Something that you don't recall, but based on your practice you believe you did?

A Yes.

Q All right. What about Principal McKay, do you recall whether you had any conversations with Principal McKay about the October 19 email?

A I don't recall any specific talking with Dr. McKay. But again, it's something I would do.

Q What about Mr. DePiazza?

A Mr. DePiazza was not my supervisor. So maybe, but he's not really -- I don't know if this is the right term, but I don't answer to him. So there's a distinct possibility, but I can't be so sure. I can't be sure.

Q You don't recall. All right. As we talked about this, does anything else come to your mind as far as something that you specifically did in response to the October 19 email?

A Not that I can -- not that we haven't discussed.

Q Fair enough. Thank you. Prior to Ethan and Nolan's

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formal withdrawal from Greenspun, were you ever aware that Connor and Dante directed homosexual slurs at Ethan and Nolan?

A No.

Q Prior to Ethan and Nolan's withdrawal, did you ever hear Connor or Dante call Ethan or Nolan any kind of names?

A No.

Q Jolly green giant, duck bill Dave, Phil the fail?

A No.

Q Did you observe Connor poke Nolan in the genitals with a pencil?

A I did not.

Q Did you ever see Connor or Dante pull Nolan's hair?

A No.

Q Did you ever see them blow in Nolan or Ethan's face?

A No.

Q Did you ever see them use their trombone slide to scratch either Ethan or Nolan's legs?

A No.

Q From the time that you received Mary Bryan's October 19 email until Ethan and Nolan formally withdrew from Greenspun, did you receive any communication from Mary Bryan that the harassment had continued?

A No.

Q During that same period of time, post October 19 email until the time that the boys formally withdrew, Ethan

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and Nolan formally withdrew, did you receive any communication from Mrs. Hairr that the harassment had continued?

A No.

Q How about from Nolan?

A No.

Q How about from Ethan?

A No.

Q During that same period of time, did you receive information from anyone or any source informing you that Ethan and Nolan were still being harassed in your class?

A No.

Q As far as you knew then, after the changes you made and the things you did after October 19, the problem was resolved?

A Yes.

Q Until you received the February 7 email?

A Until February, yes.

MR. WAITE: No further questions, Your Honor.

THE COURT: Redirect.

MR. SCOTT: Thank you.

REDIRECT EXAMINATION

BY MR. SCOTT:

Q Mr. Beasley, I think you just testified that after the October 19 email you had a conversation with Ms. Winn that you've testified about, correct?

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A Yes.
Q You remember that?
A I -- yeah. I believe we met in the hallway outside my room.
Q That's not an assumption, that's a recollection?
A Yes.
Q And you assume you might have talked with Mr. Halpin, but you don't recall?
A Yes.
Q And you assume you might have talked to Dr. McKay, but you don't recall?
A Yes.
Q And you assume you may have talked to Mr. Piazza, but you don't recall?
A I may have, yes.
Q Let me refresh your recollection, please. If you would turn to page 31, of your deposition.
A Okay.
Q And directing your attention to lines 11 through 20. Do you see that?
A Yes, I do.
Q Does this refresh your recollection that you did speak with Mr. DePiazza sometime in September or October about the situation here?
A Yes.

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Q And what contact or communication did you have with Mr. DePiazza in September or October?

A It would have been about the October email, and it's just discussing what was going on in my room.

Q And when you talked to Mr. DePiazza after the October 19 email, you understood he was aware also of the September 15 email, correct, and he was concerned because of now a second email?

A I believe so.

Q Right. And you assumed if Mr. DePiazza was aware of the September 15 email in October, then certainly the principal and Dean Winn must have been aware, correct?

A Yes.

Q Now, you testified that at about the time you changed the seating on about September 19, you recall speaking with Connor and Dante; is that right?

A Yes.

Q And you knew from the email together with Nolan's appearance -- you do recall Nolan's appearance at that time, correct?

A Yes, I do.

Q And did you connect the dots that given Nolan's appearance and being stabbed in the genitals, that this was certainly bullying that may be somehow sex related?

A No.

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Q Did you believe it was bullying?
A If it's repeated, yes. Yes.
Q And would the stabbing have to be repeated for it to be bullying, or could something less than stabbing if it was repeated be bullying?
A The stabbing does not have to be repeated, because it's severe. The other things being repeated, yes.
Q Oh. And when you spoke with Connor and Dante, were they together, or did you talk to them separately?
A That I don't remember.
Q And where did the conversation take place?
A More than likely it would be in the front of my room after everyone had left.
Q Do you have a recollection of that, or are you just assuming?
A No. I recall.
Q And I believe you testified that you probably didn't mention what was alleged in the September 15 email, the stabbing, because they might think they were ratted out, correct?
A Yes.
Q All right. And why were you concerned, if they were told or confronted by you about the stabbing, that they might think they were ratted out? Why did that concern you?
A They might -- Connor and Dante might retaliate if

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they know that somebody had been telling on them.

Q And were you concerned that if Dean Winn talked to Connor and confronted him with the stabbing that he would assume or believe that he was being ratted out?

A No.

