

No. 25-581

In the Supreme Court of the United States

ST. MARY CATHOLIC PARISH IN LITTLETON, ET AL.,

Petitioners,

v.

LISA ROY, IN HER OFFICIAL CAPACITY AS EXECUTIVE
DIRECTOR OF THE COLORADO DEPARTMENT OF EARLY
CHILDHOOD, ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE TENTH CIRCUIT

JOINT APPENDIX (VOLUME I OF III)

HELEN NORTON

Counsel of Record

OFFICE OF THE COLORADO
ATTORNEY GENERAL

1300 Broadway, 10th Floor

Denver, Colorado 80203

(720) 508-6000

helen.norton@coag.gov

ERIC C. RASSBACH

Counsel of Record

THE BECKET FUND FOR
RELIGIOUS LIBERTY

1919 Pennsylvania Ave.

NW, Suite 400

Washington, D.C. 20006

(202) 955-0095

erassbach@becketfund.org

Counsel for Respondents

Counsel for Petitioners

June 2026

Petition for Writ of Certiorari Filed Nov. 13, 2025

Petition for Writ of Certiorari Granted Apr. 20, 2026

TABLE OF CONTENTS¹

Page

VOLUME I

Supplemental Declaration of Elias Moo, <i>St. Mary Catholic Parish v. Roy</i> , 1:23-cv-2079 (D. Colo. Nov. 3, 2023), Dkt. 51-1	JA 1
Deposition Testimony of Avery Coats, <i>St. Mary Catholic Parish v. Roy</i> , 1:23-cv-2079 (D. Colo. Dec. 28, 2023), Dkt. 92	JA 3
Transcript of Bench Trial, Vol. 1, <i>St. Mary Catholic Parish v. Roy</i> , 1:23-cv-2079 (D. Colo. Jan. 2, 2024)	JA 102
Transcript of Bench Trial, Vol. 2, <i>St. Mary Catholic Parish v. Roy</i> , 1:23-cv-2079 (D. Colo. Jan. 3, 2024)	JA 260

¹ “JA” refers to the Joint Appendix. “SJA” refers to the Supplemental Joint Appendix, a separate volume, printed on 8.5 x 11” paper, composed of trial exhibits containing graphs, charts, webpages, and other materials that are understandable only in their original format. See Sup. Ct. R. 25.7 (such materials “may be contained in a separate volume or volumes”).

VOLUME II

Transcript of Bench Trial, Vol. 3, <i>St. Mary Catholic Parish v. Roy</i> , 1:23-cv-2079 (D. Colo. Jan. 4, 2024)	JA 432
Trial Ex. 1, Archdiocese of Denver Catholic Schools Administrator’s Manual (excerpts), <i>St. Mary Catholic Parish v. Roy</i> , 1:23-cv-2079 (D. Colo. Jan. 2, 2024)	JA 536
Trial Ex. 3, Mission and Charter of Catholic Schools in the Archdiocese of Denver, <i>St. Mary Catholic Parish v. Roy</i> , 1:23-cv-2079 (D. Colo. Jan. 2, 2024)	JA 553
Trial Ex. 7, Archdiocese of Denver’s “The Splendor of the Human Person: A Catholic Vision of the Person and Sexuality,” <i>St. Mary Catholic Parish v. Roy</i> , 1:23-cv-2079 (D. Colo. Jan. 2, 2024)	JA 558
Trial Ex. 8, Archdiocese of Denver’s “School of the Lord’s Service,” <i>St. Mary Catholic Parish v. Roy</i> , 1:23-cv-2079 (D. Colo. Jan. 2, 2024)	JA 585
Trial Ex. 9, Archdiocese of Denver Early Childhood Curriculum Guidelines, <i>St. Mary Catholic Parish v. Roy</i> , 1:23-cv-2079 (D. Colo. Jan. 2, 2024)	JA 633
Trial Ex. 17, St. Mary Catholic Virtue School Parent/Student Handbook (2023-2024), <i>St. Mary Catholic Parish v. Roy</i> , 1:23-cv-2079 (D. Colo. Jan. 2, 2024)	JA 676

Trial Ex. 18, St. Mary Catholic Virtue School Preschool Parent Handbook (2023-2024), <i>St. Mary Catholic Parish v. Roy</i> , 1:23-cv-2079 (D. Colo. Jan. 2, 2024)	JA 771
Excerpts of Trial Ex. 26, Deposition Testimony of Dawn Odean, <i>St. Mary Catholic Parish v. Roy</i> , 1:23-cv-2079 (D. Colo. Jan. 2, 2024)	JA 808
Excerpts of Trial Ex. 27, Deposition Testimony of Lisa Roy, <i>St. Mary Catholic Parish v. Roy</i> , 1:23-cv-2079 (D. Colo. Jan. 2, 2024)	JA 819
Trial Ex. 31, Colorado Department of Early Childhood Individualized Exception Request Form, <i>St. Mary Catholic Parish v. Roy</i> , 1:23-cv-2079 (D. Colo. Jan. 2, 2024)	JA 828
Trial Ex. 42, 2023 St. Mary Preschool Colorado Child Care Assistance Program “CCCAP” Fiscal Agreement, <i>St. Mary Catholic Parish v. Roy</i> , 1:23-cv-2079 (D. Colo. Jan. 2, 2024)	JA 831
Trial Ex. 43, 2022-2023 Wellspring Catholic Academy Denver Preschool Program “DPP” Provider Agreement, <i>St. Mary Catholic Parish v. Roy</i> , 1:23-cv-2079 (D. Colo. Jan. 2, 2024)	JA 849

VOLUME III

Trial Ex. 44, CV of Dr. Abbie Goldberg,
St. Mary Catholic Parish v. Roy,
1:23-cv-2079 (D. Colo. Jan. 2, 2024)JA 910

Trial Ex. 45, Expert Report of Dr. Abbie Goldberg,
St. Mary Catholic Parish v. Roy,
1:23-cv-2079 (D. Colo. Jan. 2, 2024)JA 1037

Trial Ex. 46, CV of Dr. Amy Tishelman,
St. Mary Catholic Parish v. Roy,
1:23-cv-2079 (D. Colo. Jan. 2, 2024)JA 1054

Trial Ex. 47, Expert Report of Dr. Amy Tishelman,
St. Mary Catholic Parish v. Roy,
1:23-cv-2079 (D. Colo. Jan. 2, 2024)JA 1149

Trial Ex. 49, CV of Dawn Odean,
St. Mary Catholic Parish v. Roy,
1:23-cv-2079 (D. Colo. Jan. 2, 2024)JA 1169

Trial Ex. 51, CV of Elsa Holguín,
St. Mary Catholic Parish v. Roy,
1:23-cv-2079 (D. Colo. Jan. 2, 2024)JA 1174

Trial Ex. 52, Pls.’ Answers to Defs.’ First
Set of Interrogatories,
St. Mary Catholic Parish v. Roy,
1:23-cv-2079 (D. Colo. Jan. 2, 2024)JA 1182

Trial Ex. 68, Deposition Testimony of Elias Moo,
St. Mary Catholic Parish v. Roy,
1:23-cv-2079 (D. Colo. Jan. 2, 2024)JA 1216

SUPPLEMENTAL JOINT APPENDIX

- Trial Ex. 19, Colorado Department of Early Childhood’s webpage entitled “*Browse participating UPK Colorado providers,*”
St. Mary Catholic Parish v. Roy,
1:23-cv-2079 (D. Colo. Jan. 2, 2024) SJA 1
- Trial Ex. 20, Colorado Department of Early Childhood’s webpage entitled “*Submit an application for UPK Colorado for the 2023-2024 school year,*”
St. Mary Catholic Parish v. Roy,
1:23-cv-2079 (D. Colo. Jan. 2, 2024) SJA 2
- Trial Ex. 55, Abbie E. Goldberg & JuliAnna Z. Smith, *Preschool selection considerations and experiences of school mistreatment among lesbian, gay, and heterosexual adoptive parents,* 29 *Early Child Research Quarterly* 64-75 (2014),
St. Mary Catholic Parish v. Roy,
1:23-cv-2079 (D. Colo. Jan. 2, 2024) SJA 9
- Trial Ex. 56, Abbie E. Goldberg & JuliAnna Z. Smith, *Predicting Parents’ School Engagement Among Lesbian, Gay, and Heterosexual Adoptive Parents of Kindergarteners,* 52 *Journal of School Psychology* 463-478 (2014),
St. Mary Catholic Parish v. Roy,
1:23-cv-2079 (D. Colo. Jan. 2, 2024) SJA 39
- Trial Ex. 57, Abbie E. Goldberg, *Lesbian, Gay, and Heterosexual Adoptive Parents’ Experiences in Preschool Environments,* 29 *Early Childhood Research Quarterly* 669-681 (2014),

<i>St. Mary Catholic Parish v. Roy</i> , 1:23-cv-2079 (D. Colo. Jan. 2, 2024)	SJA 69
Trial Ex. 61, Jack P. Shonkoff, et al., <i>The Lifelong Effects of Early Childhood Adversity and Toxic Stress</i> , 129:1 Pediatrics 232-246 (2012), <i>St. Mary Catholic Parish v. Roy</i> , 1:23-cv-2079 (D. Colo. Jan. 2, 2024)	SJA 99
Trial Ex. 63, Brian C. Thoma, et al., <i>Disparities in Childhood Abuse Between Transgender and Cisgender Adolescents</i> , 148:2 Pediatrics (2021), <i>St. Mary Catholic Parish v. Roy</i> , 1:23-cv-2079 (D. Colo. Jan. 2, 2024)	SJA 114
Trial Ex. 64, Brian C. Thoma, et al., <i>Suicidality Disparities Between Transgender and Cisgender Adolescents</i> , 144:5 Pediatrics (2019), <i>St. Mary Catholic Parish v. Roy</i> , 1:23-cv-2079 (D. Colo. Jan. 2, 2024)	SJA 125
Trial Ex. 66, Lindsey Wilkinson & Jennifer Pearson, <i>School Culture and the Well-Being of Same-Sex-Attracted Youth</i> , 23:4 Gender & Society 542-568 (2009), <i>St. Mary Catholic Parish v. Roy</i> , 1:23-cv-2079 (D. Colo. Jan. 2, 2024)	SJA 134

JA 1

* * *

**SUPPLEMENTAL DECLARATION OF
ELIAS MOO**

I, Elias J. Moo, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am over the age of 21 and have personal knowledge of all contents of this declaration. I have not been convicted of a felony or crime involving dishonesty.

2. I am the current Superintendent of Catholic Schools at the Archdiocese of Denver.

3. Catholic Charities of the Archdiocese of Denver operates Head Start and Early Head Start programs that serve needy families across Denver.

4. These programs are part of Catholic Charities' ministry to the poor, serving, among others, a significant number of families experiencing homelessness in Denver.

5. These programs are not operated as Catholic schools in the Archdiocese, are not supervised by the Archdiocese's Office of Catholic Schools, do not operate according to the Office of Catholic School's policies, and are not parish programs. Instead, to the extent these programs operate in Catholic parishes in the Archdiocese, they lease the space.

6. This charitable ministry of the Archdiocese (like the Archdiocese's soup kitchens and homeless shelters) does not condition its care for the poor and needy on adherence to Catholic beliefs or on agreement to support and uphold Catholic teachings. Instead, these Head Start and Early Head Start

programs are open to all families in need, regardless of personal circumstances, and seek to help by providing childcare services while parents work to get back on their feet.

7. This charitable ministry is not seeking to create a community of believers or to provide children with a distinctively Catholic education. Accordingly, these Catholic Charities programs are able to sign the UPK Program Services Agreement in good faith since they do not, for example, prioritize Catholic families when providing this ministry to those in need.

8. For the Archdiocese of Denver's 36 Catholic preschools—whose mission *is* to create a Catholic community and support parents seeking to provide their children with a Catholic education—signing the Agreement in good faith is not possible, as I have explained in a prior declaration.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 30, 2023.

/s/ Elias J. Moo
Elias J. Moo

JA 3

* * *

RULE 30 (b) (6) DEPOSITION OF:
St. Bernadette Catholic Parish in Lakewood
AVERY COATS
November 28, 2023
Via RemoteDepo

* * *

EXAMINATION

BY MS. RUST:

Q. Ms. Coats, my name is Niki Rust, and I'm an attorney with the attorney general's office, and I represent the defendants, Dr. Roy and Dawn Odean, from the Colorado Department of Early Childhood.

I'll be doing the deposition today. It's nice to meet you virtually.

Could you please identify who else is in the room with you this morning?

A. Joe Davis.

Q. Okay. And then, Ms. Coats, I would ask, if you have any chat or other type of communication open, that you please close them. You can't get assistance from anyone while answering the questions.

So if today you need to see something or speak to someone when answering a question, I would ask you just say that out loud so that we can discuss it and make those arrangements. Okay?

MS. RUST: And then, Mr. Davis, it's my understanding that just Mr. Reaves is going to be on the line today; is that correct?

MR. DAVIS: Yes.

MS. RUST: Okay. And then for the record, I let Ms. Kelly know earlier that Virginia is not with us today, but Greg Whitehair and Janna will be joining shortly in the room with me.

So I can let you know, if you want, when they're in the room. If not, just know that they will be here.

MR. DAVIS: Very well.

THE REPORTER: Before we go on, Niki, did you want to discuss exhibit numbering?

MS. RUST: Thank you, Ms. Kelly, for the reminder. Yes, I do.

Mr. Davis, Ms. Kelly and I were discussing whether you wanted – if we wanted exhibits today to be consecutive, so starting at 13, or whether to start again at 1.

My general practice is to keep them consecutive, but I know – well, actually, we only did one depo for you guys so I don't know what you prefer.

MR. DAVIS: Yeah. Consecutive is fine with us.

MS. RUST: Wonderful. Thank you.

All right. Ms. Kelly, anything else I forgot before I getting going?

THE REPORTER: No. Thank you.

Q. (BY MS. RUST) All right. Would you please state and spell your full name for the record?

A. Avery Cecile Coats, A-v-e-r-y C-e-c-i-l-e C-o-a-t-s.

Q. And did you have any previous names, Ms. Coats?

A. Yes.

Q. What are they?

A. Avery Cecile Balsiger, so B, as in boy, a-l-s-i-g-e-r.

Q. Okay. And can I inquire who is now in the room?

A. Yeah. This is Barbara Inglada, and she's updating our room arrangements. I think she's walking out right now.

Q. Thank you. Okay. All right. And, Ms. Coats, can you please give your home address for the record?

A. [REDACTED]

Q. Thank you. And a phone number?

A. [REDACTED]

Q. And an email address?

MR. DAVIS: Niki, can we give you this information off the record? I'm not sure the witness needs to – you know, this is going to be filed somewhere and we're happy to provide the email address off the record, but can we do that?

MS. RUST: That's fine, Joe.

MR. DAVIS: Okay.

Q. (BY MS. RUST) Okay. Ms. Coats, have you ever been deposed before?

A. No.

Q. Okay. So because this is being recorded by the court reporter, when I ask you questions, your answers

will need to be verbal. So even though I can see you shaking your head, you will have to give yes or no answers.

We also must take turns talking so that the court reporter can get everything down and doesn't get upset with us. That also means that sometimes we may have to repeat things. And I might accidentally talk over you if I have an objection. And it's not meaning to be rude. I'm just trying to insert my objection, just so you know.

If you need a break today, please say so. But I think we'll try and take a break about halfway, or every hour, just depending on how things are going.

But please understand that if you ask for a break, I'll need you to answer any pending questions before we take a break.

You were sworn in under oath, so we'll be asking you to tell the whole truth and nothing but the truth. And this is the same oath that is given at trial and it should hold the same weight today; okay?

A. (Nodded head up and down.)

Q. I'm here to learn everything you know about the events and facts of this lawsuit. For that reason, I am looking for full and complete answers to my questions. In other words, I'm looking for the whole truth that you just gave an oath to give.

Do you understand that?

A. I understand.

Q. Okay. You will have the opportunity to review and change any answers given today, though if you do

change an answer, I may ask that I be allowed to come back here and ask you follow-up questions.

Does that sound fair?

A. Yes.

Q. Thank you. If you realize that an answer you have given is not complete or inaccurate for any reason, will you tell me today so we can just clarify the record?

A. Yes.

Q. And if I ask a question that you do not understand, will you please tell me and I'll do my best to rephrase the question?

A. Yes.

Q. Okay. Are you on any medications today that could affect your ability to testify?

A. No.

Q. Are you at all sick?

A. No.

Q. Is there any reason why you can't give accurate and complete testimony here today?

A. No.

Q. Okay. Before we get started, did you understand all, kind of, my instructions?

A. I do.

Q. Wonderful. All right.

Ms. Coats, what did you do to prepare for the deposition today?

A. I met –

MR. DAVIS: Objection to the extent it gets to attorney-client information.

But you can answer otherwise.

A. I met with my lawyers, via Zoom, and we went over the topics that you had presented.

Q. (BY MS. RUST) Okay. How long was that meeting?

A. Two hours. And Joe and I touched base for 15 – 10 – I’m sorry. I don’t know – 10 minutes this morning.

Q. Okay. Did you review any documents in preparation for today?

A. I did.

Q. What documents were those?

A. I read – I reread my declaration. I went through some school demographics. I – I can’t remember some of the names. Yeah.

Q. Okay. Did you bring any of those documents to your deposition today?

A. No.

Q. Ms. Coats, have you testified under oath before today?

A. No.

Q. Have you given a deposition before?

A. No.

Q. Have you ever been involved in any other lawsuits or court proceedings?

A. No.

MS. RUST: Bonnie, if you could bring up what will be marked as Exhibit 13.

Q. (BY MS. RUST) And, Ms. Coats, will you let me know, once Bonnie shares her screen, if you can see it?

A. I can see it.

Q. Great. Can you identify this document, please?

A. Do you just want me to read the title? The Amended Notice of Rule –

Q. Yes. So is this the deposition notice you received?

A. Yes.

Q. Okay. And are you here on behalf of St. Bernadette's Preschool or Wellspring and not as yourself as an individual?

A. Yes.

Q. Okay. Also, I wanted to just do a quick housecleaning matter, Ms. Coats. Would you prefer that we refer to the preschool as St. Bernadette's Preschool or Wellspring? I just want to make sure we're clear while we're talking today.

A. Wellspring Preschool. Wellspring Catholic Academy is the proper name.

Q. All right. Sounds great. Are you the person with the most knowledge concerning the topics in the deposition notice today?

MR. DAVIS: Objection to the extent that misstates the 30(b)(6) standard.

But you can answer, Ms. Coats.

A. I don't know if I'm the most knowledgeable.

Q. (BY MS. RUST) Okay. Are there any areas listed in the topics –

MS. RUST: And, Bonnie, can we scroll to the topics so that Ms. Coats can review them?

Q. (BY MS. RUST) Ms. Coats, will you review the topics and let me know if there are any that you are not knowledgeable in.

A. Are you asking me to read them aloud or just read them to myself?

Q. No. You can just review them. And if you want to let us know when Bonnie can scroll, we can do that.

A. You can scroll, please. That's good.

Can you scroll, please? Thank you.

Can you scroll, please? Thank you.

Can you scroll, please? Thank you. Okay.

Q. So, Ms. Coats, the question was, are there any areas listed in these topics about which you are not knowledgeable?

A. No.

Q. Okay. Is there anyone else who has more knowledge about these topics?

MR. DAVIS: Objection. Same objection about the 30(b)(6) standard.

