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THE STATE EDUCATION DEPARTMENT  
THE UNIVERSITY OF THE STATE OF NEW YORK

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In the Matter of  
NEW YORK CITY DEPARTMENT OF EDUCATION  
v.  
THEODORE SMITH  
Section 3020-a Education Law Proceeding (File # )

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DATE: February 8, 2007  
TIME: 11:00 a.m. to 12:45 p.m.  
1:45 p.m. to 3:00 p.m.  
LOCATION: NYC Department of Education  
Office of Legal Services  
49-51 Chambers Street  
New York, New York 10004  
BEFORE: JACK TILLEM, ESQ.  
Hearing Officer

1 Theodore Smith - 2-8-2007  
 2 APPEARANCES:  
 3 FOR THE COMPLAINANT:  
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1 Theodore Smith - 2-8-2007  
 2 INDEX OF PROCEEDINGS  
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1 Theodore Smith - 2-8-2007  
 2 EXHIBIT INDEX  
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 6 Twenty-two 1010 - 24  
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 7 Ted Smith and Peter Mulman (phonetic  
 spelling), the union representative  
 8  
 Twenty-three 1022 - 23  
 9 Notes from meeting with Mr. Smith  
 10 Twenty-four 1029 - 14  
 Notes from a discipline meeting  
 11 recounting an incident on June 27,  
 2000  
 12  
 Twenty-five 1032 - 21  
 13 List of dates that involve professional  
 development from which Mr. Smith was  
 14 absent  
 15  
 16 Respondent  
 One 1065 - 04  
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 18 Two 1067 - 07  
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 19 a meeting with Mr. Smith  
 20 Three 1073 - 15  
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 22 Request from Mr. Smith to observe what  
 he calls a regulated-size class  
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1 Theodore Smith - 2-8-2007  
 2 Five 1077 - 04  
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 3 In the classes  
 4 Six 1088 - 11  
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 Seven 1098 - 16  
 6 Document  
 7 Eight 1103 - 09  
 Complaint from Mr. Smith to Mr. Ramsey,  
 8 and Ramsey's response  
 9 Nine 1105 - 09  
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 10  
 Ten 1109 - 23  
 11 Series of pages of the calendar from  
 December '04 to the end of the year,  
 12 2005  
 13 Eleven 1120 - 02  
 Peer intervention program  
 14  
 Twelve 1122 - 12  
 15 Request for peer intervention from Ted  
 Smith dated August 18th  
 16  
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 17 Letter addressed to Mr. Smith on  
 September 12th offering the peer  
 18 intervention program  
 19 Fourteen 1133 - 05  
 Draft of a request for a medical for  
 20 Mr. Smith, and Faye Pallen's response  
 21 Fifteen 1142 - 20  
 Several documents  
 22  
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 23 Fax from Ted Smith's doctor  
 24

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1 Theodore Smith - 2-8-2007  
 2 Seventeen 1163 - 03  
 Series of e-mails  
 3  
 4 Eighteen 1175 - 12  
 Document  
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Page 1006

1 Theodore Smith - 2-8-2007  
 2 THE HEARING OFFICER: Okay.  
 3 We're ready. Let's state our appearances --  
 4 Jack Tillem, the hearing officer. Susan?  
 5 MS. JALOWSKI: Susan Jalowski  
 6 for the Department of Education.  
 7  
 8 MR. CARNEY: David Carney for  
 9 Ted Smith.  
 10 THE HEARING OFFICER: And Mr.  
 11 Ted Smith, the Respondent, is present.  
 12 We're going now to continue  
 13 with the direct examination of a witness  
 14 Lindley Uehling. Did I pronounce that --?  
 15 THE WITNESS: Yes, you did.  
 16 Thank you.  
 17 THE HEARING OFFICER: Your  
 18 witness, Ms. Jalowski.  
 19 LINDLEY UEHLING; Previously sworn  
 20 DIRECT EXAMINATION  
 21 BY MS. JALOWSKI:  
 22 Q. I'd like this marked  
 23 Department's Twenty-one and shown to the -- the  
 24 witness.

Page 1007

1 Uehling - Direct - Jalowski  
 2 Ms. Uehling, do you recognize  
 3 that document?  
 4 **A. Yes, I do.**  
 5 Q. And what do you recognize  
 6 that to be?  
 7 **A. Personal notes that I made on**  
 8 **March 3rd and March 4th, 2005.**  
 9 Q. All right. Without looking  
 10 at it, can you tell me what happened on that  
 11 day?  
 12 **A. I was -- it's a combination**  
 13 **of days. March 3rd, I was doing hall duty, and**  
 14 **Mr. Smith came up behind me and said that,**  
 15 **because we had a discipline meeting scheduled**  
 16 **on the 4th, he wanted to bring lawyers to the**  
 17 **discipline meeting. And I told him that I**  
 18 **couldn't talk at that time, and I would come**  
 19 **down and talk with him later -- later went down**  
 20 **to talk with him about his concerns and to tell**  
 21 **him that his union rep would be at the**  
 22 **discipline meeting and that there would be no**  
 23 **need for lawyers there, nor would they be**  
 24 **acceptable at -- at level one discipline -- not**

Page 1008

1 **Uehling - Direct - Jalowski**  
 2 **a level one -- at a discipline meeting. But I**  
 3 **couldn't find him anywhere. So later on, I**  
 4 **found out that -- that he -- he came, and he**  
 5 **said that he was going to the hospital, that he**  
 6 **was having heart -- he was concerned about his**  
 7 **heart and needed to go to the hospital. And so**  
 8 **then he was absent the subsequent day on which**  
 9 **the discipline meeting would be held.**  
 10 Q. And what day that was -- what  
 11 day was that?  
 12 **A. That was the -- the following**  
 13 **day, the 4th -- March 4th.**  
 14 Q. So when -- on the 3rd,  
 15 what -- what happened? What -- what -- did he  
 16 get a substitute for the -- for when he left?  
 17 **A. No.**  
 18 Q. Did he leave any lesson  
 19 plans?  
 20 **A. No.**  
 21 MS. JALOWSKI: I'd like that  
 22 now moved into evidence as Department  
 23 Twenty-one.  
 24 MR. CARNEY: I just want to

3 (Pages 1005 to 1008)

Page 1009

1 Uehling - Direct - Jalowski  
 2 object on the basis that this is actually a --  
 3 an incomplete fax from Mr. Smith to the  
 4 witness. It contains the cover sheet and said  
 5 that there are pages to follow, but those pages  
 6 seem to be -- have been omitted from the  
 7 exhibit. And to the extent that they would  
 8 inform what is a contradictory stance, as  
 9 compared to these notes, I would object.  
 10 MS. JALOWSKI: Well, all  
 11 right. Then if that's the case, I mean, I'll  
 12 just put in --.  
 13 THE HEARING OFFICER: Yeah.  
 14 Let me check this out -- this first page. I  
 15 would sustain that objection, and if you want  
 16 to put in the second page as -- as notes the  
 17 witness wrote to herself, is there any  
 18 objection on that?  
 19 MR. CARNEY: No objection to  
 20 that.  
 21 THE WITNESS: The notes on  
 22 the cover page are Joanne Siegel, the -- the  
 23 person who received the message.  
 24 THE HEARING OFFICER: We'll

Page 1010

1 Uehling - Direct - Jalowski  
 2 mark the notes as 'D' Twenty-one.  
 3 BY MS. JALOWSKI: (Cont'g.)  
 4 Q. So now on March 4th, was --  
 5 did the sub come on March 4th?  
 6 A. No.  
 7 Q. Did Mr. Smith ever give you  
 8 the name of who he said he -- he --  
 9 A. No.  
 10 Q. -- had gotten to sub?  
 11 A. No.  
 12 MR. CARNEY: I want to hand  
 13 that back to you.  
 14 MS. JALOWSKI: Sure. And I'd  
 15 like this marked Department Twenty-two and  
 16 shown to the witness.  
 17 MR. CARNEY: Thank you.  
 18 BY MS. JALOWSKI: (Cont'g.)  
 19 Q. Ms. Uehling, do you recognize  
 20 this document?  
 21 A. Yes, I do.  
 22 Q. And what do you recognize  
 23 that to be?  
 24 A. It's the notes from the

Page 1011

1 Uehling - Direct - Jalowski  
 2 discipline meeting with Ted Smith and Peter  
 3 Mulman (phonetic spelling), the union  
 4 representative, in my office.  
 5 Q. And are there -- and can you  
 6 describe what the attachments are to the  
 7 document?  
 8 A. They're attachments to which  
 9 I referred in the letter. I referred to these  
 10 attachments because they represent the ongoing  
 11 concern I had for the lack of planning, lack of  
 12 attention to routines that needed to happen,  
 13 the lack of expectations for a professional.  
 14 Q. And so what specifically did  
 15 you discuss with Mr. Smith on that -- on -- on  
 16 that -- that day in regard to his -- his  
 17 lessons?  
 18 A. One of the major ones was he  
 19 needed to get his lesson plans to the -- his  
 20 assistant, especially since he was very  
 21 concerned that they were not licensed in P.E.  
 22 So if he didn't give him the lesson plans when  
 23 they came in, they wouldn't know what to expect  
 24 in -- in terms of what he needed. So without

Page 1012

1 Uehling - Direct - Jalowski  
 2 those lesson plans, he couldn't expect them to  
 3 really be helpful to him. And then I had also  
 4 a complaint from one of the assistants that she  
 5 was not only getting -- not getting lesson  
 6 plans, but that when he was having trouble with  
 7 the kids, they got them onto the bleachers, and  
 8 then he turned to her and said -- he told the  
 9 kids that she wanted to talk with them. And  
 10 she said that she had not been in the least bit  
 11 planning -- planning to speak with them. So  
 12 she was caught off guard, and she -- she was  
 13 upset by it.  
 14 Q. And now had -- prior to the  
 15 meeting, had you made any arrangement with Mr.  
 16 Smith to review his lesson plans?  
 17 A. Many times, yeah.  
 18 Q. What arrangements did you --  
 19 had you made with him?  
 20 A. That he would -- he would  
 21 give me his -- his -- just overall objectives  
 22 for the week on Monday -- nothing fancy, just  
 23 what he had planned to accomplish because I  
 24 wanted to see that there was some planning

4 (Pages 1009 to 1012)

Page 1013

1 **Uehling - Direct - Jalowski**  
 2 **going on ahead of time and then, in terms of**  
 3 **the assistance and in terms of my**  
 4 **walk-throughs, that I would have access to some**  
 5 **evidence that the class was planned.**  
 6 Q. And did Mr. Smith comply with  
 7 that -- those directives?  
 8 **A. He -- he did a couple of**  
 9 **times with the assistants. I -- I was able to**  
 10 **find a couple of times that he had given plans**  
 11 **to the assistants.**  
 12 Q. No. I'm talking about  
 13 meeting with you on Monday to give you the --  
 14 the -- the lesson plans.  
 15 **A. No. No. He -- he -- as I**  
 16 **recall, he -- he said that he had put them in**  
 17 **my box, and I had not gotten them.**  
 18 MS. JALOWSKI: I'd now like  
 19 to move it into evidence as Department's  
 20 Twenty-two.  
 21 MR. CARNEY: No objection.  
 22 THE HEARING OFFICER: In  
 23 evidence.  
 24 BY MS. JALOWSKI: (Cont'g.)

Page 1015

1 Uehling - Direct - Jalowski  
 2 regard -- what happened with -- with Mr. Ramsey  
 3 coming to the -- the school to assist him?  
 4 **A. Well, there was a**  
 5 **professional development coming up, and so when**  
 6 **I spoke to Ted, I thought it would be a good**  
 7 **opportunity to introduce yourself and to say to**  
 8 **Mr. Ramsey that -- that you were glad that he,**  
 9 **you know, could come give you a hand with the**  
 10 **oversized classes because that was the major**  
 11 **issue, was the oversized classes.**  
 12 Q. All right. So now, did Mr.  
 13 Ramsey come to your school?  
 14 **A. Yes.**  
 15 Q. And was Mr. Smith -- what --  
 16 and what happened with regard to when Mr.  
 17 Ramsey came to the school?  
 18 **A. Mr. Smith was absent, and Mr.**  
 19 **Ramsey covered his class -- his -- the class**  
 20 **that he was going to help him.**  
 21 Q. And was that -- did that  
 22 happen on more than one occasion?  
 23 **A. Yes.**  
 24 Q. Do you recall how many times

Page 1014

1 Uehling - Direct - Jalowski  
 2 Q. Now, do you know who Mr.  
 3 Ramsey is?  
 4 **A. Yes.**  
 5 Q. Who is Mr. Ramsey?  
 6 **A. Mr. Ramsey is the director of**  
 7 **physical education and health in Region Nine.**  
 8 Q. And did -- did you speak with  
 9 him in regard to Mr. Smith?  
 10 **A. I did.**  
 11 Q. And what -- what did you  
 12 discuss with him?  
 13 **A. I discussed with him the**  
 14 **difficulty that -- that Ted Smith and I were**  
 15 **facing with these oversized classes and that I**  
 16 **was asking him a number of questions relative**  
 17 **to conducting phys ed. One was clarification**  
 18 **on dodge ball, for example, and whether or not**  
 19 **that was allowed. And Victor Ramsey offered to**  
 20 **come and support Ted. He said, you know,**  
 21 **that -- that he had ways of dealing with it,**  
 22 **and maybe he could be helpful. And I thought**  
 23 **that would be great.**  
 24 Q. And what do you know with

Page 1016

1 Uehling - Direct - Jalowski  
 2 that Mr. Ramsey came, and Mr. Smith was not  
 3 there?  
 4 **A. Two or three -- I would have**  
 5 **to look back in my notes to know for sure.**  
 6 **THE COURT REPORTER: I'm**  
 7 **sorry to interrupt, but they just asked me to**  
 8 **ask you all what room you're in.**  
 9 MS. JALOWSKI: Oh. I'm  
 10 sorry. We're in Room Eleven.  
 11 **THE COURT REPORTER: Okay.**  
 12 And since I'm interrupting, can I also ask what  
 13 the -- the spelling on the witness' name there?  
 14 **THE HEARING OFFICER: No.**  
 15 Let's wait till the end of the hearing, and  
 16 we'll give you all the spellings.  
 17 **THE COURT REPORTER: Okay.**  
 18 Fine. Thank you.  
 19 **THE HEARING OFFICER: Okay.**  
 20 BY MS. JALOWSKI: (Cont'g.)  
 21 Q. Right. But did there  
 22 actually come a time that Mr. Ramsey and Mr.  
 23 Smith did meet?  
 24 **A. Not that I recall. I think**

5 (Pages 1013 to 1016)

Page 1017

1 **Uehling - Direct - Jalowski**  
 2 **he observed it. He may have -- he may have --**  
 3 **he may have worked with him at least once**  
 4 **because I know that Victor gave him some**  
 5 **pointers, gave him some materials to use. And**  
 6 **the reason I'm thinking that is because Mr.**  
 7 **Ramsey gave me a copy of materials.**  
 8 Q. Now, did there come a time  
 9 that you discussed Mr. Smith's health with him?  
 10 **A. Yes.**  
 11 Q. And can you tell us why you  
 12 had a conversation about his -- his health?  
 13 **A. Well, we had talked about it**  
 14 **informally because he had been absent,**  
 15 **relatively speaking, a good deal. And so when**  
 16 **we met more formally about it, it was a warning**  
 17 **because the absences were getting to a point**  
 18 **where it was a danger of -- of being even more**  
 19 **deleterious to the -- the phys ed program. And**  
 20 **Mr. Smith shared that he needed some**  
 21 **accommodation because of health issues. And I**  
 22 **believe he sent me an e-mail that -- and I**  
 23 **don't remember the year. But the accommodation**  
 24 **was that he be able to leave when he's not**

Page 1019

1 **Uehling - Direct - Jalowski**  
 2 **ongoing, especially with -- what I discovered**  
 3 **was a history of problems with attendance in**  
 4 **other schools -- that something needed to be**  
 5 **checked out here, that I had to take the**  
 6 **initiative.**  
 7 Q. So now, do you recall when  
 8 the first medical evaluation was scheduled?  
 9 **A. I think it was in April. I**  
 10 **don't remember the date.**  
 11 THE HEARING OFFICER: Which  
 12 year?  
 13 THE WITNESS: Pardon?  
 14 THE HEARING OFFICER: What  
 15 year.  
 16 THE WITNESS: Oh -- 2005 --  
 17 April 2005.  
 18 BY MS. JALOWSKI: (Cont'g.)  
 19 Q. And did Mr. Smith attend that  
 20 evaluation?  
 21 **A. No. I found out later -- I**  
 22 **found out after it was scheduled that he did**  
 23 **not attend it because it was scheduled on a**  
 24 **teacher's vacation week. So he had written a**

Page 1018

1 **Uehling - Direct - Jalowski**  
 2 **feeling well.**  
 3 Q. So what did you do in regard  
 4 to the request for the accommodation?  
 5 **A. Well, we -- at that point, we**  
 6 **were meeting with a special representative,**  
 7 **Leroy Barr (phonetic spelling) from the U.F.T.**  
 8 **And so Mr. Barr gave Mr. Smith the name of the**  
 9 **contact person because I, as the principal,**  
 10 **can't give authority for that kind of -- I have**  
 11 **no authority for that kind of accommodation.**  
 12 **So it has to go through some process. And so**  
 13 **Mr. Barr gave Mr. Ted -- Mr. Smith the -- the**  
 14 **contact number.**  
 15 Q. All right. But now, did you  
 16 contact the medical bureau?  
 17 **A. I did later on, when the**  
 18 **absences were so frequent that they were**  
 19 **impacting the school as a whole -- not just Mr.**  
 20 **Smith, but -- but the -- the building and the**  
 21 **students and -- and the faculty. And I**  
 22 **requested a -- a medical because if -- if he**  
 23 **was not going to follow up on the**  
 24 **accommodations, and this was going to be**

Page 1020

1 **Uehling - Direct - Jalowski**  
 2 **letter -- of which I did not get a copy, so**  
 3 **that's why I didn't know about it until**  
 4 **afterwards -- that he wanted -- that he could**  
 5 **not be there because of that. So they**  
 6 **rescheduled it.**  
 7 Q. And do you recall what date  
 8 they rescheduled it for?  
 9 **A. Yes. That was May -- May**  
 10 **2005. I'm remembering the 24th, but I may not**  
 11 **be correct.**  
 12 Q. Now, did Mr. Smith attend  
 13 that medical evaluation?  
 14 **A. No.**  
 15 Q. Did you and him have any  
 16 discussions as to why he was not attending that  
 17 one?  
 18 **A. The one on the 24th, yes.**  
 19 **Specifically, the superintendent, Michael**  
 20 **LaForgia, had said that he wanted to meet with**  
 21 **Mr. Smith and me and to alert Mr. Smith to the**  
 22 **consequences -- possible consequences of not**  
 23 **attending the medical that he had -- had -- had**  
 24 **requested --**

6 (Pages 1017 to 1020)

Page 1021

1 **Uehling - Direct - Jalowski**  
 2 Q. Right. But --  
 3 **A. -- that Mr. Smith attend.**  
 4 Q. -- did -- did Mr. -- did Mr.  
 5 Smith tell you what he -- that he wasn't going  
 6 to attend it?  
 7 **A. Yes.**  
 8 Q. And did he give you a reason  
 9 as to why he was not going to attend it?  
 10 **A. He -- he felt that -- that it**  
 11 **wasn't an -- I don't mean to express it in his**  
 12 **words, but this was how I took it. He felt**  
 13 **that I was being unfair to him and that I was**  
 14 **not just in -- in asking for this medical and**  
 15 **that he was not getting his due rights. So**  
 16 **with not attending, I believe -- and again, not**  
 17 **to -- to -- to characterize what he intended,**  
 18 **but as I read it, because he objected to being**  
 19 **required to go to the medical.**  
 20 Q. And what did you tell him --  
 21 what, if anything, did you tell him would be  
 22 the result or what was told to him would be the  
 23 result of his not attending the medical on May  
 24 24th?

Page 1023

1 **Uehling - Direct - Jalowski**  
 2 **May 26th, and we met on the 23rd, and the**  
 3 **medical was on the 24th.**  
 4 Q. And --.  
 5 THE HEARING OFFICER: This  
 6 would be 'D' Twenty-three, I believe?  
 7 BY MS. JALOWSKI: (Cont'g.)  
 8 Q. Yes. And can you look at the  
 9 attachments?  
 10 Can you just briefly explain  
 11 what the attachments are to your letter?  
 12 **A. Yes. I see the -- the**  
 13 **directive from Superintendent -- Local**  
 14 **Instructional Superintendent LaForgia to report**  
 15 **for a medical -- medical examination and to**  
 16 **have a medical report and recommendation for**  
 17 **the employment to resume as soon as possible.**  
 18 **There's a copy of the superintendent's form to**  
 19 **authorize a required medical examination of**  
 20 **certain employees. Then there is my request to**  
 21 **Mr. LaForgia, a report -- a request for a**  
 22 **medical exam, which includes these absences and**  
 23 **a pattern of absences around obligations,**  
 24 **although my real concern is the -- the**

Page 1022

1 Uehling - Direct - Jalowski  
 2 **A. We -- we met the previous day**  
 3 **because of my concern that he was not going to**  
 4 **go, and Mr. LaForgia was unable to be there**  
 5 **because of an emergency at another school. So**  
 6 **he told me to go ahead with the meeting. And I**  
 7 **was very clear to Mr. Smith that it is**  
 8 **extremely rare for a teacher to refuse to go to**  
 9 **a medical and that in -- if he were to refuse**  
 10 **to go to the medical, that there was a chance**  
 11 **that he would be removed from payroll.**  
 12 Q. So what ultimately did  
 13 happen?  
 14 **A. He was removed from payroll.**  
 15 Q. I'd like this marked  
 16 Department Twenty-three and shown to the  
 17 witness.  
 18 Do you recognize that  
 19 document?  
 20 **A. Yes.**  
 21 Q. What do you recognize that to  
 22 be?  
 23 **A. Those are the notes from my**  
 24 **meeting with Mr. Smith. The notes are dated**

Page 1024

1 **Uehling - Direct - Jalowski**  
 2 **frequency of absences and the impact on the**  
 3 **school and the kids in the classroom.**  
 4 Q. And then --?  
 5 **A. Oh. The -- the -- the**  
 6 **document that I became aware of and a -- and a**  
 7 **copy that Mr. Smith had -- had attached to a --**  
 8 **another complaint -- and this was a copy of his**  
 9 **request that it be delayed. Oh. This -- and**  
 10 **he is saying in this that he will not submit to**  
 11 **the examination on May 24th.**  
 12 MS. JALOWSKI: All right.  
 13 And I'd like to move this into evidence as  
 14 Department's Twenty-three.  
 15 MR. CARNEY: I have an  
 16 objection as to one of the attachments. At the  
 17 beginning of the hearing, I raised the issue in  
 18 in limina as --  
 19 THE HEARING OFFICER: Yeah.  
 20 MR. CARNEY: -- to previous  
 21 attendance problems. There is attached a March  
 22 6th, 2003 letter from a former principal of a  
 23 school which rated Mr. Smith highly. He did  
 24 request additional time off for disability

7 (Pages 1021 to 1024)

Page 1025

1 Uehling - Direct - Jalowski  
 2 reasons. He got them. He got physicians'  
 3 letters. His absences were excused. And he  
 4 worked out his differences with the principal.  
 5 I think it's improper that they're trying to  
 6 inject this as a pattern of absenteeism or  
 7 incompetence or whatever it is he's being  
 8 charged with.  
 9 MS. JALOWSKI: This letter  
 10 was not removed from his personnel file. It's  
 11 signed by Mr. Smith that he did indeed get a  
 12 letter stating that -- about being on notice  
 13 that excessive absences affect the running of a  
 14 school.  
 15 MR. CARNEY: It's not  
 16 relevant to know this because Mr. Smith was  
 17 given a "satisfactory" rating. You don't --  
 18 you don't rate --  
 19 MS. JALOWSKI: It's saying  
 20 he --.  
 21 MR. CARNEY: -- someone  
 22 "satisfactory" --.  
 23 MS. JALOWSKI: But the letter  
 24 said that -- that absences may lead to an

Page 1027

1 Uehling - Direct - Jalowski  
 2 is a malingerer or he -- he just is absent too  
 3 much. You're saying it's justified because he  
 4 has a physical condition -- a heart condition.  
 5 This shows their side. You will get the chance  
 6 to show that it's all justified. I -- I don't  
 7 see why this should be removed. Respondent  
 8 brings a record in, and it's maybe an ongoing  
 9 problem of attendance. Unless there's  
 10 something in the collectively bargaining  
 11 agreement that says there's a cutoff for these  
 12 types of things -- which some collective  
 13 bargaining agreements have, that after a  
 14 certain number of months or years you can't  
 15 introduce anything like this. But I don't know  
 16 that this agreement has such a thing. I'm  
 17 inclined to leave it in. If indeed it shows  
 18 that he has a heart condition and that he  
 19 came -- worked those days and --.  
 20 MS. JALOWSKI: And then, I  
 21 mean, in the information that I found, it's not  
 22 that his absences were excused for a medical  
 23 condition.  
 24 THE HEARING OFFICER: No.