Q Okay. What was the difference between you confronting Connor with it and Dean Winn confronting Connor with it?

A That the difference, I'll try to explain this, being the dean, she more -- even more of an authoritarian figure than me -- that's not a very good explanation. But she's in charge of the discipline. If she knows about it, then obviously somebody's told on them. But if I can make, when I talk to the boys, make it seem like that Nolan was telling on them, that if I -- then they would hopefully not go back at him for more.

Q And did you believe that if Connor was not confronted with this stabbing that he was less likely to stop the bullying?

A No. But it might be less likely that he doesn't retaliate.

Q And do you believe that Nolan didn't make the complaint because he was afraid of being ratted out?

A I can't tell what Nolan's thinking, why he didn't do it.

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Q But you didn't do it because you were concerned that Nolan would be identified as having ratted out Connor?
A Yes.
Q And you don't know if Nolan thought that?
A No. I don't know what Nolan thought.
Q In the September 15 email, Exhibit No. 4 in the small binder in front of you, if you could find the September 15 email. It's Tab 4 in the small binder.
A All right.
Q You recall receiving it and reading it, correct?
A Yes.
Q And near the bottom of the email, that says, quote, Nolan is afraid to notify an adult for fear of retaliation, period, unquote. Do you see that?
A Yes.
Q Does that refresh your recollection that when you spoke to Connor and Dante, you knew Nolan was afraid of retaliation?
A Yes.
Q Oh. And you were too?
A Yes.
Q And at some point later did you learn that Dean Winn, on September 27, met with Connor and his mother?
A I'm aware of that now.
Q You didn't know it then?

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A No, I don't think so.

Q And you don't know if as a result of that meeting Nolan was identified as ratting out Connor?

A I have no idea what went on in that meeting.

Q And if Nolan was ratted out in that meeting, is that something you believe you should have known?

A That I should have known?

Q Yes, since you were concerned about it.

A I don't know if the dean would express those concerns to me.

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

THE COURT: Recross.

MR. WAITE: Very briefly, Your Honor.

RECROSS-EXAMINATION

BY MR. WAITE:

Q Mr. Beasley, you just at the beginning of that line of questioning, you had indicated that you had assumed that Mr. DePiazza, Dr. McKay and Dean Winn were aware of the September 15 email. Do you know whether they were aware of the September 15 email?

A Specifically I don't know exactly what they were aware of.

MR. WAITE: No further questions, Your Honor.

MR. SCOTT: Nothing further.

THE COURT: All right. May we excuse the witness?

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MR. SCOTT: Yes, Your Honor.

THE COURT: Sir, you may step down, Mr. Beasley.

Okay. It's 11:48. Is this a good time for a lunch break?

MR. SCOTT: Fine.

THE COURT: Yes. Until 12:30, does that give everyone enough time?

MR. SCOTT: It's fine, Your Honor.

THE COURT: Very good.

MR. POLSENBERG: Yes. If we eat at Capriotti's, yes.

THE COURT: The court will be in recess until 12:30.

(Court recessed at 11:48 a.m. until 12:36 p.m.)

THE COURT: Plaintiff, please call your next witness.

MR. SCOTT: Thank you, Your Honor. The plaintiff calls Cheryl Winn.

CHERYL WINN, PLAINTIFF'S WITNESS, SWORN

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

THE WITNESS: My name is Cheryl Winn, C-h-e-r-y-l. My last name is Winn, W-i-n-n.

THE COURT: Thank you. Please proceed.

DIRECT EXAMINATION

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BY MR. SCOTT:

Q Good afternoon, Mrs. Winn. Thank you for being here. First of all, were you the dean at Greenspun Junior High School in the fall of 2011?

A Yes, I was.

Q And can you summarize for the judge your educational background starting with college, please.

A In college I lived in Oklahoma, so I attended the University of Central Oklahoma. At that time it was called -- let's see. It had a previous name. Central State University. So after that we moved out here in 2002. I attended University of Las Vegas, Nevada, and that's where I received my master's degree in educational leadership. And then in 2008, I received a -- well, I have my -- I worked on my doctorate and have all my coursework finished except my dissertation.

Q Thank you. And can you summarize for the Court your work experience after you graduated from college in Oklahoma?

A I've been a kindergarten, third grade teacher, fourth grade teacher, fifth grade teacher and an eighth grade science teacher.

Q In that order?

A Yes. Well, I was kindergarten first, then fifth grade, and we moved to Kansas for a little bit and I taught fourth grade in Independence, Kansas. Then back into

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Oklahoma, where I taught in Edmond, Oklahoma. And I also worked with, in the time where I didn't teach, I worked with the Indian education program with the Edmond public schools in Oklahoma, and I was an artist in residence with them, taught Cherokee basket weaving and some different things with them.

Q Thank you for your service.

A Mm-hmm.

Q When did you first become employed by the Clark County School District?

A I taught starting in 2002 at George E. Harris. I was a fifth grade teacher there, and taught there three years. And then in 2006, I was -- I started at Greenspun Junior High School as the dean of students.

Q In 2006?

A Yes.

Q And are you still there as the dean?

A Yes, I am.