But you can answer, Ms. Coats.

A. Again, I don't know. I'm knowledgeable myself. I don't know if somebody is more knowledgeable.

Q. (BY MS. RUST) Okay. Do you have full authority to speak on behalf of Wellspring with respect to the deposition topics?

A. I do.

Q. Are you aware that the answers you will give to our questions will be binding upon Wellspring?

A. Yes. I understand.

Q. Are you fully prepared to speak about each of the topics in the deposition notice today?

A. Yes.

* * *

Q. (BY MS. RUST) And, Ms. Coats, where did you go to high school?

A. Loretto Academy.

Q. And college?

A. University of Colorado at Boulder.

Q. And what did you receive your degree in from University of Colorado Boulder?

A. I received a bachelor's in speech hearing language sciences.

Q. Any continuing education after that?

A. I went to the University of Colorado at Denver and received a master's in special education, as well as a teaching license.

Q. Do you have any certificates?

A. From the – I'm sorry.

Q. In addition to your degrees, do you have any additional certifications?

A. No, I don't.

Q. Okay. And then you stated that you have a teaching license. Any other licenses that you hold?

A. No.

Q. And then any specialized training to be the principal of Wellspring?

A. I received professional development classes, new leaders academy class through the Institute of Catholic Liberal Education. It's not an accredited university.

Q. And do you have to do continuing education every year?

A. No, I don't.

Q. Ms. Coats, are you married?

A. Yes.

Q. What is your husband's name?

MR. DAVIS: Niki, can we, again, provide some of this background information off the record or is this relevant to the case?

MS. RUST: It's part of getting her background, Joe. We don't see why it would not be relevant.

A. John Coats, J-o-h-n.

Q. (BY MS. RUST) Thank you. And do you have children?

A. I do.

Q. Okay. Without giving their names, can you tell me how many and their ages, please?

A. I have two children. I have a 4-year-old and a 1-1/2-year-old, and I have one on the way.

Q. Congratulations. When are you due?

A. Thank you. Late April.

Q. I have a bunch of April babies in my life so they're a fun bunch.

Okay. Any other dependents, Ms. Coats?

A. No.

Q. Okay. All right. Ms. Coats, are you currently employed?

A. Yes.

Q. Where are you currently employed?

A. St. Bernadette Catholic Church.

I'm sorry. I have two employments. I am also employed through the Archdiocese of Denver. I have two separate roles.

Q. Okay. Can you – let's talk about those two roles. Can you first tell me, what is your job title at St. Bernadette?

A. Principal and head of school.

Q. Okay. And that's specific through St. Bernadette and not Wellspring, or can you explain that relationship a little bit?

A. I can.

Q. Thank you.

A. St. Bernadette is the, kind of, umbrella, that's overarching, so we're all employees of St. Bernadette. Wellspring Catholic Academy is a ministry of St. Bernadette. So we're under, but we – it's – it's essentially the same entity.

Q. Okay. And when did you start working at St. Bernadette?

A. July 1, 2022.

Q. And how did you become the – and please correct me if I'm using the wrong terminology – the principal or director for Wellspring? Principal and head of school, is what you said.

A. Principal and head of school.

Q. Okay.

A. Yeah.

Q. How did you get that role?

A. Yeah. I applied. I went through an interview process, several different rounds, and I was offered late May in 2022.

Q. Okay. And during that interview process with St. Bernadette, were you asked to verify your membership in a Catholic parish?

A. I don't recall needing to give any paperwork on my registration. I was asked if I was a Catholic, yes.

Q. Okay. Who do you report to in your role at St. Bernadette?

A. The pastor, Father Joe McLagan, M-c, capital L-a-g-a-n.

Q. Thank you. Okay. And what is your job description at St. Bernadette?

A. Oh, goodness. I run the day-to-day operations of the school. I oversee all staff and faculty and supervise them. I am in charge of the safety and security of our students, curriculum, all the focus of our schools; so

faith, academics, and then our specific school curriculums.

I am in charge of aligning us to our mission and vision and maintaining our future, so financial sustainability as well.

Do you want me to go into more depth?

Q. Well, that's good for now. Thank you.

Did you hold any previous positions as a principal before your role at Wellspring?

A. I did not.

Q. Any previous employment in early childhood?

A. No.

Q. Okay. Any previous employment within a Catholic school?

A. Yes.

Q. Can you describe that, please?

A. I was a long-term substitute at St. Vincent de Paul Catholic School.

Q. How many years did you do that?

A. That was six weeks, and that was my involvement in Catholic schools.

Q. Okay. Any previous employment within a Catholic organization?

A. Yes.

Q. Will you please describe?

A. I worked in the development office as a gifts officer for St. Thomas Aquinas Catholic Church for two years.

Q. What is a gifts officer?

A. Fundraising.

Q. And what was your job prior to principal of Wellspring?

A. I'm sorry. There is a little gap. I took a couple months off to have my second. But my previous employment, I worked in Pittsburgh, Pennsylvania, as lead teacher at The Bradley Center.

Q. What is The Bradley Center?

A. It is a residential treatment facility.

Q. And what age kids did you work with there?

A. We served kids from – I think during my time there, I believe the youngest was 6 – I could be wrong – into early 20s.

Q. Okay. And I'm sorry. What was your role there? I must have missed it.

A. I started as a special education teacher and then I was the lead teacher.

Q. All right. Ms. Coats, I want to now switch and talk about your employment through the Archdiocese of Denver, please.

A. Yes.

Q. Would you please tell me, what is your job title there?

A. I work as a part-time consultant to the director of student support services.

Q. Okay. I'm going to need you to explain that one, please.

A. Yes. The director of student support services works to bring inclusion to our schools, in terms of learners with exceptional differences and disabilities, and I work as a part-time consultant to her to bring this work to our schools.

Q. Okay. All right. And when did you start that position with the Archdiocese?

A. October – I don't know the date. October of 2022.

Q. And who do you report to at the Archdiocese?

A. The associate superintendent of curriculum renewal, Abriana Chilelli, A-b-r-i-a-n-a C-h-i-l-e-l-i (sic). I could be mistaken.

Q. And is this the same Abriana Chilleli who oversees Wellspring from the Archdiocese?

A. She is my co-advisory supervisor, yes.

Q. Okay. All right. So what else do you do, as a part of your job description or duties, to bring inclusion to Archdiocese schools for those who are differently abled?

A. I mainly – so the director of student support services, her name is Kristen. I mainly work with Kristen. I've never been asked this.

We're building a system for the first time within the Archdiocese. So we're starting from the ground up. We're doing anything as little as database to professional development, gaining legal counsel to properly serve students and protect them if they do have disabilities. We're building a system.

Q. Okay. It's a lot of work, isn't it?

A. Yes. It's good work.

Q. All right. I think I'm going to move on from your employment history.

Ms. Coats, can you give a little bit – I know we talked about St. Bernadette and Wellspring and their relationship. Can you talk a little bit more about St. Bernadette, the parish's relationship with Wellspring Academy, how that works together?

A. I'm sorry.

MR. DAVIS: Objection to the form of the question.

A. Can you rephrase? I'm not understanding what you're asking.

Q. (BY MS. RUST) Sure. We previously touched a little bit on how you're employed with St. Bernadette and not Wellspring Academy.

A. Yes.

Q. So can you talk a little bit more about the relationship between St. Bernadette, the parish, and Wellspring Academy, a little bit more in-depth how their relationship works, how you guys work together, those things?

MR. DAVIS: Objection to the form.

Q. (BY MS. RUST) You can answer.

A. We – we're on the same campus. The name change is difficult for people, but we are the same. So Father Joe oversees our church and all of its ministries. The school is one ministry of the church, so we're on the same campus.

I have – so Father Joe is my boss, and he does have the final say over even the overall operations and the

day-to-day of the school. We – I mean, we share a budget. We're very connected. We're just a ministry of the church.

Q. What does it mean to be a ministry of the church?

A. Each church couldn't – give me a moment to explain this. Within the Catholic Church, we believe that everybody and different ministries have different charisms. So just like that.

Different Catholic churches can have different charisms and ministries in which they carry out our duties to be in line with the church.

And so we have a ministry to the homeless, we have a ministry to the deaf community, and we have a ministry to children of the school.

Q. Okay. Thank you.

A. Among others as well.

Q. Okay.

MS. RUST: So I think at this point I want to bring up the Wellspring Handbook, Bonnie.

Q. (BY MS. RUST) So if you'll give me a second, Ms. Coats, while we share our screen.

A. Yes.

Q. And I'll be marking this as Exhibit 14.

We're going to go to page 25, please. There we go. The preschool and Pre-K part of the handbook.

So I noticed here, Ms. Coats, it says, "St. Bernadette operates its own preschool that is licensed by the State."

Can you describe more what that sentence means?

A. Yes. Well, all preschools have to be licensed by the State of Colorado, at least in Colorado. I don't know about the rest of the country. So we – we are inspected every year – it could be more than that, but it's at least every year, to ensure that we are abiding by State regulations.

But St. Bernadette operates the preschool.

Q. Okay. So is the preschool somehow separate and apart from the rest of the Wellspring Academy?

A. No. I mean, we're physically in the same building. We operate under the same umbrella. It's just that preschool, in the state of Colorado, has separate and different regulations than a K-8 school.

So while we're owned and operated and run by essentially the same people, the same entities, preschool has to follow different guidelines.

Q. Okay. Thank you.

MS. RUST: Bonnie, we can close that for the time being?

Q. (BY MS. RUST) All right. And, Ms. Coats, are you head of school of the preschool as well?

A. Yes. On paper, I am the assistant director of the preschool.

Q. Okay. You said "on paper." What does that mean in practice then?

A. I work with our preschool director just to ensure that we are following State guidelines. And I supervise her as well. And we ensure that the preschool, just like

any other grade, is in mission and alignment of our mission and vision as a school.

Q. Okay. Who is the director of the preschool?

A. Melissa English, M-e-l-i-s-s-a E-n-g-l-i-s-h.

Q. All right. And then who do you and Melissa report to, if anyone?

A. Father Joe McLagan.

Q. All right. Ms. Coats, who hires and fires employees at Wellspring Catholic Academy?

A. We have a process for – can I separate these out, hiring and firing?

Q. Yeah.

A. We have a process. Ultimately, the final decision for each is Father Joe McLagan, the pastor, and I give him my recommendations and we work together on that.

There is an application interview process for hiring. And then if we have to get to termination, it would be followed by documentation.

Q. Okay. Have you hired individuals in your role at Wellspring?

A. I have.

Q. Okay. And have you fired individuals in your role as principal?

A. I have not.

Q. What various types of jobs does Wellspring hire employees for?

A. We hire professional teachers, paraprofessionals, aides. That's about it right now.

Q. Okay. No janitors?

A. I do not hire the janitor. Father Joe McLagan would hire maintenance under St. Bernadette's, and they would work over the entire campus.

Q. Okay. And then in terms of, like, your food service, do you have – do you hire individuals for that or –

A. We do –

Q. Sorry.

A. We do not have a food service currently.

Q. Okay. All right. I know you said one of your missions is also to the deaf community. Do you have deaf students at your school?

A. Not currently.

Q. All right. Does Wellspring Catholic Academy require all employees to be Catholic?

A. We do not.

Q. Okay. Do you have any current employees that are not Catholic?

A. I do.

Q. How many?

A. One, to my knowledge.

Q. And what is their professional role?

A. PE teacher.

Q. At what point – I'm sorry?

A. I'm sorry. He has a separate role as well. He's the adventure coordinator.

Q. That sounds fun.

At what point in the hiring process do you request information about an applicant's religious beliefs?

A. Can you be more specific – excuse me – more specific about what do you mean by requesting information?

Q. Sure. In your hiring process, do you ever request an individual to show that they are a member of a Catholic Church?

A. No.

Q. Do you use the Archdiocese-approved employment contract?

A. We do.

Q. Okay. Is that the only contract employees sign?

A. Employees – yes. Employment contract, yes.

Q. Okay. Is there other paperwork specific to Wellspring Catholic Academy that an employee must sign?

A. Yes.

Q. What is that?

A. The Archdiocesan code of conduct, the terms and conditions of their contract, and the statement of commitments and beliefs, and then their contract.

Q. Have you ever hired someone who signed off these things but later disagreed with your school's point of view or mission?

MR. DAVIS: Objection to form of the question.

A. Can you define "disagree"?

Q. (BY MS. RUST) Yes. That individual says, I don't think same-sex marriage is wrong.

A. I'm not sure I've ever had that direct of a conversation about it.

Q. Okay. How about transgendered children or family members?

A. I have never had a direct conversation with staff.

Q. Any indirect conversations?

A. What matters to me as the principal is a person that's going to uphold the values of the Catholic Church. I have not, so far in my experience, seen any of my current staff not uphold the values of the Catholic Church. I am unaware of the extent of their personal beliefs.

Q. Do you ask, during the hiring process, about religious affiliation, aside from requiring to sign the forms we discussed earlier?

A. The matter of faith comes up during interviews, yes.

Q. Can you explain that more, please?

A. We – we follow more of a loosely form of interview process. It's more conversational based. So it wouldn't be the exact same for each person; however, because we are a ministry of the church and we are a Catholic institution, we do ask questions of their stance. It could be their stance in faith or we would talk about books or saints that maybe the person would – that likes. Things like that.

Q. Under what circumstances, if any, would Wellspring hire straight or cisgendered individuals

who expressed disagreement with your views about sexual orientation or gender identity?

MR. DAVIS: Objection to the form of the question.

A. I don't understand the question. Could you break it up?

Q. (BY MS. RUST) Sure. Under what circumstances, if any, would Wellspring hire a straight or a cisgendered individual who expresses disagreement with your school's views about sexual orientation?

MR. DAVIS: Same objection.

A. What is the word you're saying after "straight"? I don't know what you're saying.

Q. (BY MS. RUST) Cisgender is a phrase that means people who identify as either just female or male.

A. Okay. So what extent would I hire a straight or cisgendered individual who does not agree with the Catholic Church?

Q. With your school's views on sexual orientation.

MR. DAVIS: Objection to the form of the question.

A. It's difficult to answer because it is a hypothetical, and it could be very case by case. So I stated before, what matters to me as an employer is somebody who upholds the values of the Catholic Church.

I don't – I don't go into depth of personal beliefs and understanding, but I do want to be able to trust somebody's ability to uphold our values and our mission and vision.

Q. (BY MS. RUST) How about gender identity?

A. I would answer very similarly.

Q. Okay.

MS. RUST: All right. Bonnie, I'm going to ask you to bring up the Wellspring handbook again, so Exhibit 14 again. And if you'll scroll through. I know it's a couple of pages.

Q. (BY MS. RUST) But, Ms. Coats, will you just review this, as Bonnie scrolls, and tell me if this looks like an accurate representation of the Wellspring Catholic Academy Handbook please, once she's done scrolling.

Okay. Ms. Coats, does Exhibit 14 – is it an accurate representation of Wellspring's student handbook, from your review?

A. Yeah. I, obviously, didn't read it during that process. It looks like last school year's handbook.

MS. RUST: Okay. Bonnie, can we go –

A. It doesn't look like this school year's handbook. It seems like it's last school year.

MS. RUST: And go to the first page, Bonnie.

Q. (BY MS. RUST) So this is the 2022 to 2023 handbook. Does that seem correct to you?

A. Correct. Yeah. This was our handbook last school year. It is not our most current and updated handbook.

MS. RUST: Okay. Joe, can you please provide us a copy with their most current and updated handbook?

MR. DAVIS: Yes. To the extent we didn't already, we'll work on that.

MS. RUST: Yeah. Thank you. And if we could get it by the end of the week, it would be appreciated.

Bonnie, can we go to page 25, please?

Q. (BY MS. RUST) Okay. Ms. Coats, I wanted to ask you, based on this little asterisk at the top of page 25, does the preschool have the same handbook as your K-through-8 school?

A. There's a preschool addendum to the handbook; however – I'm sorry. They do – they are given this one, the student and family handbook, and then there is a preschool addendum. So it's not separate. Does that make sense?

Q. Right. So this handbook that we're looking at applies to preschool; correct?

A. Yes.

Q. And then there's an additional addendum that also applies to preschool; correct?

A. Yes.

MS. RUST: Okay. Mr. Davis, I also don't think we've been provided the preschool addendum, and I would request that you guys review, and if we have not, to please provide that by the end of the week, too.

Okay. Can we go back up to page 3, Bonnie?

Q. (BY MS. RUST) And, Ms. Coats, does Wellspring Catholic Academy have a nondiscrimination policy? Can you scroll down a little bit, please?

MR. DAVIS: Objection to the form of the question. Lacks foundation.

MS. RUST: Let me ask a different question, Ms. Coats.

Q. (BY MS. RUST) Ms. Coats, have you reviewed the Wellspring Catholic Academy Student Handbook?

A. Yes.

Q. Did you review the Wellspring Catholic Academy Student Handbook for the 2022-2023 school year?

A. I did.

Q. You broke up.

A. I did.

Q. Okay. Who wrote that handbook?

A. I honestly don't know. My predecessor had some part in it, but I really don't know who ultimately wrote it.

Q. Okay. And when did you say you started working at Wellspring Academy again?

A. In July of 2022.

Q. Okay. So did this handbook apply when you started working as principal at Wellspring Catholic Academy?

A. Yes, it did.

Q. Okay. Did you approve this handbook going out to the families and students at Wellspring Catholic Academy?

A. Yes, I did.

Q. Okay. Does your Wellspring Catholic Academy Handbook from 2022-2023 have a nondiscrimination policy in it?

A. As far as what you are showing me, yes.

Q. Okay. So this nondiscrimination policy states that “admission is open to all families and students who sincerely seek a Catholic education”; is that true?

A. Yes.

Q. What if that student is transgendered?

MR. DAVIS: Objection. Calls for speculation.

Q. (BY MS. RUST) You may answer.

A. Okay. So, again, it would be case by case, and we would ask the family further questions to understand the situation.

Q. Okay. Can you explain that process about asking the family further questions?

A. I – so this is a hypothetical. I’ve never faced this. I’m not going off of a written procedure or protocol or experience. We would want to understand what the family – again, if the family is in line with the mission and vision of the church, as well as, obviously, the Archdiocese of Denver.

I would want to just gain more information to ensure that what the family and the student needs, Wellspring Catholic Academy can truly provide.

Q. Okay. Let’s say the family is fully committed to Catholic teaching. They say, We want our transgender kid baptized because the pope says they can be now.

Would you allow that child to enroll in Wellspring Catholic Academy?

MR. DAVIS: Objection to the form of the question. Calls for speculation and assumes facts not in evidence. Mischaracterizes evidence.

Q. (BY MS. RUST) You may answer.

A. It's just not black and white. The church does recognize gender dysphoria and so, again, we would want to understand the fullness of the situation and ensure that we could remain in line with our values, our mission, and vision, while serving the student with the needs that the student truly needs.

Q. Is it really hard to decide what you would do as a principal if the actual real situation isn't happening in front of you?

MR. DAVIS: Objection to the form of the question. Objection. Calls for speculation.

Q. (BY MS. RUST) You may answer.

A. Well, first of all, I'm not the ultimate decider so it would be Father Joe and I working together, and Father Joe would be the ultimate decider.

Yeah. I think that it would be a different situation than we've encountered, so because it's unknown territory, we would want to make sure that we approach it faithfully.