Page 1026

1 Uehling - Direct - Jalowski  
 2 "unsatisfactory" rating. That's all. I mean,  
 3 it's a letter that's in his personnel file,  
 4 signed by him.  
 5 THE HEARING OFFICER: What --  
 6 tell me again why -- why would it be  
 7 objectionable? Give me that again.  
 8 MR. CARNEY: Because I think  
 9 what they're trying to do is they're trying to  
 10 bring in -- because Mr. Smith has a documented  
 11 heart condition, and I think that for -- for  
 12 the prior principal and for this principal who  
 13 didn't know that until they received the  
 14 documentation from the hospital and from his  
 15 treating physicians, certainly there was  
 16 initially a concern about his absenteeism at  
 17 Chelsea. But after receiving the doctor's  
 18 letter and working it out with the principal,  
 19 it no longer was an issue. And he's  
 20 actually --.  
 21 THE HEARING OFFICER: But it  
 22 wasn't removed from his file, so it wasn't an  
 23 issue -- in other words, what they're saying  
 24 is -- at least implicitly that this Respondent

Page 1028

1 Uehling - Direct - Jalowski  
 2 I'll -- I'll leave it. It -- it -- it may have  
 3 some relevance. The objection will be  
 4 overruled. I'll take 'D' Twenty-three.  
 5 BY MS. JALOWSKI: (Cont'g.)  
 6 Q. So -- all right. Did there  
 7 come a time that Mr. Smith did comply with the  
 8 medical evaluation?  
 9 **A. Yes. Within days of his**  
 10 **being removed payroll, he called me and asked**  
 11 **me to have it rescheduled.**  
 12 Q. And so did -- did he -- was  
 13 he reinstated at your school?  
 14 **A. Yes. The only difficulty was**  
 15 **that they -- it would take a month to have him**  
 16 **reschedule it. And so we had to wait until**  
 17 **they could fit it in. But it was rescheduled,**  
 18 **and it did happen. What I was hoping from the**  
 19 **medical was that it would reveal that he did**  
 20 **need accommodation, that there was some**  
 21 **justification. But the result of the medical,**  
 22 **apparently, is that he is healthy and can serve**  
 23 **in the position without accommodation.**  
 24 MS. JALOWSKI: I'd like this

8 (Pages 1025 to 1028)



Page 1029

1 Uehling - Direct - Jalowski  
 2 marked Department's Twenty-three --  
 3 THE HEARING OFFICER: Four.  
 4 BY MS. JALOWSKI: (Cont'g.)  
 5 Q. -- Twenty-four.  
 6 Sorry. That's the wrong copy. All right.  
 7 Actually, don't -- give me that copy. Give me  
 8 that copy back. We'll try this one.  
 9 All right. Ms. Uehling, do  
 10 you recognize this document?  
 11 **A. Yes.**  
 12 Q. What do you recognize that to  
 13 be?  
 14 **A. These are notes from a**  
 15 **discipline meeting recounting the -- an -- an**  
 16 **incident on June 27, 2000. The discipline**  
 17 **meeting was June 27th, and the incident was**  
 18 **June 22nd.**  
 19 Q. Of what year?  
 20 **A. Of 2000, and this --.**  
 21 Q. What -- what happened on that  
 22 day?  
 23 **A. I got a call from Vinnie**  
 24 **Murray down at the gym, saying the kids were**

Page 1031

1 Uehling - Direct - Jalowski  
 2 period was, and he told me "free play." And I  
 3 also noticed that he had the Lab School's mats  
 4 out. They were very unhappy when we used their  
 5 mats. And the kids had them out and were  
 6 roughhousing on them.  
 7 **Mr. -- Mr. Smith was**  
 8 **belligerent. I -- all I can say is I can stand**  
 9 **by this. I -- I don't want to basically read**  
 10 **it because it --.**  
 11 THE HEARING OFFICER: No, no,  
 12 no. Did you write that letter?  
 13 THE WITNESS: I did indeed.  
 14 THE HEARING OFFICER: Okay.  
 15 All right.  
 16 THE WITNESS: Yeah.  
 17 THE HEARING OFFICER: Are you  
 18 offering it?  
 19 BY MS. JALOWSKI: (Cont'g.)  
 20 Q. What -- what -- what do  
 21 you -- what -- what do you remember?  
 22 **A. Mr. Smith was belligerent and**  
 23 **rude, and rather than -- than simply saying,**  
 24 **"okay, I'll, you know, call him back in and" --**

Page 1030

1 Uehling - Direct - Jalowski  
 2 **going wild. And Vinnie Murray -- Murray works**  
 3 **for the Lab School, which shares the gym with**  
 4 **us. And at the time, I was -- I was in a**  
 5 **meeting with the union representative, and I**  
 6 **asked him to come down with me to assist me.**  
 7 **We went downstairs, and there was apparently no**  
 8 **instruction going on. There was free play.**  
 9 **Students were in the yard; students were in the**  
 10 **gym. I observed Mr. Smith was not in any way**  
 11 **instructing the class --**  
 12 Q. What was he --?  
 13 **A. -- nor apparently**  
 14 **supervising.**  
 15 Q. What was he doing?  
 16 **A. He -- he was watching them**  
 17 **have free play.**  
 18 Q. Did you -- did you say  
 19 anything to him?  
 20 **A. I did. I'd --**  
 21 Q. What --?  
 22 **A. -- have to refresh my memory**  
 23 **as to what I said.**  
 24 **I asked what the plan for the**

Page 1032

1 Uehling - Direct - Jalowski  
 2 or "I forgot," he was totally unaware that --  
 3 he seemed to be totally unaware that he had  
 4 responsibility for a class.  
 5 Q. What was his attitude towards  
 6 you?  
 7 **A. Anger.**  
 8 MS. JALOWSKI: And I'd like  
 9 to move this into evidence as Department's  
 10 Twenty-four.  
 11 MR. CARNEY: No objection.  
 12 THE HEARING OFFICER: In  
 13 evidence.  
 14 BY MS. JALOWSKI: (Cont'g.)  
 15 Q. I'd like this marked  
 16 Department's Twenty-five for I.D.  
 17 Ms. Uehling, do you recognize  
 18 that document?  
 19 **A. Yes.**  
 20 Q. What is that document?  
 21 **A. It is a list of dates that**  
 22 **involve professional development from which Mr.**  
 23 **Smith was absent.**  
 24 MS. JALOWSKI: And I'd like

9 (Pages 1029 to 1032)

Page 1033

1 Uehling - Direct - Jalowski  
 2 to move into evidence as Department's  
 3 Twenty-five.  
 4 MR. CARNEY: At this time,  
 5 I'd like to interpose an objection. We had  
 6 asked for the sign-in sheets for those  
 7 meetings.  
 8 MS. JALOWSKI: There were no  
 9 sign-in sheets. I went to the school. They  
 10 don't have them from 2005.  
 11 THE HEARING OFFICER: Was  
 12 there any record that he was absent?  
 13 MS. JALOWSKI: Yes.  
 14 THE HEARING OFFICER: How do  
 15 we know he was absent?  
 16 MS. JALOWSKI: I'm going to  
 17 bring in the payroll secretary to -- to -- for  
 18 the payroll to show that he was absent on --.  
 19 THE HEARING OFFICER: All  
 20 right. So I'll accept this only for showing  
 21 what the professional development dates are.  
 22 That's all it's offered for.  
 23 MR. CARNEY: I just want the  
 24 record to reflect that it's not that there were

Page 1035

1 Uehling - Direct - Jalowski  
 2 particular period of time, it was improving the  
 3 discipline in the school -- teachers working  
 4 together to have a common approach.  
 5 THE HEARING OFFICER: All  
 6 right. So -- so when -- when you say these are  
 7 dates, these are dates kids don't come to  
 8 school?  
 9 THE WITNESS: No. These are  
 10 dates -- our professional development was after  
 11 school.  
 12 THE HEARING OFFICER: Oh.  
 13 Okay. That's what I want to know. But  
 14 other -- these are some sort of faculty  
 15 meetings after school?  
 16 THE WITNESS: Right. Right.  
 17 THE HEARING OFFICER: Okay.  
 18 BY MS. JALOWSKI: (Cont'g.)  
 19 Q. Was it mandatory to attend  
 20 these meetings?  
 21 A. Yes.  
 22 THE HEARING OFFICER: Were  
 23 you at these meetings?  
 24 THE WITNESS: Yes.

Page 1034

1 Uehling - Direct - Jalowski  
 2 no sign-in sheets; it's that the Department no  
 3 longer has them. That's my understanding.  
 4 MS. JALOWSKI: Yes.  
 5 THE HEARING OFFICER: Okay.  
 6 I'll -- I'll accept that. But I'll just accept  
 7 this for the limited purpose of showing these  
 8 were the professional --  
 9 MS. JALOWSKI: Right.  
 10 THE HEARING OFFICER: --  
 11 development dates. And then you're going to --  
 12 I assume you're offering a -- you're going to  
 13 offer -- as an offer of proof, you're going to  
 14 put in payroll records showing that the  
 15 Respondent -- all right. I'll take it for this  
 16 purpose.  
 17 Tell me what a -- just for my  
 18 own edification, if I may, while you're  
 19 doing -- what is a professional development  
 20 date?  
 21 THE WITNESS: Professional  
 22 development will have -- in -- in terms of  
 23 the -- will have to do with the design of  
 24 lessons. In many cases, in -- in this

Page 1036

1 Uehling - Direct - Jalowski  
 2 THE HEARING OFFICER: Do you  
 3 know of your own knowledge whether or not  
 4 Respondent was absent from these meetings?  
 5 THE WITNESS: If I made a  
 6 record of it, yes.  
 7 THE HEARING OFFICER: Did  
 8 you?  
 9 THE WITNESS: I have a record  
 10 in another document.  
 11 THE HEARING OFFICER: All  
 12 right. We'll --  
 13 THE WITNESS: Yeah.  
 14 THE HEARING OFFICER: -- just  
 15 take them for the --.  
 16 THE WITNESS: Yeah. One  
 17 of -- one of the things that I -- I need to  
 18 point out with the actual meetings is that  
 19 the -- Mr. Smith had his own office down on the  
 20 first floor. We were on the second or third  
 21 floor. And I had no way of knowing of his  
 22 comings and goings in the building except when  
 23 I was having to look for him.  
 24 MS. JALOWSKI: Can I see the

10 (Pages 1033 to 1036)

Page 1037

1 Uehling - Direct - Jalowski  
 2 specifications for a second, please? I -- just  
 3 one minute.  
 4 THE HEARING OFFICER: What do  
 5 you want?  
 6 MS. JALOWSKI: To see the --.  
 7 THE HEARING OFFICER: The  
 8 specs -- here.  
 9 MS. JALOWSKI: Yes. I'd like  
 10 this marked Department's Twenty-five and shown  
 11 to the witness.  
 12 MR. CARNEY: Twenty-five  
 13 or --?  
 14 THE HEARING OFFICER: It's  
 15 Six -- Twenty-six.  
 16 BY MS. JALOWSKI: (Cont'g.)  
 17 Q. Twenty-six -- sorry.  
 18 Do you recognize that document?  
 19 **A. This says the -- the**  
 20 **Thirteenth.**  
 21 Q. That's Department's  
 22 Twenty-six --  
 23 **A. Oh.**  
 24 Q. -- is what it --.

Page 1039

1 Uehling - Direct - Jalowski  
 2 **the -- the term or for the year, given that his**  
 3 **record books were not in the drawer. He said**  
 4 **that somebody must have taken them.**  
 5 Q. And did you also have issues  
 6 with how Mr. Smith graded the students?  
 7 **A. Every term, yes.**  
 8 Q. And what did -- what was your  
 9 discussion with him in regards to the grading  
 10 of students?  
 11 **A. Mr. Smith had no apparent**  
 12 **grading system for P.E. so that his grades**  
 13 **appeared to be at random. And one of the**  
 14 **reason I know that is the frequency with which**  
 15 **'A's were given and that there was no pattern.**  
 16 **Kids would be given 'A's and 'B's even though**  
 17 **they had been absent frequently. Even a**  
 18 **student who had withdrawn from the school was**  
 19 **given an 'A' and could not defend it. But**  
 20 **the -- that's a matter of record in terms of**  
 21 **his inability to -- to take attendance. So**  
 22 **there was no accurate attendance that year in**  
 23 **P.E.**  
 24 Q. All right. So now, overall,

Page 1038

1 Uehling - Direct - Jalowski  
 2 **A. I'm sorry.**  
 3 **Okay. This -- this refers to the grading of**  
 4 **the report cards at the end of the year.**  
 5 Q. All right. So what do you  
 6 recall happening at the end of the school year  
 7 of --?  
 8 **A. When Mr. Smith was out -- was**  
 9 **off payroll, I called him to remind him that he**  
 10 **would be responsible for the end-of-year**  
 11 **reports. And he informed me that he left**  
 12 **the -- his record books in the desk of the P.E.**  
 13 **office. Now, I had been in the P.E. office**  
 14 **with Susan Schron, who was his sub while he was**  
 15 **out. And she and I remarked to each other that**  
 16 **it was as though he had moved out. There was**  
 17 **nothing left of him in the office. There were**  
 18 **no personal effects. So we had looked in the**  
 19 **drawers, and so when he told me that -- that he**  
 20 **had left them in the drawers, I went back down**  
 21 **and checked the drawers. There was nothing**  
 22 **there. And Ms. Schron told me that she had**  
 23 **found nothing of record books. And so he said**  
 24 **that he would be unable to do the grades for**

Page 1040

1 Uehling - Direct - Jalowski  
 2 in the 2002 -- in the 2004-2005 school year,  
 3 what did you do to assist Mr. Smith?  
 4 **A. Mr. Smith and I met**  
 5 **frequently to talk about the difficulties of**  
 6 **working with large classes. So from the**  
 7 **beginning, it was trying to support him in**  
 8 **getting the assistance he need -- needed to**  
 9 **support him and the assistants following the**  
 10 **lesson plans that he gave them. So the**  
 11 **requirement to have a planned lesson so the**  
 12 **assistants would know what to do was -- was**  
 13 **crucial -- establishing professional**  
 14 **development with Victor Ramsey, the head of**  
 15 **phys ed and -- and -- and health for Region**  
 16 **Nine, who was willing to come and work with**  
 17 **him, shoulder to shoulder with those classes.**  
 18 **So I -- if there was something more that I**  
 19 **could have done, I would be very pleased to --**  
 20 **to know about it.**  
 21 Q. So at the end of the year,  
 22 did Mr. Smith show any improvement?  
 23 **A. No.**  
 24 MS. JALOWSKI: I have no

11 (Pages 1037 to 1040)

Page 1041

1 Uehling - Direct - Jalowski  
 2 further questions for this witness.  
 3 THE HEARING OFFICER: Okay.  
 4 Counselor, you want to take a break for a  
 5 little while and -- or you want to go right  
 6 ahead with your cross-examination? What's your  
 7 pleasure?  
 8 MR. CARNEY: Whatever the  
 9 witness would like to do.  
 10 THE WITNESS: I'm fine.  
 11 THE HEARING OFFICER: You're  
 12 fine? Want to go ahead with -- you're ready?  
 13 Okay.  
 14 MR. CARNEY: Just want to  
 15 distribute these now -- these are -- these are  
 16 documents we plan on entering as exhibits.  
 17 Several of them are in evidence, and as such,  
 18 they've been marked in this case.  
 19 THE HEARING OFFICER: Okay.  
 20 CROSS-EXAMINATION  
 21 BY MR. CARNEY:  
 22 Q. You don't need to go through  
 23 it right now; I just want to ask you some  
 24 questions, Ms. Uehling, at this time.

Page 1043

1 Uehling - Cross - Carney  
 2 Smith and his difficulty with oversized  
 3 classes, did you not?  
 4 **A. Yes.**  
 5 Q. You recall giving that  
 6 testimony?  
 7 **A. Yes.**  
 8 Q. Do you -- do you agree with  
 9 the -- with the fact that his classes were  
 10 oversized?  
 11 **A. Yes.**  
 12 Q. And those were his physical  
 13 education classes, --  
 14 **A. Yes.**  
 15 Q. -- were they not?  
 16 Would you consider them very oversized?  
 17 **A. I would -- forgive me.**  
 18 **That's relativity in New York City public**  
 19 **schools. His largest class was seventy-five**  
 20 **students. I know of other classes that are**  
 21 **larger, but I believe that if we could have had**  
 22 **smaller classes, it would have been better.**  
 23 Q. But you used the term "very  
 24 oversized" at one --

Page 1042

1 Uehling - Cross - Carney  
 2 Ms. Uehling, you were asked a  
 3 question whether Mr. Smith had shown any  
 4 improvement by the end of the year. Do you  
 5 recall that testimony?  
 6 **A. Yes, I do.**  
 7 Q. And I believe that your  
 8 answer was, in sum or substance, not at all.  
 9 Is that right?  
 10 **A. If -- if asked that question**  
 11 **as a "yes" or "no," which I believe I heard as**  
 12 **a "yes" or "no," I -- it -- the answer is I saw**  
 13 **no improvement.**  
 14 Q. At the time -- in the context  
 15 of that question and the time that you were  
 16 observing Mr. Smith to see if there had been  
 17 improvement, was Mr. Smith actually teaching?  
 18 **A. Yes.**  
 19 Q. And what -- on what date was  
 20 he removed from the classroom?  
 21 **A. I don't remember the exact**  
 22 **date, but it -- it was about a week after he**  
 23 **missed the medical.**  
 24 Q. You testified earlier as to

Page 1044

1 Uehling - Cross - Carney  
 2 **A. Uh-huh.**  
 3 Q. -- point, did you not?  
 4 And in fact, you also -- you also had written  
 5 in various documents that Smith's P.E. classes  
 6 were a tremendous challenge. Do you recall  
 7 using those words?  
 8 **A. Yes.**  
 9 Q. And they were a tremendous  
 10 challenge both to manage and in terms of  
 11 instruction; isn't --  
 12 **A. Yes.**  
 13 Q. -- that right?  
 14 Are you aware of any contractual provisions  
 15 that require that you give written stipulation  
 16 to a teacher prior to his or her teaching an  
 17 oversized class?  
 18 **A. Yes.**  
 19 Q. And in this case, did you  
 20 provide such stipulation to Mr. Smith?  
 21 **A. It was a part of our -- our**  
 22 **hiring discussion.**  
 23 Q. And that was a discussion  
 24 which you testified in -- about the last time

12 (Pages 1041 to 1044)

Page 1045

1 Uehling - Cross - Carney  
 2 you were here; is that right?  
 3 THE HEARING OFFICER: You  
 4 have to say "yes" or --.  
 5 **A. Yes. Sorry.**  
 6 BY MR. CARNEY: (Cont'g.)  
 7 Q. I'd just -- I'd like to refer  
 8 your attention to I think what was marked  
 9 Defendant's Exhibit One. Do you still have a  
 10 copy of Defendant's One?  
 11 THE HEARING OFFICER: I'm  
 12 sorry. Did you say "defendant's"?  
 13 MR. CARNEY: Defendant's  
 14 One -- I just wanted to use --.  
 15 MS. JALOWSKI: Well, that's  
 16 Department's --.  
 17 THE HEARING OFFICER: While  
 18 you're used to defendants and --  
 19 MR. CARNEY: Department --  
 20 Department --  
 21 THE HEARING OFFICER: --  
 22 plaintiffs --.  
 23 MR. CARNEY: -- sorry --  
 24 Department --

Page 1047

1 **Uehling - Cross - Carney**  
 2 THE HEARING OFFICER: Yeah.  
 3 I'm sorry. I was rustling papers. Forgive me.  
 4 THE COURT REPORTER: Yeah.  
 5 Okay. Sorry.  
 6 THE HEARING OFFICER: Sorry.  
 7 THE COURT REPORTER: Uh-huh.  
 8 THE HEARING OFFICER: Go  
 9 ahead.  
 10 BY MR. CARNEY: (Cont'g.)  
 11 Q. Do you see the -- in your  
 12 handwritten notation where you say "works with  
 13 assistants"? It's in the second line from the  
 14 top, the second bullet point.  
 15 **A. Second bullet point is**  
 16 **"skilled in martial arts, yoga, Tae Bo and**  
 17 **sports."**  
 18 MS. JALOWSKI: It's the  
 19 third.  
 20 MR. CARNEY: The third --  
 21 THE WITNESS: Oh.  
 22 MR. CARNEY: -- I apologize.  
 23 I don't --.  
 24 **A. (Cont'g.) Oh -- "experience**

Page 1046

1 Uehling - Cross - Carney  
 2 THE HEARING OFFICER:  
 3 Department --.  
 4 MR. CARNEY: -- One.  
 5 THE HEARING OFFICER: Okay.  
 6 MR. CARNEY: 'D' One --  
 7 Department's --.  
 8 THE HEARING OFFICER: Right.  
 9 Okay. I need to get myself ordered. All  
 10 right. Go ahead. Show it -- show it to her.  
 11 THE WITNESS: Yes.  
 12 BY MR. CARNEY: (Cont'g.)  
 13 Q. Are those your handwritten  
 14 notes?  
 15 **A. Those are a copy of my**  
 16 **personal notes from my interview with Ted**  
 17 **Smith --**  
 18 Q. On --?  
 19 **A. -- on August 23rd, 2004.**  
 20 Q. And that was your interview  
 21 with Mr. Smith?  
 22 **A. Yes.**  
 23 **THE COURT REPORTER: I'm**  
 24 **sorry to interrupt again, but I'm --.**

Page 1048

1 **Uehling - Cross - Carney**  
 2 **with large classes; works with assistants."**  
 3 BY MR. CARNEY: (Cont'g.)  
 4 Q. Is that what you referred to  
 5 when you testified that there was an agreement  
 6 at the -- at the interview?  
 7 **A. Uh-huh.**  
 8 Q. So the fact that he --  
 9 MS. JALOWSKI: You have to  
 10 say "yes."  
 11 THE HEARING OFFICER: That's  
 12 a "yes"?  
 13 THE WITNESS: Yes. Sorry.  
 14 BY MR. CARNEY: (Cont'g.)  
 15 Q. The -- the fact that Mr.  
 16 Smith had experience teaching oversized classes  
 17 with assistants --?  
 18 **A. That's what he told me.**  
 19 Q. And you considered that to be  
 20 a stipulation?  
 21 **A. That he would have**  
 22 **assistants -- absolutely. And it would be**  
 23 **required in any class of more than forty**  
 24 **students.**

13 (Pages 1045 to 1048)

Page 1049

1 **Uehling - Cross - Carney**  
 2 Q. My question is, did you  
 3 consider that to be a stipulation under the  
 4 contract that Mr. --  
 5 **A. That he be --.**  
 6 Q. -- notice to Mr. Smith that  
 7 he would be --  
 8 **A. Yes.**  
 9 Q. -- teaching oversized  
 10 classes?  
 11 **A. Yes.**  
 12 Q. All right. In the book that  
 13 I've just handed you, if you -- if I could  
 14 direct your attention to what I've labeled  
 15 Exhibit 'G' in the black book in front of  
 16 you --  
 17 **A. Okay.**  
 18 MR. CARNEY: -- I  
 19 apologize -- Exhibit 'F'.  
 20 I don't know if counsel is  
 21 willing to stipulate that it is Article Seven  
 22 'M' from the current --  
 23 MS. JALOWSKI: Yes.  
 24 MR. CARNEY: -- C.B.A.

Page 1050

1 Uehling - Cross - Carney  
 2 MS. JALOWSKI: It's the  
 3 contract --.  
 4 THE WITNESS: So you want me  
 5 to look at -- on page forty?  
 6 BY MR. CARNEY: (Cont'g.)  
 7 Q. Do you recognize the pages  
 8 that I've copied?  
 9 THE HEARING OFFICER: We'll  
 10 stipulate -- or I'll take arbitral notice that  
 11 is part of the collective bargaining agreement.  
 12 So you can ask a question about it if you want.  
 13 BY MR. CARNEY: (Cont'g.)  
 14 Q. Have you ever seen this  
 15 document before?  
 16 **A. I'm sure I read it as**  
 17 **principal. Yes.**  
 18 Q. The --.  
 19 **A. And you're looking at M.F.,**  
 20 **right -- the size of physical education**  
 21 **classes?**  
 22 Q. That's correct.  
 23 **A. "In the junior and senior**  
 24 **high school, shall be determined on the basis**

Page 1051

1 **Uehling - Cross - Carney**  
 2 **of the maximum of fifty pupils for each**  
 3 **teacher, except as specified in three below.**  
 4 **The union agrees that classes of absent**  
 5 **elementary school teachers" -- that didn't**  
 6 **apply.**  
 7 Q. Now continue.  
 8 MS. JALOWSKI: I mean, I --.  
 9 THE HEARING OFFICER: No, no.  
 10 I'd rather not read it. It's just -- it speaks  
 11 for itself. If you have a question about it,  
 12 I'll allow it.  
 13 MR. CARNEY: No, the -- the  
 14 question is -- is that you were nevertheless  
 15 aware that you were required to give written  
 16 notice to Mr. Smith that he would be teaching  
 17 over classes --  
 18 MS. JALOWSKI: Where does --  
 19 MR. CARNEY: -- oversized  
 20 classes.  
 21 MS. JALOWSKI: -- where are  
 22 you pointing? Where does it say "written  
 23 notice"?  
 24 THE WITNESS: I -- I

Page 1052

1 Uehling - Cross - Carney  
 2 believe -- I'm reading what it says so --.  
 3 MS. JALOWSKI: Right. No,  
 4 no. I'm just asking --  
 5 THE WITNESS: Yeah.  
 6 MS. JALOWSKI: -- for my  
 7 edification.  
 8 MR. CARNEY: Hold on one  
 9 second. It's six, seven, and --.  
 10 THE HEARING OFFICER: You --  
 11 you're looking at probably 'D' on page  
 12 forty-one, one third of the way down, second --  
 13 "in the event that it is necessary to" -- is  
 14 that what you're referring to, counselor?  
 15 BY MR. CARNEY: (Cont'g.)  
 16 Q. Thank you. Thank you.  
 17 Do you see where it says that  
 18 the principal --  
 19 **A. Uh-huh.**  
 20 Q. -- shall stipulate the reason  
 21 in writing?  
 22 **A. Right.**  
 23 Q. Did you provide a -- a  
 24 written stipulation to the chancellor that Mr.