Q And would it be fair to say that prior to 2006, when you started at Greenspun, that you had taken courses at UNLV that related to bullying?

A There was some courses that we took throughout our time in educational leadership in our master's program, yes.

Q And did any of these courses focus on the issue of bullying, or was it just part of a larger subject matter?

A It was part of the -- it was part of the classwork

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and it was mostly theory and going into what bullying is. And I graduated by 2002 -- I mean, 2006, so it was 2004 to 2006, that's when I studied there.

Q And the definition of bullying that you learned at UNLV, did you understand it was consistent with Nevada law?

A Yes.

Q And in approximately September of 2011, what would have been your working definition as the dean of bullying?

A Having someone making statements that makes another person feel like they are not -- feel bad about themselves, or continually making themselves feel bad about themselves.

Q And could it go beyond making statements?

A Yes, it could.

Q And for example, what types of behavior other than statements did you understand came within the definition of bullying in September 2011?

A It could be where they would come up behind them and hit them, or they could make them feel uncomfortable by getting people involved in rumors, things like that.

Q So it could involve hitting?

A It could. Mm-hmm.

Q And did you understand on occasion bullying could be related to racial stereotypes?

A Yes. It could.

Q Or gender stereotypes?

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A Yes.

Q And when you were the dean or first started as the dean at Greenspun Junior High School, who was your immediate supervisor?

A In 2006, my immediate supervisor was Dr. McKay, and the principal was Dr. Beth Howe.

Q And at that time as the vice principal, did Dr. McKay supervise you directly?

A Yes.

Q And at some point did Mr. DePiazza become your immediate supervisor?

A Yes. After Dr. Howe moved up and Dr. McKay was the principal, then Mr. DePiazza came over to Greenspun and he was assigned to supervise the dean.

Q And what did Mr. DePiazza do to supervise you in 2011-2012 school year?

A Supervision would be observe what I do, make sure that I'm out where I'm supposed to be, you know, if I have questions I could go to him and have him work with me if I need more guidance or something. But mainly he worked with me, mm-hmm.

Q Supervising directly, kind of hands on?

A Not so much hands on. The administrative team, we worked as more of an administrative team and he -- we had different supervision tests that we would do. And if there

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was something that I needed to have him assist with, I would certainly ask him, especially in an area where it was -- like I had so many teachers that I supervised and if I had questions about how to write up evaluations and observations and working with -- with supervision or different things, he would guide me on that.

Q All right. And what were your primary duties and responsibilities as the dean? And you can assume all of my questions are Greenspun Junior High School during the school year 2011 to 2012, so I don't have to repeat that; fair enough?

A That's fair enough.

Q Oh.

A Okay. So what were my duties?

Q Primary duties and responsibilities.

A Primary duties. I -- besides discipline, I also supervised the -- I had about 16 or 17 teachers that I supervised, some -- and I'm not sure exactly. I think it was the social studies department, and I'm not sure exactly on that one if I was still with the English department. I also took care of discipline on campus.

And I had transportation. I took care of the buses coming in, going out, making sure that kids, if they had problems on the buses, the transportation, the bus drivers would always come to me and work with me, referrals. Teachers

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would send referrals in to me and that could be for classroom -- classroom disruptions.

It could be for concerns with the students late to class quite a bit, they are acting out in class in a certain way, they've cheated on a test, academic dishonesty. There was teacher referrals coming in, transportation referrals coming in. Plus every time the bell rang for the students to get up and change classes, I was in the quad or in the hallways.

So I talked to a lot of students at that time, stop running, go to class, be on time. And I was in the quad along with the campus security monitors, and I also supervised the campus security monitors. We had cameras. I was on cameras if I needed to look for different things.

If a student left campus and the person saying someone left campus, maybe a parent had called and would say, Ms. Winn, there is a student walking down the street. And, okay, what do they look like, where do I need to go and find them, do you know who they are. I would get with someone to call truancy person to go and look for that student. If we knew who the student was, we would have someone call the parent.

I also worked with a lot of special ed kids, special ed kids that would come to me if they were disruptive in class, need to settle down. I had a collection of "I Spy"

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books in my office, and the kids would come in there and they would look at those, calm down a little bit, go back to class.

There were investigations for drugs. If anyone had drugs on campus, that means selling or any -- any -- if someone came to me or someone on campus and said we think that someone has something on campus, then I would go to the classroom or check lockers for that, take campus security with me. There was so many things on that one.

Especially with weapons, if we had a weapon on campus, we'd only had one incident of a gun on campus, and that was an adult, and either 2006, 2007. And that was a man that started in Pahrump and came over to pick up a child on our campus and we had information on that, that he was on our campus in the car. And police were called and they came out. But that was the only gun.

The other weapons are usually pocket knives and smaller knives, and that's when we would go to a campus security monitor and I would go to the classroom, make sure that the kid would be escorted to my office, a search would be done. And I know how to search. I've been trained to search. The -- let's see. We would also have teachers that would call and say that there's students in the hallway, can you come down and check hallways, and I would do that.