Q. Ms. Coats, as your time as principal, and I think we agreed to going back five years, has Wellspring Catholic Academy ever enrolled a transgendered student?

A. Not to my knowledge.

Q. Okay. How about a student with gender dysphoria, as you stated?

A. Not to my knowledge.

Q. How about a family with same-sex parents?

A. Not to my knowledge.

Q. How about a family with a transgender parent?

A. Not to my knowledge.

Q. How about a student with a same-sex girlfriend or boyfriend?

A. Not to my knowledge.

Q. Okay. Ms. Coats, did Wellspring Academy in this year, in this handbook, have a bullying and harassment policy?

A. I believe it did. I'm not –

Q. Okay.

A. I'm not certain. It's a long document.

MS. RUST: Can we go to page 39, please, Bonnie? Okay.

Q. (BY MS. RUST) Can you also – so there's the bullying and harassment policy. What types of harassment are outlined here?

You can go down a little bit.

A. Sexual harassment, gender, racism, ethnicity and cultural heritage, attributes, religion or creed, intimidation, bullying, physical assaults, verbal abuse, threats, defiance, defamation of character, and inappropriate electronic conduct or digital usage.

Q. Ms. Coats –

A. I think – I think I skipped verbal abuse, by accident.

Q. Ms. Coats, as a principal, have you ever had to deal with bullying or harassment based on gender?

A. Could you scroll up, please, to that bullet? Thank you.

No.

Q. All right. Ms. Coats, can you describe to us what admission at Wellspring Preschool is based on?

A. All of our families go through an admission process. So we start with a tour of the school and we meet the family; then to an application, a shadow day, and possible registration.

THE DEPONENT: Is it possible to take a break after this next question?

MS. RUST: Yes. Let's – actually, I think let's go ahead and take a break now, if everyone is okay with it, before we dive into this next section.

Does ten minutes sound okay, Ms. Coats?

THE DEPONENT: Yes, ma'am. Thank you.

MS. RUST: Okay. Great.

THE REPORTER: Off the record.

(Recess from 9:01 a.m. to 9:12 a.m.)

THE REPORTER: Back on the record.

Q. (BY MS. RUST) Awesome. So when we took a break, Ms. Coats, we were talking about admission into your preschool. Is admission in Wellspring also based on the timely and complete payment of tuition?

A. Payment of tuition doesn't typically start until after registration.

Q. Okay. Is admission also based on cooperation with the school?

A. Can you define "cooperation"?

Q. Well, I am reading from your handbook.

A. Okay.

Q. So what would you define cooperation as?

A. The area that you're reading, is it about the tuition contract?

Q. Let me take a second. Give me one moment, Ms. Coats, and I will find it so that we can direct you to it.

A. Thank you.

MS. RUST: Okay. I'm going to ask Bonnie to share her screen, page 11. Or I guess it's actually page 12. Oh, no. There it is.

Q. (BY MS. RUST) Okay. Ms. Coats, do you recognize this page?

A. Yes.

Q. Okay. In the first paragraph, about halfway down, it says "Admission is based." Do you see that sentence beginning?

A. I do.

Q. Okay. Why don't you take a moment and read that sentence and let me know when you are completed.

A. Okay.

Q. Okay. So I believe the question was, is admission also based on cooperation with the school?

A. Yes. According to this handbook, yes.

Q. Okay. And what does cooperation with the school mean to you?

A. Yeah. To be clear, I did not write this paragraph so, yeah, just give me a moment.

Cooperation with the school would be in alignment. And then I think it is defined later, adherence to the parent/student handbook requirements.

Q. So even though you didn't write these admission policies, do you enforce these admission policies?

A. Yes, I do.

Q. Okay. Is another requirement for admission a contribution of time to volunteering at the school?

A. I understand, but can you just repeat it?

Q. Is another requirement for a child to be admitted to Wellspring a contribution of time to volunteering at the school?

A. Yes. We do require volunteer hours for our families. You'll see that in the updated handbook.

Q. How many hours do you require?

A. 12.

Q. Per family, per year, or per semester?

A. Per family, per year.

Q. Okay. And then admission into Wellspring is also contingent on participation in major fundraisers sponsored by the school; is that correct?

A. Yeah. We currently don't have major fundraisers at this time.

Q. Okay. Did you have fundraisers in the past?

A. I actually can't answer that honestly, with COVID. I'm not sure the extent of what was done before I got there. It was difficult.

Q. Okay. Do you plan to have fundraisers in the future?

A. Yes.

Q. Okay. So it sounds like your testimony today is there are changes to these admission policies in the updated handbook; is that correct?

MR. DAVIS: Objection. Misstates testimony.

A. Do I answer? Yeah. I don't believe – I don't know where the changes are. I know certain student policies were changed. I'm not certain if anything was changed in this paragraph.

Q. (BY MS. RUST) Okay. So are you familiar with the 2023-2024 handbook and preschool addendum?

A. Yes.

Q. Okay. Did you make or approve any changes?

A. I approved changes and I also made a couple changes.

Q. Okay. Can you describe what changes you made?

A. I can give you some examples of the ones I remember for sure. They won't be all of them. Is that okay? I just don't remember exactly.

Q. Yes, please.

A. Okay. So we – for example, the volunteer hours, we just defined that a little bit better. So there is a policy on – there is a financial towards – excuse me.

The tuition, at the end of the year, if a family was unable to complete the 12 hours, we will post a payment to their – add a payment to their overall tuition contract.

If they exceed the 12 hours by a certain number, then they will be credited a certain amount. So that was something that was changed.

Then some discipline things for students, uniform policy, things like that were changed.

MS. RUST: Okay. Mr. Davis, I'm going to ask to reserve the right to continue or reopen the deposition if the present handbook is materially different than the one you guys provided as an exhibit.

MR. DAVIS: Niki, at the time of the response to the discovery requests, I'm not sure the 2023-2024 handbook was in effect. The 2022-2023 one was the one that was still posted publicly for St. Bernadette.

As the deposition goes on, if you have a question about how St. Bernadette's handles a particular situation, you're absolutely free to ask if that would be different under the 2023-2024 handbook than it is under the 2022-2023, and I'm sure the witness is prepared to answer that question.

But again –

MS. RUST: Well, she just said she couldn't remember all the differences, Mr. Davis, so that's why I wanted to just put you on notice that I may be requesting to reopen the deposition.

MR. DAVIS: Okay. I don't think – yeah. Remembering all the differences is very unlikely to be material to the issues in this case. I think as material questions arise, you can ask if they would be different under the current handbook.

Q. (BY MS. RUST) Ms. Coats, you said one of the differences was about – and maybe – the dress code policy; is that correct?

A. Yes.

Q. Okay. And is the dress code policy one of the reasons that you are suing CDC?

A. No.

Q. It's not?

A. Our dress code policy? Can you be more specific?

Q. No. I think I would like you to answer the question.

Is one of the reasons you're suing CDC because of your dress code policy?

A. I answered no.

Q. Okay. Ms. Coats, what is your current dress code policy for preschoolers?

A. They follow the same requirements as the rest of the school. Do you want me to – are you asking about, like, the specific colors and what it is? Would you like me to say that?

Q. Yes, please.

A. Okay. We actually have kind of three different – it's unique. We have a Monday through Wednesday, navy blue, light blue, white, for a shirt option. It's typically a polo. The pants or skirts or jumper option is for – is khaki, navy blue.

And then on Thursdays, we attend Mass so we have a Mass uniform, which is just more formal. We ask students to wear navy blue or khaki bottoms, a button-down, white-collared shirt, with a tie or a scarf around the neck. And then we also have a school cardigan or a vest.

Fridays are our casual Fridays. We allow denim as a bottom and the top is a Wellspring-branded shirt.

MS. RUST: Okay. Bonnie, can we go to page 25 of the handbook again? Thank you. That's actually not the page I want. Give me one second.

Q. (BY MS. RUST) Okay. Ms. Coats, we're bringing up page 44 of the 2022-2023 handbook which addresses dress code and uniform.

You see the top sentence there, it says, "For preschool and Pre-K students are determined by the Pre-K director and addressed in their specific handbook." Is this part of what was changed in this year's handbook?

A. I don't believe so.

Q. Okay. So what has the Pre-K director decided is the uniform for preschool and Pre-K students? What you just described?

A. Yes, ma'am.

Q. Okay. And I think in the preschool addendum, it also requires a change of clothing to be sent with preschool and Pre-K students; is that correct?

A. Yes.

Q. Does that change of clothing also have to match the dress code?

A. We – I'm not sure that's explicitly defined. We would assume that it would be a change of clothes in accordance with the uniform.

Q. Okay.

MS. RUST: Will you scroll down just a little bit, Bonnie?

Q. (BY MS. RUST) So in your dress code, both boys and girls can wear pants and shorts; correct?

A. Yes.

Q. Okay. In your dress code, girls can only wear skirts, skorts, or jumpers; correct?

A. Yes.

Q. And girls can only wear leggings and tights; is that correct?

A. Yes.

MS. RUST: Okay. And I think I'm done with that, Bonnie.

Q. (BY MS. RUST) All right. Ms. Coats, could you please explain Wellspring Catholic Academy's relationship with the Catholic Archdiocese?

MR. DAVIS: Objection to the form of the question.

Q. (BY MS. RUST) You can answer.

A. We are an Archdiocesan Pre-K-through-8 school, so we are connected to – I'm sorry. I'm not sure I understand exactly what you're asking. We are an Archdiocesan Catholic school.

Q. What does that mean?

A. We follow the guidelines of the Archdiocese. Archbishop is the overall – I don't know the word. He's in charge of our diocese. We're Catholic in name so he is in charge overall.

Q. Does the school make its own decisions on curriculum?

A. Yes.

Q. Does the Archdiocese have any input on curriculum?

A. Yes. We follow their guidance.

Q. Does the Archdiocese direct you in dress and uniform code?

A. I don't believe I've ever had a conversation with anyone in the Archdiocese about our dress code and uniform.

Q. Okay. Does the Archdiocese have input on hiring?

A. They are available if we need support. They do not require to be involved.

Q. Does the Archdiocese have input on firing?

A. I answer the same way. They're there for support but not – it's not a requirement.

Q. Could St. Bernadette choose to ignore an Archdiocese guideline?

A. You would have to be really specific about the guideline. Yeah. I can't really answer that hypothetically. It's too broad.

Q. Okay. Could St. Bernadette choose to not follow an Archdiocese guideline on curriculum?

MR. DAVIS: Objection. Calls for speculation.

A. I've never not followed a guideline. Yeah. Yeah. I think I could choose to do that.

Q. (BY MS. RUST) Okay. Could

St. Bernadette choose to ignore a guideline on dress code?

MR. DAVIS: Objection to the form of the question. Objection. Calls for speculation.

A. I don't remember seeing a dress code policy for the Office of Catholic Schools, so I wouldn't know how to answer that.

Q. (BY MS. RUST) Okay. Does the Archdiocese review the internal policies and practices of Wellspring?

A. I believe so. Yes.

Q. How does that process work?

A. As stated earlier, Abriana Chilleli is an associate superintendent of the Archdiocese and she is my co-advisory – I don't remember the term of what she is, but she works in tandem with Father Joe to guide me and supervise me.

Q. Okay. Has Abriana or the Archdiocese ever addressed with you any concerns with your policies at Wellspring?

A. No.

Q. Does every admission of a child have to be approved by the Archdiocese?

A. No.

Q. Does every admission of a family have to be approved by the Archdiocese?

A. No.

Q. Is Wellspring Academy a separate legal entity from the Archdiocese of Denver?

MR. DAVIS: Objection. Calls for a legal conclusion.

Q. (BY MS. RUST) You can answer.

A. I'm not familiar with the intricacies. Because we're Catholic in name, Archbishop does have ownership; however, Father Joe is named sole proprietor. So I'm not – I don't know.

Q. Could Wellspring sign a contract without the Archdiocese approval?

A. What type of contract?

Q. Any contract.

MR. DAVIS: Objection. Calls for speculation.

A. Yeah. We've signed maintenance, construction contracts.

Q. (BY MS. RUST) And the Archdiocese has not needed to the approve those contracts?

A. Well, sorry. I apologize. So, again, this is a bit outside my realm as principal. All the contracts are typically signed by Father Joe. So I don't know which ones are run by the Archdiocese and which ones are not.

Major – major contracts are always asked guidance on to ensure that we are in alignment with the Archdiocese.

Q. Did you follow the Archdiocese direction not to participate in UPK?

A. Yes.

Q. Did you follow the Archdiocese direction, in May 2023, that said you could participate in UPK?

MR. DAVIS: Objection to the form of the question. Misstates testimony. Lacks foundation.

Q. (BY MS. RUST) It's okay. I can ask you a few more questions, Ms. Coats.

Did you have communications with Mr. Moo regarding the UPK program?

A. Yes.

Q. Were you invited to any of Mr. Moo's presentations about the UPK program?

A. Yes.

Q. Did you attend any of Mr. Moo's presentations on the UPK program?

A. Yes.

Q. Which presentations did you attend?

A. I only remember one. There was an option for in-person or via Zoom. I attended via Zoom. And it was overall guidance for Catholic schools for UPK.

Q. Was that meeting in May of 2023?

A. I don't remember exactly. It was at the end of the school year. I don't remember.

MS. RUST: Okay. Give me one second.

(Discussion off the record.)

Q. (BY MS. RUST) Ms. Coats, I'm going to have Bonnie share her screen. This is what's been previously marked as Exhibit 8.

Could you review this email and tell me if it looks familiar to you and let me know when you're done?

A. I'm done. This is familiar to me, to answer the question.

Q. Is this the meeting you attended virtually?

A. Yes.

Q. Okay.

MS. RUST: Bonnie, can you pull up the slide show, please?

Q. (BY MS. RUST) And, Ms. Coats, I'm showing you what's been previously marked as Deposition Exhibit 5.

A. Okay.

Q. Okay. As Bonnie scrolls, Ms. Coats, will you let us know if this Exhibit 5 looks familiar to you?

A. Yes. It looks familiar to me.

MS. RUST: Let's go back up two pages.

Q. (BY MS. RUST) All right. So here the presentation from Mr. Moo states that, "We continue to have significant concerns with the regulations of UPK but believe there is significant court precedence to support an exemption."

And then if we go down one more slide, it looks like the slide talks about, "If you're interested in pursuing the pathway, you can register and fill out the service agreement but not sign that."

Does that look familiar to you?

A. Yes.

Q. Okay. So did you then follow Mr. Moo's suggestion, in May 2023, that said you could participate in UPK?

MR. DAVIS: Objection. Misstates testimony. Misstates the evidence.

Q. (BY MS. RUST) You can answer.

A. You're asking if I did one, two, and three?

Q. Yes.

A. I had the intention. I actually did not.

Q. Okay. Why not?

A. Because it was the end of the school year and I became very busy.

Q. Okay. All right. Ms. Coats, how many preschool or Pre-K classrooms does Wellspring have?

A. One.

Q. Okay. Is that located in the same building as the rest of the school?

A. Yes, ma'am.

Q. Can you describe the general setup of that classroom, please?

A. It's a large classroom with different centers and bathrooms inside and storage closets; doors to the interior building, as well as exterior doors.

Q. What different centers are in the classroom?

A. I believe they can change from time to time, but typically there are blocks. There's a creative area, which is dress-up and kitchen, a toy kitchen. There is a calming corner with a – there's a prayer table. And then there's – the specific centers can shift, but it's typically some sort of play, engaging fine motor skills, imagination, development, et cetera.

Q. With your background in special education and early education, do you think all the centers are developmentally appropriate?

A. I do.

Q. Ms. Coats, is there assigned seating in the preschool classroom?

JA 46

A. Not to my knowledge. Not to my knowledge.

Q. When was the last time you visited the preschool classroom?

A. Yesterday.

Q. Okay. Is anything in the Pre-K classroom segregated by gender?

A. Yes.

Q. What?

A. The restrooms.

Q. Okay. And you said there's two restrooms?

A. Yes.

Q. Okay. So can you tell me which is which?

A. There is a restroom for girls and a restroom for boys, two separate rooms.

Q. Okay. And are they a single bathroom or several stalls?

A. Each – each restroom has two toilets in them and two sinks.

Q. Okay. Does Wellspring allow more than one child in the restroom at a time?

A. It depends. For washing hands, yes. I don't believe for going to the restroom.

Q. Are teachers or other professionals allowed in the restrooms with the children?

A. Yes. There are protocols and procedures in place for the different circumstances. Yep.

Q. Okay. Is this type of restroom different than the rest of the school?

A. The toilets are way smaller.

Q. Does every classroom have the restrooms in the classroom like the preschool?

A. No.

Q. Okay. And then is there a urinal in the boys restroom or is it just toilets?

A. I think it's just toilets.

Q. Okay. So you spoke a little bit about the protocols for a teacher assisting a preschooler because sometimes they need help in the bathroom.

So what is the protocol when a female teacher has to assist a male student?

A. I apologize. I don't know the ins and outs of it, but I think it's just in line with our policies and procedures, the code of conduct. So no staff should be alone with any student, regardless of gender.

Q. Okay. So how many professionals, paraprofessionals, teachers, are in the preschool classroom?

A. Yes. In total, it would be three. We follow the rules of the ratio, so it wouldn't necessarily be three at one time.

Q. Okay. And are all the current employees in the preschool classroom, are they all female? All male? What is the makeup?

A. The three teachers currently are all female.

Q. Okay. And then I know you said for washing hands, it can be more than one student. How about using the bathroom? What is the policy for how many students in the bathroom?

A. I don't know.

Q. Okay. Great. Do preschoolers use any other facilities at Wellspring?

A. Yes.

Q. What are they?

A. They go to the gym.

Q. Okay.

A. And then they would follow any sort of school activities. So if we were having an assembly, they would go to where that is.

Q. Okay. And do all students from the same grade enter together –

A. So –

Q. – to an assembly?

A. – does the preschool go to the assembly with the preschool?

Q. Correct.

A. Yes. They travel as a class.

Q. Okay. And is the general facilities mixed gender?

MR. DAVIS: Objection to the form of the question.

A. Are you saying facilities, the bathroom, or facilities, the room of the gym, the actual gym?

Q. (BY MS. RUST) The actual gym.

A. Can you – I don't understand –

Q. Sure.

A. – with being mixed gender.

Q. Do preschoolers have gym all together or is it divided by gender?

A. All together.

Q. Okay. And then does your school have locker rooms?

A. No.

Q. Okay. And then do the students have to change for gym?

A. No.

Q. So I want to ask you one clarifying question, Ms. Coats.

So back to the bathrooms and helping a preschooler.

A. Yes.

Q. So do two teachers need to go into the bathroom if the child is having difficulty?

MR. DAVIS: Objection. Relevance.

Q. (BY MS. RUST) You can answer.

A. I've never been present during a situation like this. I don't know. Just two adults have to – to ensure the safety and the protection of the child, two adults have to be within eyesight of what's happening, yes.

Q. Okay. All right. Ms. Coats, earlier in your testimony you talked about the mission and vision of Wellspring. I was wondering if you could describe that, please.

A. Well, we have a specific mission statement which is stated in our handbook and on our website. I don't have it memorized.

Q. Okay.

A. Yeah.

Q. Does your vision differ at all from your mission statement?

A. No. It just goes into further depth of how we live the mission.

Q. Okay. Can you please describe the daily Pre-K schedule?

A. Students arrive between 8:10 and 8:30. I believe they do centers to warm the children up. They'll gather as a whole class. They return to centers, rotate through. And this could involve small group as well or direct instruction.