14 (Pages 1049 to 1052)

Page 1053

1 Uehling - Cross - Carney  
 2 Smith would be teaching oversized classes?  
 3 **A. No, I did not.**  
 4 Q. You testified earlier that  
 5 Mr. Smith had taught classes of up to  
 6 seventy-five, did you not?  
 7 **A. No, I didn't know he -- did**  
 8 **not know the size. He told me that he had**  
 9 **taught classes -- large classes with**  
 10 **assistants.**  
 11 MS. JALOWSKI: That's not  
 12 what --.  
 13 BY MR. CARNEY: (Cont'g.)  
 14 Q. My question is that earlier  
 15 you testified, when I asked you if Mr. Smith  
 16 had taught oversized classes --  
 17 **A. Uh-huh.**  
 18 Q. -- and I asked you if they  
 19 were -- you considered them very oversized --  
 20 **A. Uh-huh.**  
 21 Q. -- do you remember that  
 22 question?  
 23 **A. Uh-huh.**  
 24 Q. You answered in sum or

Page 1055

1 Uehling - Cross - Carney  
 2 **seventh and eighth grade, and some of his**  
 3 **classes were nine through twelve.**  
 4 Q. And he taught those classes  
 5 intermittently through the day.  
 6 **A. Right.**  
 7 Q. And some of them were double  
 8 classes, were they not?  
 9 **A. Right.**  
 10 Q. And some of them, in fact,  
 11 involved students of -- as young as age twelve  
 12 and as old as age eighteen; is that not a fact?  
 13 **A. Well, it was seventh grade,**  
 14 **so it would be more like thirteen.**  
 15 Q. Thirteen to eighteen?  
 16 **A. Yeah -- not in the same**  
 17 **class, of course -- just the range.**  
 18 Q. So Mr. Smith also taught  
 19 double classes, did he not?  
 20 **A. Right, which he agreed to at**  
 21 **the time of hire. He wouldn't have accepted**  
 22 **the nomination for hire.**  
 23 Q. Do you consider a class of  
 24 seventy-five thirteen-year-olds in physical --

Page 1054

1 Uehling - Cross - Carney  
 2 substance that it's the New York City school  
 3 system, and everything is relative, and that  
 4 Mr. Smith had classes of up to seventy-five  
 5 students.  
 6 **A. Right.**  
 7 Q. Do you recall giving that  
 8 testimony?  
 9 **A. I do.**  
 10 Q. Do you consider the fact that  
 11 the contract has the limitation of fifty  
 12 students -- do you consider a class of  
 13 seventy-five mixed high school, middle school  
 14 students a problem by itself?  
 15 **A. Mixed middle school and**  
 16 **high --?**  
 17 Q. Your -- the Museum School was  
 18 where you were principal; was --  
 19 **A. Right.**  
 20 Q. -- it -- was it not?  
 21 **A. Right.**  
 22 Q. It's a mixture of -- of  
 23 middle school and high school students.  
 24 **A. Some of his classes were**

Page 1056

1 Uehling - Cross - Carney  
 2 in a physical education environment problematic  
 3 from an educational standpoint?  
 4 **A. I consider a class of**  
 5 **twenty-five thirteen-year-olds problematic from**  
 6 **an educational standpoint.**  
 7 Q. And that's -- that's for  
 8 various reasons -- physical reasons, is it not?  
 9 **A. It has to do with the age.**  
 10 **However, I -- I did a tremendous amount of**  
 11 **investigation in calling members of the D.O.E.**  
 12 **to find out about this particular piece because**  
 13 **I didn't like to be in a situation where**  
 14 **this -- an ongoing situation of oversized**  
 15 **classes. I think Mr. Smith, as a new -- as a**  
 16 **teacher in the school, agreed to take oversized**  
 17 **classes -- assured me that he had had**  
 18 **experience with oversized classes. And I**  
 19 **worked with -- with -- with phase with him that**  
 20 **we would all do the best we could to make them**  
 21 **doable, to make them phased and instructive**  
 22 **classes.**  
 23 Q. And when Mr. Smith made it  
 24 clear to you in his interview that he had

15 (Pages 1053 to 1056)

Page 1057

1 Uehling - Cross - Carney  
 2 experience teaching oversized classes, he also  
 3 made a point that he had worked with  
 4 assistants.  
 5 **A. Right. And I reassured him**  
 6 **he would have an assistant in -- in the room**  
 7 **with him.**  
 8 Q. Now, when Mr. Smith began at  
 9 the -- at the Museum School in September of  
 10 2004, he didn't have any teaching assistants  
 11 with him, did he?  
 12 **A. Not at the beginning.**  
 13 Q. In fact, he didn't have any  
 14 until he brought that fact to your attention;  
 15 isn't that right?  
 16 **A. That's right.**  
 17 Q. And that was in or around  
 18 October of 2004?  
 19 **A. I -- I looked back at my**  
 20 **notes. It was late September, and I went to**  
 21 **the programmer and said, "this has to be**  
 22 **changed immediately." And the programmer**  
 23 **reassured me that it would be done.**  
 24 **The next problem after that**

Page 1059

1 Uehling - Cross - Carney  
 2 **was just quick walk-throughs -- write notes to**  
 3 **show that -- acknowledging what I thought was**  
 4 **going well and to give recommendations if I**  
 5 **felt there was something more that would be**  
 6 **helpful.**  
 7 Q. Is this -- is this a -- is it  
 8 fair to characterize this as a written  
 9 observation?  
 10 **A. No -- not -- see, the D.O.E.**  
 11 **was different then. When doing a note like**  
 12 **this, for example -- does not go to file. It's**  
 13 **just a -- a note between me and the teacher to**  
 14 **acknowledge that I spent some time in the**  
 15 **class. This is during a time when -- when Ted**  
 16 **and I were meeting weekly. And we were trying**  
 17 **to figure out the best way to get these classes**  
 18 **up and running.**  
 19 Q. Do you have any independent  
 20 recollection of meeting with Mr. Smith on  
 21 Tuesday, October the 12th, 2004?  
 22 **A. Independent, if you had asked**  
 23 **me that, no. I wouldn't. If you asked me, did**  
 24 **you meet with Mr. Smith frequently, I would say**

Page 1058

1 **Uehling - Cross - Carney**  
 2 **was to -- to get Mr. Smith to call me or to**  
 3 **notify me if Mr. Smith did not show up or if an**  
 4 **assistant was late. He has access to a phone**  
 5 **in the gym.**  
 6 Q. I'd like you to direct your  
 7 attention to what I've marked Exhibit 'A' and  
 8 put before you. Just take a moment to flip  
 9 through it. There are several pages there.  
 10 **A. Okay.**  
 11 **What is the second page? I recognize my**  
 12 **handwriting, but I don't know where this is**  
 13 **from.**  
 14 Q. I'm just asking if you  
 15 recognize --  
 16 **A. I recognize my handwriting,**  
 17 **but I don't recognize -- it's out of context,**  
 18 **so I'm -- I'm confused by it.**  
 19 Q. Do you recognize the face  
 20 page of the exhibit?  
 21 **A. This -- yes. I do.**  
 22 Q. And what is it?  
 23 **A. When I do walk-throughs, I**  
 24 **would write notes just to -- just because it**

Page 1060

1 **Uehling - Cross - Carney**  
 2 **at least once a week.**  
 3 Q. Notwithstanding the second  
 4 page --  
 5 **A. Uh-huh.**  
 6 Q. -- if you say it's out of  
 7 context --  
 8 **A. No. I just don't -- I just**  
 9 **don't recognize the symbols.**  
 10 Q. Do you recognize the third  
 11 page of the exhibit?  
 12 **A. Let's see. Yeah. These --**  
 13 **these are more conference notes, it says.**  
 14 Q. And is there a date indicated  
 15 on top of --?  
 16 **A. Yes -- October 12th.**  
 17 Q. And in fact, this is the  
 18 conference with Ted Smith that you had --  
 19 **A. Yeah. But it's not --**  
 20 Q. -- following the --  
 21 **A. -- not the first time I**  
 22 **became aware --.**  
 23 THE HEARING OFFICER: No, no.  
 24 Wait -- wait for questions.

16 (Pages 1057 to 1060)



Page 1061

1 Uehling - Cross - Carney  
 2 THE WITNESS: Sorry.  
 3 THE HEARING OFFICER: Better  
 4 idea if you just answer the questions.  
 5 THE WITNESS: Sorry.  
 6 BY MR. CARNEY: (Cont'g.)  
 7 Q. Do you recognize the face  
 8 page of the document as a walk-through note to  
 9 the teacher on October the 12th? Do you not?  
 10 **A. The face page of the**  
 11 **document -- so you're saying these are all one**  
 12 **document?**  
 13 Q. I'm not making any notation.  
 14 THE HEARING OFFICER: We're  
 15 going away. It's -- listen to his question and  
 16 just answer the question.  
 17 THE WITNESS: Thank you.  
 18 I'll --.  
 19 THE HEARING OFFICER: Okay.  
 20 Now, he's asking, do you recognize the face?  
 21 It takes a "yes," "no," or --.  
 22 **A. Yes.**  
 23 THE HEARING OFFICER: Good.  
 24 BY MR. CARNEY: (Cont'g.)

Page 1063

1 Uehling - Cross - Carney  
 2 **A. Yes.**  
 3 Q. -- of October, 2004?  
 4 **A. Yes.**  
 5 THE HEARING OFFICER: You've  
 6 got to wait till he finishes; otherwise, --  
 7 THE WITNESS: Sorry.  
 8 THE HEARING OFFICER: -- they  
 9 won't get --.  
 10 BY MR. CARNEY: (Cont'g.)  
 11 Q. And that was -- and that was  
 12 following your -- I believe you testified your  
 13 walk-through of his class on Tuesday the 12th  
 14 of October. Isn't that right?  
 15 **A. Say that again?**  
 16 Q. You evaluated Mr. Smith's  
 17 teaching on Tuesday, October the 12th, 2004,  
 18 didn't you?  
 19 **A. Yes.**  
 20 Q. The third page of what I've  
 21 marked Exhibit 'A' -- these are notes of a  
 22 conference that you had with Mr. Smith  
 23 following that conference; isn't that right?  
 24 **A. Yes.**

Page 1062

1 Uehling - Cross - Carney  
 2 Q. And the face page is a  
 3 walk-through letter to Mr. Smith that you wrote  
 4 after evaluating him on the 12th; isn't that  
 5 right?  
 6 **A. It's -- yes. What if I --?**  
 7 THE HEARING OFFICER: You're  
 8 getting the hang of this. That --  
 9 THE WITNESS: Doesn't matter?  
 10 THE HEARING OFFICER: --  
 11 doesn't matter. Just try to answer the -- just  
 12 the questions.  
 13 BY MR. CARNEY: (Cont'g.)  
 14 Q. The last page is a page with  
 15 handwritten notes. Do you recognize the  
 16 handwriting on this page?  
 17 **A. Yes.**  
 18 Q. Is it your handwriting?  
 19 **A. Yes, it is.**  
 20 Q. Did you write these notes?  
 21 **A. Yes.**  
 22 Q. And in fact, this is a  
 23 conference that you had with Ted Smith on the  
 24 12th --

Page 1064

1 **Uehling - Cross - Carney**  
 2 Q. All right. Do you see at the  
 3 bottom of the conference sheet --  
 4 **A. Yes.**  
 5 Q. -- where it says "needs  
 6 assistants for following classes," and then it  
 7 says "Tuesday, periods two and three, Thursday,  
 8 period six and seven, Wednesday, six and  
 9 seven," and there's a stray six? Do you see  
 10 that?  
 11 **A. Uh-huh.**  
 12 Q. Do you see where it says  
 13 "still needs six people"?  
 14 **A. Uh-huh.**  
 15 Q. So as of October the 12th,  
 16 2004, Mr. Smith, at the very least, still  
 17 needed six more assistants; isn't that --  
 18 **A. Yes.**  
 19 Q. -- correct?  
 20 And he didn't have them as of October 12th, did  
 21 he?  
 22 **A. Apparently.**  
 23 MR. CARNEY: But for the  
 24 second page, which the witness doesn't

17 (Pages 1061 to 1064)

Page 1065

1 Uehling - Cross - Carney  
 2 recognize, of what I've marked Exhibit 'A', I'd  
 3 like to offer into evidence the notes and the  
 4 objective plan marked Exhibit 'A'.  
 5 MS. JALOWSKI: The -- the  
 6 issue I have -- I have no issue with pages one  
 7 and two. Ms. Uehling is basically saying that  
 8 she didn't write the notes, that she does not  
 9 recognize that it's a note that she wrote for  
 10 any comment on the October 12th lesson. She  
 11 would need to write it in an attachment to --.  
 12 THE HEARING OFFICER: So  
 13 which page -- one, two, or three?  
 14 MS. JALOWSKI: Second page.  
 15 THE HEARING OFFICER: I think  
 16 he's taking out the -- is that the page  
 17 you're --?  
 18 MS. JALOWSKI: You're taking  
 19 it out?  
 20 THE HEARING OFFICER: He's  
 21 taking it out.  
 22 MS. JALOWSKI: I have no  
 23 objection to page one and two.  
 24 THE HEARING OFFICER: One and

Page 1067

1 Uehling - Cross - Carney  
 2 BY MR. CARNEY: (Cont'g.)  
 3 Q. Do you recognize what has  
 4 been marked Respondent's Two?  
 5 **A. Yes.**  
 6 Q. What is it?  
 7 **A. It's personal notes I made in**  
 8 **preparation for a meeting with Mr. Smith, and**  
 9 **then some personal notes on the side following**  
 10 **up.**  
 11 Q. And there's an indication at  
 12 the top of the form that there's a  
 13 post-conference date. Is there not?  
 14 **A. Yes.**  
 15 Q. And this would have been  
 16 something you filled out following the  
 17 conference you had with Mr. Smith; is that  
 18 right?  
 19 **A. These are personal notes.**  
 20 **They weren't intended as official notes. And I**  
 21 **may have been experimenting with a -- a -- a**  
 22 **structure at the time. I can't answer you that**  
 23 **question over a year later.**  
 24 Q. But you wrote -- you wrote

Page 1066

1 Uehling - Cross - Carney  
 2 three?  
 3 MR. CARNEY: One and three.  
 4 MS. JALOWSKI: One and three.  
 5 THE HEARING OFFICER: In  
 6 evidence, Exhibit 'A'.  
 7 MR. CARNEY: I would direct  
 8 your attention to what I've marked Exhibit 'B'.  
 9 Just take a moment to review it for the record.  
 10 It's some handwritten form entitled "plan for  
 11 instructional improvement."  
 12 THE HEARING OFFICER: While  
 13 you're reviewing -- just off the record for a  
 14 minute, but don't go away.  
 15 (Off-the-record discussion)  
 16 THE HEARING OFFICER: Exhibit  
 17 'A' will now be Respondent's One.  
 18 THE COURT REPORTER: Okay.  
 19 THE HEARING OFFICER: Okay.  
 20 Go ahead. We're now looking at Exhibit 'B',  
 21 which we will mark as Respondent Two for  
 22 identification only.  
 23 THE COURT REPORTER: Okay.  
 24 THE HEARING OFFICER: Okay.

Page 1068

1 Uehling - Cross - Carney  
 2 these notes?  
 3 **A. I did write these notes.**  
 4 Q. And you recognize this  
 5 document?  
 6 **A. Yes.**  
 7 Q. And you reviewed its  
 8 contents?  
 9 **A. Yes.**  
 10 Q. And to the best of your  
 11 recollection, it -- it's all true?  
 12 **A. Yes.**  
 13 MR. CARNEY: I'd offer  
 14 Respondent's Two into evidence.  
 15 MS. JALOWSKI: I have no  
 16 objection.  
 17 THE HEARING OFFICER: In  
 18 evidence.  
 19 BY MR. CARNEY: (Cont'g.)  
 20 Q. Do you see where it says  
 21 "resources needed" at the middle of the page?  
 22 **A. Uh-huh. Yes.**  
 23 Q. Do you see your handwriting  
 24 where you've written the -- the words "the

18 (Pages 1065 to 1068)

Page 1069

1 Uehling - Cross - Carney  
 2 gym," with an exclamation point?  
 3 **A. Yes.**  
 4 Q. This is written on October  
 5 the 22nd, 2004; isn't that right?  
 6 **A. Yes.**  
 7 Q. Now, this was at a time when  
 8 there was no gym; isn't that right?  
 9 **A. Yes.**  
 10 Q. Now, you testified earlier  
 11 that Mr. Smith had up to seventy-five students  
 12 in class. Do you recall giving that testimony?  
 13 **A. Yes.**  
 14 Q. And as of October the 22nd,  
 15 there was no gym; isn't that right?  
 16 **A. As of October 22nd, relative**  
 17 **to what other time?**  
 18 Q. On October 22nd, was there a  
 19 gym?  
 20 **A. On October 22nd, there was no**  
 21 **gym. For three weeks, there was no available**  
 22 **gym.**  
 23 Q. Well, we'll get to the time  
 24 period that the gym was closed. But at least

Page 1070

1 Uehling - Cross - Carney  
 2 at this time, there was no gym.  
 3 **A. Yes.**  
 4 Q. And as of the 12th --.  
 5 MS. JALOWSKI: I -- I'm  
 6 objecting to the use of "this time." You mean  
 7 on that date? You -- you're not saying --  
 8 because obviously, it's not from September --  
 9 not from the beginning of school through --.  
 10 THE HEARING OFFICER: No.  
 11 No. His question's clear. He's saying on this  
 12 date, and the witness says, "yes, on this date,  
 13 there was no gym."  
 14 MS. JALOWSKI: He's saying  
 15 "at the time." So "time" can be more than, you  
 16 know -- I'm saying --  
 17 MR. CARNEY: I'll rephrase  
 18 it.  
 19 MS. JALOWSKI: -- in -- in  
 20 the school year, that you're considering it  
 21 from September to the present.  
 22 THE HEARING OFFICER: Be  
 23 helpful, counselor.  
 24 BY MR. CARNEY: (Cont'g.)

Page 1071

1 Uehling - Cross - Carney  
 2 Q. In October of 2004, the --  
 3 the gym to the Museum School was closed, was it  
 4 not?  
 5 **A. Yes.**  
 6 Q. And that continued until  
 7 approximately November the 9th; isn't that  
 8 right?  
 9 **A. I don't remember the exact**  
 10 **date, but it was around the first week of**  
 11 **November.**  
 12 Q. And school starts on or about  
 13 September the 15th?  
 14 **A. I can't tell you the exact**  
 15 **date, other than I believe it's earlier than**  
 16 **the 15th.**  
 17 Q. Sometime in September?  
 18 **A. Yes -- soon after Labor Day.**  
 19 Q. On October the 22nd, 2004,  
 20 when you've written in your handwritten plan  
 21 for instructional improvement that there was no  
 22 gym, Mr. Smith didn't have the six additional  
 23 assistants at this time, did he?  
 24 **A. May I check the date?**

Page 1072

1 **Uehling - Cross - Carney**  
 2 **I don't recall.**  
 3 Q. So you don't know one way or  
 4 another?  
 5 **A. I don't recall.**  
 6 Q. Do you recall writing -- are  
 7 you aware that your counsel has represented  
 8 to -- to Mr. Smith that -- prior to Mr. Smith's  
 9 bringing to your attention the lack of  
 10 assistants, that you were under the impression  
 11 that assistants had previously been assigned?  
 12 **A. Yes.**  
 13 Q. And whose job was it to  
 14 assign the assistants?  
 15 **A. The programmer.**  
 16 Q. And who was the programmer at  
 17 that time?  
 18 **A. Faye Muirhead -- I think**  
 19 **that's pronounced right --**  
 20 Q. So you --.  
 21 **A. -- M-U-I-R-H-E-A-D.**  
 22 Q. So at -- on or about October  
 23 the 12th, when Mr. Smith said to you, in sum or  
 24 substance, "I need at least six more people,"

19 (Pages 1069 to 1072)

Page 1073

1 Uehling - Cross - Carney  
 2 you were, at that time, under the impression  
 3 that they had already been assigned?  
 4 **A. Yes.**  
 5 Q. I want to direct your  
 6 attention to what I've marked -- it's marked as  
 7 'C', but it --.  
 8 THE HEARING OFFICER: We'll  
 9 call it Respondent Three for identification.  
 10 MR. CARNEY: And I --.  
 11 THE HEARING OFFICER: It's  
 12 already in evidence?  
 13 MR. CARNEY: It's already in  
 14 evidence. And it's --.  
 15 THE HEARING OFFICER: It's  
 16 the second page of -- or third page of the --  
 17 page one -- one of four. Just bear with me a  
 18 moment. I'll probably tell you what -- what it  
 19 is.  
 20 It could be the 'D' Eight.  
 21 Try 'D' Eight. No -- not 'D' Eight.  
 22 MR. CARNEY: It's 'D' Seven.  
 23 THE HEARING OFFICER: I was  
 24 close.

Page 1075

1 **Uehling - Cross - Carney**  
 2 Q. Do you recognize the  
 3 document?  
 4 **A. I do.**  
 5 Q. What is it?  
 6 **A. It's a request from Mr. Smith**  
 7 **to observe a -- a -- what he calls a**  
 8 **regulated-size class, meaning a class that has**  
 9 **one section in it.**  
 10 Q. And when you say "meaning a  
 11 class that has one section in it," is that a  
 12 term of art in the Department of Education --  
 13 a --  
 14 **A. Yes.**  
 15 Q. -- regulated-size class?  
 16 **A. It -- it means it'll be a**  
 17 **regular classroom size, which -- it means it**  
 18 **would be between twenty-eight and thirty-four**  
 19 **children.**  
 20 Q. Pursuant to the regulation,  
 21 isn't that right?  
 22 **A. Well, thirty-four is more**  
 23 **than it should be, but again, that's -- that's**  
 24 **what we had in our -- our -- we had classes of**

Page 1074

1 Uehling - Cross - Carney  
 2 BY MR. CARNEY: (Cont'g.)  
 3 Q. This document is already in  
 4 evidence, Ms. Uehling. You've already assessed  
 5 the -- the contents. You rated Mr. Smith --  
 6 you gave him a "satisfactory" evaluation on --  
 7 based on your evaluation of November 9th, 2004;  
 8 isn't that right?  
 9 **A. Yes.**  
 10 Q. And you just looked at the  
 11 last page of Respondent Three -- Defendant's --  
 12 Department's Seven. It's the last paragraph.  
 13 If you'd just read that quietly to yourself?  
 14 And you recognize, at least in November -- in  
 15 late November, on the 26th of November 2004,  
 16 that Mr. Smith is facing what you describe as  
 17 challenges with a very large class; isn't that  
 18 right?  
 19 **A. That's correct.**  
 20 Q. Referring your attention to  
 21 what I've marked in the folder as 'D' but what  
 22 we'll mark for identification as Respondent's  
 23 Four -- just read it -- read it to yourself.  
 24 **A. I have.**

Page 1076

1 **Uehling - Cross - Carney**  
 2 **thirty-four and thirty-five in our middle**  
 3 **school classes.**  
 4 Q. And in response to Mr.  
 5 Smith's request that you evaluate him in a  
 6 regulated-size class, did you take any action  
 7 to that effect?  
 8 **A. Not immediately, but I did.**  
 9 **I did observe him in a regulated-size class.**  
 10 Q. And you -- do you recall  
 11 giving Mr. Smith a negative evaluation on or  
 12 about December the 16th of 2004?  
 13 THE HEARING OFFICER: If you  
 14 don't recall it, it just say "I don't recall,"  
 15 and --  
 16 THE WITNESS: I don't recall.  
 17 THE HEARING OFFICER: --  
 18 he'll refresh your recollection, I'm sure.  
 19 BY MR. CARNEY: (Cont'g.)  
 20 Q. We'll get back to that.  
 21 Just returning -- directing your attention to  
 22 what I've marked 'E' -- marked for  
 23 identification as Respondent's Five, do you  
 24 recognize this document?