I care a lot about kids. They would see me in the cafeteria. They would talk to me in the cafeteria about,

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Ms. Winn, I'm missing my cellphone, can you help me with my cellphone because I'm going to be in trouble at home if I don't have my cellphone with me. And I, where did you leave it last, and if they think that it was stolen, I would help them with that. I would work with theft.

Someone reporting a theft, they would come to me and talk to me about something was stolen out of a locker. And we had cameras. Now we are upgrading to really nice, nicer cameras now. But then I would have the campus security monitors help me with camera work and look on that and see if we could help find who's stolen something from another student. Students would come to me, I've misplaced my book.

Also, when students would inappropriately use computers on campus and go to sites that they were not supposed to be looking and a teacher would be aware of that, then I would get in touch with the tech person and make sure that the tech person would go back and investigate that and look. Now we have Chromebooks and it's a bigger deal.

And really be supportive to parents. And while all that is going on, parents daily and at that time daily would come in to meet with me. And I am very courteous to parents and make sure that they always feel welcome in my office. And they didn't always bring -- they didn't always have an appointment to meet with me, and they could come in and just say, I need to meet with the dean about something.

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Maybe they had a concern about a grade in a classroom and that would be sent over to the counselor. Maybe they had a problem with a child in the class and they didn't feel like it was at the right level, and that would be something I would get the counselor involved. It might have been that it was a bullying case and the parent came in to talk to me about it. And I would start looking into that right away on a bullying case, because that was very important to me.

It could have been there was something that happened after school, they were throwing rocks after school and at the cars. It could have been a neighbor in the neighborhood coming to see. At about that same time we did have neighbors across the wash. We had kids that would -- they removed the fencing, and they would go down into the wash and they would remove the fence and then jump the wall and go into the neighborhood, instead of walking all the way around and into the neighborhood.

And so we had to do some things on our announcements about being good neighbors, and we would talk to them about that, and go down and re-fix the fence. So I'd have to have somebody from the district come out to fix the fence and talk to the kids about don't go down in the wash, it's dangerous to be walking down in there. So that would be going on.

Also students, we don't have crossing guards at our

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school in secondary, and we do have a crosswalk we had to -- at that time we did have a campus security guard, a campus security monitor that would go up and voluntarily she would be up at the street and go across with the kids, and she would go back and forth with the kids. But since then we don't have insurance that covers us, so we'd have to really work with the kids about safety.

I also trained, I did some bike safety classes and talked to the kids about wearing helmets, the importance of helmets, and did some bike safety classes that year. And some of the kids don't have brakes on the back of those bikes and they brake with their back foot. It's just so many things that kids do just being immature, and it's sixth, seventh and eighth graders, and so you have to really work with them about being more mature and being thoughtful about their safety.

The church that is to our south, the custodial staff or the secretary up there would call me every once in a while and say, Ms. Winn, some of your kids are coming on our grounds, our church grounds and they're hanging out after school and coming into our sanctuary and giving us problems. And so I would walk up the hill after school and stand around on that campus and talk to kids about not being in that area after school.

And then I would be in classrooms meeting with teachers, supervise, doing my minutes. I usually spend

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about 130 minutes per teacher observing in classrooms, where I would supervise who I supervised, the -- and then meet with them. Teachers and students are always a high priority for me and always welcome in my office. I had one secretary.

And I also was in charge of attendance, and I've always been in charge of attendance, and we would be sure that they were coming to school. And so I had a wide range of things that I did every single day. And I try to be kind to the students as well as parents, and listen to what they have to say and what they do on our campus.

In the lunchroom, I had three lunch duties supervision every day, and I would go into the lunchroom. We've never allowed cellphones in our cafeteria, and that's when --

MR. POLSENBERG: Excuse me, Ms. Winn.

THE WITNESS: Mm-hmm.

MR. POLSENBERG: May we approach, Your Honor?

THE COURT: You may.

(Bench conference transcribed as follows.)

THE COURT: It's Friday, so anybody who wants candy --

MR. POLSENBERG: Thank you, Your Honor.

THE COURT: I need sugar on Friday.

MR. POLSENBERG: Mr. Waite keeps giving me breath mints, but I don't have a sense of smell, so I tell him he has

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to suffer with it.

THE COURT: All right.

MR. LICHTENSTEIN: You're giving candy to a diabetic, by the way.

THE COURT: I'm sorry. You don't have to take it.

MR. LICHTENSTEIN: I'm just joking.

THE COURT: Are you concerned about the narrative?

MR. POLSENBERG: Yeah. John's too polite to interrupt. I'm giving everybody the --

THE COURT: All right. So I'm going to sustain the objection, as this has been -- this has all been foundational.

MR. SCOTT: I didn't want to interrupt.

THE COURT: You're going to have to -- I understand.

MR. POLSENBERG: He's being polite, and he actually has the right to stop it. I don't.

THE COURT: Good enough.

MR. POLSENBERG: But I'm just giving him the opportunity not to look bad.

THE COURT: Thank you both.

MR. POLSENBERG: Thank you, Your Honor.

(End bench conference.)

THE COURT: I've sustained an objection. And I will ask that the counsel, Mr. Scott, direct the next question to the witness.

MR. SCOTT: Thank you.