Then they have lunch, nap. After nap, they – I think they gather again as a whole group and then do a whole group instruction, centers, and then recess outside. And they'll come in and get ready for dismissal. This is very loose. I'm not in there every day.

Q. Okay. I know you mentioned before one of the centers potentially being a, like, dress-up center. Do you know what's included in that center?

A. I remember seeing, like, a firefighter overcoat, a doctor overcoat, hats. I remember seeing hats.

Q. Okay. Do you – strike that.

Is Wellspring Preschool okay if a girl puts on a firefighter uniform?

A. Yes.

Q. How about a doctor uniform?

A. Yes.

Q. What if there was a princess costume? Could a boy wear that?

MR. DAVIS: Objection to the form of the question. Objection. Calls for speculation.

A. We don't have a princess costume.

Q. (BY MS. RUST) If there was a princess costume, could a boy wear that?

MR. DAVIS: Objection. Calls for speculation.

Q. (BY MS. RUST) You can answer.

A. I believe so.

Q. Okay. What type of curriculum is used in the Pre-K?

A. Creative Curriculum.

Q. Can you describe that a little more for me?

A. Yeah. That's the name of it.

Q. Okay.

A. Sorry. I wasn't being rude.

Q. I got it. No. And I didn't think you were. I just was curious.

Okay. Is that the – that's the formal name of the curriculum?

A. It is. It is.

Q. And who developed that curriculum?

A. Oh, I don't know the publisher.

Q. Okay. Is it curriculum that is approved by the Archdiocese?

A. I've never heard any objection towards it.

Q. Did you have to get formal approval to use that curriculum?

A. The curriculum was in place before I got there, but no, I don't believe so.

Q. Okay.

THE DEPONENT: I'm so sorry. I'm pregnant. Can I take another break?

MS. RUST: Yes. Ms. Coats, let me know any time you need to take a break. That is fine. We'll take another ten-minute break. Is that enough time for you?

THE DEPONENT: Yes.

MS. RUST: Okay. Perfect.

THE REPORTER: Off the record.

(Recess from 9:53 a.m. to 10:05 a.m.)

THE REPORTER: Back on the record.

Q. (BY MS. RUST) Okay. Where we left off, Ms. Coats, was talking about the Creative Curriculum.

A. Yes.

Q. My next question to you is, is this Creative Curriculum used for every student in preschool?

A. Yes.

Q. Okay. In your – or, Ms. Coats, did you submit an affidavit in this case?

A. I submitted a declaration, yes.

Q. A declaration. In that declaration, did you state that Wellspring teaches theology of the body?

A. Yes.

Q. What does that mean?

A. We follow a specific curriculum for theology of the body.

I'm just wiping my camera.

Q. No problem. Does that curriculum adhere to the document entitled "Guidance for Issues Concerning the Human Person and Sexual Identities"?

A. Yes. It's in line – it's in line with the Archdiocese and the teaching.

Q. Okay. Does Wellspring Catholic Academy teach theology of the body to their preschoolers?

A. The curriculum that we use does not provide a preschool curriculum, so we don't – no. Not in structure, no.

Q. Okay. Is there another way it comes up, if not in structure?

A. Theology of the body is understanding the human person, so of course that comes up at all developmental stages. So it could come up in casual conversation, just understanding who you are as a person.

Q. But there's no specific class or section of the preschool curriculum devoted to the theology of the body?

A. No, ma'am.

Q. Okay. Does Wellspring have learning sessions, as described in the Guidance for Issues Concerning the Human Person and Sexualities, for preschool parents?

MR. DAVIS: Objection. Lacks foundation. You're asking about a particular phrase in that document, if we can pull it up.

MS. RUST: Sure. Bonnie, can you pull up Guidance for Issues Concerning the Human Person and Sexual Identities?

Give us one second, Ms. Coats.

(Discussion off the record.)

Q. (BY MS. RUST) All right. Ms. Coats, thanks for your patience. Bonnie is going to share her screen with what's been previously marked as Exhibit 12.

I'll have us go through the rigmarole of her scrolling through it, you reviewing it, and you telling me if it's familiar to you.

Ms. Coats, do you recognize this document?

A. This is the Archdiocesan guidance, right, of Denver?

Q. The Guidance for Issues Concerning the Human Person and Sexual Identity.

A. Yes. Yeah.

MS. RUST: Okay. Can we go to page 6, please, Bonnie? If you can scroll down. One second.

(Discussion off the record.)

Q. (BY MS. RUST) Sorry. My pages got messed up from the PDF to this file.

So, Ms. Coats, this paragraph in the middle, it's titled "Practically speaking, Catholic schools and religious education programs should offer educational presentations on gender ideology for parents."

So my question was, does Wellspring have an educational presentation on gender identity – excuse me – ideology for preschool parents?

A. Not at this time.

Q. Okay. Do you have plans for it in the future?

A. Yes.

Q. Okay. When are you planning on instituting that?

A. We haven't set a date. We have begun – we have had one parent teaching already and then are planning the next two.

Q. When was this parent teaching?

A. Our first parent teaching was on October 5th, and it was on health and dietary guidance, led by our contracted school nurse.

Q. Okay. And what are the next two going to be about?

A. Undetermined right now.

Q. Okay. And are these presentations for all parents or just K-through-8 parents?

A. No. Let me clarify. This would be for preschool, specific to preschool, and then we would do – we do have separate for K-8 parents, but all parents are invited to that.

Q. Okay. So your specific to preschool ones, you're stating that the next two topics are undetermined; correct?

A. Correct.

Q. And is your testimony that they might be about gender ideology?

A. Yes. We've just brainstormed.

Q. Okay. Thank you. Okay. And then the second full paragraph on this page, as it's pulled up, says, "In addition, schools in religious education should address the topic with students directly at appropriate ages with notice to or permissions from parents."

So the preschool curriculum does not directly address gender ideology; correct?

A. Correct.

MS. RUST: Okay. All right. I think we can close that, Bonnie. Thank you.

Q. (BY MS. RUST) All right. Ms. Coats, I'm going to move to talking about demographics of your students for a little bit.

In the amended complaint, it is stated that "The demographics of the students at Wellspring are students with diverse backgrounds and varied economic circumstances."

Would you please explain the diverse backgrounds of Wellspring Preschool students?

A. We have students from multiple countries speaking different languages.

Q. What languages are spoken at Wellspring Preschool?

A. English, Spanish. We have a student – oh, no. That's not this year. We had a student last year in the preschool room that spoke Russian. And then there are a couple students that I'm not quite sure what

their home dialect is. I know that they're learning English as a second language.

Q. Okay. About what percentage of your preschoolers speak Spanish?

A. I would like to ballpark. Around 50 percent.

Q. And is your preschool classroom set up in any way as an English as a second language classroom?

MR. DAVIS: Object to the form of the question.

A. We do not follow a bilingual program; however, we – yes, there are supports to help those students access the curriculum.

Q. (BY MS. RUST) Okay. And then can you please explain varied economic circumstances in the demographics of your preschoolers?

A. Yes. Again, I have to ballpark these numbers. The – I believe over 30 percent of our preschool families fall under the country's poverty line. I believe over 70 percent qualify for free or reduced lunch. I think the exact numbers are in my declaration.

Q. Okay. And then how many of your preschool students are Catholics?

A. The majority. I don't know the specific number, but the majority are Catholic.

Q. How many non-Catholic students?

A. I'm going through the kids. Possibly one or two. Again, I can get those numbers for you later.

Q. Okay. Does St. Bernadette offer food help to students or their families?

A. Yes.

Q. Do students appear to have adequately warm clothing?

A. Yes.

Q. Does St. Bernadette's do outreach for enrollment?

A. Yes.

Q. Do you look for families to enroll?

A. Yes.

Q. How do you do that?

A. We advertise on social media. We attend different churches and speak about our school. We have ads in the community.

Q. Okay. And what is your impression of the demographics of Wellspring Preschool?

A. My impression?

Q. Uh-huh.

A. What do you mean by that?

Q. Just what is your impression of the types of children and families who make up the preschool?

MR. DAVIS: Objection to the form of the question.

A. I don't know how to answer that. Are you asking my opinion of our demographics?

Q. (BY MS. RUST) Yes.

A. I love our community.

Q. How many preschool students are enrolled this year?

A. 14, I believe.

Q. How many were last year?

A. 16 or 17, I believe.

Q. Okay. And the year before that?

A. I don't know the exact number.

Q. Okay. How many of the currently enrolled students have siblings at Wellspring?

A. I want to say around four or five. It could be more.

Q. How many of the enrolled Pre-K students are parishioners?

MR. DAVIS: Niki, feel free to ask these questions. You know, the interrogatory responses, I think, also address these same issues, so I note that for the record.

MS. RUST: Okay.

Q. (BY MS. RUST) Go ahead, Ms. Coats.

A. So I'm – I am unclear. I don't – if they – if they don't show me a registration form, I don't know where they're registered. I can speak for one specifically who I know for sure is registered.

Q. Okay. Ms. Coats, it's not a requirement of Wellspring to be a parishioner of St. Bernadette's in order to enroll?

A. It's not a requirement.

Q. Okay. Is it a requirement to be a parishioner of any Catholic Church to enroll?

A. It's not a requirement. No.

Q. Okay. Do you check enrollment – or excuse me. Strike that.

Do you check enrollment in a parish before a child is accepted into Wellspring?

A. No.

Q. Okay. Ms. Coats, how many seats are available in your preschool?

A. Currently 20.

Q. Okay. Have you turned away any families from enrollment in your preschool?

MR. DAVIS: Objection to the form of the question.

A. I don't believe so.

Q. (BY MS. RUST) Okay. Is enrollment in your preschool declining?

A. Yes.

Q. Is that a reflection of decreased enrollment in your parish?

MR. DAVIS: Objection to the form of the question.

A. Can you rephrase?

Q. (BY MS. RUST) Is the decreased enrollment in your preschool a reflection of the decreased enrollment of your parish?

MR. DAVIS: Same objection.

A. I don't know if there would be a correlation.

Q. (BY MS. RUST) Okay. Is decreased enrollment in your preschool a reflection of an aging population?

MR. DAVIS: Objection to the form of the question. Lacks foundation.

Q. (BY MS. RUST) You can answer.

A. An aging population overall in our state or our world?

Q. (BY MS. RUST) Yes.

A. I don't know if there's a correlation.

Q. Okay. You stated in your decoration [sic] that you believe not participating in the UPK program led to a decline in enrollment.

Why do you believe that?

A. I know we've had a couple families ask if we were participating, and then upon hearing that our answer was "not at this time," didn't hear from some families after that.

Q. And is this your personal opinion or the opinion of St. Bernadette?

MR. DAVIS: Objection to the form of the question.

A. I'm here representing St. Bernadette Catholic Church.

Q. (BY MS. RUST) Okay. When you spoke to those families, did they tell you they were specifically looking for a Catholic preschool?

A. It's a very nuanced statement in a conversation. I assume people, when they are touring our school, are looking for a Catholic education.

Q. Were these families who had children previously enrolled at Wellspring?

A. No. I don't believe so.

Q. Okay. Do you know whether those inquiring families found a UPK placement?

A. I don't know.

Q. Okay.

A. I believe –

Q. Sorry.

A. I don't know. I think one may have, yes, but I'm not certain.

Q. Okay. Are any current enrollees in preschool children of a Wellspring employee?

A. Yes.

Q. How many?

A. One.

Q. And then how many 4-year-old students started Wellspring before their 4th birthday but continued care after their 4th birthday?

A. Oh, gosh. Are you asking this school year? In the last five years?

Q. This school year.

A. Okay. I know of four birthdays for sure. There could have been more.

Q. Okay. And then has Wellspring ever suffered from decreased enrollment in the past?

A. Yes.

Q. What caused that decrease?

A. I can't be certain. I have thoughts.

Q. What are your thoughts?

A. Well, a change in administration statistically offers a pretty big decrease in enrollment.

Q. When did this happen?

A. The change in administration was July 2022.

Q. And then what was the reason for St. Bernadette School to get shut down for a year?

MR. DAVIS: Objection to the form of the question. Lacks foundation.

A. I wasn't there. I know that – I believe that there was a decline in enrollment and a toxic culture has been the reason I've heard.

Q. (BY MS. RUST) Okay. If you know, what does toxic culture mean?

A. I don't think there was much unity among the faculty and staff in all definitions of that.

Q. All right. Ms. Coats, I want to just run through with you what's described in paragraph 86 of the amended complaint, Wellspring's priorities for enrollment.

Is Wellspring's first priority for enrollment siblings of current students?

A. I believe so. I know this is in my decoration [sic]. I can't remember the specific order, but yes.

Q. Okay.

MR. DAVIS: Paragraph 86, if we're going to have specific questions about it, can we see it?

MS. RUST: I'm sorry. What? You cut out, Mr. Davis.

MR. DAVIS: I just said, can we pull up paragraph 86 if we're going to have specific questions about it?

MS. RUST: Sure. Let's pull up paragraph 86. One second.

(Discussion off the record.)

MS. RUST: Okay. It looks like we have marked this as Exhibit 15, Ms. Kelly. And this is the first amended complaint. Let just go ahead and go to paragraph 86, please.

I think what I'll do – oh, there it is. I was correcting myself that it was paragraph 84 of the amended complaint, not paragraph 86.

Q. (BY MS. RUST) Ms. Coats, you were noticed to talk about these priorities and enrollment numbers, so are you prepared to talk about these priorities over the last ten years?

A. No.

MS. RUST: Okay. Mr. Davis?

MR. DAVIS: We said five years in our email response. I think – well, the witness can answer. I think that may be what she's referring to.

THE DEPONENT: Yes. That's what I'm referring to.

MS. RUST: Okay. Well, you were noticed for the deposition for ten years, Mr. Davis.

MR. DAVIS: Oh. We sent an email objecting to that time frame, let's see, last week.

MS. RUST: All right. Hold on one second.

MR. DAVIS: Sure.

(Discussion off the record.)

MS. RUST: Thanks, Mr. Davis. If you could just make a record of what you guys did do to try and get as much information as possible for these years, I would appreciate it.

MR. DAVIS: We can make a record of – for which years? I'm sorry.

MS. RUST: For the five years and why you aren't able to speak to ten years.

MR. DAVIS: Oh, well, part of it is the burden of going back ten years. It's not relevant to the case and the burden is disproportionate to its benefit. You know, the written discovery responses that Defendant sent were generally limited to five, and that's what our – that's what our client – that's the information our clients gathered.

And our client has also just testified, as you know, that the school shut down and reopened in the recent past and so the demographic numbers going back maybe even to five years are not incredibly easy to put together, but she's prepared to talk about that today.

MS. RUST: Thank you.

Q. (BY MS. RUST) So, Ms. Coats, can you tell me a breakdown of enrollment numbers regarding your priority for siblings of current students over the past five years?

A. I submit –

Q. Would it be easier to speak in percentages?

MR. DAVIS: Niki, is this getting at the same thing that was answered in our interrogatory? I mean, our client signed off on that interrogatory and is responsible for those answers with respect to St. Bernadette's.

MS. RUST: All right. I am going to – Mr. Davis, I might come back to this. I will move on and just review

the interrogatory over a break and just, if I need to come back to this one, I will.

MR. DAVIS: Sure.

MS. RUST: I mean, I think that's why we asked for ten years, instead of five years, to be quite frank with you, is we wanted to explore this further. So I'll come back to this if I need to. We'll move on.

Q. (BY MS. RUST) So, Ms. Coats, we're going to move on to the topic about information about the makeup of St. Bernadette Catholic parish, your parishioners – that's been a tongue twister for me today – and the process for joining or for leaving the parish.

Can you talk to me a little bit about how many parishioners St. Bernadette has at the moment?

A. I apologize. I saw this number yesterday and I – I don't remember it.

Q. Okay. Can you tell me generally, has this number increased or decreased since you've been working at Wellspring?

A. I don't – I don't know. I don't handle registration forms for the parish.

Q. But you were asked to be prepared to talk about this topic today; is that correct?

A. Yes.

Q. Okay. Ms. Coats, are you a parishioner of St. Bernadette's?

A. Yes.

Q. Okay. Is there a document that would refresh your recollection?

A. Yes.

Q. What is that document?

A. I have our database.

Q. Okay.

MR. DAVIS: Niki, for the record, the 30(b)(6) topic requests information about the makeup of St. Bernadette's parishioners and the process for joining. I think that's what the witness was prepared to discuss, not – it doesn't refer to parishioner trends in the same way it does enrollment numbers and trends at the preschool.

If you would like her to refresh her recollection on the numbers that she just now couldn't pull to mind, I think we can do that after a break.

MS. RUST: Okay. I mean, I disagree. I don't think that asking her whether enrollment has increased or decreased is outside of asking about the makeup of the parish, especially if she's a parishioner. Can she look around and see the church is fuller than it used to be, or less? But we'll move on.

Q. (BY MS. RUST) So, Ms. Coats, what can you tell me about the makeup of St. Bernadette's parish?

A. It's a primarily older parish. The majority of parishioners are retired or near retirement.

Q. Okay. How about income? What is the makeup of income?

A. I believe it's median, according to State standards.

Q. Okay. These older parishioners, do they have children?

A. A lot of them do, yes.

Q. Did their children remain in the parish?

MR. DAVIS: Objection to the form of the question.

A. I don't know. You're asking specific to registration forms. There's different definitions to remaining in a parish.

Q. (BY MS. RUST) Okay. Can you please tell me the different definitions for remaining in the parish?

A. To be a parishioner requires you to be registered with a form through the parish office, and it typically means some sort of tithing towards the parish or volunteer commitment.

Q. Okay. That's one definition. What's the other?

A. Well, you alluded to I can just look around. We have multiple Masses. I can't just look around. I don't go to all the Masses. And if somebody isn't there, it doesn't mean that they're not a parishioner. So I really can't speak without seeing the forms myself.

Q. Okay. So can someone be a parishioner and not attend Mass?

A. Yes.

Q. Can someone be a parishioner – this word – parishioner and not tithe?

A. Yes.

Q. Can someone be a parishioner and not volunteer?

A. Yes.

Q. And can someone tithe and not be a parishioner?

A. Yes.

Q. And can someone volunteer and not be a parishioner?

A. Yes.

Q. And can someone attend Mass and not be a parishioner?

A. Yes.

Q. Can someone attend Mass that's not even a Catholic?

A. Yes.

Q. Can someone tithe that's not even Catholic?

A. Yes.

Q. Can someone volunteer that's not even Catholic?

A. Yes.

Q. Okay. So how do you define being a member of the St. Bernadette Church?

MR. DAVIS: Objection to the form of the question. Misstates testimony.

Q. (BY MS. RUST) You can respond.

A. To be an official member of the church, you have filled out a registration form. Now, there are different levels of involvement and you can definitely be involved without being an official member.

Q. Are there unofficial members of St. Bernadette's?

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

Q. Okay. And then what is the process for leaving or defecting from the parish? I'm not sure. What is the correct word?

A. There's not a process. There's not a written process.

Q. Okay.

A. A parish can – a pastor can choose for renewed registration forms to get updated numbers.

Q. Okay. So someone could be registered on a form but no longer go to church; is that correct?

A. Correct.

Q. And someone could be registered as a member of your church but no longer tithe?

A. Correct.

Q. And someone could be a registered member of your church and no longer actively participate in the church body?

A. Correct.

Q. Okay. All right. Ms. Coats, I wanted to ask you, has there been any instance in Wellspring where you have enrolled a student who has identified as LGBTQ?