20 (Pages 1073 to 1076)

Page 1077

1 Uehling - Cross - Carney  
 2 **A. Yes.**  
 3 Q. What is it?  
 4 **A. It's a document to assess**  
 5 **assistants assigned to him in the classes that**  
 6 **were double, saying that Ted agreed to give**  
 7 **them lesson plans prior to the class so that**  
 8 **they could anticipate to help. I was trying to**  
 9 **support Ted in giving the -- getting the**  
 10 **assistants to be more supportive of him.**  
 11 Q. Do you -- who is Judith  
 12 Killan?  
 13 **A. One of the assistants.**  
 14 Q. Now, it's actually "Killan"  
 15 with an 'N'; is that right?  
 16 **A. Right.**  
 17 Q. My mistake.  
 18 In your testimony the last  
 19 time you appeared, I believe you testified that  
 20 you -- in sum or substance, you had difficulty  
 21 getting Ms. Killan to attend meetings that you  
 22 would call concerning Mr. Smith's classes. Do  
 23 you recall giving that testimony?  
 24 **A. Yes.**

Page 1079

1 Uehling - Cross - Carney  
 2 information to the Department with regard to  
 3 Specification Eleven?  
 4 **A. I believe I did. Yes.**  
 5 Q. In your testimony the other  
 6 day, you described a situation where you in  
 7 fact met with Mr. Smith on that date but that  
 8 you either sent him out or he had volunteered  
 9 to go get Judith Killan. Do you recall giving  
 10 that testimony?  
 11 **A. Not that testimony, but I**  
 12 **recall meeting with Mr. Smith. Ms. Killan was**  
 13 **supposed to join us. Yes.**  
 14 Q. I -- I don't want to  
 15 misrepresent your testimony.  
 16 **A. Okay.**  
 17 Q. You met with Mr. Smith on the  
 18 6th of January, 2005, did you not?  
 19 **A. Yes.**  
 20 Q. That meeting, for whatever  
 21 reason, was interrupted so that Mr. Smith could  
 22 go get Ms. Killan; isn't that right?  
 23 **A. May I tell you what happened?**  
 24 Q. I think you've already

Page 1078

1 **Uehling - Cross - Carney**  
 2 Q. And in fact, there were times  
 3 where you would call meetings to discuss Mr.  
 4 Smith's classes with Ms. Killan, and she  
 5 wouldn't show up; isn't that right?  
 6 **A. There was one meeting where**  
 7 **she didn't show up. Yes.**  
 8 Q. I want to direct your  
 9 attention to Specification Eleven. Do you have  
 10 a copy?  
 11 **A. Yes.**  
 12 THE HEARING OFFICER: I'll  
 13 take a look at this. Do you have it?  
 14 MS. JALOWSKI: Just this.  
 15 THE HEARING OFFICER: Okay.  
 16 BY MR. CARNEY: (Cont'g.)  
 17 Q. Now, Specification Eleven,  
 18 for the record, states that "on or about  
 19 January the 6th, 2005, the Respondent refused  
 20 to attend a meeting as directed by Principal  
 21 Lindsay -- Lindsay" -- I think it's supposed to  
 22 be Lindley --  
 23 **A. Right.**  
 24 Q. -- Uehling. Did you provide

Page 1080

1 Uehling - Cross - Carney  
 2 testified to this point.  
 3 **A. All right.**  
 4 Q. And I just want to clarify  
 5 your testimony, and I'm going to lead you.  
 6 **A. Okay.**  
 7 Q. So just answer the questions  
 8 "yes" or "no." Did Mr. Smith leave that  
 9 meeting to get Ms. Killan?  
 10 **A. Not accurate -- I can't**  
 11 **answer "yes" or "no" to that statement.**  
 12 Q. Did Mr. Smith -- Mr. Smith  
 13 didn't go to get Ms. Killan?  
 14 **A. Not to get Ms. Killan -- he**  
 15 **said that he would go speak with Ms. Killan.**  
 16 **Ms. Killan was late. And he said that he would**  
 17 **go speak with Ms. Killan and catch her up on**  
 18 **what we had discussed. Ms. Killan bumped into**  
 19 **him in the hallway, coming to my office late,**  
 20 **and did not come in. When I met with her later**  
 21 **and asked why she was late and why she did not**  
 22 **come in, she said that Mr. Smith had not**  
 23 **mentioned anything about our discussion -- Mr.**  
 24 **Smith's and my discussion.**

21 (Pages 1077 to 1080)

Page 1081

1 **Uehling - Cross - Carney**  
 2 Q. Looking at Specification  
 3 Eleven, where it says that the Respondent  
 4 refused to attend a meeting as directed by  
 5 you --  
 6 **A. Uh-huh.**  
 7 Q. -- on the 6th of -- of  
 8 January, 2005, that's not true, is it?  
 9 **A. I don't know if we're talking**  
 10 **about the same meeting.**  
 11 Q. You just testified that you  
 12 met with the Respondent on that date, did you  
 13 not? Yes or no?  
 14 **A. I would need to look at my**  
 15 **notes.**  
 16 Q. You gave extensive testimony  
 17 the last time you were here about that meeting.  
 18 **A. I --**  
 19 Q. And you just --  
 20 **A. -- I just had a --**  
 21 Q. -- you remember --?  
 22 **A. -- paper in front of me to be**  
 23 **able to do that.**  
 24 Q. I think the record is going

Page 1083

1 Uehling - Cross - Carney  
 2 this line is I'm not sure that the witness  
 3 testified that January 6th -- although you're  
 4 saying she did testify that way.  
 5 MR. CARNEY: The -- on  
 6 direct --.  
 7 THE HEARING OFFICER: Did she  
 8 testify to January 6th? I --.  
 9 MR. CARNEY: We -- counsel  
 10 walked her through the specifications, and when  
 11 it -- on Specification --  
 12 THE HEARING OFFICER: Okay.  
 13 MR. CARNEY: -- Eleven, the  
 14 witness described in sum or substance a meeting  
 15 where Mr. Smith attended, and then, for  
 16 whatever reason, he was dispatched to talk to  
 17 Killan. That's all I'm getting at. And I --.  
 18 THE HEARING OFFICER: Do you  
 19 recall that testimony?  
 20 THE WITNESS: I don't recall  
 21 being walked through each one of these  
 22 specifications. I believe we have skipped some  
 23 of these specifications. Am I not --?  
 24 THE HEARING OFFICER: No, no.

Page 1082

1 Uehling - Cross - Carney  
 2 to speak for itself on that point.  
 3 **A. All right.**  
 4 Q. And I think --.  
 5 MS. JALOWSKI: I'm going to  
 6 object. Are you making --  
 7 MR. CARNEY: I mean --.  
 8 MS. JALOWSKI: -- he has to  
 9 refresh her recollection. I -- the -- the --.  
 10 THE HEARING OFFICER: From my  
 11 point of view, I know she testified about a  
 12 number of meetings. If you have something to  
 13 show her to -- to corroborate that, yes, she  
 14 met on that date, it might be helpful. Is  
 15 there anything in writing?  
 16 MS. JALOWSKI: No. There's  
 17 writing about a meeting on January 11th  
 18 discussing the failure to meet on January 6th.  
 19 THE HEARING OFFICER: Well,  
 20 hold off. She's on cross right now.  
 21 MS. JALOWSKI: She said --  
 22 well, she --.  
 23 THE HEARING OFFICER: I --  
 24 I -- I don't know. You see, my problem with

Page 1084

1 Uehling - Cross - Carney  
 2 You're not -- you're -- you're -- only he has  
 3 questions now. Go ahead, counselor. Take it  
 4 up from there.  
 5 BY MR. CARNEY: (Cont'g.)  
 6 Q. Mr. Smith, at the -- whatever  
 7 the date was -- and the record will show  
 8 whatever the date was when we get your direct  
 9 testimony -- there was a meeting between you  
 10 and Smith, and Killan was supposed to attend  
 11 it; isn't that a fact?  
 12 **A. True.**  
 13 Q. Killan was late.  
 14 **A. True.**  
 15 Q. She was no-show as far as you  
 16 were concerned.  
 17 **A. True.**  
 18 Q. Smith offered to fill the --  
 19 Ms. Killan in on what you had discussed.  
 20 **A. He said he would.**  
 21 Q. To the extent that  
 22 Specification Eleven relates to that particular  
 23 meeting that you testified to, it isn't true  
 24 that Mr. Smith refused to attend that meeting?

22 (Pages 1081 to 1084)

Page 1085

1 Uehling - Cross - Carney  
 2 MS. JALOWSKI: Objection.  
 3 THE HEARING OFFICER: No, no.  
 4 I'll allow that. Are you specifically asking  
 5 to the extent -- if that was the meeting --  
 6 I'll allow that question. Do you want to have  
 7 it read back? I'll allow that question.  
 8 THE WITNESS: But I -- I  
 9 can't -- can I elaborate on the situation?  
 10 THE HEARING OFFICER: Your  
 11 lawyer will let you elaborate on redirect.  
 12 THE WITNESS: Oh.  
 13 THE HEARING OFFICER: But now  
 14 you just have to answer the questions on  
 15 cross-examination.  
 16 THE WITNESS: All right.  
 17 THE HEARING OFFICER: Did  
 18 that happen, if that was the meeting on  
 19 September -- on January 6th?  
 20 MS. JALOWSKI: I'm objecting  
 21 to the term "meeting." They had a discussion.  
 22 THE HEARING OFFICER: Her --  
 23 overruled --  
 24 MS. JALOWSKI: That --

Page 1087

1 Uehling - Cross - Carney  
 2 (Off-the-record discussion)  
 3 THE HEARING OFFICER: Thank  
 4 you -- Department Ten.  
 5 BY MR. CARNEY: (Cont'g.)  
 6 Q. And I just asked you a  
 7 question when the first formal "unsatisfactory"  
 8 evaluation of Mr. Smith was. And you testified  
 9 sometime in mid-December. Do you recall giving  
 10 that testimony?  
 11 **A. Yes.**  
 12 Q. The -- the document I put in  
 13 front of you marked as Department Ten -- is  
 14 that not the evaluation that you just testified  
 15 to?  
 16 **A. Yes.**  
 17 Q. And it was based on an  
 18 observation you made on the 16th of  
 19 December, --  
 20 **A. Yes.**  
 21 Q. -- 2004?  
 22 That's a "yes"?  
 23 **A. Yes.**  
 24 Q. I can take that back.

Page 1086

1 Uehling - Cross - Carney  
 2 that's --.  
 3 THE HEARING OFFICER: --  
 4 overruled. Can you answer that question,  
 5 please?  
 6 **A. He -- he objected to meet**  
 7 **subsequent to my finding out that he had spoken**  
 8 **with Ms. Killan, all on the same day. This all**  
 9 **happened on the same day. So --.**  
 10 BY MR. CARNEY: (Cont'g.)  
 11 Q. Do you recall when the first  
 12 formal negative "unsatisfactory" evaluation you  
 13 gave to Mr. Smith -- when that was?  
 14 **A. In December 2004 -- I mean --**  
 15 **2004, yes.**  
 16 Q. Do you recall the particular  
 17 dates?  
 18 **A. No -- mid-December.**  
 19 Q. It was in fact December the  
 20 16th; isn't that a fact?  
 21 **A. I would have to refresh my**  
 22 **memory to say "yes, it's a fact."**  
 23 THE HEARING OFFICER: Off the  
 24 record for a minute.

Page 1088

1 Uehling - Cross - Carney  
 2 I want to show you a -- a  
 3 document that I'll -- that is under -- it's  
 4 under the cover 'J', but we'll call it -- we'll  
 5 mark it Respondent's Six for purposes of  
 6 identification. Just take a moment to review  
 7 it, please.  
 8 **A. I've reviewed it.**  
 9 Q. Do you recognize this  
 10 document?  
 11 **A. I recognize it as an e-mail.**  
 12 MS. JALOWSKI: Have you ever  
 13 seen that document?  
 14 MR. CARNEY: Let me ask the  
 15 question.  
 16 THE HEARING OFFICER: Yeah.  
 17 **A. (Cont'g.) No. Yes.**  
 18 BY MR. CARNEY: (Cont'g.)  
 19 Q. And it's an -- you do  
 20 recognize this document. That's your  
 21 testimony?  
 22 **A. Well, I recognize it is -- is**  
 23 **from Faye. It's Faye's e-mail. There would be**  
 24 **no reason for me to -- I'm -- I would --.**

23 (Pages 1085 to 1088)

Page 1089

1 **Uehling - Cross - Carney**  
 2 Q. Did you receive an e-mail  
 3 that was substantially similar in content to  
 4 this e-mail on or about January the 29th, 2005?  
 5 **A. I can't recall the date.**  
 6 **This document is dated January 29th, 2005.**  
 7 Q. And it --  
 8 MS. JALOWSKI: I'm going  
 9 to -- I'm going to object in terms of -- when  
 10 he says "do you recognize the document?" she  
 11 recognizes it's an e-mail. It -- you're  
 12 talking about -- content is different. And  
 13 in -- in the context of a legal --  
 14 MR. CARNEY: I'm trying to  
 15 lay a foundation. I haven't even --  
 16 MS. JALOWSKI: Right.  
 17 MR. CARNEY: -- offered  
 18 this --  
 19 MS. JALOWSKI: But she's --  
 20 MR. CARNEY: -- into  
 21 evidence --  
 22 MS. JALOWSKI: -- but --  
 23 MR. CARNEY: -- yet.  
 24 MS. JALOWSKI: -- she's just

Page 1091

1 Uehling - Cross - Carney  
 2 sorry -- that you cannot get him out this year,  
 3 to my understanding, because he's tenured; you  
 4 need two 'U' annual performance reviews, unless  
 5 it is so dangerous that the safety of the  
 6 students is in question, and the initials  
 7 B.Y.P.I. must document that. You received this  
 8 e-mail, didn't you?  
 9 **A. Yes.**  
 10 MR. CARNEY: At this time,  
 11 I'd like to offer it into evidence as  
 12 Respondent's Six.  
 13 MS. JALOWSKI: I'm going  
 14 to -- this e-mail's not to Ms. Uehling. I'm  
 15 going to object. This --  
 16 THE HEARING OFFICER: Did she  
 17 receive this?  
 18 THE WITNESS: There's no way  
 19 I can --  
 20 THE HEARING OFFICER: No.  
 21 THE WITNESS: -- explain --.  
 22 THE HEARING OFFICER: Did you  
 23 receive it?  
 24 MS. JALOWSKI: On January

Page 1090

1 Uehling - Cross - Carney  
 2 saying she recognizes it as an e-mail, not --.  
 3 THE HEARING OFFICER: Well,  
 4 if you let him offer it, you can ask the  
 5 questions. When he offers it, you can state  
 6 your objection. I'll allow the questions. Go  
 7 ahead.  
 8 BY MR. CARNEY: (Cont'g.)  
 9 Q. Are you -- does anything  
 10 about the text that appears on what I've marked  
 11 Respondent's Six refresh your recollection as  
 12 to whether you had a -- a -- an e-mail exchange  
 13 with Faye Pallen in January 2005 regarding the  
 14 Respondent, Ted Smith?  
 15 **A. Yes.**  
 16 Q. And in fact, you received an  
 17 e-mail that was substantially similar to the  
 18 one marked Respondent's Six on or about the  
 19 29th of January, 2005?  
 20 **A. Don't know the date, but I**  
 21 **would say yes.**  
 22 Q. You remember receiving an  
 23 e-mail that said, in sum or substance, that you  
 24 need to get two annual performance reviews --

Page 1092

1 Uehling - Cross - Carney  
 2 29th, did you --?  
 3 THE HEARING OFFICER: No, no,  
 4 no, no, no.  
 5 MS. JALOWSKI: I -- she did  
 6 not receive this document. That's why I'm --  
 7 THE HEARING OFFICER: Is this  
 8 a --  
 9 MS. JALOWSKI: -- objecting.  
 10 THE HEARING OFFICER: -- voir  
 11 dire? Do you want a voir dire or -- otherwise,  
 12 I'm inclined to take it.  
 13 MR. CARNEY: I can -- I can  
 14 ask another question. I --  
 15 THE HEARING OFFICER: No, no.  
 16 I opened the door and let it in already. You  
 17 don't have to --  
 18 THE WITNESS: I --  
 19 THE HEARING OFFICER: --  
 20 I'll --  
 21 THE WITNESS: -- I --  
 22 THE HEARING OFFICER: -- take  
 23 it. Objection --  
 24 THE WITNESS: -- I have no --

24 (Pages 1089 to 1092)



Page 1093

1 Uehling - Cross - Carney  
 2 THE HEARING OFFICER: -- is  
 3 overruled --  
 4 THE WITNESS: -- I have no --  
 5 THE HEARING OFFICER: -- 'R'  
 6 Six.  
 7 THE WITNESS: -- problem with  
 8 this e-mail.  
 9 THE HEARING OFFICER: I don't  
 10 need that.  
 11 BY MR. CARNEY: (Cont'g.)  
 12 Q. Please, I'm not finished  
 13 asking you questions.  
 14 You testified that the very  
 15 first "unsatisfactory" evaluation you gave Mr.  
 16 Smith --  
 17 **A. Uh-huh.**  
 18 Q. -- was on December the 16th,  
 19 2004.  
 20 **A. Correct.**  
 21 Q. Correct. On January the  
 22 29th, 2005, you received a copy of what I've  
 23 marked Respondent's Six, did you not?  
 24 **A. I -- I received a copy.**

Page 1095

1 Uehling - Cross - Carney  
 2 "I -- I have given Ted an 'unsatisfactory.'  
 3 Faye Pallen was walking with me through many,  
 4 many cases -- many classrooms. And she knew  
 5 that I was considered that Ted was not showing  
 6 improvement. So when I gave the first  
 7 "unsatisfactory," I wrote her, and I said, "I  
 8 don't see improvement. I -- I am really  
 9 concerned that" -- I'll be honest with you.  
 10 When he got the "unsatisfactory," he walked  
 11 into my office and said, "if you will change  
 12 this to a -- to a 'satisfactory,' I'll  
 13 transfer." And I e-mailed her, and I said, "I  
 14 don't agree with this." I said to Ted at the  
 15 time, "if you do lesson plans, if you -- if you  
 16 do the work that needs to be done, you don't  
 17 have to worry about an 'unsatisfactory.' It's  
 18 only if you don't try and improve."  
 19 Q. What is -- can -- sitting  
 20 here today, can you recall your -- just in  
 21 general terms, the question that you asked Ms.  
 22 Pallen that got the response, "you need to get  
 23 the next letters written and in his files. In  
 24 addition, is Ramsey going to write? You can't

Page 1094

1 **Uehling - Cross - Carney**  
 2 Q. And you have no reason to  
 3 dispute that that was on the 29th of -- of  
 4 January, do you?  
 5 **A. It does not matter.**  
 6 Q. Do you have any reason to  
 7 dispute?  
 8 **A. No.**  
 9 Q. And this was an e-mail that  
 10 was intended for you, was it not?  
 11 **A. It appears to be so.**  
 12 Q. Is it in -- was the e-mail  
 13 sent in response to an inquiry that you -- that  
 14 you sent to Ms. Pallen asking how to get rid of  
 15 Ted Smith?  
 16 **A. No.**  
 17 Q. What, to the best of your  
 18 recollection, was the question that you asked  
 19 that elicited the response "you cannot get him  
 20 out this year, to my understanding, because  
 21 he's tenured"?  
 22 **A. I don't remember the exact**  
 23 **wording of what I would have sent, but I can**  
 24 **tell you that it would be along the lines of**

Page 1096

1 Uehling - Cross - Carney  
 2 get -- get him out this year, to my  
 3 understanding, because he's tenured"?  
 4 **A. My question would be, if I've**  
 5 **given him an "unsatisfactory," and he does not**  
 6 **improve, and he came in to tell me he was going**  
 7 **to transfer -- that he didn't intend to improve**  
 8 **is what I heard as a transfer. An employee**  
 9 **would generally go in and say, "I -- this is**  
 10 **'unsatisfactory.' I don't want an**  
 11 **'unsatisfactory.' What do I have to do to**  
 12 **change this?" You don't go in and say, "if you**  
 13 **change it, I'll transfer." So my question to**  
 14 **her was, "if he has chosen not to improve, what**  
 15 **is going to happen? What is" -- and Faye**  
 16 **Pallen, as an experienced mentor, is giving me**  
 17 **this basic advice. It's not professional, but**  
 18 **she didn't intend it for professional**  
 19 **consumption.**  
 20 Q. You don't consider this  
 21 particular e-mail professional?  
 22 **A. I don't consider the wording**  
 23 **professional.**  
 24 Q. It would appear to be an

25 (Pages 1093 to 1096)

Page 1097

1 Uehling - Cross - Carney  
 2 answer to one or more questions that you asked.  
 3 Wouldn't you agree with that?  
 4 **A. It is an answer to a question**  
 5 **I asked.**  
 6 Q. And you testified that the  
 7 very first negative -- "unsatisfactory"  
 8 evaluation was on the 16th of December.  
 9 **A. Yes.**  
 10 Q. Isn't that right?  
 11 So on the 29th, we've got Ms. Pallen writing  
 12 inadvertently to Teddy but intending to write  
 13 to you the formula to get rid of Mr. Smith;  
 14 isn't that right? "You need the next letters  
 15 written in his file. In addition, is Ramsey  
 16 going to write? You" --  
 17 THE HEARING OFFICER: One  
 18 question --  
 19 MR. CARNEY: -- "can't get  
 20 him out."  
 21 THE HEARING OFFICER: -- at a  
 22 time, counselor.  
 23 **A. Wouldn't you need to talk**  
 24 **with Ms. Pallen about this? This is in**

Page 1099

1 Uehling - Cross - Carney  
 2 MR. CARNEY: Sorry -- at the  
 3 upper right-hand corner of the -- of what I've  
 4 marked --.  
 5 THE HEARING OFFICER: The  
 6 date -- the 2/2/05, I --?  
 7 MR. CARNEY: Yes.  
 8 THE HEARING OFFICER: Okay.  
 9 **A. And also -- yes. I recognize**  
 10 **the date in the upper right-hand -- right-hand**  
 11 **corner and the typed date on it.**  
 12 BY MR. CARNEY: (Cont'g.)  
 13 Q. Is that your handwriting at  
 14 the upper right-hand corner?  
 15 **A. I don't know. It could be**  
 16 **because I date a document that I type. And it**  
 17 **made it easy to keep them in order.**  
 18 Q. What is -- what is this  
 19 document, what I've marked Respondent's Seven?  
 20 **A. That was the -- the list of**  
 21 **recommendations that Victor Ramsey made after**  
 22 **visiting with Mr. Smith in a class -- in his**  
 23 **phys ed class in part of his support of Mr.**  
 24 **Smith.**

Page 1098

1 **Uehling - Cross - Carney**  
 2 **response to my question of if this -- if this**  
 3 **teacher refuses to improve, what is -- what is**  
 4 **going to happen? And she said -- and she,**  
 5 **having seen him teach, chose to write this**  
 6 **response. I can't speak for her.**  
 7 BY MR. CARNEY: (Cont'g.)  
 8 Q. I'm going to direct your  
 9 attention to what I've -- it's under the cover  
 10 'K'. But I'm going to mark it as Respondent's  
 11 Seven for identification. Just take a moment  
 12 to review it.  
 13 Do you recognize the  
 14 document?  
 15 **A. I do.**  
 16 Q. Do you recognize the date at  
 17 the top -- top right hand of the page?  
 18 **A. February 2nd.**  
 19 Q. Do you know whose handwriting  
 20 that is?  
 21 THE HEARING OFFICER: When  
 22 you say "handwriting," I -- I'm seeing several  
 23 types. Do you mean down at the bottom, the  
 24 signature?