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BY MR. SCOTT:

Q Forgive me. I probably gave you what lawyers call an open-ended question.

A Very.

Q And I was just trying to find out, assuming you may have a job description that's less than 20 pages long, is there maybe the executive summary of what your primary job duties and responsibilities were?

A In our staff handbook there would be just basic titles, and that would be supervision and the -- the area of supervision, which departments that I would be in charge of. I've been in transportation doing transportation most all of those years, attendance. I have been the athletic director and I've --

Q We're talking about 2011-2012?

A Yes, in there.

Q Okay.

A And also behavior, and that would encompass a lot of different things. Okay.

Q Did you think your function as being the dean in charge of discipline was your most important responsibility?

A It is very important to me, yes.

Q Did you think in terms of your job description that was your most important responsibility compared to attendance or transportation or evaluating teachers?

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A I think that behavior and teacher supervision is very important. Both of those things are very important.

Q And why did you think discipline in relation to inappropriate behavior was important?

A Students come on campus and sometimes from classrooms that are smaller in size, especially from elementary school, and they have -- they're new on campus. They are learning to build new relationships with kids and they really need to find some structure.

We do have a lot of structure at Greenspun with a lot of rules and things. And so if there are incidents where they need to learn different ways to communicate or react to students, that's somewhat of what the dean does. Plus the teachers get involved with that too.

Q So let me ask you this. Was bullying, in your opinion, one of the most significant issues you had to address?

A Not necessarily.

Q What was more important?

A Weapons.

Q Okay. Weapons. Anything else?

A Bullying --

Q What about a cellphone?

A Cellphones --

Q Is that more important than bullying?

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MR. POLSENBERG: Your Honor, I'm going to object to a comparative assessment of what the different importance of dangers are.

THE COURT: The objection is overruled.

MR. POLSENBERG: Thank you, Your Honor.

BY MR. SCOTT:

Q In your mind was a lost cellphone more important than addressing bullying?

A If it's addressing bullying, if it's coming in at the same time, I would address the bullying initially, and then work with the cellphone secondary.

Q And why would you deal with the bullying initially?

A In my mind it would be something that would be that I would need to have in mind what the student is feeling and what the student is needing to tell me.

Q And other than weapons, was there other student misconduct that you experienced at Greenspun in your mind was a more serious violation that required more attention?

A If we had a fight on campus and especially if there was injury, that would need immediate attention.

Q Okay. So weapons, fights with weapons or injuries, fights with injuries. Anything else more significant than bullying?

A If there's a student being disruptive in class and needing to be removed because a danger to classmates. And not

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necessarily being bullying, a bullying case in that classroom, but they are a danger to other students in the classroom.

Q Okay. Being a physical threat?

A Correct.

Q And give me examples of types of physical threats you had to deal with at Greenspun as the dean.

A A student becoming angry in the classroom and pushing desks over, and they're upset, they're cursing, the teacher has called for a campus security monitor to come to the classroom. And when I would hear that on the radio I would go as well.

Q Now, were you obligated, back in 2011, to investigate complaints of bullying?

A I've always felt like I'm obligated to look into bullying.

Q When you say look into, is that different from investigating?

A Investigate, yes.

Q Oh. And did you understand in 2011 you were legally obligated to investigate complaints of bullying?

A Yes.

Q And did you understand that you were legally obligated to complete your investigation within ten days and if you determined that bullying occurred, to make a recommendation for discipline in a written report?

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A In 2011?
Q Yes.
A No.
Q Do you believe at some point after 2011 that obligation changed?
A Yes.
Q Why do you believe that?
A Because there have been changes in our procedures now.
Q Okay. To your knowledge, did your procedures have to comply with Nevada law?
A Yes.
Q Oh. If you would, there's a small white binder in front of you. Hopefully you can find it.
A Mm-hmm.
Q If you would turn to Tab No. 2, please.
A Mm-hmm.
Q And I believe this was also an exhibit at your deposition. Have you had a chance to review your deposition before today?
A Yes, I have.
Q And do you recognize these pages here as setting forth the law in Nevada in 2011 that related to bullying?
A I remember seeing them.
Q And did you understand that you were obligated to

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follow the law?

A Yes. And I do see here on 388.1351.

Q Yes.

A Within ten days.

Q I believe it's the fourth page of this exhibit, and it's Section 388.1351. It talks about the time period for initiation and completion of investigation. Do you see that?

A Right.

Q Does this refresh your recollection that in 2011, as the dean you were legally obligated to investigate complaints of bullying and complete an investigation within ten days? Do you recall that?

A Yes. Yes, I see that now.

Q And in doing your investigation, did you understand there was a certain standard you were looking at; in other words, preponderance of evidence or any terms like that are you familiar with?

A Can you restate that?

Q Yeah. Did you understand that investigating complaints of bullying, for you to determine as the dean that bullying occurred, did it have to mean more likely than not, or was something a higher standard, like beyond a reasonable doubt or something like that?

A For some -- I'm still not understanding what you're asking me.

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Q Okay. But you understood that when you did the investigation, one of your responsibilities was to determine whether or not bullying occurred?

A Whether it was substantiated?