A. Not to my knowledge.

Q. Okay. Is there any instance where you disenrolled a student who identified as LGBTQ?

A. No. Not to my knowledge.

Q. Okay. Sorry. I'm just looking because I think we talked about a few of these questions before so I don't want to double ask.

Okay. Have there been any instances within the past five years where Wellspring Preschool has been asked to recognize or facilitate a gender transition of a student?

A. No.

Q. Okay. Have there been any instances in the past five years Wellspring Preschool has been asked to grant any accommodation that recognizes a change in sexual identity?

A. No. Not to my knowledge.

Q. Okay. Has there been any instance in the past ten years where Wellspring has been asked to grant any accommodation that suggests a change in sexual identity?

A. Wellspring has only been in effect for five years and no, not to my knowledge.

Q. Can you please explain Wellspring's pre-enrollment interview process?

A. Interview should be a light term. We offer the family a tour, in which we get to know them and they get to know us. For the preschool, we – well, for all students, we ask that the student attend, give them a chance to enter into the classroom and explore. And the parents typically ask us a lot of questions about curriculum, day to day. And we like to get to know the family.

Q. So is that two separate visits or does the tour and the child going into the classroom happen on the same day?

A. More often than not, it's on the same day. It depends on schedules.

Q. Okay. What, in this pre-enrollment process, would make you think a student was not a good fit for Wellspring?

MR. DAVIS: Objection. Calls for speculation.

A. Yeah. This would be case by case. It could be alignment with the church and our mission or alignment with our curriculum and our charisms.

Q. (BY MS. RUST) Okay. Has that ever happened at your time at Wellspring?

A. In the whole school or are we specifically –

Q. Preschool.

A. For preschool?

Q. (Nodded head up and down.)

A. The school has never – excuse me. In my time at Wellspring, we have not determined a family to not be a good fit for preschool; however, we've had families tour and not register.

Q. Okay. So how does Wellspring ensure that parents understand and accept the Catholic view of marriage?

MR. DAVIS: Objection to the form of the question.

A. Upon enrollment, all of our families are required to sign our handbook and within our handbook is the code of conduct. In there – it states in there, you know, the paragraphs on marriage.

Q. (BY MS. RUST) Okay. Do you have any students who have divorced parents at your school?

A. Yes.

Q. Okay. What is Wellspring's policy on divorced parents of a student?

A. I don't know if we have a written policy on divorce, outside of paperwork. If there's a custody agreement, we need that on file so that we abide by it.

Q. Okay. Would that situation affect a student's enrollment?

A. It depends on the –

MR. DAVIS: Calls for speculation.

A. It depends on the custody agreement.

Q. (BY MS. RUST) Okay.

A. If we're unable to follow the law, then yes, absolutely.

Q. Is it Wellspring's understanding that you cannot conduct pre-enrollment interviews if it participates in the UPK program?

MR. DAVIS: Objection. Calls for a legal conclusion.

Q. (BY MS. RUST) You can answer.

A. Can you say it again? I'm sorry.

Q. Sure. Is it Wellspring's understanding that the preschool cannot conduct pre-enrollment interviews if it joined the UPK program?

MR. DAVIS: Same objection.

A. I don't have an understanding. I don't think Wellspring has an understanding of how to abide by UPK since we haven't started the process.

MS. RUST: Okay. Ms. Coats, if you need another break, this would be a good time. I thought I would ask. If not –

THE DEPONENT: Sure. I'll take it.

MS. RUST: Okay. Perfect. Let's take another ten-minute break.

THE REPORTER: Off the record.

(Recess from 10:48 a.m. to 11:00 a.m.)

THE REPORTER: Back on the record.

MS. RUST: Ms. Kelly, could you actually remind my where I left off, the last question I asked?

(The last question and answer were read back.)

MS. RUST: Thank you, Ms. Kelly.

THE REPORTER: You're welcome.

Q. (BY MS. RUST) Okay. Ms. Coats, has there been any instance where Wellspring refused enrollment of a child or disenrolled a child based on their religion?

A. No. Not to my knowledge.

Q. Okay. Has there been any instance where Wellspring refused enrollment of a child or disenrolled a child based on the marital status of their parents?

A. Yes.

MR. DAVIS: Objection. Just objection to form.

But you can answer.

Q. (BY MS. RUST) Okay. Would you please describe that instance?

A. Yes. To be clear, the family never filled out an application. We did a tour, we met, and ultimately decided, with the guidance of the Archdiocese and, obviously, Father Joe, our pastor, that if the student

attended Wellspring, it would cause further conflict in their home and in their family. And we didn't believe – we didn't want that to happen, so we didn't pursue registration.

Q. Okay. A few follow-up questions. Was this a preschool student?

A. No.

Q. What grade, if you recall?

A. 5th grade.

Q. Okay. And then what was the marital status of the parents?

A. I don't believe they were married.

Q. Okay. And then what was the conflict you guys felt enrollment would cause or further?

A. Our teaching on theology of the body.

Q. What specific part?

A. Definition of marriage.

Q. Okay. Thank you, Ms. Coats.

MS. RUST: Okay. I'm going to jump back to enrollment numbers. Bonnie is going to share the screen with the interrogatory, Mr. Davis. I just have a few questions for you, Ms. Coats.

Scrolling down to Interrogatory 11, please, Bonnie.

And this has been marked as Exhibit 16, Ms. Kelly.

Q. (BY MS. RUST) Okay. Ms. Coats, does this look familiar to you, this document?

A. Yes, I believe so. Sorry.

Q. Nope. You're fine. Okay. So we are going to talk about Interrogatory 11 really quickly.

"Identify and list how many 4-year-old students have been enrolled in your preschool."

MS. RUST: So, Bonnie, can you scroll down to the St. Bernadette answers?

Q. (BY MS. RUST) Ms. Coats, you testified earlier that preschool enrollment is 14 students.

Does that include 4-year-olds and 3-year-olds?

A. Yes, it does.

Q. Okay. So how many 4-year-olds are currently enrolled at Wellspring?

A. I don't know because of the birthdays. So as of whatever today is, November 28th, the number has changed.

Q. Okay. Do you know total enrollment for Wellspring Preschool for 2022, how many students?

A. I believe we started with about 16 or 17.

Q. Okay. Did you – did some leave? You said "started."

A. Yes. Yeah. We didn't end with the same number.

Q. How many students left?

A. I want to say three.

Q. Why did they leave?

A. We had – we had a switch in staffing for the preschool department.

Q. What was that?

A. Our preschool director, who was also the lead teacher, and one of the aides resigned their positions.

Q. Why did they resign?

A. I don't think it was defined in their resignation letter, but they no longer wanted to work there.

Q. What is your understanding of why they resigned?

A. My understanding is the aide was not feeling prepared to step into the lead teaching position. My understanding of the director, slash, lead teacher at the time was – was no longer – she didn't want to work there anymore. Just give me one second. I don't believe she felt in alignment with our mission anymore.

Q. What part of the mission?

A. She was expressing to other staff and families that the school would close, and it wasn't true, so she wasn't believing in our growth and our mission.

Q. Why did she think the school would close?

A. I honestly can't tell you. I have no idea. There was – there was nothing going on at that time.

Q. Okay. And at what point in the school year did these resignations happen?

MR. DAVIS: I'm going to object in terms of the 30(b)(6) topics. Can you let us know which of these topics this falls under?

MS. RUST: Sure, Nick (sic). One second.

(Discussion off the record.)

MS. RUST: I will let that question go and ask a different one.

MR. DAVIS: Okay.

Q. (BY MS. RUST) So, Ms. Coats, you ended the school year with 13 students in 2022-2023?

A. That's a ballpark, but yes.

Q. And you began the 2023-2024 school year with 14 students?

A. Another ballpark, yes.

Q. So it's actually an increase from where you ended last year?

A. Yes.

Q. Okay. And then in 2021, what was the total number of preschoolers enrolled?

A. 21.

Q. They were all 4-year-olds that year?

A. Oh, I'm sorry. I'm sorry. I don't – I don't know. Again, time of enrollment, I'm not sure the exact numbers. We do mixed classrooms – sorry – mixed-age classrooms.

Q. Okay. So the interrogatory asks specifically about 4-year-olds. Your deposition notice was noticed to speak about all enrollment numbers of preschool.

So can you tell me for 2021 what the total enrollment number was?

A. For 4-year-olds?

Q. For all 3 and 4-year-olds, the whole preschool.

A. 21 enrolled.

Q. Okay. So in 2021, there were only 4-year-olds enrolled?

MR. DAVIS: I think there was a misunderstanding of the question. You asked the total number enrolled in 2021. And wasn't this answered in 21?

MS. RUST: So the interrogatory is specific to 4-year-olds; correct, Mr. Davis?

MR. DAVIS: I wasn't – just now the question – your question was how many total students were enrolled in 2021.

MS. RUST: Of preschool, yes.

MR. DAVIS: Preschool.

MS. RUST: Of 3-year-olds and 4-year-olds.

MR. DAVIS: And the witness answered 21. And I think you followed up, so they were all 4-year-olds. And I think that's where the confusion came from. You're free to restate your question.

MS. RUST: Right. So I'm trying to get to the bottom of whether this number in the interrogatories, the 21, is just 4-year-olds or if your witness knows of a different number for 2021 enrollment that includes also 3-year-olds.

A. I believe the 21 and fully enrolled is both mixed 3 and 4-year-olds. And I'm sorry. I'm not prepared with how many 4-year-olds, at the start of the school year, that 21 consisted of.

MR. DAVIS: Niki, we can supplement our interrogatory response with that admission.

MS. RUST: Thank you.

Q. (BY MS. RUST) Ms. Coats, would that be your same answer for '20, '22, and 2019 here?

A. Yes, it would.

Q. Okay.

MS. RUST: I would just ask for those to be supplemented, too, Mr. Davis.

A. Yes.

Q. (BY MS. RUST) Okay. Thank you, Ms. Coats. Thanks for walking me through that.

MS. RUST: Okay. We can close that, Bonnie.

Q. (BY MS. RUST) All right. Ms. Coats, I wanted to just have a few kind of stray questions from some things we talked about previously.

So back to the discussion of the parent handbook. Do parents have to re-sign that handbook every school year?

A. Yes.

Q. Okay. And then how does Wellspring monitor compliance with the handbook during the year?

A. We refer back to it when situations arise, as we need to, to ensure that we're following what we said we would do.

Q. Okay. And are these situations just situations in the school or situations within private family life?

A. It could be both.

Q. Okay. Ms. Coats, I want to briefly go back to the topic of St. Bernadette's getting shut down. When that happened, did a new Father get put in place, too?

A. The pastor who was involved in the closing remained the same pastor when the school was reopened, and then it switched. Father Joe McLagan was named pastor, I want to say in 2019, the summer

of 2019, but COVID blurs everything. I don't know if it was '19 or '20.

Q. It does. I give you no fault for that. Okay.

So what also is your understanding of the staff turnover when St. Bernadette's closed and Wellspring opened? Was it all new staff?

A. Yes, it was.

Q. Okay. Did any staff from the previous school remain, to your knowledge?

A. Yes. Yes. I apologize. Yes. One.

Q. Okay. Who was that?

A. Karina Campa. And then just to clarify, this is school staff. So I believe that – I mean, there were multiple people on the parish side of the staff that remained.

Q. Okay. Thank you for that clarification. And do you know why the school got shut down?

A. Not the intricacies behind what I stated earlier.

Q. Okay. Thank you. What do you know? Anything more than what you stated earlier?

A. Yeah. I know it was a decline in enrollment, I know it was a discernment process, and I know there was a toxic culture among staff and faculty.

Q. Okay. All right. Ms. Coats, what is Wellspring Preschool's tuition rate this year?

A. So – oh, gosh. It is – we have an unaffiliated rate and affiliated rate for Catholics. So I believe the affiliated rate is 7,224. That's a ballpark. And then the unaffiliated rate would be around like 8,224. But that's also a ballpark. It's on our website.

Q. How do you discern who's affiliated and unaffiliated, if you're not asking about religion during the enrollment process?

A. We ask all of our – most of our families require tuition assistance, and we ask them to apply through a separate portal that helps us calculate just tuition. In that portal – it's a separate system, it's not ours, we didn't write it – it asks if they're affiliated with a church.

Q. Do you ever pull that info, that data?

A. I reference it to write adjust tuition contracts. I don't know what you mean by pull.

Q. Yeah. Pull the data from that system of what number of your students are affiliated versus nonaffiliated.

A. We use that system to fill out several different demographic, like, data entries. So for –the State asks us to fill out yearly things. Our scholarship programs ask us to fill out. NCEA. There's a lot of data that we give around October of every year.

Q. Okay. Has the tuition increased from last year?

A. It decreased.

Q. Okay. How about from the year before? Did tuition increase or decrease?

A. So from – can you define the years? I'm just losing my timeline.

Q. Yeah. No problem. So you said that from this year to '22-'23, it decreased.

A. Yes.

Q. Okay. How about from '22-'23 going to the '23-'21 year – or '22-'21 year, did it increase or decrease?

A. I think there was a slight – no. I believe it stayed the same. Excuse me. I think it stayed the same.

Q. Okay. What is the UPK rate Wellspring would receive, if you know?

A. I don't.

Q. Okay. What type of scholarships and financial assistance does Wellspring offer families?

A. Are you asking who we partner with?

Q. Uh-huh.

A. We partner with ACES scholarships, the Schmitz Family Foundation, and Seeds of Hope. Those are the different institutions. And then we also ask – you know, as part of donations and everything, a family could sponsor a student, so it could be individual.

Q. Okay. How does a family apply?

A. For a scholarship?

Q. Yes.

A. It depends on the institution. So Seeds of Hope has – they all have their own separate application.

Q. Do they all have separate qualifications?

A. They could differ, yeah. I believe some of the income levels differ.

Q. Okay. What are the qualifications for an ACES scholarship, if you know?

A. So income and then number of people living in the household.

Q. Okay. How about Schmitz Family?

A. Same.

Q. Okay. Seeds of Hope?

A. Same. And then they also – I know Seeds of Hope asks a lot of information about other bills, other things that the family may provide for. So it goes – it allows them to provide more information on their expenses.

Q. And then how does a student qualify for the sponsor of a student?

A. That's more of a general fund. So we still have a gap between what a family can offer and what our scholarships offer, there's still a large tuition gap, so it's more of a general fund.

Q. Okay. How many students are receiving financial assistance this year at preschool?

A. Over 95 percent.

Q. Okay. How many last year?

A. Over 95 percent.

Q. And then what about the 2022-2021 school year?

A. Over 90 – 95 percent.

Q. Does Wellspring tell families about other financial aid or other assistance available to them?

A. Yeah. Yes. We don't – we don't hide anything.

Q. Okay. What about CCAP?

A. Yes.

Q. What about the Denver Preschool Program?

A. Yes.

Q. Does Wellspring participate in the Denver Preschool Program?

A. We have in the past. I don't believe we have current participation.

Q. Okay. I'm going to screen share –

MS. RUST: Bonnie, can we pull up the next exhibit?

Q. (BY MS. RUST) Okay. Ms. Coats, we're showing you what's been marked as Exhibit 16. Again, Bonnie will scroll so that you can review.

THE REPORTER: Is this the same one? We had a 16, I think, come up. Is this 17?

MS. RUST: Oh, thank you. Sorry, Ms. Kelly. Thanks for keeping us on the straight and narrow. It's different, so we'll redo.

This should be Exhibit 17.

THE REPORTER: Thank you.

MS. RUST: Thank you.

Q. (BY MS. RUST) Okay. Bonnie is going to scroll. If you'll just review it, Ms. Coats, and when you're done reviewing, would you please let me know if you recognize this document?

A. Yes. I recognize it.

Q. Thank you. And, Ms. Coats, who is Karina Campa? Pardon me.

A. She was the former director of Wellspring Catholic Academy Preschool.

Q. Did you work with Ms. Campa?

A. I did.

Q. Were you aware that Wellspring Preschool applied for the Denver Preschool Program in 2022-2023?

A. Yes.

Q. Did you review this contract then?

A. No. I don't believe I did.

Q. Did Ms. Campa have your authority to sign this contract?

A. Yes.

Q. Okay. Did you and/or Ms. Campa consult with the Archdiocese before signing this contract?

A. I don't remember a direct conversation, but the guidance from the Archdiocese was that entering into this – into the DPP program was fine.

MS. RUST: Okay. Bonnie, can you please go to page 21, I think it is?

One second. Again, my numbers got screwy.

(Discussion off the record.)

Q. (BY MS. RUST) I apologize for that, Ms. Coats. Okay. Bonnie is going to pull up page 26. Okay. And do you see the paragraph marked number 3 here, Ms. Coats?

A. I do.

Q. Okay. Can you read that, please, and tell me when you're done?

A. I'm done.

Q. Okay. And you felt comfortable with Wellspring signing this contract that included the language in number 3 on page 26; is that correct?

A. I don't think I had a feeling about it. The guidance of the Archdiocese was that this was an appropriate contract to enter into.

Q. Okay. Did the Archdiocese give you a reason that they felt it was an appropriate contract to enter into?

A. No. Again, I don't – I didn't have a direct conversation regarding DPP at that time.

Q. Okay. Do you notice any similarities between number 3 and the UPK program contract?

MR. DAVIS: Objection. Calls for a legal analysis.

Q. (BY MS. RUST) You can answer.

A. Can you pull up the other paragraph you're referring to?

Q. Sure.

MS. RUST: Give us a second. We'll need a break to pull that up.

(Discussion off the record.)

Q. (BY MS. RUST) Thanks, Ms. Coats, for giving us a second. So Bonnie is going to pull up what was previously marked as an exhibit. It was marked as Exhibit 9.

And, Ms. Coats, if you will look at –

MS. RUST: Let's just find the section, Bonnie.

Q. (BY MS. RUST) Okay. So under quality assurance, the fourth bullet point down, that paraphrases the statute that's referred to above, the 26.5-4-205.

So if you will read that and then let me know if you want to see the DPP contract again.

A. Can you switch back, please?

Q. Yes.

A. Thank you. Can you restate the question, please?

Q. Yeah. So, Ms. Coats, do both of these nondiscrimination clauses reference gender?

A. Yes. I believe so.

Q. Okay. Do both reference sexual orientation?

A. Yes. I believe so.

Q. Okay. And then the DPP agreement states "gender variance."

MS. RUST: Bonnie, can you switch back to the UPK?

Q. (BY MS. RUST) And the UPK program says "gender identity." So those aren't exactly the same, but what do you take gender identity to mean?

MR. DAVIS: Objection to the form. Objection. Calls for a legal analysis.

Q. (BY MS. RUST) You can respond, Ms. Coats.

A. How one would identify themselves, I think.

Q. Okay. And then the language used in –

A. Can I amend my answer?

Q. Sure.

A. I'm sorry. I don't believe how I answered. I believe gender identity to be the gender they were born with.

Q. Okay. Is that your understanding of the definition of gender identity?

MR. DAVIS: Objection. Calls for a legal analysis.

A. The definition of gender identity is deeply controversial, and I don't believe there is a standard definition in our world.