Page 1100

1 **Uehling - Cross - Carney**  
 2 Q. And referring your attention  
 3 back to Respondent's Six, is -- to the best of  
 4 your knowledge, Victor Ramsey is the person  
 5 that's identified in Respondent's Six --  
 6 **A. Uh-huh.**  
 7 Q. -- as "is Ramsey going to  
 8 write"; isn't that right?  
 9 **A. Uh-huh.**  
 10 Q. Did you receive a copy of  
 11 this evaluation on or about February the 2nd,  
 12 2005?  
 13 **A. Yes.**  
 14 Q. And did Mr. -- you testified  
 15 earlier that Victor Ramsey -- and I don't want  
 16 to misrepresent your testimony -- is the --  
 17 the -- is it Division Nine?  
 18 **A. Region Nine.**  
 19 Q. Region Nine physical  
 20 education and health coordinator --?  
 21 **A. He's the director.**  
 22 Q. Director?  
 23 **A. Uh-huh.**  
 24 Q. Did you ask him to evaluate

26 (Pages 1097 to 1100)

Page 1101

1 Uehling - Cross - Carney  
 2 Mr. Smith on or about February the 2nd, 2005?  
 3 **A. No.**  
 4 Q. Who did?  
 5 **A. No one.**  
 6 Q. Mr. Smith -- Mr. Ramsey just  
 7 showed up?  
 8 **A. To -- I did not ask him to**  
 9 **evaluate. I asked him to support Mr. Smith.**  
 10 **This is not an evaluation.**  
 11 Q. Fair enough. It's a document  
 12 marked "visit to the Museum School." It is --  
 13 it has two components -- observations and  
 14 suggestions.  
 15 **A. I did not request this of Mr.**  
 16 **Ramsey.**  
 17 Q. Did you request that he visit  
 18 Mr. Smith?  
 19 **A. Yes.**  
 20 Q. Did you request that he give  
 21 him instruction as to how to teach physical  
 22 education?  
 23 **A. Yes.**  
 24 Q. Do you know -- do you have

Page 1103

1 Uehling - Cross - Carney  
 2 this into evidence at this time because I want  
 3 Ramsey to authenticate it or bring it in  
 4 through Smith. But just looking -- looking at  
 5 what I've marked for identification as  
 6 Respondent's Eight --  
 7 **A. Uh-huh.**  
 8 Q. -- it appears to be a  
 9 complaint from Mr. Smith to Mr. Ramsey, and  
 10 Ramsey's response. Would you agree with that?  
 11 **A. Yes.**  
 12 Q. And the substance of the  
 13 complaint is that the evaluation or the -- what  
 14 I've marked Respondent's Seven doesn't  
 15 accurately reflect what Ramsey's comments to  
 16 Mr. Smith were at the end of that lesson; is  
 17 that fair to say?  
 18 **A. Yes.**  
 19 Q. And in fact, Mr. Ramsey  
 20 appears to answer Ted. "You were right. There  
 21 were many" --.  
 22 MS. JALOWSKI: Objection.  
 23 This document speaks for itself.  
 24 THE HEARING OFFICER: Speaks

Page 1102

1 Uehling - Cross - Carney  
 2 any independent knowledge that what I've marked  
 3 Respondent's Seven is, in fact, the visit to  
 4 the Museum School observations and suggestions  
 5 that you received on or about February 2nd,  
 6 2005?  
 7 **A. Yes.**  
 8 MR. CARNEY: I'll offer it  
 9 into evidence as Respondent's --.  
 10 MS. JALOWSKI: I have no  
 11 objection.  
 12 THE HEARING OFFICER: In  
 13 evidence.  
 14 BY MR. CARNEY: (Cont'g.)  
 15 Q. Now, looking at what I've  
 16 marked 'L' and I'll mark for identification as  
 17 Respondent's Eight, I don't expect you, Ms.  
 18 Uehling, to have any personal knowledge of this  
 19 document. I just want you to read it.  
 20 **A. All right.**  
 21 Q. Have you had a chance to read  
 22 it?  
 23 **A. Yes, I have.**  
 24 Q. Now, I'm not going to offer

Page 1104

1 Uehling - Cross - Carney  
 2 for itself --.  
 3 BY MR. CARNEY: (Cont'g.)  
 4 Q. Okay. Turn your attention to  
 5 what I've marked Respondent's Nine on the cover  
 6 'M'. Do you recognize this document?  
 7 **A. I do.**  
 8 Q. And by "this document," I  
 9 mean Respondent's Nine. What is it?  
 10 **A. It is a document from Mr.**  
 11 **Ramsey summarizing his visit to the physical**  
 12 **education class.**  
 13 Q. And it was -- it's actually a  
 14 revision of the previous observations and  
 15 suggestions from then, right?  
 16 **A. Yes.**  
 17 Q. And this one includes what  
 18 are marked as salient points; isn't that right?  
 19 **A. Yes.**  
 20 Q. Did you receive a copy of  
 21 this document?  
 22 **A. Yes.**  
 23 Q. Did you date it on the upper  
 24 right-hand corner as March 2nd, 2005?

27 (Pages 1101 to 1104)

Page 1105

1 Uehling - Cross - Carney  
 2 **A. Yes.**  
 3 Q. And do you recognize the  
 4 signature at the end of it?  
 5 **A. Yes.**  
 6 Q. And to the best of your  
 7 knowledge and -- and recollection, is what I've  
 8 marked Respondent's Nine the same document that  
 9 you received as the revised observations and  
 10 suggestions --  
 11 **A. Yes.**  
 12 Q. -- document from Mr. Ramsey?  
 13 **A. Yes.**  
 14 Q. And this is based on the  
 15 February 2nd, 2005 --  
 16 **A. Yes.**  
 17 Q. -- observation. Right?  
 18 **A. Yes.**  
 19 Q. Directing your attention to  
 20 the signature --.  
 21 MS. JALOWSKI: I have no  
 22 objection to --.  
 23 THE HEARING OFFICER: If  
 24 that's where you're going, I'll -- I'll accept

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1 Uehling - Cross - Carney  
 2 it. If -- are you just now going to offer it?  
 3 MR. CARNEY: I'm -- I'm going  
 4 to offer it.  
 5 THE HEARING OFFICER: Yeah.  
 6 No objections -- in evidence, Respondent Nine.  
 7 BY MR. CARNEY: (Cont'g.)  
 8 Q. Directing your attention to  
 9 the signature, --  
 10 **A. Uh-huh.**  
 11 Q. -- have you seen that  
 12 signature before?  
 13 MS. JALOWSKI: I have no  
 14 objection that if Victor Ramsey --.  
 15 THE HEARING OFFICER: What is  
 16 the purpose of these questions? What -- it's  
 17 in evidence.  
 18 MR. CARNEY: If you'll --  
 19 THE HEARING OFFICER: I'm  
 20 taking it in evidence.  
 21 MR. CARNEY: -- give me a  
 22 little bit of latitude --  
 23 THE HEARING OFFICER: Go  
 24 ahead.

Page 1107

1 Uehling - Cross - Carney  
 2 MR. CARNEY: -- you know,  
 3 I'll --.  
 4 THE HEARING OFFICER: I'm  
 5 sorry. Go ahead.  
 6 BY MR. CARNEY: (Cont'g.)  
 7 Q. Do you recognize the  
 8 signature?  
 9 **A. I have not memorized it. I'm**  
 10 **taking it on good faith that that's Victor's**  
 11 **signature.**  
 12 Q. I just want to know if you've  
 13 ever seen it before.  
 14 **A. I'm sure I have. I'm -- I'm**  
 15 **taking it on faith this is an accurate**  
 16 **document. Yes. I've seen it before.**  
 17 Q. Looking back at the unrevised  
 18 version, --  
 19 **A. Uh-huh.**  
 20 Q. -- what I've marked  
 21 Respondent's Seven, can you just look at the  
 22 signature there?  
 23 **A. Yes. That's my handwriting.**  
 24 Q. It's your handwriting?

Page 1108

1 Uehling - Cross - Carney  
 2 **A. Yes.**  
 3 Q. And it says "V. Ramsey."  
 4 **A. Yes.**  
 5 Q. You wrote that?  
 6 **A. Yes.**  
 7 Q. Are you purporting to sign it  
 8 for Mr. Ramsey?  
 9 **A. No, I'm not. He sent me a**  
 10 **copy via -- attached to an e-mail. And I put**  
 11 **his name on it. I did not submit it in any way**  
 12 **as his document, in any professional --.**  
 13 Q. And in fact, this was not put  
 14 in Mr. Smith's personnel file; was -- is that  
 15 right?  
 16 **A. It was sent to Mr. Smith. I**  
 17 **would have been happy to put in his file if he**  
 18 **had requested it.**  
 19 Q. It was put in and then taken  
 20 out; isn't that right?  
 21 **A. Not this document -- no.**  
 22 Q. Which -- what about  
 23 Respondent's --?  
 24 **A. I didn't know if either of**

28 (Pages 1105 to 1108)

Page 1109

1 **Uehling - Cross - Carney**  
 2 **these were put in, but I'm sure that the one I**  
 3 **signed was not put in.**  
 4 Q. I want to direct your  
 5 attention to what I've marked on the cover 'M'.  
 6 I'll call it Respondent's 'M'. If it's okay  
 7 with everyone, we'll take a break.  
 8 THE HEARING OFFICER: Okay.  
 9 You want to take a lunch break now or just a  
 10 short recess? Or you want --?  
 11 MR. CARNEY: Can I just ask  
 12 her a couple of questions about this document?  
 13 THE HEARING OFFICER: Sure.  
 14 Of course.  
 15 MR. CARNEY: We'll break for  
 16 lunch.  
 17 THE HEARING OFFICER: Okay.  
 18 This is 'R' Ten -- Respondent's Ten? Is that  
 19 where we are? Just bear with -- go ahead.  
 20 BY MR. CARNEY: (Cont'g.)  
 21 Q. If you could just take a --  
 22 flip through the first sentence.  
 23 **A. Okay. This is a series of**  
 24 **pages of the calendar from December '04 to**

Page 1110

1 **Uehling - Cross - Carney**  
 2 **January to -- apparently through the end of the**  
 3 **year, 2005. Yes -- through June 2005 --**  
 4 **November 2004 to June 2005.**  
 5 Q. Do you recognize this as a  
 6 partial rendition of November 2004 to June 2005  
 7 of the D.O.E. calendar?  
 8 MS. JALOWSKI: It's on the --  
 9 the Department's computer, so if there's  
 10 anything that he wants to be put into evidence,  
 11 I have no objection, if that is the  
 12 calendar --.  
 13 THE HEARING OFFICER: But the  
 14 question as to --.  
 15 THE WITNESS: And it seems to  
 16 have November in its entirety. Am I missing  
 17 something here?  
 18 MR. CARNEY: No -- November  
 19 through June '04-05.  
 20 THE WITNESS: Oh. I thought  
 21 you said "partial November." Okay.  
 22 MR. CARNEY: It's a --  
 23 it's -- in other words, September and October  
 24 are --

Page 1111

1 Uehling - Cross - Carney  
 2 THE WITNESS: Right.  
 3 MR. CARNEY: -- not included.  
 4 THE WITNESS: Right.  
 5 BY MR. CARNEY: (Cont'g.)  
 6 Q. Do you recognize it as such?  
 7 **A. Yes.**  
 8 MR. CARNEY: I would offer it  
 9 as Respondent's Ten.  
 10 THE HEARING OFFICER: In  
 11 evidence.  
 12 Okay. Is there --  
 13 MS. JALOWSKI: I mean,  
 14 I'll --  
 15 THE HEARING OFFICER: --  
 16 anything, counsel?  
 17 MS. JALOWSKI: I mean, the --  
 18 the fact is, though, I would think we should  
 19 put in the whole document, starting with --.  
 20 MR. CARNEY: I've got it.  
 21 I've got it.  
 22 THE HEARING OFFICER: All  
 23 right. I'll take it for 'R' Ten, and then, if  
 24 you want to add on the first two months at some

Page 1112

1 Uehling - Cross - Carney  
 2 point, we'll do it. All right. Let's -- do  
 3 you want to continue or take a break, you said?  
 4 MR. CARNEY: One more --  
 5 THE HEARING OFFICER: Go  
 6 ahead.  
 7 MR. CARNEY: -- question --.  
 8 THE HEARING OFFICER: Yeah.  
 9 Go ahead.  
 10 BY MR. CARNEY: (Cont'g.)  
 11 Q. I just want to direct your  
 12 attention to the second page of what I've  
 13 marked Respondent's Ten -- the December 2004  
 14 letter. There is -- there are several  
 15 indications of student vacations in the month  
 16 of December. Do you see where, from December  
 17 the 24th to December -- actually, until  
 18 January -- sorry -- until at least December  
 19 31st, 2004, that students were -- were on  
 20 break?  
 21 **A. Yes.**  
 22 Q. Was there any instruction  
 23 during that period?  
 24 **A. No.**

29 (Pages 1109 to 1112)

Page 1113

1 **Uehling - Cross - Carney**  
 2 Q. Teachers all on vacation?  
 3 **A. Yes.**  
 4 Q. You gave Mr. Smith his first  
 5 "unsatisfactory" evaluation on the 16th of  
 6 December; isn't that right?  
 7 **A. The class was December 16th.**  
 8 **Yes.**  
 9 Q. And you actually issued the  
 10 letter on --?  
 11 THE HEARING OFFICER: It's  
 12 'D' Ten, I think, isn't it?  
 13 MR. CARNEY: Yeah. Yeah. I  
 14 took it out of --.  
 15 THE HEARING OFFICER: It's  
 16 dated December 20th, if you want to look at  
 17 this, counselor. Is that what you want?  
 18 MR. CARNEY: I apologize.  
 19 THE HEARING OFFICER: That's  
 20 all right. Is that what you're referring to?  
 21 BY MR. CARNEY: (Cont'g.)  
 22 Q. Ms. Uehling, you gave Mr.  
 23 Smith the letter containing the negative  
 24 evaluation of the 16th on -- on the 20th; is

Page 1115

1 **Uehling - Cross - Carney**  
 2 Q. And there was, of course,  
 3 Martin Luther King Day on the 17th of January.  
 4 **A. Yes.**  
 5 Q. So between -- if you look at  
 6 the -- the January '05 calendar month, there  
 7 were fourteen teaching days prior to the  
 8 Regents exam; isn't that right?  
 9 **A. Yes.**  
 10 Q. And there were only four  
 11 teaching days after you issued your  
 12 "unsatisfactory" rating in December; isn't that  
 13 right?  
 14 **A. Yes.**  
 15 Q. So you have seventeen  
 16 teaching days from those months.  
 17 THE HEARING OFFICER: Wait --  
 18 fourteen and four. I have eighteen. Is  
 19 that --?  
 20 MR. CARNEY: Fourteen and  
 21 four -- I'm sorry --  
 22 THE HEARING OFFICER: Go  
 23 ahead.  
 24 MR. CARNEY: -- never a math

Page 1114

1 Uehling - Cross - Carney  
 2 that right?  
 3 **A. The date it's dated.**  
 4 Q. Did -- did you give Mr. Smith  
 5 any "unsatisfactory" evaluations between the  
 6 16th and the 20th of December, 2004?  
 7 **A. I don't recall.**  
 8 Q. From the 20th -- from the  
 9 time that you issued that letter on December  
 10 the 20th, 2004, there were only four teaching  
 11 days left in the month of December; isn't that  
 12 right?  
 13 **A. Yes.**  
 14 Q. And if you look at January of  
 15 2005 -- I believe the third page of what I've  
 16 marked Respondent's Ten -- there's a -- another  
 17 week that's blocked off for Regents exams. Do  
 18 you see that?  
 19 **A. Yes.**  
 20 Q. And that would have been when  
 21 the high school students were taking some sort  
 22 of state standardized test?  
 23 **A. They're taking the Regents.**  
 24 **Yes.**

Page 1116

1 Uehling - Cross - Carney  
 2 whiz.  
 3 THE HEARING OFFICER: You may  
 4 have been a doctor if your math was good.  
 5 BY MR. CARNEY: (Cont'g.)  
 6 Q. What happened in those  
 7 eighteen teaching days from the first  
 8 "unsatisfactory" evaluation that Mr. Smith is  
 9 sent on December the 20th, the January 29th --?  
 10 MS. JALOWSKI: You know, I --  
 11 you know, I --.  
 12 THE HEARING OFFICER: Wait,  
 13 wait. Let me hear the whole --  
 14 MS. JALOWSKI: I'm sorry.  
 15 THE HEARING OFFICER: --  
 16 question. I -- I -- what happened? Go ahead.  
 17 You -- did you finish the question, counselor?  
 18 I'm sorry. Go ahead.  
 19 MR. CARNEY: No.  
 20 THE HEARING OFFICER: What  
 21 happened from --?  
 22 BY MR. CARNEY: (Cont'g.)  
 23 Q. I haven't even asked a  
 24 question yet.

30 (Pages 1113 to 1116)

Page 1117

1 Uehling - Cross - Carney  
 2 What happened in those  
 3 eighteen instructional days between December  
 4 the 20th and the end of January, when Mr. Smith  
 5 would receive his first "unsatisfactory"  
 6 teaching evaluation, to justify the e-mail that  
 7 I've marked Respondent's Six with a formula as  
 8 to how to get Mr. Smith, a tenured teacher, out  
 9 of the Department? What happened?  
 10 MS. JALOWSKI: You know, I'm  
 11 going to object and --.  
 12 THE HEARING OFFICER: Yeah.  
 13 I'll sustain. That's more of an argument --  
 14 MS. JALOWSKI: But that's --  
 15 THE HEARING OFFICER: -- than  
 16 a question.  
 17 MS. JALOWSKI: -- but I have  
 18 a --  
 19 THE HEARING OFFICER: I'll  
 20 sustain that.  
 21 MS. JALOWSKI: -- I have an  
 22 objection to this first observation. It was  
 23 the first formal observation.  
 24 THE HEARING OFFICER: I know.

Page 1119

1 Uehling - Cross - Carney  
 2 MR. CARNEY: Whatever you  
 3 need --.  
 4 MS. JALOWSKI: Forty-five  
 5 minutes?  
 6 THE WITNESS: Forty-five --  
 7 THE HEARING OFFICER: Good.  
 8 All right. We'll --  
 9 THE WITNESS: -- sure.  
 10 THE HEARING OFFICER: -- come  
 11 back at one thirty. I know. Off the record.  
 12 (Off-the-record discussion)  
 13 BY MR. CARNEY: (Cont'g.)  
 14 Q. Ms. Uehling, I just want to  
 15 direct your attention to the exhibit that I've  
 16 marked Exhibit 'P'. And I'll have it marked  
 17 for identification as Respondent's Eleven.  
 18 Just take a moment to review it.  
 19 **A. Okay.**  
 20 Q. Have you seen this document  
 21 before?  
 22 **A. No, I haven't.**  
 23 Q. Do you know what it is, in  
 24 general terms?

Page 1118

1 Uehling - Cross - Carney  
 2 That's an argument, too, counselor. We'll let  
 3 you argue that at some point when we finish the  
 4 case. That's more of an argument. I'll --  
 5 MR. CARNEY: There were --  
 6 THE HEARING OFFICER: --  
 7 sustain.  
 8 BY MR. CARNEY: (Cont'g.)  
 9 Q. -- there were --  
 10 THE HEARING OFFICER: Go  
 11 ahead.  
 12 BY MR. CARNEY: (Cont'g.)  
 13 Q. -- eighteen instructional  
 14 days between the time that you issued the  
 15 letter on December the 20th, 2004, and the time  
 16 that you received Faye Pallen's e-mail on  
 17 January the 29th; isn't that a fact?  
 18 **A. Yes.**  
 19 MR. CARNEY: No more  
 20 questions for now -- break.  
 21 THE HEARING OFFICER: We'll  
 22 take a break. How does -- forty-five minutes  
 23 is enough time to go down or -- or you want a  
 24 full hour?

Page 1120

1 Uehling - Cross - Carney  
 2 **A. It's referring to the peer  
 3 intervention program.**  
 4 Q. Have you ever seen a document  
 5 like this one in the past?  
 6 **A. No.**  
 7 Q. Do you understand that it's a  
 8 letter inviting Mr. Smith to engage in the peer  
 9 intervention?  
 10 **A. I'm sorry. I don't see his  
 11 name.**  
 12 Q. Do you understand that it's a  
 13 letter inviting the recipient to -- to engage  
 14 in peer intervention?  
 15 **A. Yes. It's with a colleague.  
 16 Yes.**  
 17 MS. JALOWSKI: You're looking  
 18 at the -- Mr. Tillem, it's --.  
 19 THE HEARING OFFICER: Am I  
 20 looking at the wrong --?  
 21 MS. JALOWSKI: You have the  
 22 wrong thing -- 'P'.  
 23 MR. CARNEY: 'P'.  
 24 THE HEARING OFFICER: 'T'?

31 (Pages 1117 to 1120)

Page 1121

1 Uehling - Cross - Carney  
 2 MS. JALOWSKI: 'P' as in  
 3 "Peter."  
 4 THE HEARING OFFICER: Oh, I'm  
 5 sorry.  
 6 THE WITNESS: I thought it  
 7 was 'T', too.  
 8 THE HEARING OFFICER: 'P' as  
 9 in "Peter"? I -- thank you. All right. And  
 10 this is going to be --  
 11 MR. CARNEY: Well, it's --  
 12 I'm just marking --  
 13 THE HEARING OFFICER: I got  
 14 it.  
 15 MR. CARNEY: -- for  
 16 identification --.  
 17 THE HEARING OFFICER: Yeah.  
 18 It's for 'P'. Okay. I'm sorry. I thought you  
 19 said --.  
 20 **A. (Cont'g.) Yeah. So it's a**  
 21 **general letter to people. I -- yeah.**  
 22 BY MR. CARNEY: (Cont'g.)  
 23 Q. It's a general letter  
 24 inviting whoever the recipient is -- whomever

Page 1123

1 Uehling - Cross - Carney  
 2 Did -- were -- to your knowledge, did Mr. Smith  
 3 ever refuse peer intervention at any time?  
 4 **A. Yes.**  
 5 Q. And when was that?  
 6 **A. When I asked him if he would**  
 7 **be interested in it.**  
 8 Q. As a principal, was it your  
 9 role to suggest or to recommend peer  
 10 intervention to a teacher?  
 11 **A. No.**  
 12 Q. That can only come from a  
 13 union, can't it?  
 14 **A. Exactly.**  
 15 MS. JALOWSKI: Objection.  
 16 That's not --.  
 17 THE HEARING OFFICER: Well,  
 18 she -- the witness has answered.  
 19 THE WITNESS: I have no --.  
 20 MR. CARNEY: What -- what's  
 21 the objection?  
 22 MS. JALOWSKI: Because  
 23 that's -- I don't believe that that's the case.  
 24 Even in the contract, it -- it allows for --

Page 1122

1 Uehling - Cross - Carney  
 2 the recipient is to --  
 3 **A. Uh-huh.**  
 4 Q. -- engage in peer  
 5 intervention; is that right?  
 6 **A. That's what I'm seeing. Yes.**  
 7 Q. And just referring your  
 8 attention to what I've marked 'Q' -- and I'll  
 9 mark this for identification at Respondent's  
 10 Twelve. Can you just take a look at the first  
 11 page?  
 12 **A. Request from peer -- for peer**  
 13 **intervention from Ted Smith dated August 18th,**  
 14 **and the date is obscured. I'm guessing it's**  
 15 **2005.**  
 16 Q. I -- have you seen this  
 17 document before?  
 18 **A. No, I haven't.**  
 19 Q. Were you aware that Mr. Smith  
 20 in fact requested a peer intervention in August  
 21 of 2005?  
 22 **A. No, I was not.**  
 23 Q. Were you aware that he had --  
 24 or that he had -- withdrawn.

Page 1124

1 Uehling - Cross - Carney  
 2 for administrators to -- to advise going to --.  
 3 THE WITNESS: I just asked if  
 4 he was interested in it.  
 5 THE HEARING OFFICER: Go  
 6 ahead. Let's move.  
 7 BY MR. CARNEY: (Cont'g.)  
 8 Q. And directing your attention  
 9 to what I've marked 'R' -- and I'm just going  
 10 to go ahead and mark it now for identification  
 11 'R' Thirteen -- Respondent's Thirteen. Just  
 12 take a moment to review it.  
 13 THE HEARING OFFICER: We're  
 14 looking at 'R'?  
 15 MR. CARNEY: Yes, sir.  
 16 **A. Yes -- letter addressed to**  
 17 **Mr. Smith on September 12th, offering the peer**  
 18 **intervention program.**  
 19 BY MR. CARNEY: (Cont'g.)  
 20 Q. Do you recognize it?  
 21 **A. I've never seen it before.**  
 22 Q. Never seen it --  
 23 **A. No.**  
 24 Q. -- before I showed it to you

32 (Pages 1121 to 1124)



Page 1125

1 Uehling - Cross - Carney  
 2 just now?  
 3 **A. I've never seen it.**  
 4 Q. And directing your attention  
 5 to Specification Nineteen --.  
 6 MS. JALOWSKI: We dismissed  
 7 this specification before.  
 8 THE WITNESS: Which is  
 9 Nineteen?  
 10 MR. CARNEY: Specification --  
 11 THE WITNESS: Oh --  
 12 Specification --  
 13 MR. CARNEY: -- Nineteen --.  
 14 THE WITNESS: -- Nineteen.  
 15 No. Sorry.  
 16 BY MR. CARNEY: (Cont'g.)  
 17 Q. It just -- it says that  
 18 Principal Uehling observed the following, and  
 19 then, under 'E', that Respondent refused to  
 20 enroll in the peer intervention program.  
 21 **A. Uh-huh.**  
 22 Q. Based on what I've -- I've  
 23 shown you today, the peer intervention program  
 24 request form, if in fact that was sent via

Page 1126

1 Uehling - Cross - Carney  
 2 postal service delivery with a -- with return  
 3 receipt --.  
 4 THE HEARING OFFICER: Which  
 5 document is that now?  
 6 **A. No. It's sent --.**  
 7 MR. CARNEY: Would its --?  
 8 THE HEARING OFFICER: 'R'  
 9 what?  
 10 MR. CARNEY: Twelve.  
 11 THE HEARING OFFICER: It's  
 12 'U'? It's 'U'?  
 13 MS. JALOWSKI: Uh-huh.  
 14 MR. CARNEY: Okay.  
 15 THE HEARING OFFICER: Go  
 16 ahead. I'm sorry. Go ahead.  
 17 BY MR. CARNEY: (Cont'g.)  
 18 Q. My question is, Ted Smith  
 19 requested peer intervention, didn't he?  
 20 **A. On August 18th, 2005.**  
 21 Q. When was -- there was a  
 22 time -- and -- and we sketched this out in  
 23 October, when Mr. Smith needed at least six  
 24 assistants, I believe. Is that your

Page 1127

1 Uehling - Cross - Carney  
 2 recollection?  
 3 **A. Yes, it is.**  
 4 Q. Was there a time when you  
 5 furnished or provided those assistants for Mr.  
 6 Smith?  
 7 **A. Yes.**  
 8 Q. Do you recall when that was?  
 9 **A. It should have been**  
 10 **immediately, once it had been identified that**  
 11 **those were missing.**  
 12 Q. Do you recall when it was  
 13 that you --  
 14 **A. I don't --**  
 15 Q. -- provided these?  
 16 **A. -- recall the dates.**  
 17 Q. Does December the 4th ring a  
 18 bell -- 2004?  
 19 **A. No.**  
 20 Q. Were any of those assistants  
 21 licensed physical education teachers?  
 22 **A. No.**  
 23 Q. And why not?  
 24 **A. It's not required. If we had**

Page 1128

1 **Uehling - Cross - Carney**  
 2 **multiple licensed phys ed teachers, they would**  
 3 **have been in there on a constant basis. We**  
 4 **would have hired two.**  
 5 Q. And were the -- did those  
 6 teachers hold a license at all?  
 7 **A. Yes. All were licensed**  
 8 **teachers.**  
 9 Q. Let's start with Judith  
 10 Killan. What was her license in?  
 11 **A. Social studies and English,**  
 12 **middle school.**  
 13 Q. Was that license, at some  
 14 point, revoked?  
 15 **A. Not that I know of.**  
 16 Q. Did there come a time when  
 17 Ms. Killan left her employ at the Museum  
 18 School?  
 19 **A. Yes.**  
 20 Q. And you in -- did you, in  
 21 fact, not initiate her termination?  
 22 **A. No, I did not.**  
 23 Q. And do you know why she was  
 24 terminated?