Q Yes.

A Yes.

Q Substantiated.

A Okay.

Q And to determine whether an allegation of bullying was substantiated, how much proof did you understand you needed for it to be substantiated?

A I'm not sure --

Q Was it a gut feeling, beyond a reasonable doubt, or something in between?

A It's never a gut feeling for me. I have to have more proof than that.

Q Okay. And when you say you have to have enough proof, how much proof do you need?

A It could take -- it would depend on the case.

Q Of course.

A Because if it were one student's word against another student, I would need witnesses to confirm one way or another. Or the student would say, I didn't say that, but the other one would be saying yes, they did. So I'm not --

Q So is it your testimony that if it was one student's

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word against another, you could not substantiate an allegation of bullying?

A In some cases it's very difficult to substantiate without witnesses.

Q I understand that. My question is, was that the rule in all cases, that if it was just one student's word against another you could not substantiate it?

A Not in all cases. I cannot 100 percent say that.

Q So you would look at a number of factors that might include a student's history, correct?

A It could be, yes.

Q The student had a history of being a bully or of acting out or being a troublemaker in class, you might take that into consideration?

A Being a troublemaker in class doesn't mean that he's a bully.

Q Exactly. But is that a factor you might take into consideration?

A I don't know that I would always take that into consideration, because some kids act out for different reasons.

Q There's no always here. Just could you take that into consideration in some cases?

A Not 100 percent, because --

Q Nothing's 100 percent. I'm just asking you is that

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something you would possibly take into consideration in some cases?

A Possibly.

Q All right. Had the student had a history of bullying but there's more than one, but two reports, the same student being a bully, would you take that in consideration with a second complaint?

A Possibly take that into consideration.

Q You might not?

A It would depend on where I'm getting the information from.

Q Okay. Can you tell me what you mean by that?

A Is it coming from hearsay, is it coming from the student being directly called a name, is it -- because sometimes students come in to the office and they've heard something that's happening that they had heard it from a friend of a friend, and they're not -- it's all hearsay. And I wouldn't go after a child thinking that it was just hearsay.

Q Would you try to find out who the friend was who supposedly heard it --

A Yes.

Q -- and ask that person if in fact --

A Yes.

Q -- that person heard it?

A Yes.

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Q Okay. So you would try to find out -- if you got a hearsay report, you'd try to find out who the friend or friends were who supposedly observed the bullying to find out directly if a person witnessed bullying?

A Yes.

Q And why would you do that?

A I don't know all the hearsay from a student just coming to me and saying this is what they think happened.

Q I understand. My question is, why would you bother to go and try to find out, find an eyewitness to talk to instead of just putting the complaint in the trash basket because it's based on hearsay?

A Because I need to find out if -- for a consequence, I really want to make sure I'm having the correct consequence for the child and not just handing a consequence to a child on something that's hearsay. I want to make sure I'm making the best judgment.

Q I understand. And so if you got a hearsay report of bullying, you would try to find out who the witness or witnesses were and talk to them, correct?

A Yes.

Q Is that something you understand is your job duty and responsibility?

A That is an ethical thing that I take on for myself, yes.

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Q You don't think you're legally obligated, when investigating a complaint of bullying, to -- if the complaint is based on hearsay, you don't think you're obligated to do more?

A Yes, I am obligated, but ethically I know that I would do that.

Q Well, we aren't talking about ethically right now. We're just talking about your legal responsibilities, okay?

A Okay.

Q So did you understand you were legally responsible to investigate complaints of bullying that were based on hearsay?

MR. POLSENBERG: Your Honor, I need to object. Asking for legal conclusion.

THE COURT: Overruled.

MR. SCOTT: You can answer.

THE WITNESS: Okay. Tell me one more time.

BY MR. SCOTT:

Q Did you understand in 2011 that you were legally obligated to investigate complaints you received of bullying that were based on hearsay?

A Yes. I would -- I would do my best and do due diligence for that.

Q We understand. All you can do is your best.

A Yes.

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Q And so you understood that it wasn't just ethical, it was your legal responsibility?

A Yes.

Q And did you also understand that you were obligated to complete an investigation within ten days?

A I do. I do.

Q Correct?

A And I misspoke awhile ago. I would like to correct that.

Q Fair enough. And did you understand if you found a violation had occurred, you were obligated to include recommendations concerning the imposition of disciplinary action or other measures to be imposed?

A [No audible response.]

Q Do you understand that was part of the job; if you did an investigation and determined that it was substantiated, that the allegation of bullying was substantiated, you were obligated to make a recommendation, presumably to the principal or the vice principal, with recommendations concerning the imposition of disciplinary action or other measures to be imposed?

MR. POLSENBERG: Your Honor, it's compound, and he's adding presumptions about the interpretation. If he could just keep it to --

THE COURT: Right. Break it down.

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MR. SCOTT: I will.

BY MR. SCOTT:

Q Let me get back to the original question. Did you understand, after you completed your investigation within ten days, you were obligated, in cases where you found it was substantiated, to include recommendations concerning the imposition of disciplinary action or other measures to be imposed?

A Yes.

Q Okay. Did you ever do that?