Q. (BY MS. RUST) Okay. And then the Denver Preschool Program says "gender variance." What do you understand that to mean?

MR. DAVIS: Objection. Calls for a legal analysis.

Q. (BY MS. RUST) You can answer.

A. It sounds like it's saying varied gender, so . . .

Q. Okay. So, Ms. Coats, do you understand that this lawsuit is specifically about what's referred to as gender identity in the UPK program?

MR. DAVIS: Objection to the form. Objection. Calls for a legal analysis.

A. I believe the overall lawsuit is about the discrimination clause.

Q. (BY MS. RUST) Okay. And would you say, upon reading the UPK discrimination clause here and the DPP discrimination clause, do you think they're more alike or more different?

MR. DAVIS: Objection. Calls for a legal analysis. I'm also not sure this is within the 30(b)(6) topics, which don't ask for a legal analysis between the two agreements.

MS. RUST: I think we have DPP in the topics, and other federal, state, and local grants that they applied for.

MR. DAVIS: The witness can answer, if she's able.

Q. (BY MS. RUST) Go ahead.

A. The wording is different. So if I do a deep dive into the way that it's worded, I'm sure I could find a lot of differences.

Q. Okay. But would you agree that both require nondiscrimination based on sexual orientation?

MR. DAVIS: Objection. Calls for a legal analysis.

Q. (BY MS. RUST) Let me know if you want to see the other one again.

A. I don't mean to be picky. Is there a way that we could just separate the screen and I can see both statements?

Q. Yeah. No. Be as picky as you want. Let's see if we can do that.

(Discussion off the record.)

A. Okay. Thank you. And before I reread and answer – thank you –

Q. Yeah.

A. – can you restate the question, please?

Q. Sure. And also for your orientation, Ms. Coats, the top one is the UPK language, the bottom one is the Denver Preschool Program language.

A. I understand.

Q. Okay. Would you agree that both of the nondiscrimination clauses specifically state “sexual orientation”?

MR. DAVIS: Same objection.

A. Yes. They both explicitly state the words “sexual orientation.”

Q. (BY MS. RUST) Okay. And do both of these explicitly state “gender”?

A. Yes, however, the wording is different.

Q. Okay. And do both of these state no discrimination based on religion?

MR. DAVIS: Same objection.

A. Yes. Again, the wording is different.

Q. (BY MS. RUST) Okay. Thank you, Ms. Coats.

MS. RUST: Bonnie, can you close that but pull up the Wellspring Preschool Handbook, which I erroneously told Mr. Davis we don’t have? Again, I’m so sorry, Mr. Davis.

And let’s mark that as the next exhibit.

THE REPORTER: I show 18.

MS. RUST: Thank you, Ms. Kelly.

Q. (BY MS. RUST) And can we – and I’m sorry, Ms. Coats. I promise this will be the last time we have to scroll and you look at it and tell me if you recognize it, okay?

A. I recognize it.

Q. What is this document, Ms. Coats?

A. This is the preschool handbook addendum for this school year.

Q. Okay.

MS. RUST: Bonnie, can we go to page 7, please? Right there.

Q. (BY MS. RUST) Can you please read the third bullet point, Ms. Coats, out loud, please? Sorry.

A. Oh, okay. "Through DPP's Preschool for 3s Program, they aim to equitably expand the access to quality preschool for a limited number of children who turn 3 by October 1st, 2023."

Q. Okay. And can you please read the second bullet point out loud?

A. "Those families who live in Denver County should apply to Denver's Preschool Program, DPP, for generous tuition assistance for all children who will be 4 by October 1st, 2023, or it will be the child's year prior to kindergarten."

Q. Okay. So did you review the preschool addendum for this year?

A. I did.

Q. And did you agree with your preschool handbook directing families to apply for the Denver Preschool Program?

MR. DAVIS: Objection. Misstates testimony.

Q. (BY MS. RUST) You can answer.

A. I did.

Q. Okay. Thank you.

MS. RUST: Bonnie, we can close that out.

Q. (BY MS. RUST) All right. Ms. Coats, has the Wellspring Preschool received any E-A-N-S or G-E-A-N-S Stability grants?

A. No.

Q. Okay. Ms. Coats, has Wellspring Preschool received the Health and Mental Health grants?

A. Is that the name of the grant?

Q. Yes.

A. No.

Q. Okay. Have you received the Paycheck Protection Program, PPP?

A. Yes. I believe so.

Q. Okay. Do you remember how much you received?

A. No, I don't.

Q. Okay. Did you have to sign paperwork to receive it?

A. I did not sign. I didn't work there at that time.

Q. Okay. And then have you received a Colorado Shines Quality Improvement Program grant?

A. Yes.

Q. Okay. How much did you receive?

A. We are – so the way that works is it's every three years. We're in our year right now. We have not – so let me amend my answer.

We haven't received a physical check and I don't know the exact amount, but I do know we will.

Q. Okay. And did you have to sign paperwork for that program?

A. Not yet. I don't believe so.

Q. Okay. And then has Wellspring in the past participated in the CCAP program?

A. Yes.

Q. Okay. Do you remember when that was?

A. I believe we participated the last two school years before '23-'24.

Q. Okay. And did you have to sign paperwork to be in that program?

A. So, again, that wouldn't be my signature but yes, paperwork was signed.

Q. And did you receive referrals through that program?

A. To be honest, I don't know how the program works. I would believe so, yes. I don't know.

Q. Okay. And then have you received any money from a Buell Foundation grant?

A. Yes.

Q. How much have you received?

MR. DAVIS: Objection. This falls outside the scope of the 30(b)(6) topics.

MS. RUST: Again, I think this is one we disagree on, Joe. We never specified whether it was government or private.

Q. (BY MS. RUST) So, Ms. Coats, you can answer.

MR. DAVIS: No. I think, I mean, the topic is federal, state, and local grants. I'm just not sure how a private grant could possibly fall within that.

MS. RUST: Yeah. And I looked up the Buell Foundation, and we can provide supplemental information, but it's a Denver-based foundation that only provides money to Colorado schools, specifically Colorado early childhood.

So if you want to look it up, that's what their website says. And this is something that your client brought up yesterday, so I'm just trying to understand which of your schools received that money as well.

MR. DAVIS: I suppose I don't object if the witness knows the answer to the question. I mean, the fact that a private foundation has geographical limits on its awards doesn't make it a governmental foundation or federal, state, or local.

MS. RUST: Correct. It does make it local, though, and our depo question did not specify whether we were asking for government or private.

Q. (BY MS. RUST) So, Ms. Coats, to the extent that you know, would you please answer the question?

A. I know that we were awarded funds. I don't know how much.

Q. Okay. And was that this year or last year?

A. I believe it was last year.

Q. And did you have to sign paperwork for that, Ms. Coats?

A. No. That was before I got there.

Q. Okay. Great. All right. I think, Ms. Coats, I just have a few more questions.

Can we please get the name of the lead teacher, slash, preschool director who left last year, and could you please spell it?

A. Karina Campa, K-a-r-i-n-a C-a-m-p-a.

Q. Thank you. Do you know where she currently is?

A. The last I was aware, she works out of Red Rocks Community College for the Triad Preschool Program.

Q. Thank you. Okay. Jumping back to the scholarships that your kids and families can apply for, Ms. Coats, if you recall, have these scholarship funds increased or decreased over time?

A. Can you just clarify a little bit? Are you talking about the whole school, the preschool, and which funds you're asking about?

Q. Sure. So let's start with the ACES scholarship. Has that amount increased or decreased over time?

A. From last year to this year, there was a decrease.

Q. Okay. And how about the Schmitz Family Foundation?

A. I believe there was also a decrease, slight decrease.

Q. Okay. Do you know why?

A. A lot of our families didn't meet the deadline.

Q. Gotcha. Okay. And then how about the Seeds of Hope? Increased or decreased?

A. I believe that amount has been the same from last year to this year.

Q. Okay. Great. All right.

MS. RUST: Well, Mr. Davis, if I can just take a second and make sure – we can go off camera and just make sure I don't have any more questions.

I know Ms. Coats has a doctor's appointment, so let me just check everything real quick before we let her go.

MR. DAVIS: Did you say five minutes?

MS. RUST: That's fine.

THE REPORTER: Off the record.

(Recess from 11:51 a.m. to 11:55 a.m.)

THE REPORTER: Back on the record.

MS. RUST: Thank you.

Ms. Coats, we don't have anything further for you.

Mr. Davis, if you have redirect, the floor is yours.

MR. DAVIS: Thank you. And I've just got a couple.

EXAMINATION

BY MR. DAVIS:

Q. Ms. Coats, earlier you were testifying about a 5th grader that St. Bernadette's wasn't able to enroll because of the church's teachings on marriage. Do you remember that?

A. I remember.

Q. Just to confirm, is that because it was a same-sex couple?

A. Yes.

Q. Earlier there was some discussion of how the school would approach enrolling students or families who identify as LGBTQ. Do you remember that?

A. Yes.

Q. Has the Archdiocese given Wellspring any guidance on that issue?

A. Yes.

Q. Is that the human sexuality documents that we pulled up earlier in the deposition?

A. Yes.

Q. And Wellspring views itself as required to follow that guidance in making particular enrollment decisions; correct?

A. Correct.

MR. DAVIS: That's all for me.

MS. RUST: I don't have – okay. Sorry. I do not have – sorry, everyone. I do not have any follow-up questions.

THE REPORTER: Perfect. Before we go off the record, Niki, would you like this transcribed, an electronic transcript with scanned exhibits?

MS. RUST: Yes, please, Ms. Kelly, and the miniscript we requested yesterday, too. Thank you.

THE REPORTER: Perfect. Thank you.

And, Joe, did you need the same, a copy, electronic, with scanned exhibits also?

JA 99

MR. DAVIS: Yes, please. And we'll reserve signature.

THE REPORTER: Perfect. We'll do that through you.

With that, we can go off the record.

Thank you.

WHEREUPON, the within proceedings were concluded at the approximate hour of 11:57 a.m. on the 28th day of November, 2023.

* * * * *

JA 100

I, AVERY COATS, do hereby certify that I have read the above and foregoing deposition and that the same is a true and accurate transcription of my testimony, except for attached amendments, if any.

Amendments attached () Yes () No

AVERY COATS

The signature above of AVERY COATS was subscribed and sworn to before me in the county of _____, state of _____, this ____ day of _____, 2023.

Notary Public
My Commission expires:

AVERY COATS 11/23/23 (lbk)

REPORTER'S CERTIFICATE

STATE OF COLORADO)

) ss.

COUNTY OF LARIMER)

I, LISA B. KELLY, Registered Realtime Reporter, Registered Professional Reporter and Notary Public ID 20194029689, State of Colorado, do hereby certify that previous to the commencement of the examination, the said AVERY COATS verbally declared her testimony in this matter is under penalty of perjury; that the said deposition was taken in machine shorthand by me at the time and place aforesaid and was thereafter reduced to typewritten form; that the foregoing is a true transcript of the questions asked, testimony given, and proceedings had.

I further certify that I am not employed by, related to, nor of counsel for any of the parties herein, nor otherwise interested in the outcome of this litigation.

IN WITNESS WHEREOF, I have affixed my signature this 11th day of December, 2023.

My commission expires August 6, 2027.

/s/ Lisa B. Kelly
Lisa B. Kelly

- Reading and Signing was requested.
- Reading and Signing was waived.
- Reading and Signing is not required.

* * *

* * *

REPORTER'S TRANSCRIPT

Bench Trial, Vol. 1

Proceedings before the HONORABLE JOHN L. KANE, Judge, United States District Court for the District of Colorado, commencing on the 2nd day of January, 2024, in Courtroom A802, United States Courthouse, Denver, Colorado.

* * *

PROCEEDINGS

(Proceedings commenced at 9:47 a.m.)

THE COURT: I have a few things I want to raise with you. First of all, it's quite understandable that the defendants do not have access to their office right now. It's been shut down because of a disturbance that occurred there with a shooting, and that building is locked up, so they couldn't bring their exhibits with them today. I don't know when it will open up again, but we will let you file those exhibits later.

The next thing is that the deposition testimony has been submitted to the Court, and the local rule provides that it's supposed to be submitted under seal, and it wasn't, but I'm not going to make a federal case out of that. We'll just go ahead with it.

The next thing is that I'm not going to read all of these designated exhibits now. If the witness is here and ready to testify, the witness should testify and not use the deposition, except for cross examination

purposes for impeachment with regard to prior inconsistent statements. But to read through all of those depositions to find one needle in the haystack doesn't make any sense.

So, if you have something in the deposition that you specifically want me to read, I will do that, but only when it's pointed out to me specifically. And that's in conformity with our local rule about adding incorporation by reference to other printed materials that exist. And that's the instance in which you have to specify rather than just dump the entire deposition on the Court.

So, if a witness is here to testify, we don't need the deposition except for cross examination. If you have somebody who is not present and unable to testify by whatever this thing is called, then you can make an offer for a deposition for somebody that isn't present, and we will hear that specifically.

The next thing is that I've reviewed as much of this as I can, as I was able to with time permitting, and it's abundantly clear to me that we're not going to finish in three days. The testimony projected alone in your trial briefs points out that the time exceeds the time that we have available.

* * *

MR. REAVES: Thank you, Your Honor. Good morning again. My name is Nick Reaves, and I'm one of the counsel for plaintiffs in this case. For many Catholic families like plaintiffs Lisa and Dan Sheley, raising their children in the faith and providing them with a Catholic education is an important religious obligation.

This is a case about the ability of these families, families like the Sheleys, to have equal access to Colorado's Universal Preschool Program, also called the UPK program. Throughout this case, you will hear how the Archdiocese of Denver and its Catholic Schools foster a community of believers and an environment conducive to faith-filled Catholic education in their schools.

You will hear how the Archdiocese and its Catholic Schools work to ensure that families who enroll in their schools understand and agree to support what the school teaches, and that these schools do this in part to avoid creating unnecessary conflict within the school and within the child's own family.

And you will hear that because of this sincere religious exercise, defendants have excluded the plaintiff preschools, St. Mary's Catholic Preschool and Wellspring Catholic Academy, from Colorado's Universal Preschool Program, denying plaintiffs' request for religious accommodation.

But in addition to what you will hear, I also want to highlight what you won't hear during testimony at trial. You won't hear, for example, that defendants have applied the same strict, quote, serve everybody requirement to other UPK providers, like Head Start programs that can limit enrollment based on income level, school districts that can consider disability when making enrollment and student placement decisions, and faith-based providers that can serve only members of their congregation.

Instead, throughout this trial, the evidence will show that defendants have selectively enforced their nondiscrimination requirements, permitting some

providers to operate according to their mission and mandate, but denying the plaintiff preschools that same opportunity. Rather than create a Universal Preschool Program, Colorado has privileged certain providers while excluding others.

In order to make the showing, plaintiffs will first present testimony from Ms. Abriana Chilelli, the Archdiocese of Denver's acting superintendent of Catholic Schools. Ms. Chilelli will testify to the Archdiocese's mission of providing Catholic education to families who enroll in Catholic Schools, and to explain how the Archdiocese advances this mission.

You will hear that religious education is a central mission of the Archdiocese, and that the Archdiocese advances this mission by providing direction, supervision, and support to its Catholic Schools. You will hear that to provide effective religious education, the evidence will show that the Archdiocese asks teachers at all its schools to agree to uphold and abide by the Catholic Church's teachings on matters of faith and morals.

You will also hear that the Archdiocese believes parents are the primary educators of their children, and that as a result, the Archdiocese and its schools seek to ensure that parents who send their children to Catholic Schools are on the same page regarding what the school teaches.

You will also hear that Archdiocesan preschools, including St. Mary's and Wellspring, meet with parents before enrollment, explain the school's religious beliefs and mission, and ask that parents who send their children to these schools will support and affirm what is being taught in the school.

The testimony will also show that the Archdiocese believes that if what is being taught and modeled at home contradicts what is being taught in school, this would create a conflict for the student.

You will also see evidence confirming that despite being open and – open about its beliefs and policies, not one of the Archdiocese’s 36 preschools has any history of a complaint from a LGBTQ family or other person alleging LGBTQ-based discrimination.

Next, you will hear about the two plaintiff schools in this case, St. Mary’s Catholic Preschool and Wellspring Catholic Academy. You will hear that these preschools are required to and do follow the guidance of the Archdiocese on matters of faith and morals, and you will hear that there are several ways in which the Archdiocese guidance impacts the operation of these schools.

This includes mandatory teacher contracts. This includes statements of community belief signed by all staff. This also includes schools meeting with and giving tours to families before enrolling them in their school to make sure the family and the school are on the same page about the school’s education.

This also means that parents and families have to review and sign that handbook that each school has which incorporates their religious beliefs and incorporates the ways in which they operate their school for parents to know ahead of time. And this also means that teachers and sometimes school administrators meet with families one on one to help ensure that the family and the school are on the same page. You will also hear that many families who come

to these schools are specifically seeking a Catholic education, and that's why they chose these schools.

You will also hear that in rare circumstances, a school has had to tell a family that they might not be a good fit for the school, because the family's beliefs and practices conflict with what the school teaches and how the school operates, ultimately denying that family admission to the school.

The evidence will also show that St. Mary and Wellspring would benefit from participating in the UPK program, not only by receiving UPK-provided bonuses, but more importantly, by being able to offer 15 hours of free preschool to their families.

Next, you will hear testimony from Ms. Lisa Sheley, a parent and plaintiff in this case. Ms. Sheley will testify about how she and her husband Dan believe in providing their children with a Catholic education and about how St. Mary's supports them in fulfilling that obligation.

You will also hear how the Sheleys would benefit from the UPK program, as their four-year-old is currently eligible for the program right now, and their two younger children will soon be eligible for this benefit if St. Mary's were able to participate.

You will also hear a lot about Colorado's new Universal Preschool Program, which plaintiffs – portions of which plaintiffs are challenging in this lawsuit. Specifically, you will hear testimony that the program completely changes how families enroll in preschool, creating a brand new matching process that prohibits schools from interviewing and screening families, instead requiring schools to accept all families matched with them.

You will hear that the UPK statute has a statutory nondiscrimination provision, which we've been calling the equal opportunity mandate, that requires all preschools to provide all families matched with them equal access to preschool enrollment and preschool services, without regard to, among other things, a child or family's religious affiliation, sexual orientation, gender identity, and others.

It also requires them to operate the preschools in the same way. But at the same time, you will see evidence that defendants have allowed numerous exceptions from the statutory requirement of equal access. You will hear that preschools can preference families based on religious affiliation, including by limiting admissions to only Catholic families. You will hear that providers can preference families based on income level, and you will see evidence that UPK providers can provide preschool services that take into consideration a child's disability.

You will also hear that providers can request individualized exceptions that would also contradict the equal opportunity mandate's plain terms, and you will hear testimony about how the UPK statute itself allows providers to participate in the program without meeting all the quality standards.

Plaintiffs will also put on evidence regarding how the Archdiocese preschools took steps to try to participate in the UPK program before litigation. The evidence will show that a coalition of faith-based providers asked the departments of early childhood for a religious accommodation that would allow them to participate in the program without violating their sincere religious beliefs. You will then hear that the defendant denied this request based on its view that

it cannot grant exceptions from the UPK statute's equal opportunity mandate.

The evidence will also show that the Archdiocese told its preschools they could return an unsigned UPK agreement along with a form letter explaining why they can't sign the agreement consistent with their religious beliefs, but you will hear that this attempt to participate was unsuccessful, because the UPK program requires providers to return a signed agreement.