33 (Pages 1125 to 1128)

Page 1129

1 Uehling - Cross - Carney  
 2 **A. She was not terminated. She**  
 3 **resigned.**  
 4 Q. Resigned -- and in the case  
 5 of Dana Gaudet or Gaudet, did Mr. Gaudet hold  
 6 any particular license?  
 7 **A. Yes, in math.**  
 8 Q. Mathematics?  
 9 **A. Yes.**  
 10 Q. And that was in 2004?  
 11 **A. 2004-2005 -- actually, he**  
 12 **came in 2003.**  
 13 Q. Did there come a -- a time  
 14 when that license was revoked?  
 15 **A. I don't know. I've never**  
 16 **been informed of it.**  
 17 Q. And in the case of Ms.  
 18 Born -- or do you know one way or another  
 19 whether her license --  
 20 **A. I do.**  
 21 Q. -- was revoked?  
 22 **A. I know she -- she resigned**  
 23 **because of health reasons.**  
 24 Q. My question is directed to

Page 1130

1 Uehling - Cross - Carney  
 2 her license.  
 3 **A. I've never been informed**  
 4 **otherwise.**  
 5 Q. Did Ms. Killan hold what --  
 6 what's known as a temporary license?  
 7 **A. Not to my knowledge.**  
 8 Q. And has Mr. Gaudet -- did he  
 9 hold a temporary license?  
 10 **A. He was a probationary**  
 11 **teacher. Yes.**  
 12 Q. And is there a difference  
 13 qualitatively between a probationary teacher --  
 14 or just a probationary teaching license and a  
 15 non-probationary teaching license?  
 16 **A. I'm not qualified to speak to**  
 17 **that.**  
 18 Q. Do you know one way or  
 19 another?  
 20 **A. No.**  
 21 Q. And Mr. Smith complained to  
 22 you about his oversized classes, did he not?  
 23 **A. He did.**  
 24 Q. On numerous occasions --

Page 1131

1 Uehling - Cross - Carney  
 2 isn't that correct?  
 3 **A. He did, in fact.**  
 4 Q. And eventually, Mr. Ramsey  
 5 was brought in to support him. I think that  
 6 was your testimony, wasn't it?  
 7 **A. Yes.**  
 8 Q. And Mr. Ramsey wrote  
 9 initially a -- a document that contained  
 10 observations and suggestions, correct?  
 11 **A. Yes.**  
 12 Q. And that document was  
 13 revised, was it not?  
 14 **A. Yes.**  
 15 Q. Did there come a time when  
 16 Mr. Ramsey issued a formal letter of reprimand  
 17 to Mr. Smith?  
 18 **A. I'm not sure what you mean by**  
 19 **"formal."**  
 20 Q. Did Mr. Ramsey, in or around  
 21 April of 2005, issue some kind of warning  
 22 letter or disciplinary letter to Mr. Smith?  
 23 **A. I'm not sure of the date.**  
 24 **I'm aware that Mr. Ramsey wrote a letter that**

Page 1132

1 **Uehling - Cross - Carney**  
 2 **called attention to the fact that Mr. Smith had**  
 3 **been rude to him.**  
 4 Q. And if you saw -- if you saw  
 5 the letter, would that refresh your  
 6 recollection as to whether or not --  
 7 **A. It probably --.**  
 8 Q. -- it was disciplinary in  
 9 nature?  
 10 **A. I would hope so.**  
 11 MR. CARNEY: It should be.  
 12 Should we -- because of the thing with the  
 13 papers, can we take a quick break?  
 14 THE HEARING OFFICER: Sure.  
 15 Off the record.  
 16 (Off-the-record discussion)  
 17 BY MR. CARNEY: (Cont'g.)  
 18 Q. If -- if you don't mind  
 19 turning to the exhibit that I've marked under  
 20 the cover 'O' -- and I'll mark it for  
 21 identification as Respondent's Fourteen. Take  
 22 a moment to review it.  
 23 **A. All right.**  
 24 Q. Do you recognize this

34 (Pages 1129 to 1132)

Page 1133

1 Uehling - Cross - Carney  
 2 document?  
 3 **A. I do.**  
 4 Q. What is it?  
 5 **A. It is a case where I sent my**  
 6 **draft of a request for a medical for Mr. Smith,**  
 7 **and it is Faye Pallen's response advising me.**  
 8 Q. Okay. And you -- you, in  
 9 fact, received this e-mail as it appears as  
 10 I've marked Respondent's Fourteen?  
 11 **A. It -- it appears to be as I**  
 12 **received it.**  
 13 Q. On or about March the 22nd,  
 14 2005?  
 15 **A. Yes.**  
 16 MR. CARNEY: I would offer it  
 17 into evidence as Respondent's Fourteen.  
 18 MS. JALOWSKI: No objection.  
 19 THE HEARING OFFICER: In  
 20 evidence.  
 21 BY MR. CARNEY: (Cont'g.)  
 22 Q. There is a notation. This --  
 23 what I've marked Respondent's Fourteen is  
 24 actually two e-mails; is it not?

Page 1135

1 **Uehling - Cross - Carney**  
 2 Q. That's a "yes"?  
 3 **A. Yes.**  
 4 Q. And in Respondent's Fourteen,  
 5 you're saying in sum or substance to zap the  
 6 e-mails from her Blackberry; is that right?  
 7 **A. Right, because it --.**  
 8 Q. I don't want to know why.  
 9 What does it mean to zap, Ms. Uehling?  
 10 **A. It means that you can't read**  
 11 **documents on a Blackberry, that you need to**  
 12 **download them from the computer. As I say,**  
 13 **following "zap," "if you do have the time,**  
 14 **remember not to try to review them until you**  
 15 **can be at a computer. Don't keep them on your**  
 16 **Blackberry."**  
 17 Q. In other words, delete them;  
 18 isn't that right?  
 19 **A. Absolutely. There's no**  
 20 **reason to have such -- such material on the**  
 21 **Blackberry when the only time you can read it**  
 22 **is on the computer.**  
 23 Q. Were you aware at this time  
 24 that Mr. Smith had confronted Mr. Ramsey with

Page 1134

1 Uehling - Cross - Carney  
 2 **A. My request and her response.**  
 3 Q. There's an original message,  
 4 which is your request, and then --  
 5 **A. Right.**  
 6 Q. -- Ms. Pallen's answer. Is  
 7 that correct?  
 8 **A. Yes.**  
 9 Q. In your original message, if  
 10 I -- looking at the -- the last paragraph,  
 11 could you just read that into the record,  
 12 please?  
 13 **A. "If you don't have the time,**  
 14 **just a quick note telling me how you -- how you**  
 15 **are would be great, and zap the e-mails off**  
 16 **your Blackberry. If you do have the time,**  
 17 **remember not to review them until you can be at**  
 18 **a computer."**  
 19 Q. Referring your attention back  
 20 to the e-mail that you testified you received  
 21 and that I marked as Respondent's Six that's  
 22 marked under the cover 'J', that was sent from  
 23 Faye Pallen's Blackberry, was it not?  
 24 **A. It's her e-mail address.**

Page 1136

1 Uehling - Cross - Carney  
 2 the e-mail that I marked Respondent's Six?  
 3 **A. No.**  
 4 Q. You're not aware of a  
 5 conversation in which Mr. Smith showed Mr.  
 6 Ramsey the e-mail, and Mr. Ramsey said, in sum  
 7 or substance, "hey, man, it's not me"?  
 8 **A. I'm not aware of --.**  
 9 Q. That was never brought to  
 10 your attention, was it?  
 11 **A. That I recall.**  
 12 Q. That you -- that was -- was  
 13 it brought to your attention or not?  
 14 **A. I don't recall it being**  
 15 **brought to my attention.**  
 16 Q. Did you ever have a  
 17 conversation with anyone at any time about Mr.  
 18 Smith's receiving e-mails that he wasn't  
 19 supposed to see off a Blackberry?  
 20 **A. Only my attorney -- the -- my**  
 21 **representation.**  
 22 Q. I don't want to -- you no  
 23 longer work for the Department of Education, do  
 24 you?

35 (Pages 1133 to 1136)

Page 1137

1 Uehling - Cross - Carney  
 2 **A. No.**  
 3 Q. Is Ms. Jalowski your attorney  
 4 in this matter?  
 5 **A. Are you calling it an**  
 6 **attorney or representative?**  
 7 MS. JALOWSKI: He doesn't --  
 8 am I your --  
 9 MR. CARNEY: I'm asking --  
 10 MS. JALOWSKI: -- attorney,  
 11 not --?  
 12 BY MR. CARNEY: (Cont'g.)  
 13 Q. -- I'm asking you the  
 14 question. I'm not going to --.  
 15 **A. I don't know what the**  
 16 **terminology is. I'm sorry.**  
 17 Q. Is she your attorney?  
 18 THE HEARING OFFICER: I think  
 19 she's indicated that she doesn't understand the  
 20 terminology. She's the attorney in this  
 21 proceeding of record. I will state that, as  
 22 the arbitrator.  
 23 BY MR. CARNEY: (Cont'g.)  
 24 Q. Ms. Jalowski doesn't

Page 1139

1 **Uehling - Cross - Carney**  
 2 Q. Have -- have you reviewed  
 3 that paragraph?  
 4 **A. I have.**  
 5 Q. Okay. Is it fair to say that  
 6 Ms. -- Ms. Pallen is asking you or telling you  
 7 that if it -- she would have played up a  
 8 concern that Mr. Smith has a heart condition?  
 9 MS. JALOWSKI: Objection.  
 10 The document speaks for itself.  
 11 THE HEARING OFFICER: Yeah --  
 12 sustained.  
 13 BY MR. CARNEY: (Cont'g.)  
 14 Q. The document says that Faye  
 15 Pallen would have advised you to play up a  
 16 concern that Mr. Smith has a heart condition,  
 17 doesn't it?  
 18 THE HEARING OFFICER: Speaks  
 19 for itself, counselor.  
 20 **A. She is advising me --.**  
 21 THE HEARING OFFICER: No, no.  
 22 BY MR. CARNEY: (Cont'g.)  
 23 Q. He's ruled on it.  
 24 Did there come a time where you left your job

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1 Uehling - Cross - Carney  
 2 represent you in a personal capacity, does she?  
 3 **A. Not at all.**  
 4 THE HEARING OFFICER: Let me  
 5 head this off by saying right now that any  
 6 conversations between this witness and Ms.  
 7 Jalowski would have an attorney-client  
 8 privilege, if that's where you're going.  
 9 Whether you deem her or I deem her -- and if  
 10 you want to have an exception to that ruling,  
 11 it's on the record.  
 12 MR. CARNEY: Just note my  
 13 objection, but --.  
 14 THE HEARING OFFICER: And I  
 15 have noted it and given you --.  
 16 BY MR. CARNEY: (Cont'g.)  
 17 Q. By -- by your -- just looking  
 18 at what I've marked Respondent's Fourteen, in  
 19 the -- in the center of the page, there is an  
 20 indication from Ms. Pallen. There's a -- a  
 21 paragraph that -- beginning with "your letter  
 22 requesting a medical is fine." Do you see  
 23 that?  
 24 **A. Uh-huh. Uh-huh.**

Page 1140

1 Uehling - Cross - Carney  
 2 as principal of the Museum School?  
 3 **A. There came a time when I left**  
 4 **my job at the Museum School.**  
 5 Q. And that was in or around  
 6 June of 2005; is that correct?  
 7 **A. No.**  
 8 Q. When did you leave?  
 9 **A. I left in August. I left**  
 10 **August 1st.**  
 11 Q. Do you recall telling Mr.  
 12 Gaudet or Gaudet -- Dana Gaudet -- that -- in  
 13 sum or substance, that you didn't make it in or  
 14 around June of 2005?  
 15 **A. I don't understand the**  
 16 **question.**  
 17 MS. JALOWSKI: Objection.  
 18 THE HEARING OFFICER: Well, I  
 19 don't think -- I didn't understand it. "Didn't  
 20 make it" -- you mean, did she use that  
 21 phrase --  
 22 MR. CARNEY: Yes.  
 23 THE HEARING OFFICER: -- that  
 24 idiomatic phrase, --

36 (Pages 1137 to 1140)

Page 1141

1 Uehling - Cross - Carney  
 2 MR. CARNEY: Yes.  
 3 THE HEARING OFFICER: --  
 4 whatever it means? Do you -- can you --  
 5 **A. (Cont'g.) I don't --**  
 6 **THE HEARING OFFICER: --**  
 7 **answer that question?**  
 8 **A. (Cont'g.) -- I don't recall**  
 9 **that.**  
 10 BY MR. CARNEY: (Cont'g.)  
 11 Q. I'll rephrase the question.  
 12 Do you recall having a staff  
 13 meeting with Dana Gaudet in or around June of  
 14 2005 in which you told him that you were not  
 15 going to continue as principal at the Museum  
 16 School?  
 17 **A. I don't recall the meeting.**  
 18 **If I were going to discontinue a teacher, they**  
 19 **would be told long before that.**  
 20 Q. Well, I'll -- I'll rephrase  
 21 the question.  
 22 Were you asked to resign as  
 23 principal from the Museum School?  
 24 **A. No, I was not.**

Page 1143

1 Uehling - Cross - Carney  
 2 **asking for a T.A.C. Then below that, dated**  
 3 **March 14th, is my request of Min Troy and just**  
 4 **asking for information about a T.A.C.**  
 5 MS. JALOWSKI: For the  
 6 record, a T.A.C. is a Technical Assistance  
 7 Conference.  
 8 THE HEARING OFFICER: Okay.  
 9 **A. (Cont'g.) And then, before**  
 10 **that, March 14th, Min is responding -- he had**  
 11 **sent me a Twenty-five Sixty-eight, which**  
 12 **isn't -- is the form for the request for**  
 13 **medical exams. And then the initiating e-mail**  
 14 **was this -- the list -- or not the**  
 15 **initiating -- this is apparently Michael's**  
 16 **response to Min, asking what he should do to**  
 17 **make the request go forward. And then it**  
 18 **continues to my e-mail to Mr. LaForgia, dated**  
 19 **March 13th, that I had spoken with Patria**  
 20 **Frias-Colon about a T.A.C. And it points to**  
 21 **different pieces of background that I felt he**  
 22 **needed to know.**  
 23 BY MR. CARNEY: (Cont'g.)  
 24 Q. Now, I appreciate your

Page 1142

1 **Uehling - Cross - Carney**  
 2 Q. Why did you leave?  
 3 **A. Because I wanted to leave the**  
 4 **Department of Education.**  
 5 Q. Was it a difficult job?  
 6 **A. Very.**  
 7 Q. Were these oversized classes  
 8 contributing to the difficulties you  
 9 experienced as principal?  
 10 **A. Not necessarily.**  
 11 Q. Directing your attention to  
 12 what I've marked on the cover as Exhibit 'S',  
 13 what I'll mark for identification as  
 14 Respondent's Fifteen, I just want you to review  
 15 it for a moment.  
 16 **A. Okay. Yes.**  
 17 Q. Do you know what this  
 18 document is?  
 19 **A. Well, there are -- there are**  
 20 **several documents within a document, starting**  
 21 **with -- dated March 15th, from Min Troy, who is**  
 22 **human resources, to me and copied to Michael**  
 23 **LaForgia, recommending that I talk to Diane**  
 24 **McFarland, senior regional counsel, about**

Page 1144

1 Uehling - Cross - Carney  
 2 testimony that this is, in fact, multiple  
 3 documents. It was provided to us as a single  
 4 document -- as a one -- as a --  
 5 **A. Uh-huh.**  
 6 Q. -- four-page --  
 7 **A. Okay.**  
 8 Q. -- printout of your e-mail  
 9 box.  
 10 **A. All right.**  
 11 Q. Do you recognize what I've --  
 12 I've marked Respondent's Fifteen as a series of  
 13 e-mail communications you had involving Troy  
 14 Min, Michael LaForgia --?  
 15 MS. JALOWSKI: And now, are  
 16 you asking the questions for evidence --  
 17 evidentiary purposes?  
 18 MR. CARNEY: Yes.  
 19 MS. JALOWSKI: I don't --  
 20 MR. CARNEY: Okay.  
 21 MS. JALOWSKI: -- I have no  
 22 objection.  
 23 THE HEARING OFFICER: In  
 24 evidence, 'D' -- 'R' Fifteen.

37 (Pages 1141 to 1144)

Page 1145

1 Uehling - Cross - Carney  
 2 BY MR. CARNEY: (Cont'g.)  
 3 Q. 'R' Fifteen -- if you could  
 4 just look at the third page of what I've marked  
 5 'R' Fifteen.  
 6 **A. The e-mail I wrote to Michael**  
 7 **LaForgia copying to Victor Ramsey and Faye**  
 8 **Pallen.**  
 9 Q. All right. I just wanted you  
 10 to look at the number two -- "recommend peer  
 11 intervention" -- and just review that to  
 12 yourself, if you don't mind.  
 13 **A. Yes.**  
 14 Q. Okay. Now, I asked you  
 15 before about Specification Nineteen. And I  
 16 think you testified that -- strike that.  
 17 Specification Nineteen says that on or about  
 18 March 9th, 2005, --  
 19 **A. Uh-huh.**  
 20 Q. -- Principal Uehling  
 21 delivered -- I'm sorry -- observed the  
 22 following. And then there's Subpart 'E', that  
 23 Respondent refused to enroll in peer  
 24 intervention.

Page 1147

1 Uehling - Cross - Carney  
 2 had not yet refused peer intervention, had he?  
 3 **A. I didn't use the term**  
 4 **"refuse." That is not my document.**  
 5 Q. Okay. Whose document is it?  
 6 **A. It is the document of the**  
 7 **person who went through all of the papers,**  
 8 **reviewing my original documents.**  
 9 Q. Do you recall writing an  
 10 e-mail on Thursday, October the 20th, 2005, at  
 11 twelve forty-three p.m., in which you wrote  
 12 that you didn't see anything that was  
 13 inaccurate in these charges? Do you recall  
 14 that?  
 15 **A. No.**  
 16 Q. Did you, in fact, review  
 17 these charges before they issued?  
 18 **A. Did I review these**  
 19 **specifications?**  
 20 Q. Yes.  
 21 **A. Yes.**  
 22 Q. And in fact, you -- you wrote  
 23 in or around October of 2005 that there was  
 24 nothing inaccurate about them; isn't that a

Page 1146

1 Uehling - Cross - Carney  
 2 **A. Uh-huh.**  
 3 **THE HEARING OFFICER: You**  
 4 **have to say "yes" or "no."**  
 5 THE WITNESS: Yes.  
 6 BY MR. CARNEY: (Cont'g.)  
 7 Q. This e-mail to Michael  
 8 LaForgia is four days after Ms. -- Mr. Smith's  
 9 supposed refusal to engage in peer  
 10 intervention; is it not?  
 11 **A. Yes.**  
 12 Q. Do you see where -- you wrote  
 13 this e-mail to Mr. LaForgia, didn't you?  
 14 **A. Uh-huh.**  
 15 Q. Do you see where you write  
 16 "recommend peer intervention; send him to union  
 17 rep; is bad for him if he refuses"?  
 18 **A. Yeah. I see that.**  
 19 Q. "Downside is that I cannot do  
 20 any evaluation during the process, and the  
 21 process would take three months." Do you see  
 22 that?  
 23 **A. Uh-huh. Yes.**  
 24 Q. On March 9th, 2005, Mr. Smith

Page 1148

1 Uehling - Cross - Carney  
 2 fact?  
 3 **A. Yes. That's a fact. I**  
 4 **didn't catch my name was misspelled, either.**  
 5 Q. Is it your testimony that you  
 6 never provided information with regard to  
 7 Specification Nineteen that Mr. Smith refused  
 8 peer intervention?  
 9 **A. I'm sorry. The question is**  
 10 **asked in a reverse way. Can you ask the**  
 11 **question again so I can translate?**  
 12 Q. Did you ever tell anyone at  
 13 the Department of Education that Smith refused  
 14 peer intervention at any time?  
 15 **A. It's in one of my letters**  
 16 **that is the notation. It's one of my letters**  
 17 **that documented a disciplinary meeting with the**  
 18 **union representative and with -- with Mr.**  
 19 **Smith. So the union representative had it; Mr.**  
 20 **Smith had it. I don't know if the union**  
 21 **representative had it. But it was in my -- it**  
 22 **was in the -- the documents that went to the**  
 23 **D.O.E.**  
 24 Q. Ms. Uehling, you didn't want

38 (Pages 1145 to 1148)

Page 1149

1 Uehling - Cross - Carney  
 2 Mr. Smith to take -- to do peer intervention,  
 3 did you?  
 4 **A. Contrary -- I did want him to**  
 5 **take it. That's why I offered him -- I put it**  
 6 **in terms of "are you interested in it?" so that**  
 7 **he would have that option before we went**  
 8 **forward with the medical.**  
 9 Q. And yet, you write to the  
 10 local instructional superintendent that the  
 11 downside of Mr. Smith doing peer intervention  
 12 is that you can't do any evaluation of him in  
 13 that period.  
 14 **A. May I point out that this is**  
 15 **Ms. Frias-Colon's recommendation. She is**  
 16 **saying concerns about -- to -- her responses**  
 17 **and recommendations included "recommend peer**  
 18 **intervention; send him to the union rep." All**  
 19 **right? "It's bad if he refuses. However," she**  
 20 **says, "the downside is that I cannot do**  
 21 **evaluation during the process." All right?**  
 22 **But I -- I gave him that -- I put it out there**  
 23 **as a possibility. I can't tell him to do it.**  
 24 **It's not something that -- that I should have**

Page 1151

1 Uehling - Cross - Carney  
 2 refused it you're writing "it's bad for him if  
 3 he refuses" and that the downside of even  
 4 recommending it is that you can't evaluate him  
 5 during that period of time. That's what I want  
 6 to know.  
 7 **A. All I could offer was, "are**  
 8 **you interested in it?" He said no. That was**  
 9 **translated into this -- "note as refused."**  
 10 **Now, I'm not -- I'm not a legal beagle. I**  
 11 **don't know what implications that has in a --**  
 12 **in a situation like this.**  
 13 MS. JALOWSKI: Just for the  
 14 record, that's the -- at the prehearing  
 15 conference that was led by Jennifer Coffey.  
 16 THE HEARING OFFICER: So that  
 17 Specification Nineteen 'E' has been withdrawn?  
 18 All right.  
 19 MR. CARNEY: To the -- to the  
 20 extent that it's attributed to Principal  
 21 Lindley Uehling on March 9th, 2005, I would say  
 22 it goes directly to the credibility of the  
 23 witness.  
 24 THE HEARING OFFICER: All

Page 1150

1 **Uehling - Cross - Carney**  
 2 **even gone to. But I wanted him to have that**  
 3 **opportunity of knowing it.**  
 4 Q. Ms. Uehling, is it your  
 5 testimony that Ms. Frias-Colon wrote these  
 6 recommendations as they're written with the  
 7 exclamation point after "three months" and sent  
 8 them to you, and you merely copied them? Is  
 9 that your testimony?  
 10 **A. No. That is not my**  
 11 **testimony.**  
 12 Q. You, in fact, are relaying a  
 13 conversation you had with Ms. Frias-Colon;  
 14 isn't that right?  
 15 **A. That's right.**  
 16 Q. And from that conversation,  
 17 you determined that the downside of  
 18 recommending peer intervention was that it  
 19 would take three months, exclamation point;  
 20 isn't that a fact?  
 21 **A. That's right. So why would I**  
 22 **recommend it the day after I found that out?**  
 23 Q. I want to know why four days  
 24 after the specification that says that he

Page 1152

1 Uehling - Cross - Carney  
 2 right. No, no. I have my questions.  
 3 BY MR. CARNEY: (Cont'g.)  
 4 Q. With regard to Specification  
 5 Eight -- do you have the specifications in  
 6 front of you?  
 7 On -- on your direct  
 8 testimony, you were questioned as to the basis  
 9 of Specification Eight. And I'd like to look  
 10 at -- you to look at Specification Eight in  
 11 tandem with a -- an e-mail that I've marked on  
 12 the cover as 'T'. This is also a defense -- a  
 13 Department exhibit, isn't it?  
 14 MS. JALOWSKI: Yes.  
 15 MR. CARNEY: Do you know  
 16 which one it is?  
 17 It's 'D' Twelve -- Department  
 18 Twelve.  
 19 THE HEARING OFFICER: 'D'  
 20 Twelve is --  
 21 MR. CARNEY: Yes.  
 22 THE HEARING OFFICER: -- 'T'?  
 23 Okay.  
 24 BY MR. CARNEY: (Cont'g.)