A Have I ever done that, or did I?

Q In 2011, did you ever do that?

A Did I tell the principal about bullying cases?

Q Did you do an investigation, find a bullying, determine or substantiate that bullying occurred and make a recommendation concerning the imposition of disciplinary action or other measures to be imposed?

A I have, yes.

Q In 2011?

A In 2011. In 2012, yes.

Q And do you have any case or cases in mind without giving me any names?

A Yes, I do.

Q Okay. Can you give the Court an example of a complaint of bullying that you investigated, substantiated and

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then made recommendations for discipline?

A Yes. It happened in November. A student was being bullied. I kept Dr. McKay apprised of what was going on. He was knowledgeable of the case. And after everything was taken care of and consequences were given to the student, Dr. McKay was also notified about that. Yes.

Q And what type of investigation did you do in that case?

A I met with the parent, met with -- or communicated with parent, met with the student. The student that was the bully, met with that parent, and a consequence was given.

Q Did you do anything else to investigate?

A I'm not sure where you're going with this. Did I talk to -- I talked to witnesses, talked to --

Q Just asking.

A Yeah. Okay. Just talked to witnesses.

Q You talked to witnesses?

A Mm-hmm.

Q That's a yes?

A Yes.

Q Did you get statements from witnesses?

A Yes.

Q Why?

A Because they were involved in the bullying, they saw the bullying event.

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Q And you understood that your obligation was to identify witnesses and get statements from witnesses?

A I don't recall exactly if the witnesses came forth with that prior to me going and looking for them, or if I had to go and ask them. It seems like there were a lot of witnesses that came forward with that.

Q So witnesses came to you without you having to look for witnesses?

A I don't recall exactly on this case.

Q Okay. And in that case that you substantiated and made recommendations for discipline, did the student who was accused of the bullying admit to what was alleged?

A I believe the student did take responsibility.

Q Oh. Have you ever substantiated a complaint of bullying where the student who was accused of the bullying did not take responsibility and admit to it?

A Yes, I have.

Q In 2011, that school year?

A I do not recall 2011.

Q Do you recall how many times you've done that?

A It would be difficult for me to put a number on that.

Q Do you recall any case of bullying that you investigated where you substantiated the allegation, where the suspect, the person being accused of bullying did not admit

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and take responsibility for it?

A Do I remember a case?

Q One case.

A One case. During that year?

Q Any year.

A Any year. Yes, I remember cases throughout my deanship that students will not take responsibility for that, yes.

Q And can you tell me one case that you investigated where you substantiated the allegation of bullying where the student who was alleged to be the bully did not admit to bullying?

MR. POLSENBERG: Without using names.

MR. SCOTT: Yes, without using names.

THE WITNESS: Yes. A student approached another student after school and was verbally abusive to her and bullying her after school for something, and we had witnesses to that. The girl did -- she was adamant that she did not do it, but because it did happen and also that I did see the conversation, I did not hear the conversation because I had it on camera, I was able to substantiate that the conversation did happen, so I saw that.

BY MR. SCOTT:

Q So you had video evidence in that case?

A Yes. Yes.

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Q Did you substantiate any cases of bullying where there was not an admission or video evidence?

A I cannot tell you any details about one, but I would say yes.

Q Can you think of one?

A I -- I cannot think of one that I can go back and give you any details about right this minute.

Q Oh. Did you receive any training in what policies or procedures to follow in conducting an investigation of bullying as of the fall of 2011?

A As deans we did have some training through just going through our coursework and what to look for in bullying and cyber bullying. We've discussed it in class. We were also -- through educational services division we were invited to go to some training on that through -- they would teach us about how to do searches and how to -- and about bullying and different subjects, yes.

Q And were you trained as of the fall of 2011 what the minimum things were that you had to do to conduct an investigation of bullying?

A Yes. Just the basic what the expectations would be, yes.

Q And what were the basic minimum requirements that you understood existed?

A Start your investigation as soon as possible. Go

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talk to a parent. Talk to the student. First of all, you have to figure out who is involved, visit with the student. Sometimes the student reporting is not actually always the victim. They're sometimes the bully trying to get to the dean first.

And so you talk to different kids to find out what's going -- and if they have anyone to actually -- they write down on their statement. And I encourage them if they want to write something down to put down who might have see -- who might have saw the incident happen, did it happen on campus, is it happening on the way home from school and those kind of details, and try to do it in a timely manner.

Q So would it be fair to say you try to identify the victim, the perpetrator and witnesses?

A Yes.

Q Whether it happened at school or outside in the area didn't matter, right?

A Right.

Q Okay. And once you identified the alleged victim, the alleged perpetrator and the witnesses, were you trained to interview them in any particular order; for example, would the perpetrator go first or last or somewhere in the middle?

A I had no formal training in that.

Q So sometimes you might interview the perpetrator first before you interview the victim?

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A Right.

Q Why would you do that? If you hadn't talked to the victim, how would you know exactly what the complaint was about?

A Okay. Let me go back to your question again. Like I said, sometimes the student reporting could have been the perpetrator, but they're getting to me first.

Q Fair enough.

A And so that could have happened.