Unable to obtain a religious accommodation, you will also hear testimony about how the Archdiocese instructed its preschools not to sign the UPK program service agreement.

Next, you will hear testimony from defendants as they attempt to justify their exclusion of St. Mary's and Wellspring from the UPK program. But here, there are a few things that you wouldn't hear or see in the evidence. You won't hear that the department or the legislature considered and rejected religious accommodations based on concerns about LGBTQ families being unable to access UPK preschools.

You won't hear anything about how keeping two Catholic preschools out of the UPK program will increase the number of preschools available to LGBTQ families. You won't hear that the department appealed its loss in *Darren Patterson*, instead allowing a preschool with similar religious beliefs and requirements to participate in the program right now.

You also won't hear any testimony about how LGBTQ families have had trouble finding affirming preschools in Denver. And finally, you won't hear evidence from a single LGBTQ family today about

how allowing St. Mary's or Wellspring to participate would cause them harm.

Instead, you will hear testimony confirming that over 1,000 preschools are exempt from the requirement that a provider accept all matches, and you will hear testimony that the UPK provider website already includes numerous disclaimers alerting parents to the fact that many preschools do not in fact accept all applicants.

Allowing two Catholic preschools to participate in the UPK program just like Darren Christian – Darren Patterson Christian Academy already does will actually advance the department's own goals of creating more options for families so that families like the Sheleys can also find the just-right provider.

Put simply, the testimony and evidence will establish that the religious beliefs and obligations of the Archdiocese and its Catholic preschools, including St. Mary's and Wellspring, are the reason that these schools cannot participate in the UPK program. This harms not only the schools, but also families like the Sheleys who sincerely believe in the importance of providing a Catholic education for their children.

Plaintiffs therefore ask this Court to enter an injunction that would allow St. Mary's preschool and Wellspring to participate in the UPK program without having to violate their sincere religious beliefs. Thank you, Your Honor.

THE COURT: I have one question for you. In respect of what – one of the statements that you made, in going through these voluminous files, I was given to understand it's contained in the statements that neither St. Mary's nor St. Bernadette's schools have –

haven't received any applications for membership from single-sex families, transgender children, or any of those that are on that list that you're seeking to qualify your client from not participating without having an exception to those conditions.

And you made a statement in your opening that a school has had to tell a family that they might not be a good second – a good fit for this program, and that they have not applied as a consequence. Is that referring to the two named defendants in this case? The two named plaintiffs, excuse me.

MR. REAVES: Yes, Your Honor. Just to clarify the situation, Ms. Avery Coats, who will testify later this afternoon, will discuss a specific instance in which a fifth grader and their family came to look at the school, and ultimately Wellspring Catholic Academy was not able to enroll them.

Our discovery responses to defendants, which I think were what were cited, only spoke about preschool enrollment. And we agree that there's never been an instance in which St. Mary's or Wellspring have had to ask a family not to seek enrollment in the preschool context. But Ms. Coats, who will testify, will talk about how it's happened in a different grade level at the same school.

THE COURT: So, it's offered to show that programs not the subject of this lawsuit is a consistent practice with the position of the defendants?

MR. REAVES: That's right. It's offered to also show that the Archdiocese and its individual preschools in this case have had to enforce their policies. These aren't merely theoretical policies, but

they actually do govern how the schools themselves operate.

THE COURT: Okay. Thank you very much.

MR. REAVES: Thank you, Your Honor.

MS. FISCHER: Good morning, Your Honor.

THE COURT: Good morning.

MS. FISCHER: Colorado didn't have to create a mixed delivery Universal Preschool Program. It chose to. It could have restricted the program to public schools only, like all the other states that have implemented similar programs. Instead, it opened the program to both public and private schools, including faith-based schools, to increase access for all of Colorado's four-year-olds, and the program in year one has been successful.

In the 2019-20 school year, the predecessor Colorado Preschool Program served about 18,000 children, or 25 percent of Colorado preschoolers. Then in 2020, Colorado voters overwhelmingly passed Proposition EE, which funded statewide Universal Preschool starting with the '23-'24 school year. The new program was housed within a new department, the Colorado Department of Early Childhood, which we will refer to as the CDEC, or the department. And that department was created on July 1st, 2022.

From day one, the Universal Preschool Program welcomed all kinds of providers. The CDEC even convened a faith-based working group, one of several, addressing different interests, that met from late 2022 through June 2023. Former early childhood transition director Michael Cooke will tell you about the formation of that group, and that CDEC started it so

it could hear from faith-based providers and respond to their concerns.

The director of plaintiff St. Mary Preschool participated in this group. UPK started in September 2023, serving 38,000 Colorado preschoolers, and currently 40 faith-based providers participate, serving 904 children.

With regard to what brings us here today, we appreciate that the Court has made a decision about standing, but I mentioned that we will elicit a few items from witnesses over the next few days, from Dawn Odean, Elsa Holguín, and Jesse Burne so we can make our record.

Turning to the defense case on the merits, Ms. Cooke and the director of Universal Preschool, Dawn Odean, will explain that the Colorado Universal Preschool Program was developed quickly. Ms. Cooke and Ms. Odean will both talk about the program history. Ms. Odean will discuss the current rule-making and how that is developing. The CDEC is committed to working with providers to improve the Universal Preschool Program.

The program includes and indeed welcomes faith-based providers, notwithstanding plaintiffs' inaccurate claim to the contrary. The *Carson*, *Espinoza*, and *Trinity* trilogy of cases are all distinguishable because those cases all involve state programs that facially excluded religious organizations solely and precisely because they were religious. Colorado's program instead welcomes religious providers, and public funds are currently flowing to religious preschools under this program.

But Colorado's program does not permit any preschool, secular or religious, to engage in discrimination that violates the statute. Plaintiffs here seek special treatment not available to any other program participant: the State's blessing to discriminate.

The Universal Preschool Program has among its objectives four important ones we will talk about today over the next – and over the next few days that underpin the program's design. The statutory antidiscrimination provision helps the government achieve these objectives which forward the government's legitimate, even compelling objective of ensuring safe and healthy access to high-quality preschool for Colorado's four-year-olds.

The first of these objectives is mixed delivery. The voters approved and the general assembly enacted a Universal Preschool system containing both public and private providers. The goal was to provide options for families so they can select the school that was the just-right fit for their family and improve their child's educational outcome.

The second important objective is child and family well-being. The goal of early childhood education in Colorado is to promote a child's health, including that child's behavioral health, and to support child and parent outcomes that improve overall family well-being. Dr. Abbie Goldberg, a psychology professor at Clark University, will discuss her research into LGBTQ families and how the context in which children from those families are raised can support or harm the child's mental health.

She will tell you that when a child receives messages at school that the child or those who they love are deviant and wrong, those messages create a sense of confusion and distress for the child. Additionally, Dr. Goldberg will speak to her own study regarding how the school's treatment of LGBTQ parents affects the parents' involvement in the school setting and the negative ramifications that noninvolvement of a parent in school may have on that child.

Dr. Amy Tishelman, a psychology professor at Boston College, will discuss how an unsupportive environment for a child or family may increase toxic stress in a child and cause confusion regarding that child's identity during early childhood.

The third statutory objective is child safety. When children receive support, including support from their teachers and their school, they feel safe. Dr. Tishelman will tell you about her research into childhood development, including the development of gender-diverse children, and how trauma in early childhood can have lifelong health, mental health, and behavioral effects on a child.

The standards of psychological care for gender-diverse children emphasize that keeping these children – emphasize keeping these children safe, as gender-diverse children have been shown to have higher rates of mental health challenges and suicidality. That safety includes feeling safe at school and not subjecting a child to environments that have conflicting views of the child's identity or their parents' identity. Dr. Tishelman will also talk about her clinical work and treatment of gender-diverse

children, including young children with suicidal thoughts.

And finally, the fourth statutory objective we will discuss is ensuring access for low-income families and families who meet certain identifying qualifying factors. And what are those factors? Students who are low-income, who are homeless, who are in the foster system, who need an individualized education program known as an IEP, and students who are dual language learners.

What all of these statutory categories have in common is they prioritize access to preschool for children who would most benefit from that preschool. LGBTQ families also have reduced access to quality early childhood education due to larger percentages of LGBTQ families living in poverty or in more rural areas than the average cisgender family, as Dr. Goldberg's research shows, and these families benefit from access to schools.

That is in line with the Colorado general assembly's legislative priorities, and the department's thoughtful implementation of those objectives. Over the next few days, we will show that the statutory nondiscrimination provision at Section 26.5-4-205(2)(b) of the Colorado Revised Statutes is neutral and generally applicable. You will hear from Dawn Odean, Michael Cooke, and Denver Preschool Program CEO Elsa Holguín about the importance of early childhood education. Ms. Odean will tell you how the goal and design of the Universal Preschool Program is to support those statutory objectives. The nondiscrimination clause in the statute, which is repeated in the year-one version of the program contract, is in line with the objectives of the statute.

None of the programmatic preferences include exceptions from the nondiscrimination provision. Neither does the temporary waiver which limits – which gives a provider time to bring a program into compliance, but does not give a provider permission to not follow the nondiscrimination clause. We will show that both the preferences and the waiver are generally applicable.

We've heard a lot already about these programmatic preferences, which plaintiffs' counsel describes as a selective enforcement of the statutory requirement. First, plaintiffs are wrong to claim that any preference exempts a provider from the statutory antidiscrimination provision. In fact, these preferences are merely departures from the algorithm-matching process, which are each designed to expand the provider base.

As Ms. Cooke will tell you, they are created in response to providers' concerns about being able to run their programs in ways that best serve the needs of the preschool populations that they serve.

Ms. Odean will tell you more about each of these nine preferences in detail. I will share a few here that are supported by the statute's objectives. These preferences came out of the need for certain providers to comply with federal requirements or out of a real-world need for a true mixed delivery system. They are called out specifically in statute, or they prefer schools to prefer community members in a way not in violation of the nondiscrimination requirements.

The congregation preference, which the two plaintiff preschools would be able to take advantage of, along with the preferences for siblings and

continuity of care, does not exempt faith-based providers' concerns – does not exempt faith-based providers from the antidiscrimination provision. It was developed in response to the providers' concerns, as Ms. Cooke will tell you, and it permits those providers to hold their seats for members of their communities as they define them, just as other providers are permitted to serve their self-identified communities by prioritizing children of employers or from school district boundaries.

In other words, preferring members of your congregation is a preference based on relationships apart from religion, even if those in the relationship share the same religion. It's akin to the sibling preference, which is based on relationships apart from race, national origin, or religion, even though siblings often share the same race, national origin, and religious identity.

The preferences for allowing programs to specialize in children's – serving children with certain disabilities to prioritize those children with disabilities and that allow Head Start programs to preference children who meet the Head Start requirements benefit children who are from populations that especially benefit from access to preschool. Permitting providers to prioritize these roots is not discriminating against children who are able-bodied or higher-income children on those bases.

Plaintiffs claim that permitting publicly-funded preschools to hold slots for low-income families or for children with disabilities permits discrimination in violation of the statutory nondiscrimination provision. Plaintiffs wrongly interpret the statutory term "discrimination" for these purposes.

That is an absurd reading of the statutory provisions that prohibit discrimination based on income or disability status given the statute's express objectives to ensure access for low-income children or children with disabilities, and to ensure inclusion of providers that specifically serve those children.

The Supreme Court has made clear that the Government's distinctions on the basis of income or disability and most other characteristics are subject only to rational basis review when evenly administered. Think of the federal Age Discrimination in Employment Act, which prohibits discrimination only against those over 40 and not against younger folks. The government is free to define age discrimination in this way, because the Court subjects the government's age-based distinctions only to rational basis review.

Here too, the State is free to prohibit discrimination against only low-income children or children with disabilities who are the most vulnerable populations that the statute expressly prioritizes. For purposes of this statute, it would be absurd to interpret the statute's antidiscrimination provision to prohibit a school that specializes in serving visually-impaired students from prioritizing those seats for visually-impaired students, and it would be absurd to interpret the statute's antidiscrimination provision to prohibit a school that receives Head Start funding from saving its seats for low-income families served by the Head Start program.

And indeed the department does that logical thing. In no case may a provider receive an exception to the statutory mandate in Section 26.5-4-205(2)(b). The antidiscrimination thus remains neutral and

generally applicable, and under *Smith* it triggers rational basis scrutiny.

As to express plaintiffs' expressive association claim, we have – we have identified evidence in the papers, but we will come back to that in closing.

You will hear from Ms. Odean that Colorado's congregation preference does not discriminate amongst religions, because it is available to all faith-based providers. It is equally available to all denominations and does not prioritize any one religion over another.

To obtain an injunction, in addition to succeeding on the merits, the plaintiffs need to show that they have an irreparable injury. Plaintiffs' preschools first of all have – there have not put forth any evidence of a specific child turned away from a preschool program, as plaintiffs' counsel just acknowledged, and plaintiff preschools can and have signed contracts with similar nondiscrimination clauses in the past and have agreed to that language without complaints.

Ms. Holguín of the Denver Preschool Program and Jesse Burne, the manager of CCCAP, will tell you how their managers handle their contracts and their expectations of providers, yet St. Mary and St. Bernadette see the language in the Universal Preschool Program as somehow different.

At the conclusion of our presentation of evidence, my colleague, Ms. Carreno, will invite the Court to make findings of fact in our favor and conclude that the Universal Preschool Program's requirements are neutral, generally applicable, and do not violate the plaintiffs' free exercise of rights under *Smith*. Thank you.

* * *

MS. CARRENO: And, Your Honor, before we move forward, we didn't get a chance to do a little bit of housekeeping at the beginning, and in light of the Court's order, I noticed that the plaintiffs have said that they intend to call Ms. Chilelli from the Archdiocese of Denver.

In light of the Court's order dismissing the Archdiocese from the case, we would just move that that witness be precluded from testifying, as the testimony is unnecessary. Only St. Mary and St. Bernadette are the plaintiffs in this case and can speak specifically about why they can or cannot participate in the UPK program.

THE COURT: I am not going to do that. I am going to permit the plaintiffs to call the witnesses they wish. I do want you to understand, all of you, very clearly, that I am not going to invade the question of authenticity of doctrine or belief.

I read some cases in which Courts have done that, and they're wrong. So, the sincerity of the belief and the practice of it are matters which I don't think require anything further. But it is relevant that – and the allegations in the pleading show this already, and in the briefs, that these two schools and the plaintiff parents feel obligated as a matter of faith to follow the doctrines established by the Archbishop or the Archdiocese.

I'm not going to get into what Pope Francis has to say about it or what the National Conference of Catholic Bishops say about it or what canon law says about it. Those are clearly beyond the competence of this Court to engage in, but we will accept it as a fact

unless there is some evidence to the contrary that these are not sincerely-held beliefs. Whether they are protected by the First amendment or not is another matter. That's why we're here. But that's strictly a question of civil law. But on the other hand, the plaintiffs are entitled to call whoever they want from the Archdiocese.

I said that the Archdiocese is not a party because there's nothing I can enforce against the Archdiocese. They don't have standing. But that's – I know the plaintiffs have disagreed with that, and it seems rather strange that a civil judge would say that an Archbishop doesn't have standing. He does in his cathedral, but not here. And I don't have any authority over his cathedral.

MS. CARRENO: Thank you, Your Honor. And the other matter I wanted to raise is the Court seemed to invite the parties to talk about the possibility of a stipulation regarding some of the changes to the employment provision. Because the order came in on Saturday, we haven't had a chance to properly confer.

THE COURT: What do you want to do? Do you want to do that now, or do you want to wait until the noon hour to do that? What pleases you?

MS. CARRENO: I think that it might be helpful to do it now so that we can potentially limit the issues.

THE COURT: That makes sense to me. All right. I will – I will listen to your first witness later, but we will declare a recess for counsel. And the jury room is available for you to use as a conference room. With the number of you here, I think you probably need some room, and we have it there. So, our courtroom deputy will show you the jury room, and when you're through

with your conference, let me know. It's a fair request. We will be in recess.

(Recess at 10:32 a.m., until 10:54 a.m.)

THE COURT: Did that recess produce anything?

MS. CARRENO: We believe so, Your Honor. We believe that the parties are going to be able to enter into a stipulation as to counts two and three, with the expectation that the contractual provision 18B will be removed from the contract in year two. And to the extent that the plaintiff preschools, or any of the Archdiocese's preschools, for that matter, intend to sign on to the UPK program in year one, that that provision would not apply to them.

THE COURT: Okay. Did you get the stipulation?

THE COURTROOM DEPUTY: Yes.

MR. DAVIS: We're planning to work on a written stipulation, Your Honor.

MS. CARRENO: Yes.

THE COURT: All right. Okay.

MS. CARRENO: But while we move forward with testimony, we're not going to fully develop testimony around those issues in the anticipation that we're going to be able to enter that written stipulation either later today or tomorrow.

THE COURT: Okay. Whenever you get it is fine. Are we ready to proceed now?

MR. DAVIS: Yes, Your Honor.

THE COURT: Who is your first witness, please?

MR. DAVIS: Thank you, Your Honor. Joseph Davis for the plaintiffs, and I am going to call our first

witness. But before I do that, I had two other housekeeping matters that I think will be very brief – briefer than that last one. The first is there were a number of stipulated exhibits on the parties’ unified exhibit list.

THE COURT: Yes.

MR. DAVIS: And I didn’t know how the Court would like us to handle that. We can go ahead and move those.

THE COURT: I’m glad you raised that. Any stipulated exhibits are admitted, because these are rules of inclusion, not exclusion, and you stipulated to them, so I will admit them as exhibits.

As to any objected exhibits, I think this is one of those anomalies in the law that have been commented upon by higher Courts. It’s not something I’m trying to originate, but it’s – the rules of evidence provide and they contemplate applying to juries. And so a judge in a jury trial has to look at an exhibit and make a ruling before the judges of the fact, the jurors, can read it.

But when it’s a bench trial, the rule makes no sense, because the judge has to look at it to decide whether it’s admissible or not. So, I’m going to be looking at inadmissible statements as well as admissible ones, and I think it’s better that we will just – you tender them, and I will reserve my ruling until the findings of fact as to which ones I am using and which ones I am not.

MR. DAVIS: Thank you, Your Honor.

THE COURT: So, that will speed things up a little, I hope. But if I have to look at it to see whether or not

I can look at it, so be it. Now I know why Charles Dickens said what he said.

MR. DAVIS: That works for us, Your Honor. Just to clarify for the record's purposes, those stipulated exhibits were 11 through 22, 24 through 25, 28 through 32, and 34 through 37.

THE COURT: All right. Very well.

MR. DAVIS: Thank you, Your Honor. And the one other point I would raise is, as Your Honor is aware, we have one witness who will be testifying remotely today from her hospital room. That's Ms. Coats. And because of her monitoring schedule and the medical needs there, it turns out that she needs to be able to testify at a particular time. It looks to us that 2:30 p.m. is a time that works for her.

THE COURT: We will accommodate that.

* * *

MR. DAVIS: So, with that, plaintiffs will call our first witness, Ms. Abriana Chilelli.

THE COURT: If you would face the courtroom deputy, she will administer an oath to you.

(The Witness is Sworn)

THE COURTROOM DEPUTY: Please be seated. Please state your full name for the record, and spell your last name.