39 (Pages 1149 to 1152)

Page 1153

1 Uehling - Cross - Carney  
 2 Q. So we really don't have to  
 3 enter it.  
 4 You were asked the basis of  
 5 Specification Eight, and you testified  
 6 concerning this exhibit, and I just want to  
 7 walk through it with you. Can you review just  
 8 the portion that was written to you and  
 9 purports to be from -- or as testified to  
 10 previously, is from Shanti Kantha?  
 11 **A. Sorry. I read the portion by**  
 12 **Shanti Kantha.**  
 13 Q. Did you not testify that --  
 14 based on the information provided to you in  
 15 this e-mail, that between -- sometime between  
 16 December the 23rd, 2004 and January 10th, 2005,  
 17 as stated in the specification, that Respondent  
 18 failed to provide teacher Shanti Kantha with  
 19 the lesson plan?  
 20 **A. Yes.**  
 21 Q. And the basis of that -- of  
 22 this Specification Eight is the e-mail that was  
 23 marked Department Twelve; isn't that right?  
 24 **A. I don't know. There are**

Page 1155

1 Uehling - Cross - Carney  
 2 **A. I don't recall her schedule.**  
 3 Q. If it were the case that  
 4 Shanti Kantha taught with Mr. Smith on a  
 5 Thursday, and the -- and this e-mail says on  
 6 Monday that she hasn't received a lesson plan  
 7 yet, --  
 8 **A. Uh-huh.**  
 9 Q. -- wouldn't you agree that  
 10 something more than this e-mail would be  
 11 required in order to establish that no lesson  
 12 plan was given to Shanti Kantha on this -- on  
 13 this day?  
 14 **A. You're suggesting it's about**  
 15 **whether or not she received a lesson plan for**  
 16 **the coming Thursday class?**  
 17 Q. I'm suggesting that when  
 18 questioned concerning Specification Eight that  
 19 Department Twelve was -- was entered into  
 20 evidence, and you testified concerning it. And  
 21 you -- and you said, in sum or substance, that  
 22 Shanti Kantha never got a lesson plan upon your  
 23 inquiry as to whether she had received one.  
 24 **A. Right.**

Page 1154

1 **Uehling - Cross - Carney**  
 2 **other documents between the 23rd and January**  
 3 **10th that would also state it.**  
 4 Q. Do you recall giving  
 5 testimony the first day of the hearing in which  
 6 you were asked about Specification Eight, and  
 7 you testified concerning Department Twelve?  
 8 **A. No. I wasn't allowed to take**  
 9 **notes so I wouldn't be able to recall the**  
 10 **details.**  
 11 Q. Look at Department Twelve for  
 12 a moment, and look at the response Shanti  
 13 Kantha is giving you. It says, "I haven't  
 14 received a lesson plan yet," doesn't it?  
 15 **A. Yes.**  
 16 Q. And does this e-mail bear a  
 17 day -- a day of the week in which it was sent?  
 18 **A. January 10th.**  
 19 Q. Sorry -- the day of the week  
 20 on which it was sent?  
 21 **A. Monday.**  
 22 Q. Now, Shanti Kantha didn't  
 23 teach with Smith until Thursday; isn't that a  
 24 fact?

Page 1156

1 **Uehling - Cross - Carney**  
 2 Q. And I just want you to look  
 3 at it and -- and recognize this says she hasn't  
 4 received one yet; isn't that a fact?  
 5 **A. She has not received any**  
 6 **lesson plans; that's correct.**  
 7 Q. Do you have personal  
 8 knowledge that after the January 10th -- that  
 9 she did not receive a lesson plan for Smith's  
 10 Thursday class?  
 11 **A. I don't recall.**  
 12 Q. I just want to direct your  
 13 attention to Specification Twenty. And I want  
 14 to direct your attention again to what I've  
 15 marked on the cover 'U', which I'll mark  
 16 Respondent Sixteen for identification. Have  
 17 you ever seen Respondent's Sixteen before?  
 18 **A. Yes, I have.**  
 19 Q. And how is it that you saw  
 20 it?  
 21 **A. It was faxed to my office,**  
 22 **to -- well, to the main school office.**  
 23 Q. And what is it?  
 24 **A. It is a fax from Ted Smith's**

40 (Pages 1153 to 1156)



Page 1157

1 Uehling - Cross - Carney  
 2 doctor, saying he is something from work on  
 3 February 9th --.  
 4 THE HEARING OFFICER:  
 5 "Excused," I think you --.  
 6 A. (Cont'g.) Oh. Thank you --  
 7 excused from work -- he's excused from work 2/9  
 8 and 2/10 due to upper respiratory infection and  
 9 bronchitis.  
 10 BY MR. CARNEY: (Cont'g.)  
 11 Q. And based on the fax that you  
 12 received, does what I've marked Respondent's  
 13 Sixteen comport in every way with your  
 14 recollection of the fax?  
 15 THE HEARING OFFICER: Sixteen  
 16 or Twenty -- I'm -- I'm sorry. You were on  
 17 Twenty.  
 18 MS. JALOWSKI: No. It's  
 19 Specification Twenty -- 'R' -- and Respondent's  
 20 Sixteen --  
 21 MR. CARNEY: Respondent's --.  
 22 MS. JALOWSKI: -- is the  
 23 document.  
 24 THE HEARING OFFICER: Oh,

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1 Uehling - Cross - Carney  
 2 MR. CARNEY: Just for the  
 3 purpose --  
 4 THE HEARING OFFICER: No, no,  
 5 no.  
 6 MR. CARNEY: -- that she  
 7 received it --.  
 8 THE HEARING OFFICER: It's --  
 9 it's in evidence.  
 10 BY MR. CARNEY: (Cont'g.)  
 11 Q. Do you see in Specification  
 12 Twenty that Mr. Smith is being charged with  
 13 incompetence, dereliction of duty with regard  
 14 to being asked in February 9th, 2005 and  
 15 February 10th, 2005?  
 16 A. He's being charged with  
 17 incompetence and dereliction of duty?  
 18 Q. The charges against him --  
 19 withdrawn. Do you see that in Specification  
 20 Twenty?  
 21 A. That he was absent on days  
 22 that -- that Victor Ramsey was expected. Yes.  
 23 Q. And those, in fact, are the  
 24 dates that are reflected in the fax that you

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1 Uehling - Cross - Carney  
 2 okay. All right. So what's your question?  
 3 Say that again.  
 4 MR. CARNEY: They -- she --  
 5 the witness testified she received a fax.  
 6 THE HEARING OFFICER: Yeah.  
 7 BY MR. CARNEY: (Cont'g.)  
 8 Q. And she recognizes this as  
 9 the fax.  
 10 I want to make sure that what  
 11 I've marked Respondent's Sixteen conforms in  
 12 every respect with your memory of that fax.  
 13 A. Yes.  
 14 MR. CARNEY: Okay. I would  
 15 like to offer it into evidence as Respondent's  
 16 Sixteen.  
 17 MS. JALOWSKI: I have no  
 18 objection as --  
 19 THE HEARING OFFICER: In  
 20 evidence.  
 21 MS. JALOWSKI: -- to this  
 22 medical note.  
 23 THE HEARING OFFICER: I'll  
 24 take it.

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1 Uehling - Cross - Carney  
 2 received --?  
 3 A. Two of the three are.  
 4 Q. When you were reviewing these  
 5 specifications with the Department, did you  
 6 provide them with the fax that you received?  
 7 A. The -- yeah. They had the  
 8 fax. They -- there were also other dates that  
 9 they left out.  
 10 Q. Okay. My question is that  
 11 when you spoke to the D.O.E. regarding these  
 12 specifications, did you provide the fax that  
 13 you received from Dr. Amant on 2/9/05?  
 14 A. They had all of the  
 15 materials. I didn't -- I had no fax to provide  
 16 them because I had given the D.O.E. all of my  
 17 materials, including this.  
 18 Q. So you did not have the fax  
 19 to give them; is that right?  
 20 A. Exactly.  
 21 MS. JALOWSKI: I -- it's -- I  
 22 think it's being confused. I mean, I think the  
 23 answer was just -- yes. The Department had  
 24 this document when they did the charges.

41 (Pages 1157 to 1160)

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1 Uehling - Cross - Carney  
 2 THE HEARING OFFICER: Is  
 3 that -- is -- all right. Let's move on.  
 4 MS. JALOWSKI: I mean,  
 5 because it's getting a little confusing there,  
 6 if -- if you're talking about the fax sheets,  
 7 not -- the Department had this document.  
 8 THE HEARING OFFICER:  
 9 Let's -- let's move on. Okay.  
 10 MR. CARNEY: If the  
 11 Department had the document saying that he had  
 12 bronchitis and upper-respiratory infection on  
 13 the 9th and 10th of February, 2005, then why is  
 14 he being charged with the specification?  
 15 THE HEARING OFFICER: In  
 16 other words, it's your understanding,  
 17 counselor, that sending a doctor's note of this  
 18 type immediately excuses somebody from any  
 19 charges; is that your point?  
 20 MR. CARNEY: My point is is  
 21 that there was a reason --.  
 22 THE HEARING OFFICER: Is --  
 23 is a doctor's note that's hearsay that I'm  
 24 accepting beyond question a credible document,

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1 Uehling - Cross - Carney  
 2 recognize -- there are actually -- there's a  
 3 series of e-mails here, if counsel will  
 4 stipulate. They appear to be from -- or from  
 5 Lindley Uehling to Dana Gaudet, Judith Killan,  
 6 and Harold Manner. I'll -- I'll offer them  
 7 into evidence. Do you want to stipulate or --?  
 8 MS. JALOWSKI: I'm sorry.  
 9 I'm reviewing them --  
 10 MR. CARNEY: Okay.  
 11 MS. JALOWSKI: -- as to the  
 12 changes to what you just said.  
 13 What -- what are you asking?  
 14 MR. CARNEY: I was --  
 15 everyone seems frustrated with the amount of  
 16 time on the foundation, so I just --.  
 17 MS. JALOWSKI: No. I have no  
 18 problem. You're asking if I -- if I'm just  
 19 going to -- as long as Ms. Uehling says that  
 20 she recognizes the documents, I have no  
 21 objection to them going into evidence.  
 22 THE WITNESS: I recognize it.  
 23 MR. CARNEY: They're yours?  
 24 I'd offer them.

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1 Uehling - Cross - Carney  
 2 in your view, as a counselor?  
 3 MR. CARNEY: Not necessarily.  
 4 THE HEARING OFFICER: All  
 5 right. Then let's move on with this. And I'll  
 6 take it in evidence.  
 7 BY MR. CARNEY: (Cont'g.)  
 8 Q. Directing your attention to  
 9 what I've marked under cover 'V' -- should be  
 10 Respondent's Seventeen --.  
 11 THE HEARING OFFICER: What is  
 12 that -- Exhibit 'B'? I'm just --.  
 13 MR. CARNEY: 'V' -- 'V' as in  
 14 "Victor."  
 15 THE HEARING OFFICER: Okay.  
 16 And that's 'R' Seventeen?  
 17 MR. CARNEY: 'R' Seventeen --  
 18 I -- I've got to apologize. I didn't have any  
 19 numerical exhibit tabs.  
 20 THE HEARING OFFICER: That's  
 21 all right -- no -- no problem. We'll -- we're  
 22 doing fine with that. 'R' Seventeen is 'V' --  
 23 no problem at all.  
 24 MR. CARNEY: Do you

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1 Uehling - Cross - Carney  
 2 THE HEARING OFFICER: In  
 3 evidence. 'R' Seventeen is 'V' as in "Victor."  
 4 BY MR. CARNEY: (Cont'g.)  
 5 Q. Looking at the first page,  
 6 this is an e-mail from you to Mr. Harold  
 7 Manner. Do you recognize it?  
 8 **A. I do.**  
 9 Q. And you wrote it?  
 10 **A. Yes.**  
 11 Q. What is the purpose of this  
 12 e-mail?  
 13 **A. It's Mr. -- Mr. Manner called**  
 14 **me in distress about Mr. Smith. He -- Mr.**  
 15 **Manner is the head of P.E. and athletics for**  
 16 **the Lab School, with whom we share the physical**  
 17 **education facilities. And he's distressed**  
 18 **because of lost keys and many other things,**  
 19 **which he enumerated on the phone. So I simply**  
 20 **said that I would get -- I would like to talk**  
 21 **with him personally.**  
 22 Q. About lost keys?  
 23 **A. Mr. Manner had issues with**  
 24 **the way Mr. Smith was behaving. However, as**

42 (Pages 1161 to 1164)

Page 1165

1 **Uehling - Cross - Carney**  
 2 **you can see, he did not want to get involved on**  
 3 **a formal basis.**  
 4 Q. That wasn't my question. Did  
 5 he give you any reason as to why he didn't want  
 6 to be involved?  
 7 **A. Actually, he did not, but I**  
 8 **surmised it.**  
 9 Q. He didn't give you a reason;  
 10 that's right?  
 11 **A. He did not.**  
 12 Q. And directing your attention  
 13 to -- on the second page of what I've marked  
 14 Respondent's Fifteen --.  
 15 THE HEARING OFFICER:  
 16 Respondent's Fifteen, which is 'S'? The second  
 17 page --?  
 18 MR. CARNEY: Yeah -- the  
 19 third paragraph. It is in paragraph -- if  
 20 you'd just review that to yourself.  
 21 THE WITNESS: Yes.  
 22 BY MR. CARNEY: (Cont'g.)  
 23 Q. You state there that -- that  
 24 this is a -- that it's important that the

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1 Uehling - Cross - Carney  
 2 difficulty for Mr. Smith to control the  
 3 students on those days?  
 4 **A. On the days that he didn't**  
 5 **have assistants, he was to call and tell me if**  
 6 **an assistant had not shown up. And I would go**  
 7 **down myself and assist if no one else was**  
 8 **available.**  
 9 Q. Okay. If -- directing your  
 10 attention to the third paragraph again, you  
 11 state to Ms. Killan that it is imperative that  
 12 all teachers who are assigned as assistants in  
 13 oversized P.E. classes report to the classes on  
 14 time, stay until dismissal, and arrange for  
 15 cover if they cannot be there. Isn't that what  
 16 it says?  
 17 **A. Yes.**  
 18 Q. Does it say that "Mr. Smith  
 19 was supposed to call, and I would personally  
 20 fill in"?  
 21 MS. JALOWSKI: Objection.  
 22 THE HEARING OFFICER: It says  
 23 what it says. I would sustain.  
 24 BY MR. CARNEY: (Cont'g.)

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1 Uehling - Cross - Carney  
 2 assistants for the oversized classes appear and  
 3 perform their duties in a timely fashion, --  
 4 **A. Exactly.**  
 5 Q. -- do you not?  
 6 **A. Yes. Right.**  
 7 Q. And that was a problem with  
 8 Ms. Killan, wasn't it?  
 9 **A. Yes.**  
 10 Q. She wouldn't show up to Mr.  
 11 Smith's classes as instructed; isn't that  
 12 right?  
 13 **A. It did happen. Yes.**  
 14 Q. And on those days when Mr.  
 15 Smith was without an assistant in an oversized  
 16 class, that would have put the -- that would  
 17 have been a violation of the collective  
 18 bargaining agreement, is it not?  
 19 **A. And a safety issue -- major**  
 20 **safety issue.**  
 21 Q. And was it difficult on those  
 22 days -- by "those days," I mean days when Mr.  
 23 Smith was unassisted in oversized classes. As  
 24 a principal, did you think it was a -- a

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1 Uehling - Cross - Carney  
 2 Q. You were aware, however, that  
 3 there was a -- a contract issue with the  
 4 oversized classes, were you not?  
 5 MS. JALOWSKI: Objection.  
 6 THE HEARING OFFICER: Yeah.  
 7 Let me -- let me sustain that objection to this  
 8 extent. There are various aspects of that  
 9 particular provision you're talking about, and  
 10 it's more or less a question of contractual  
 11 interpretation, that this witness would not be  
 12 the one to answer. There are various  
 13 exceptions, for example, to the requirements.  
 14 So rather than get into that, I would sustain  
 15 and avoid any questions as to whether it's a  
 16 violation of the contract.  
 17 BY MR. CARNEY: (Cont'g.)  
 18 Q. Is -- isn't it true that Mr.  
 19 Smith was in charge of a lunch program in --  
 20 which involved supervising over a hundred  
 21 students single-handedly?  
 22 **A. Yes.**  
 23 Q. And that went on for some  
 24 time, did it not?

43 (Pages 1165 to 1168)

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1 Uehling - Cross - Carney  
 2 **A. Until he spoke with me about**  
 3 **it, at which time I came up with different**  
 4 **solutions so that there would not be so many**  
 5 **students in there.**  
 6 Q. So you stopped it at some  
 7 point.  
 8 **A. We tried to work out a**  
 9 **solution for how we could minimize the number**  
 10 **of students in there -- for example, staggered**  
 11 **times for the students.**  
 12 Q. And --.  
 13 **A. That was part of his job. He**  
 14 **had fewer classes in order to do the -- the**  
 15 **lunch supervision and have gym. And they would**  
 16 **only be allowed in the gymnasium, not in the**  
 17 **yard, unless he closed the gym and took them to**  
 18 **the yard.**  
 19 Q. So the students actually ate  
 20 lunch in the gymnasium; is that right?  
 21 **A. No. They had -- they were**  
 22 **not allowed to take food or drink into the gym.**  
 23 Q. This would be a -- when  
 24 they're finished with lunch, they can go and --

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1 Uehling - Cross - Carney  
 2 time, any principal anywhere calling you for a  
 3 reference about Mr. Smith?  
 4 **A. I got a call from a**  
 5 **principal -- I don't remember which month it**  
 6 **was; it was in the spring -- saying that Mr.**  
 7 **Smith expressed an interest, and he was calling**  
 8 **for a reference.**  
 9 THE HEARING OFFICER: Spring  
 10 of '05 was --?  
 11 THE WITNESS: '05 --  
 12 THE HEARING OFFICER: Go  
 13 ahead. I'm sorry.  
 14 THE WITNESS: -- uh-huh.  
 15 THE HEARING OFFICER: Yeah.  
 16 **A. (Cont'g.) And -- and I said,**  
 17 **"what -- what kind of position is he looking**  
 18 **at?" And he said, "well, he's looking at being**  
 19 **a phys ed instructor." I since talked to Mr.**  
 20 **Smith and found out that Mr. Smith was only**  
 21 **interested in being an A.P. So I was surprised**  
 22 **later to find that out.**  
 23 **But the -- and the principal**  
 24 **said would I recommend him. And I said, "I**

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1 Uehling - Cross - Carney  
 2 **A. Exactly.**  
 3 Q. -- play in the gym?  
 4 **A. Right.**  
 5 Q. And why -- did Mr. Smith, at  
 6 some point, tell you that he was unwilling to  
 7 teach a hundred students single-handedly, --  
 8 **A. Yes.**  
 9 Q. -- without assistants?  
 10 **A. Yes.**  
 11 Q. And you didn't accuse him at  
 12 that time of insubordination, did you?  
 13 **A. No. I closed the gym.**  
 14 Q. And you did that because  
 15 someone advised you that that wasn't proper;  
 16 isn't that a fact?  
 17 **A. I did it because I no longer**  
 18 **had anyone to cover the gym.**  
 19 Q. Do you recall ever speaking  
 20 to a man named Jesus Santiago -- a Dr.  
 21 Santiago -- Santiago, a principal in the Bronx,  
 22 regarding Mr. Smith?  
 23 **A. No.**  
 24 Q. Did -- do you recall, at any

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1 Uehling - Cross - Carney  
 2 **recommend that you have him do a demonstration**  
 3 **lesson."**  
 4 BY MR. CARNEY: (Cont'g.)  
 5 Q. And that was the extent of  
 6 the conversation?  
 7 **A. That was the extent of the**  
 8 **conversation.**  
 9 Q. You didn't tell that  
 10 principal that he was a bad teacher?  
 11 **A. No. Nor did I ask him what**  
 12 **the extent of the phys ed classes were.**  
 13 Q. You don't -- you never told  
 14 him that -- that Smith was okay?  
 15 **A. No.**  
 16 Q. Do you recall giving  
 17 testimony at a grievance hearing on or around  
 18 June 21st, 2005?  
 19 **A. I'd have to look at my notes**  
 20 **to know the dates of the grievance hearings.**  
 21 **There were many.**  
 22 Q. How would you characterize  
 23 the reference that you gave to the principal  
 24 you -- you just testified that you spoke with?

44 (Pages 1169 to 1172)

Page 1173

1 Uehling - Cross - Carney  
 2 **A. I didn't give a reference. I**  
 3 **told him to have -- use a demonstration lesson**  
 4 **as the basis for his decision.**  
 5 Q. So you didn't give a  
 6 reference one way or another? Did -- did the  
 7 principal ask you for a reference?  
 8 **A. I think he was asking for a**  
 9 **reference, but he didn't ask me what I rated**  
 10 **the teacher. Nor did he ask any specific**  
 11 **questions. I simply said, "do a demonstration**  
 12 **lesson."**  
 13 Q. At any time did you -- did  
 14 you block Mr. Smith's attempts to transfer to  
 15 another school?  
 16 MS. JALOWSKI: Objection.  
 17 BY MR. CARNEY: (Cont'g.)  
 18 Q. I'll rephrase it.  
 19 Did there come a time when Mr. Smith tried to  
 20 transfer out of the Museum School, but you  
 21 recommended otherwise?  
 22 **A. I was amazed that he never**  
 23 **tried to transfer.**  
 24 THE HEARING OFFICER: Just

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1 Uehling - Cross - Carney  
 2 **A. Not to my knowledge.**  
 3 Q. And I think you testified a  
 4 moment ago that you were surprised that he  
 5 didn't --  
 6 **A. Yeah.**  
 7 Q. -- try to transfer.  
 8 I just -- I want to direct your attention to  
 9 what I've marked under cover 'X' the  
 10 Respondent's Eighteen for identification.  
 11 **A. All right.**  
 12 Q. Have you ever seen this  
 13 document before?  
 14 **A. No, I haven't.**  
 15 Q. Do you know of any reason why  
 16 Principal Marvia Lindsay would say that you  
 17 blocked Teddy's release?  
 18 **A. She doesn't say the name --**  
 19 Q. Sorry.  
 20 **A. -- of the principal.**  
 21 Q. It -- I'll rephrase.  
 22 Do you see where it says the name Marvia  
 23 Lindsay at the --?  
 24 **A. But it doesn't say "your**

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1 Uehling - Cross - Carney  
 2 try and answer --  
 3 MS. JALOWSKI: I think  
 4 also --  
 5 THE HEARING OFFICER: -- the  
 6 question.  
 7 MS. JALOWSKI: -- I'm just  
 8 going to object as -- the question, I think,  
 9 was a -- was --.  
 10 THE HEARING OFFICER: I'll  
 11 allow it, but --.  
 12 MS. JALOWSKI: No, no, no. I  
 13 think it needs to be broken down into two  
 14 questions is all --  
 15 MR. CARNEY: If it's --  
 16 MS. JALOWSKI: -- I'm saying.  
 17 MR. CARNEY: -- compound,  
 18 I'll rephrase it.  
 19 THE HEARING OFFICER: Go  
 20 ahead.  
 21 BY MR. CARNEY: (Cont'g.)  
 22 Q. Did there come a time when  
 23 Mr. Smith tried to transfer out of the Museum  
 24 School?

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1 **Uehling - Cross - Carney**  
 2 **principal." Who is the principal she spoke**  
 3 **with or tried to reach?**  
 4 MR. CARNEY: Well, let me  
 5 rephrase --  
 6 MS. JALOWSKI: Can --  
 7 MR. CARNEY: -- the question.  
 8 MS. JALOWSKI: -- can I make  
 9 an application to have Ms. Uehling step out of  
 10 the room and -- because I think this -- this  
 11 might be something that Mr. Carney's not  
 12 necessarily aware of the rules of the  
 13 Department, and obviously, I don't want to  
 14 taint her testimony as --.  
 15 THE HEARING OFFICER: Do you  
 16 want to -- off the record, please.  
 17 (Off-the-record discussion)  
 18 BY MR. CARNEY: (Cont'g.)  
 19 Q. So you never tried to block  
 20 Smith's transfer; --  
 21 **A. Never.**  
 22 Q. -- is that right?  
 23 But you nevertheless were aware that giving him  
 24 an "unsatisfactory" rating would have that

45 (Pages 1173 to 1176)

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1 Uehling - Cross - Carney  
 2 effect, were you not?  
 3 **A. Yes. Not entirely -- I'm**  
 4 **sorry. I shouldn't say that. My assumption**  
 5 **was that he would return to the Museum School**  
 6 **because I was the first principal who had rated**  
 7 **him "unsatisfactory."**  
 8 Q. But you nevertheless  
 9 understood he couldn't transfer to another  
 10 school.  
 11 **A. That I didn't know. I really**  
 12 **didn't know that. But I would -- I don't know.**  
 13 Q. The -- the witness is  
 14 equivocating. I need to -- did you understand  
 15 or not that giving Smith a 'U' rating would  
 16 have the effect of preventing him to transfer  
 17 to another school?  
 18 THE HEARING OFFICER: If you  
 19 know.  
 20 **A. No.**  
 21 MR. CARNEY: I want to take  
 22 one break and then wrap it up. Is that okay?  
 23 THE HEARING OFFICER: Sure --  
 24 of course. Off the record.