Q Let's talk about cases that aren't that case.

A Okay.

Q Where that's not that issue. Okay.

A Right. I would try to talk to the victim first.

Q And why would you do that?

A To see where it happened, see if the student was offended, to see what was being said to the victim, how the victim felt about it, had the victim spoken to their parent about it. I try to ask that one of the first things, have you told your parents.

Q Why was that important?

A It's very important to us because we need the parent support especially when the child goes home. When the child goes home and they're upset about something, the parent needs to know why the kids are upset.

And if they're -- if they're feeling like they're

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sad or kids are picking on them at school, maybe that's the puzzle piece that the parents are missing why the kids aren't wanting to go to school, or if something has happened at home and they feel like it's been a sad day at school, the parent needs to know. And I usually call the parent right there with the student in my office, and we get the parent on the phone.

Q And what if the parent is not being supportive, then what?

A Parents love their kids and they send their kids to school and they want the best for their kids, and parents are usually very supportive, and that's been my experience with kids. And when I call home and they'll talk to their kids on the phone and there's true concern there, and what's happened. And I think the biggest thing is why didn't you tell me. And there might be some, oh, I feel like why did you go to the school first and tell them and why didn't you tell me first.

Q Oh. So you'll first try to talk to the student with them and that student's parents. Then what?

A Then I ask the parent if there's anything else that they would like to add to this, if there's anything else that I can do for them. And I ask how are your student's grades and anything at home that we should know about, what's going on with the student. And sometimes they'll say, well, his grades are failing in this particular class.

And I encourage them to come and talk to me. But

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then I will say, I will get back to you on this and I'll say, I had no idea that this was going on and thank you for calling. They're very appreciative.

Q And after you do that, do you do anything further to investigate an allegation of bullying?

A Yes. And then I don't ever call the other student in while that student is in my office. I make sure that they have cleared the area. If the student is so upset that they need to go home, I ask the parent if they'd like to come get the child at that time to go home, or if they want them to stay at school. The student has the right to feel safe and if I can do anything to help them to feel safe at school, that really is something that I try to do.

Q All right. Let's talk about the next step, if I understand you, would be to interview the alleged perpetrator?

A Mm-hmm.

Q That's a yes?

A Yes, I do.

Q And this would be before you talk to other witnesses if there are other witnesses?

A Correct.

Q And does the perpetrator have a right to take the Fifth or anything like that?

A They sometimes don't seem to know anything about it, and that would be something that I would have to look into,

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whether they're being truthful about the situation or -- and I would say, do you know where this happened, do you know anything about this, without really giving up the victim, because I don't want to make it more difficult for that student that's come to me seeking help from me.

And, you know, is there a student in your PE class that you're having difficulty with; no. And I try to really keep -- keep information very vague at first so it doesn't put that, the victim, which I am assuming is the victim right now, where he would feel worse if he leaves out of my office and that first thing that he sees is that kid in the next class and the kid is going to say, why'd you snitch on me.

Q All right. So you don't want the perpetrator to know the identity of the alleged victim?

A Not yet. Not until I can see if the -- if the student that is being accused of bullying comes in and he'll say, oh, that kid, then I know that maybe there's some things going on in class and I would work it a little bit differently.

Q All right. And after you interview the alleged perpetrator, would you then talk to witnesses if you were aware of any?

A Yes. Yes.

Q And why would you talk to potential witnesses?

A I would talk to potential witnesses and the teacher

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if it happened in the classroom. Sometimes teachers may see things, but they don't really realize at the time what they have been noticing. Maybe there was something that happened during that time period and that was out of the ordinary, but they just didn't put the pieces together. So I would talk to the teacher as well.

Q And would you document who you spoke to and the date or dates that you spoke to people?

A The students that come in are asked if they would like to fill out a statement to help me remember, because it does help me remember and it's their words that they put down that helps me remember. I talk to numerous students every day, and when they come through my office and they tell me something, I may forget about exactly what their words were. And I'm listening to them, I'm looking at them and I'm trying to understand what they're saying, so I ask them to write a statement. And it's voluntary.

Q I'm only talking about investigation.

A Yes.

Q Not people who just walk in the door and want to tell you something.

A No.

Q The investigating bullying.

A Investigations.

Q So my question is, you've identified potential

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witnesses, you talk to potential witnesses. Now, have there been occasions where you talk to a potential witness, that witness tells you, yes, the bullying occurred, and you ask that person to write it down and the person says, no, I won't write it down?

A I have had that.

Q So what do you do?

A I have had some students that say no, because I don't want to have that kid know that I have said anything to you, can I remain anonymous. And so they will put anonymous on it.

Q And is that documented, and do you document these events somewhere?

A It goes down. They can write that and put anonymous on their paper, and they write their information down and they date it. But I don't put it -- I don't type it up. I don't put all of that typing into my Infinite Campus.

Q And what about the kids who are even reluctant to write it down anonymously, what do you do in those situations?

A Then I would need to make a note and put it on the -- I would -- sometimes I'll just put a sticky note on the student's incident report, and I leave that sticky note on there that's in the file --

Q And what --

A -- that someone reported.

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