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1 Uehling - Cross - Carney  
 2 first?  
 3 MR. CARNEY: I don't have  
 4 copies of that one. This one -- that was  
 5 provided in discovery.  
 6 **A. It looks like notes from a**  
 7 **phone call.**  
 8 THE HEARING OFFICER: No, no.  
 9 The question is, does this refresh your  
 10 recollection --  
 11 THE WITNESS: Oh.  
 12 THE HEARING OFFICER: -- as  
 13 to a conversation with Carmen? And really, the  
 14 answer is "yes," "no," or --.  
 15 **A. (Cont'g.) No. It's not --**  
 16 **it -- they're two separate things. One is a**  
 17 **note about something else.**  
 18 BY MR. CARNEY: (Cont'g.)  
 19 Q. Did you recognize that -- the  
 20 document that I've put in front of you?  
 21 **A. Yes. It's my handwriting.**  
 22 Q. Okay. Do you see that at the  
 23 top there's a name "Carmen" and the date,  
 24 5/12/2005?

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1 Uehling - Cross - Carney  
 2 (Off-the-record discussion)  
 3 BY MR. CARNEY: (Cont'g.)  
 4 Q. I do appreciate your time. I  
 5 just have a couple more questions.  
 6 Do you recall having a -- a  
 7 telephone conversation with a woman named  
 8 Carmen regarding Mr. Smith?  
 9 **A. No.**  
 10 Q. Do you recall a telephone  
 11 conversation where, in sum or substance, you  
 12 discussed charging Mr. Smith with  
 13 insubordination based on his failure to report  
 14 to medical examinations?  
 15 **A. Do you have a last name?**  
 16 Q. No.  
 17 **A. I don't remember speaking to**  
 18 **any Carmen about insubordination -- about Mr.**  
 19 **Smith's insubordination.**  
 20 Q. Did -- if I showed you what I  
 21 think are your handwritten notes from the  
 22 conversation, would it refresh your  
 23 recollection?  
 24 MS. JALOWSKI: Can I see it

Page 1180

1 Uehling - Cross - Carney  
 2 **A. The date is probably**  
 3 **accurate, but the -- the note -- or this is a**  
 4 **separate notation.**  
 5 Q. Just put the -- the note down  
 6 just for a moment, if you don't mind.  
 7 **A. Okay.**  
 8 Q. You were looking for a reason  
 9 to charge Mr. Smith with the insubordination,  
 10 weren't you?  
 11 **A. No. I was told by legal that**  
 12 **the way he had behaved was insubordinate and**  
 13 **not to go to the medical was insubordination.**  
 14 Q. You asked a question whether  
 15 you could charge him with insubordination of  
 16 the legal department, didn't you?  
 17 **A. "Asked if you could charge**  
 18 **him" -- I'm asking Mr. LaForgia this?**  
 19 Q. Yes.  
 20 **A. It's not a yes-no question.**  
 21 THE HEARING OFFICER: What is  
 22 the answer? I didn't hear. I'm sorry.  
 23 **A. (Cont'g.) There -- it's not**  
 24 **a yes-no question. Mr. LaForgia didn't know,**

46 (Pages 1177 to 1180)

Page 1181

1 **Uehling - Cross - Carney**  
 2 **either. That's why I was getting help from**  
 3 **legal.**  
 4 BY MR. CARNEY: (Cont'g.)  
 5 Q. The -- no. My question is  
 6 that you sought out advice as to whether you  
 7 could charge Mr. Smith with insubordination,  
 8 didn't you?  
 9 **A. No. I was told by legal that**  
 10 **it was insubordination. I was told later by a**  
 11 **different office in legal that it was not**  
 12 **insubordination. I was getting counseling from**  
 13 **various areas.**  
 14 Q. Did you or did you not write  
 15 an e-mail to Min Troy asking her advice as to  
 16 whether you could request a medical examination  
 17 from Mr. Smith?  
 18 **A. Yes.**  
 19 Q. And --.  
 20 **A. Not if I could, but how to go**  
 21 **about it.**  
 22 Q. And you had conversations  
 23 with Ms. Pallen, did you not, regarding  
 24 whether -- and these were Ms. Pallen's words,

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1 Uehling - Cross - Carney  
 2 THE HEARING OFFICER: Want to  
 3 repeat the question, please? It's okay. By  
 4 this late in the day, I could use some help.  
 5 Go ahead.  
 6 THE WITNESS: Sorry.  
 7 THE HEARING OFFICER: You  
 8 want to ask it again, counselor?  
 9 BY MR. CARNEY: (Cont'g.)  
 10 Q. Sure. You spoke to several  
 11 people about charging Mr. Smith with  
 12 insubordination, didn't you?  
 13 **A. Yes.**  
 14 Q. And you spoke to several  
 15 people about removing Mr. Smith for  
 16 insubordination, didn't you?  
 17 **A. For the medical -- yes.**  
 18 Q. And you were told, at least  
 19 by one person, that Mr. Smith could be -- could  
 20 be charged with insubordination for his failure  
 21 to submit to an evaluation.  
 22 **A. Yes.**  
 23 Q. Isn't that correct?  
 24 **A. Yes.**

Page 1182

1 Uehling - Cross - Carney  
 2 not yours, I realize -- one should play up Mr.  
 3 Smith's admission that he had a heart  
 4 condition; isn't that a fact?  
 5 **A. That's what she wrote.**  
 6 Q. Were you not seeking a reason  
 7 to get rid of Mr. Smith in terms of his failure  
 8 to comply with your request that he submit to a  
 9 medical evaluation?  
 10 MS. JALOWSKI: Objection.  
 11 THE HEARING OFFICER: I'll  
 12 allow it.  
 13 THE WITNESS: Ask a simple  
 14 question -- simple question. It would be much  
 15 better if "yes" or "no" -- parts, you know,  
 16 like one sentence at a --.  
 17 THE HEARING OFFICER: No, no.  
 18 I -- I give the advice here, although that --  
 19 your -- your advice may be well taken, but you  
 20 can only ask for the question.  
 21 THE WITNESS: I apologize.  
 22 THE HEARING OFFICER: That's  
 23 all right.  
 24 THE WITNESS: I'm sorry.

Page 1184

1 **Uehling - Cross - Carney**  
 2 Q. And someone else told you he  
 3 couldn't; isn't that right?  
 4 **A. Yes.**  
 5 Q. Did you ultimately recommend  
 6 that Mr. Smith be brought under charges for  
 7 insubordination?  
 8 **A. Yes, but not relative to the**  
 9 **medical.**  
 10 Q. On what basis?  
 11 **A. Because of insubordinate**  
 12 **behavior during the teaching**  
 13 **responsibilities -- for example -- I'll leave**  
 14 **it.**  
 15 THE HEARING OFFICER: You're  
 16 getting the hang of it.  
 17 BY MR. CARNEY: (Cont'g.)  
 18 Q. So as far as you're  
 19 concerned, to the best of your knowledge, Mr.  
 20 Smith -- and this -- just to the best of your  
 21 knowledge, is not here under charges of  
 22 insubordination based on his failure to appear  
 23 for a medical exam?  
 24 MS. JALOWSKI: Objection.

47 (Pages 1181 to 1184)

Page 1185

1 Uehling - Cross - Carney  
 2 THE HEARING OFFICER: Yeah.  
 3 That's sort of a question we might have to ask  
 4 counsel. I'll sustain that. I'll sustain.  
 5 BY MR. CARNEY: (Cont'g.)  
 6 Q. Did you speak with Timothy  
 7 Timberlake at any time about Ted Smith?  
 8 **A. I did.**  
 9 Q. And what was the nature of  
 10 your conversation with Mr. Timberlake?  
 11 **A. Clarification about the**  
 12 **absences.**  
 13 Q. Did you seek out information  
 14 about one Lacy Stull?  
 15 **A. When I called, I asked for**  
 16 **both of them. I didn't realize that Lacy Stull**  
 17 **was no longer there -- if that's the same**  
 18 **school.**  
 19 Q. Do you recall writing an  
 20 e-mail to the Department of Education in which  
 21 you said -- in which you inquired whether  
 22 criminal charges have been brought against Mr.  
 23 Smith?  
 24 **A. Yes.**

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1 Uehling - Cross - Carney  
 2 **And in fact, a secretary at one of the schools**  
 3 **told me.**  
 4 Q. And -- and you wanted the  
 5 Department to follow up on that; isn't that  
 6 right?  
 7 **A. Wanted to know if it was**  
 8 **hearsay or true.**  
 9 Q. Did that have anything to do  
 10 with Smith's employment with you?  
 11 **A. No.**  
 12 MR. CARNEY: And no further  
 13 questions.  
 14 REDIRECT EXAMINATION  
 15 BY MS. JALOWSKI:  
 16 Q. Ms. Uehling, you -- you  
 17 stopped yourself when -- sorry -- he asked you  
 18 about the insubordination. What -- why did you  
 19 have a technical assistance conference? What  
 20 were the issues?  
 21 **A. The continued -- that when --**  
 22 **once Mr. Smith had -- had received a 'U'**  
 23 **rating, rather than working with me to improve**  
 24 **his teaching to -- or even just say to**

Page 1186

1 **Uehling - Cross - Carney**  
 2 Q. And do you recall urging the  
 3 Department to investigate whether criminal  
 4 charges had been filed against Mr. Smith?  
 5 **A. Yes -- well, not urging them.**  
 6 THE HEARING OFFICER: I -- I  
 7 can't hear. I'm sorry.  
 8 **A. (Cont'g.) I -- I -- I said,**  
 9 **"is this true?" I said, "can you find out if**  
 10 **this is true?" I had come by it as hearsay.**  
 11 BY MR. CARNEY: (Cont'g.)  
 12 Q. And you asked whether there  
 13 was any way the Department could verify whether  
 14 Mr. Smith was under criminal charges; isn't  
 15 that right?  
 16 **A. I'm sorry. I don't remember**  
 17 **my wording, but it was to find out if this**  
 18 **hearsay was accurate. That was my purpose.**  
 19 Q. It wasn't -- strike that.  
 20 You found a letter in his file, did you not,  
 21 that led you to believe that Mr. Smith could or  
 22 should be under some sort of criminal  
 23 investigation; isn't that right?  
 24 **A. Actually, somebody told me.**

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1 Uehling - Redirect - Jalowski  
 2 transfer, for that matter -- he was becoming  
 3 increasingly stressed and unable to do his job.  
 4 And he was at a point where he was not doing  
 5 his -- even taking the P.E. classes to the gym.  
 6 He was taking them to the auditorium to run  
 7 around. And when I would give him a direct  
 8 "take these kids to the gym," he would look at  
 9 me and refuse. If I went to him in the gym,  
 10 and -- as I did in one time where it was  
 11 another free play, and I said, "I see it's free  
 12 play again; let's have some class going on," he  
 13 became belligerent and yelled, "well, that's --  
 14 I'll tell them they'll never have free play  
 15 again," and -- and he stomped off away from me.  
 16 It was --.  
 17 THE HEARING OFFICER: Excuse  
 18 me. This is pretty much -- we got this on  
 19 direct. The --  
 20 THE WITNESS: Yes.  
 21 THE HEARING OFFICER: --  
 22 question really was why you had a T.A.C. Is  
 23 this leading up to why there was a T.A.C. --  
 24 THE WITNESS: I was --.

48 (Pages 1185 to 1188)



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1 Uehling - Redirect - Jalowski  
 2 THE HEARING OFFICER: --  
 3 based on, you know --?  
 4 THE WITNESS: And -- and --  
 5 and the global answer is that there was no  
 6 improvement. There was a -- actually worsening  
 7 of behaviors in the gym to the point where I  
 8 felt it was unsafe for the kids to be in there  
 9 with him, even with an assistant. And I wanted  
 10 to find some way to remove him from the  
 11 gymnasium because it's not a place that I would  
 12 have allowed my own child to be in.  
 13 BY MS. JALOWSKI: (Cont'g.)  
 14 Q. All right. Now I just have a  
 15 couple of questions. Were -- was Susan Schron  
 16 able to teach the -- the -- the oversized  
 17 classes?  
 18 **A. Yes.**  
 19 Q. Did anybody else have --  
 20 who -- was there anybody else besides Ms.  
 21 Schron who took over the teaching of the gym  
 22 classes?  
 23 **A. Mr. Ramsey.**  
 24 Q. And did -- did he have any

Page 1191

1 Uehling - Redirect - Jalowski  
 2 Smith?  
 3 **A. Uh-huh.**  
 4 Q. Did Mr. Smith meet with you  
 5 on that day?  
 6 **A. He came. He came in. Yes.**  
 7 Q. And what did he say to you?  
 8 **A. He -- he said that -- I'm so**  
 9 **confused now. I would have to look at my**  
 10 **notes. What -- what had happened was that**  
 11 **Ms. --.**  
 12 Q. Do you need to refresh your  
 13 recollection?  
 14 **A. Yeah. I do because my -- I**  
 15 **may be confusing two meetings for one and one**  
 16 **meeting for two. Because what --.**  
 17 Q. Let me --.  
 18 THE HEARING OFFICER: Wait.  
 19 Wait. Wait. Are we looking at 'D' Ten? Or  
 20 what meeting -- January 6th --?  
 21 MS. JALOWSKI: Okay. Have a  
 22 look at them, and let me know if looking at  
 23 them refreshes your recollection.  
 24 MR. CARNEY: Can I just

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1 Uehling - Redirect - Jalowski  
 2 issues with teaching oversized classes?  
 3 **A. No.**  
 4 Q. Did you ever take the class  
 5 over?  
 6 **A. Only -- I only went in to**  
 7 **assist.**  
 8 Q. Now, when the gym was closed,  
 9 where was -- where did instruction take place?  
 10 **A. The cafeteria -- I can't**  
 11 **remember if they -- it may have been to the**  
 12 **cafeteria, but the auditorium -- basically,**  
 13 **that's where we would stop. I talked with Mr.**  
 14 **Smith about using the cafeteria and even using**  
 15 **the -- ways to use the auditorium -- for**  
 16 **example, as much as I disliked to have a**  
 17 **substitute for athletics, films about athletics**  
 18 **that would, in some way, entertain and educate**  
 19 **the kids at the same time.**  
 20 Q. Now, in -- I'm going to just  
 21 direct your attention to -- to January 6th.  
 22 There had been some questioning about the --  
 23 the meetings. Did you -- so on January 6th,  
 24 you requested a meeting to Ms. Killan and Mr.

Page 1192

1 Uehling - Redirect - Jalowski  
 2 note --?  
 3 THE HEARING OFFICER: What  
 4 are you -- what is she looking at?  
 5 MS. JALOWSKI: The -- I'm  
 6 sorry. They're almost the same. It's the  
 7 letter dated January 20th.  
 8 MR. CARNEY: January 20?  
 9 MS. JALOWSKI: Uh-huh.  
 10 THE HEARING OFFICER: That's  
 11 'D' Fifteen?  
 12 **A. Okay. The reason I'm**  
 13 **confused was that there was a -- a walk-through**  
 14 **that I did January 6, which was the -- the**  
 15 **issue. Okay. Yeah. Okay.**  
 16 BY MS. JALOWSKI: (Cont'g.)  
 17 Q. So does that refresh your  
 18 recollection?  
 19 **A. Yeah.**  
 20 Q. So did Mr. Smith meet with  
 21 you on that day?  
 22 **A. He came by the -- he -- he**  
 23 **stood at the door. I told him what we were**  
 24 **going to talk about because he said -- he said**

49 (Pages 1189 to 1192)

Page 1193

1 Uehling - Redirect - Jalowski  
 2 that he didn't want to meet without the union  
 3 representative. I felt that it was a congenial  
 4 exchange at first because he thought it was a  
 5 discipline meeting, and I assured him it was  
 6 just to meet with Ms. Killan so that we could  
 7 have her better assist him in the gym. And so  
 8 he -- that -- so he said that he would tell Ms.  
 9 Killan that stuff. But he refused to meet with  
 10 me.  
 11 I'm sorry. I'm losing my  
 12 voice.  
 13 THE HEARING OFFICER: Do you  
 14 want to get some water?  
 15 A. (Cont'g.) No, it's -- I've  
 16 got water in the bag.  
 17 So he refused to meet with Ms. Killan and me  
 18 together, basically.  
 19 BY MS. JALOWSKI: (Cont'g.)  
 20 Q. All right. Now -- now, in  
 21 December, you had the -- the formal observation  
 22 that you rated "unsatisfactory."  
 23 A. Yes.  
 24 Q. But between November 9th and

Page 1195

1 Uehling - Redirect - Jalowski  
 2 BY MS. JALOWSKI: (Cont'g.)  
 3 Q. Now, in -- who was Faye  
 4 Pallen?  
 5 A. Faye Pallen was my principal  
 6 mentor.  
 7 Q. So what was her role?  
 8 A. Her role was to advise me  
 9 about D.O.E. policy.  
 10 Q. Now, in the letter, when you  
 11 say to zap the e-mails, what do you mean by  
 12 "zap the e-mails"?  
 13 A. That she cannot -- she cannot  
 14 read documents that are attached on the  
 15 Blackberry so to leave those e-mails -- when  
 16 she opened it, rather than trying to open them  
 17 and read them on the Blackberry, to zap the  
 18 e-mails and read it on her computer. It is not  
 19 in any way malicious or -- or protective.  
 20 Q. So an e-mail she'd zap -- zap  
 21 from her Blackberry would still be on her  
 22 computer?  
 23 A. Absolutely -- and in fact,  
 24 would be on D.O.E. e-mail.

Page 1194

1 Uehling - Redirect - Jalowski  
 2 the -- and December 16th, did you make  
 3 observations of Mr. --  
 4 A. Many.  
 5 Q. -- of Mr. Smith's class?  
 6 A. Yes.  
 7 Q. And what did you -- what did  
 8 you observe during that time?  
 9 A. Lack of planning, a lack of  
 10 instruction, no lesson plans for the  
 11 assistants, unsafe conditions in terms of the  
 12 kids in their free play not being properly  
 13 supervised.  
 14 Q. All right. Now between  
 15 December 16th and then the other formal  
 16 observation of -- in January the 29th, did you  
 17 have occasions to visit Mr. Smith's gym class?  
 18 A. Yes.  
 19 MR. CARNEY: I want to object  
 20 at this time. Those time periods -- they're  
 21 interspersed with positive and negative --.  
 22 THE HEARING OFFICER: Yeah.  
 23 Plus, I think this is a rehash of direct. I'll  
 24 sustain.

Page 1196

1 Uehling - Redirect - Jalowski  
 2 Q. Now, if Mr. Smith had asked  
 3 for a transfer -- if he -- if he had found a  
 4 transfer school in March, what would you have  
 5 done?  
 6 A. I would have wished him good  
 7 luck.  
 8 Q. So what would you have --?  
 9 A. Maybe say to myself that --.  
 10 Q. What would -- if you had let  
 11 him -- would you release him?  
 12 A. Yes -- absolutely.  
 13 MS. JALOWSKI: I have no  
 14 further questions.  
 15 THE HEARING OFFICER: Your  
 16 witness, counselor.  
 17 RECROSS EXAMINATION  
 18 BY MR. CARNEY:  
 19 Q. Yeah -- just very, very  
 20 briefly.  
 21 You testified on cross that  
 22 when -- when I asked you what "zap" meant, you  
 23 said it meant "delete," didn't you?  
 24 A. Yes.

50 (Pages 1193 to 1196)

Page 1197

1 **Uehling - Recross - Carney**  
 2 Q. Now, you know now that Mr.  
 3 Smith was receiving at least some of the  
 4 correspondence between you and Faye Pallen; is  
 5 that fair?  
 6 **A. Yes.**  
 7 Q. Putting yourself in Mr.  
 8 Smith's position for a moment, receiving at his  
 9 home an e-mail that prescribes the method by  
 10 which he's to be gotten rid of, do you think it  
 11 was unreasonable for Mr. Smith to ask in a less  
 12 than enthusiastic way when people like Victor  
 13 Ramsey and yourself were instructing him to do  
 14 things like show up to the medical evaluation?  
 15 **A. It would have been reasonable**  
 16 **for him to confront me with it and to ask what**  
 17 **was going on.**  
 18 Q. And is your testimony that  
 19 Mr. Smith never confronted you with that  
 20 e-mail?  
 21 **A. No.**  
 22 MR. CARNEY: Nothing further.  
 23 REDIRECT EXAMINATION  
 24 BY MS. JALOWSKI:

Page 1199

1 Uehling - Recross - Carney  
 2 **A. The -- you're saying that the**  
 3 **May --?**  
 4 Q. May 24th appointment was  
 5 cancelled --?  
 6 **A. No. I'm not --.**  
 7 Q. You're not aware of that  
 8 fact?  
 9 **A. What I'm aware of is that his**  
 10 **letter said that he refused to go. So I didn't**  
 11 **know if it was -- I assumed it was canceled**  
 12 **because he refused to go or he didn't.**  
 13 MR. CARNEY: Nothing further.  
 14 THE HEARING OFFICER: Thank  
 15 you very much.  
 16 MS. UEHLING: Thank you.  
 17 THE HEARING OFFICER: You're  
 18 home safe. We're going to reconvene --.  
 19 MS. JALOWSKI: Oh. I was --  
 20 THE HEARING OFFICER: Yeah.  
 21 What's --?  
 22 MS. JALOWSKI: -- looking at  
 23 this. June --.  
 24 THE HEARING OFFICER: Off the

Page 1198

1 Uehling - Redirect - Jalowski  
 2 Q. If -- between January 29th  
 3 and the end of the school year, if Mr. Smith  
 4 had shown improvement, what would you have  
 5 rated him?  
 6 **A. If he had improved so that**  
 7 **the classes were safe, absolutely a**  
 8 **"satisfactory."**  
 9 **THE HEARING OFFICER:**  
 10 **Anything else?**  
 11 **RECCROSS EXAMINATION**  
 12 **BY MR. CARNEY:**  
 13 Q. Yes. I just have one -- one  
 14 last question.  
 15 You were aware, were you not,  
 16 that Mr. Smith's April 2005 medical examination  
 17 was rescheduled? Were you not?  
 18 **A. Yes.**  
 19 Q. And it was rescheduled to  
 20 sometime in May.  
 21 **A. Right.**  
 22 Q. You're also aware, are you  
 23 not, that that second appointment was  
 24 cancelled.

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1 Theodore Smith - 2-8-2007  
 2 record.  
 3 (Off-the-record discussion)  
 4 THE HEARING OFFICER: We're  
 5 going to be reconvening on February 15th, but  
 6 instead of ten a.m., we're going to start at  
 7 one thirty p.m.  
 8 THE COURT REPORTER: Okay.  
 9 2/15 at one thirty p.m.?  
 10 THE HEARING OFFICER: You got  
 11 it.  
 12 THE COURT REPORTER: Okay.  
 13 THE HEARING OFFICER: And  
 14 that's on the Smith case.  
 15 (Off the record)  
 16 THE HEARING OFFICER: Okay.  
 17 There's an offer by the Department --  
 18 MS. JALOWSKI: 'R' Fourteen.  
 19 THE HEARING OFFICER: -- of  
 20 'D' Twenty-seven, which is for  
 21 identification --  
 22 MS. JALOWSKI: Oh, I'm --  
 23 THE HEARING OFFICER: --  
 24 right now.

51 (Pages 1197 to 1200)

1 Theodore Smith - 2-8-2007  
 2 MS. JALOWSKI: -- I'm sorry.  
 3 I made a mistake. That -- that is in already.  
 4 Yeah.  
 5 THE HEARING OFFICER: Okay.  
 6 Department's withdrawing the request.  
 7 MS. JALOWSKI: Yes. Yes.  
 8 THE HEARING OFFICER: It's in  
 9 evidence. Do you want to tell us what it's in  
 10 as?  
 11 MS. JALOWSKI: It's -- it's  
 12 'R' Fourteen. I'm sorry about --.  
 13 THE HEARING OFFICER: It's  
 14 already in as 'R' Fourteen. Okay. Does that  
 15 take care of it?  
 16 We can go off the record.  
 17 THE COURT REPORTER: You're  
 18 done?  
 19 THE HEARING OFFICER: And  
 20 we're going to recess. We're done. Thank you.  
 21  
 22  
 23  
 24

1 Theodore Smith - 2-8-2007  
 2 STATE OF NEW YORK  
 3 I, Jacki Ezyk, do hereby certify that the  
 4 foregoing was reported by me, in the cause, at  
 5 the time and place, and in the presence of  
 6 counsel, as stated in the caption hereto, at  
 7 Page 1000 hereof; that the foregoing  
 8 typewritten transcription, consisting of pages  
 9 number 1000 through 1201, inclusive, was  
 10 prepared under my supervision and is a true  
 11 record of all proceedings had at the hearing.  
 12 IN WITNESS WHEREOF, I have  
 13 hereunto subscribed my name, this the 13th day  
 14 of February, 2007.  
 15 \_\_\_\_\_  
 16 Jacki Ezyk, Reporter  
 17  
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1 Theodore Smith - 2-8-2007  
 2 E R R A T A S H E E T  
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 4 Date: February 8, 2006  
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1 Theodore Smith - 2-8-2007  
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