THE WITNESS: Good morning. My name is Abriana Chilelli. My last name is C-H-I-L-E-L-L-I.

THE COURT: Go ahead, please.

DIRECT EXAMINATION

BY MR. DAVIS

Q Thank you, Ms. Chilelli, and thank you for being here today. You have already stated your name and spelled it for the record, so we will just dive right in. Ms. Chilelli, who do you work for?

A I work for the Archdiocese of Denver.

Q And what's your role at the Archdiocese?

A My role at the Archdiocese is acting superintendent of Catholic Schools.

Q How long have you been in that role?

A I've been in that role since December 5th of this year.

Q Okay.

A 2023.

Q And then what role did you have before that?

A Before that I served as assistant superintendent over our Catholic Schools.

Q And who was your supervisor when you were assistant superintendent?

A When I was assistant superintendent, my supervisor was Elias Moo, who was the then superintendent of Catholic Schools for the Archdiocese.

Q And was that – was assistant superintendent, was that your first role at the Office of Catholic Schools?

A No, it was not. I've been with the Archdiocese since 2016 serving in a multitude of roles. Before assistant superintendent I was associate superintendent. Before that, director of curriculum –

THE COURT: Ms. Chilelli, I'm going to ask for your indulgence. Would you slow down a bit?

THE WITNESS: Yes.

THE COURT: I realize that when you're on the witness stand, you want to get off the witness stand. It's a thing that happens, but my hearing deficits would be a lot reduced if you would slow down a bit for me.

THE WITNESS: I would be happy to.

THE COURT: And the court reporter will bless you as well.

THE WITNESS: I would be happy to. I was explaining that I've been with the Archdiocese since 2016. Before serving as assistant superintendent, I served as an associate superintendent overseeing academics. And before that, I served as director of curriculum and instruction.

Q. (By Mr. Davis) And who is your supervisor now that you're acting superintendent?

A My current supervisor is Keith Parsons. He's the chief operating officer of the Archdiocese. He's directly overseen by Archbishop Aquila.

Q Thank you, Ms. Chilelli. So, just to back up a moment, what is the Archdiocese of Denver?

A Sure. The Archdiocese of Denver is the geographic reality. So, it's, in short, the Catholic Church in northern Colorado. The Archdiocese represents the Catholic Church in northern Colorado. Basically if you draw a line in the state of Colorado, it's the northern portion of the state. And so the Archdiocese operates under the pastoral leadership of Archbishop Sam

Aquila, and through that delegation of his teaching and governing and sanctifying authority and shepherding over the Catholic faithful of northern Colorado, the Archdiocese is made up of parishes, schools, and other ministries that help communicate the message of Jesus Christ.

Q And on that last note, what is the purpose of the Archdiocese?

A Sure. The purpose of the Archdiocese of Denver is to establish ministries across northern Colorado in order to communicate the message of the gospel, the message of Jesus, and in that way, in order to rescue – provide the rescue of Jesus Christ and lead the faithful and the non-faithful to the rescue of Jesus Christ and for the glory of the Father.

Q And education, is that part of how the Archdiocese pursues that purpose?

A Yes. Education is critically important to the mission of the Archdiocese. We understand the human person as being endowed of being able to come to know and understand reasonably all of reality, both naturally and supernaturally. And so the educational mission of the school is incredibly important for forming young people especially in coming to understand reality itself.

Q Okay. And does that educational portion of what the Archdiocese does, does that include operating preschools?

A Yes. We have many preschools at many of our schools across the Archdiocese.

Q Okay. Do you know how many preschools are operated by the Archdiocese or one of its parishes?

A Yes. We have 36 preschools in the Archdiocese of Denver.

Q Does that number, 36, include St. Mary in Littleton?

A Yes. It includes St. Mary.

Q And then Wellspring Catholic Academy of St. Bernadette?

A Yes. Wellspring is also in that 36.

Q About how many students attend Archdiocese preschools?

A Approximately 1,500.

Q And what is the Archdiocese's relationship to the preschools?

A Yeah. It's just that. It's a relationship. So, all of our preschools exist, like I mentioned before, as a ministry of the Archdiocese, and so in that way they exist in the hierarchy of the Catholic Church here locally in Colorado. So, that hierarchy begins with Archbishop Aquila, who then delegates his teaching authority to school pastors or through his Office of Catholic Schools, me as the acting superintendent. So, we oversee schools – preschools, excuse me, that are run by school pastors, or in some cases regional schools are directly overseen by us.

And so in order to fulfill the mission of Catholic Schools, there's a hierarchy of delegating teaching authority. And so because of that, the Archbishop issues and promulgates policies, directives, guidance so that the mission at the school level is incarnated or operates from his same teaching authority in ministry. And so the policies are expected to be

implemented at the school level, and that in turn provides unity amongst our Catholic Schools so there's consistency with the mission across them.

Q And does that oversight function that you mentioned, does that include oversight over the schools' adherence to Catholic faith and morals?

A Yes. So, it includes standard operating procedures, all – and adherence to Catholic faith, morals, the building up of Catholic culture within the school, all ordered towards the formation of the human person, the student, all in service to the family. And so those pieces regarding faith and morals are inextricable in regards to our policies, and it's a definite communication through them.

Q Is there a particular department within the Archdiocese that's charged with overseeing schools?

A Yes. So, the office I oversee, which is the Office of Catholic Schools.

Q And then you may have touched on this a little bit already, but how specifically does the Office of Catholic Schools exercise that oversight function?

A Sure. So, the Archbishop delegates his teaching authority through our office. And so in that way, we – teaching and governing authority through our office, so in that way we apply the policies, directives, and guidance, and then in fact issue those on behalf of the Archbishop. We issue those policies related to full operations of the school, including employment of personnel at the school level, including enrollment and admittance of families, curriculum guidelines, and then we oversee that as an Office of Catholic Schools through what's called a co-supervisory

process and co-supervision with our pastors over the particular school to ensure that the policies are in place. And then for our regional schools, we directly supervise on behalf of the Archbishop.

Q Thank you. I will have you look at our first document, Ms. Chilelli. If you wouldn't mind opening the binder that's labeled plaintiffs' exhibits, volume one of two. And this will just be our first tab here. So, it's been marked as Exhibit 1. Do you recognize this document, Ms. Chilelli?

A Yes. I recognize this. This is a portion of our Archdiocese and administrators' manual.

Q So, is this a document that's issued by the Office of Catholic Schools?

A Yes. This is issued directly from our office on behalf of the Archbishop.

Q And you're familiar with it through your role as the acting superintendent at the Office of Catholic Schools?

A Yes.

Q Okay. What's the purpose of this document?

A Sure. So, as I mentioned before, this document gives the policy and the structure for the promulgation of the Archbishop's authority over his schools. And so it's very typical policy regarding operation employment requirements, what schools are required to have in place at their local school. It comes from canon law that the Archbishop has the right to inspect and watch over the schools in his local territory, which again is that geographic reality that I was referring to.

Q And there are also some – were there also some policies in here that relate to personnel policies within the Archdiocese?

A Yes. There's a whole section on personnel policies.

Q And within the schools as well; right?

A Yes.

Q So, I'll direct you to a particular page. This is the bolded page ten there at the bottom right. And are there any religious certification requirements for teachers that are mentioned in this document?

A Yes. We require what's called a catechetical certificate for all of our – all of our teachers. We require that all of them are certified, which means thoroughly trained in Catechesis, which is the teaching of the faith.

MR. DAVIS: Your Honor, we would move to admit Exhibit 1. I understand you'll take it under advisement.

THE COURT: It's admitted.

MR. DAVIS: Thank you.

Q. (By Mr. Davis) Ms. Chilelli, if you could turn to the document that's labeled Exhibit 3, tab three.

A Yes.

Q And do you recognize this document?

A Yes. This document is our mission and charter document, and so it communicates the mission and charter of each of our Catholic Schools in unity with one another.

Q And is this also a document that's issued by the Office of Catholic Schools?

A Yes. On behalf of the Archbishop, we issue this to all of our school pastors and school leaders.

Q And you're familiar with it through your role at the Office of Catholic Schools?

A Yes.

Q And what is the mission of Catholic Schools?

A Sure. The mission of Catholic Schools are that our Catholic schools exist to be what we call sanctuaries of education, and supporting parents. So, we see parents as the primary educators of their children, and so our mission is to support parents and empower families in their mission, which is to lead children to Jesus Christ in order that those children might have abundant life for the glory of the Father.

MR. DAVIS: Your Honor, plaintiffs move to admit Exhibit 3.

THE COURT: I will look at that when it comes back at the end. You don't need to offer it now.

MR. DAVIS: Thank you, Your Honor.

Q. (By Mr. Davis) All right. So, we've been discussing the Archdiocese's oversight of Catholic Schools on matters of faith and morals. Specifically with respect to faith and morals, how does the Archdiocese exercise that oversight?

A Sure. In a few different ways. The faith and morals of the Catholic faiths are threaded throughout our policy manual. So, in that way, by requiring our schools to operate within the Archdiocesan policy for the operation of their schools. We also have language regarding faith and morals in guidances that we issue to our schools that we ask them to follow. We also have

language related to faith and morals in work agreements or teacher contracts, for teaching faculty and nonteaching faculty. And then we also communicate the expectations regarding faith and morals through documents such as we call it a statement of community beliefs, which is a document that provides abundant clarity on what we believe in the Catholic school.

Q Okay. Does the Archdiocese also issue curriculum guidelines to its schools?

A Yes, we do.

Q If you wouldn't mind tabbing or turning to the document that's tabbed as Exhibit 9.

A Okay.

Q And do you recognize this document, Ms. Chilelli?

A Yes. This is our early childhood curriculum guidelines that we issue from the Archdiocese.

Q Okay. And are all Archdiocesan preschools expected to follow these guidelines?

A Yes. Per the administrators' manual, it's required that schools are required to follow those curriculum guidelines. And then like I was mentioning before, in our teacher work agreements or contracts, teachers are also required to teach the curriculum guidelines.

Q And if you could flip to page 25, the bolded page 25 in the bottom right.

A Okay.

Q Does the curriculum guidance require Archdiocesan preschools to include religious instruction in their curriculum?

A Yes. Every preschool is required to teach religious instruction, which means that every teacher is required to teach religious instruction as a separate block of time during the day, but also threaded throughout the entirety of the other disciplines in preschool: reading, math, science, et cetera.

Q Okay. And so at the preschool level, it's the main teacher that's doing the religious instruction as well; is that right?

A Yes. It's the main teacher.

Q Thank you. If we could turn back to the exhibit that's tabbed as Exhibit 2.

A Okay.

Q You mentioned the statement of community beliefs earlier. Is this the statement of community beliefs that you were referring to?

A Yes. This is our statement of community beliefs, and we have versions for multiple roles of employees in the schools: teachers, leaders, nonteaching faculty, support staff, et cetera.

Q Okay. And just to spell that out, it looks like the version that begins on the bolded page one, is that the one for principals?

A Yes. This is for presidents, so some of our schools have a president-principal model. This one is for principals, and then assistant principals as well.

Q Okay. Great. And then on the bolded page three, that's the one for teachers?

A Yes.

Q Bolded page five, that's for other staff?

A Yes. Any other staff in the school is required to sign this.

Q Okay. And then the bolded page seven, that's for parents to enroll at the school?

A Yes. So, parents at the time of enrollment are asked to sign this document so that it's abundantly clear what the Catholic school will teach and what the Catholic school community believes.

Q Okay. And you're familiar with this document through your role at the Office of Catholic Schools?

A Yes, I am.

Q Did you help prepare this document?

A I did.

Q So, does the statement of community beliefs, does it address the behavior of school employees?

A Yes. So, it communicates the church's beliefs, and then it delineates the expectations for teaching staff, faculty staff, that our faculty and staff, including teachers, that they would live in such a way that would promote the church's teachings. We ask them to unabashedly defend the church's teachings, and at a minimum, we ask them to provide a simply supportive attitude, and at the bare minimum to never live in a manner contrary to church teaching that would cause confusion about the reputation of the school and what it teaches.

Q Okay. And are there any other documents besides this one that address the behavior of school employees within the Archdiocese?

A Yes. A few. So, language from our statement of community beliefs is also threaded within our teacher

contracts, specifically the terms and conditions of the teacher contract, especially related to behavior or expectations. So, in our teacher contracts, and then all of our Archdiocesan employees, including those who teach in schools or work at schools are required to sign the Archdiocesan code of conduct, which also delineates expectations regarding behavior of employees.

Q Great. And just briefly, if you could turn to the document that's tabbed as Exhibit 4. Is this the code of conduct that you were just referring to, whenever you get there?

A Yes. This is the Archdiocesan code of conduct.

Q Okay. So, this is a document issued by the Archdiocese?

A Yes.

Q And you're familiar with it because Archdiocesan employees are also subject to this code of conduct?

A Yes. Anyone who works in the Archdiocese of Denver must sign this and agree by it.

Q Great. If you could turn to the document that's tabbed as Exhibit 6. Is this the terms and conditions that cross reference that statement of community beliefs that you were testifying about a moment ago?

A Yes. Exhibit 6 is the parish school teacher and formator contract terms and conditions.

Q And these terms and conditions are issued by the Archdiocese?

A Yes. They're issued out of our office on behalf of the Archbishop, and they're required for use in all of our parish or regional schools.

Q And who is required – who in particular is required to sign this version?

A Any full-time teacher or any full-time teacher support staff.

Q Does this contract and then the statement of community beliefs that's incorporated into it, do they require employees to conduct themselves consistently, specifically with Catholic doctrine on human sexuality?

A Yes. So, the expectations for behavior regarding any manner of exemplifying characteristics of Catholic living, and then refraining from any public position that would – or conducting oneself in a manner that's contrary to the teachings of the church, including human sexuality.

Q Thank you, Ms. Chilelli. And if you could just briefly set out what the church's teachings on human sexuality are, just because it might be relevant to what comes up later.

A Sure. The teachings of the church and the beliefs that we ask our employees to hold are that human beings were created by a loving creator, God, who creates the human person at the time of conception, and in their mother's womb, and that the human person is endowed, created, not only with a soul, but with a body, and that the body-soul unity is the makeup of the human person.

And so we believe and teach in our Catholic Schools that in order to find happiness or human flourishing, that means to find a life lived in friendship with Jesus Christ, and so because of our understanding of human flourishing, the truths of the

body are taken very seriously. We believe strongly, then, that the body is of utmost good and importance, and that the body communicates not only that purpose, but our identity as well.

And so being a biological man or a woman is of great importance and reverence. And so in that way, we take the body as good, and an important contributor to human flourishing. And so because of that, the church has a particular understanding of marriage as being between a man and a woman, given the biological realities of the body, and the way that the body is ordered towards unity with one another and the procreation of children, who we believe are owed the identity of being beloved sons or daughters created with – between the love of a man and a woman in a marriage.

Q Okay. And where do these beliefs come from?

A Jesus Christ. But they come from the church's tradition, millennia of church teaching, tradition, sacred scripture, the Catechism of the Catholic Church. These have been the consistent beliefs of the church throughout time. Locally they come from – locally they come from the Archbishop's own teaching authority on these particular topics.

Q Great. Has the Archdiocese itself issued any sort of teaching documents on this issue?

A Yes. Multiple ways. Specifically for our schools, we produced and promulgated through the Archbishop a document called *The Splendor of the Human Person*, which helps give articulation for the church's teaching on human sexuality.

Q Great. If you could just briefly turn to the document tabbed as Exhibit 7. Is that the teaching document that you were just mentioning from the Archdiocese?

A Yes. This is the document that we issued from our office for our schools in 2021.

Q Great. If you could turn next to the document tabbed as Exhibit 5. Do you recognize this document, Ms. Chilelli?

A Yes. This is a document that we issued to our schools as a guidance document for any issues concerning the human person and sexual identity.

Q Okay. And the “we” there, that’s the Office of Catholic Schools?

A Yes. On behalf of the Archbishop.

Q And you’re familiar with it through your role at the Office of Catholic Schools?

A Yes, I am.

Q What year was this guidance issued? Do you know?

A This was issued in 2019.

Q All right. And did this guidance reflect some new position of the Archdiocese, or was it consistent with what the Archdiocese had already taught?

A Yes. This was completely consistent with what the church has always taught related to the human person and sexual identity. This document specifically was issued in 2019 when there were beginning to be a number of sort of conflicting understandings of the human person in modern or secular society, and many of our school leaders needed assistance and help from

the Archbishop with a few things, terminology related to biological sex, gender, sexual identity.

The guidance also goes through certain situations that may come up in the Catholic school, especially in our postmodern secular society, and then it gives specific directives for issues related to human sexuality that may come up in the life of the school.

Q Great. Was the guidance – was it issued to all Archdiocesan Catholic schools?

A Yes. Every Archdiocesan Catholic school, including our preschools.

Q Great. And you mentioned it gave guidance on certain situations that could come up in Catholic schools. Let's just talk through a couple of those situations.

A Sure.

Q So, first, are there any – is there any guidance here about a situation in which a family is seeking enrollment at an Archdiocesan school but isn't living in a manner consistent with the church's teachings on sexuality?

A And you mean the parents are not living in a manner?

Q Correct. Yes.

A Yes. There is guidance. The guidance speaks specifically regarding enrollment. And as mentioned earlier, the guidance communicates to the school to have an enrollment process that makes it abundantly clear to any family seeking to enroll what the church teaches on human sexuality. And so in that way, the document communicates that if a family is presenting

themselves as living in a sexual relationship between one another, that's outside of how the church would understand human sexuality, but the principle would be abundantly clear that the church will teach the church's teachings on faith and morals regarding human sexuality, explain to the parents that this may cause confusion for the child, that this would be difficult for the child to hear from the school, especially if that's not what they hear from their parents.

And so in that way, because the school's mission is to serve the parents in their education of their children, we would never want to conflict – cause conflict with what the parents are teaching in their home, and so the guidance does communicate to our school leaders that students in that circumstance with parents of – in a same-sex couple, that guidance would not be possible given the confusion it would create for the child and the family.

Q Okay. The guidance would not be possible?

A I'm sorry. Enrollment would not be possible.

Q Thank you, Ms. Chilelli. If you could turn to bolded page 14 of this document. Just to confirm, is this the guidance in the document that relates to the testimony you just gave?

A Yes. So, the question here at the bottom of the page refers to the testimony I just gave.

Q Thank you. What about for the church's teachings on sexual identity? Are there any guidelines in this document for how to handle situations where a family might seek enrollment of a child who asserts a gender identity at odds with the child's biological sex?

A And you're referring to at the time of enrollment?

Q Correct.

A Sure. So, at the time of enrollment, there are guidance – there is guidance in this document that communicates, for similar reasons that I just explained regarding children of a same-sex couple, for parents desiring to enroll a child who they're presenting with an identity as contrary or different than the child's biological sex.

We – the guidance is that a school leader ought to explain to the family that we will teach the reverence of the body, the good of the body's biological reality, and that in that way, if the parents are teaching the child something contrary to that notion, that identity could be separate from biology. If parents are teaching that, then there is a conflict with what we will teach in our schools, and so in that way out of abundant respect for the parents and the child himself, we ask the school leaders to be abundantly clear about what will be taught. If the family doesn't see eye to eye on that, we ask our school leaders to please not admit the child out of abundant respect for the family.

Q Okay. And flipping over to the bolded page six, is this the part of the guidance that speaks to the situation you were just addressing?

A I'm sorry. What was the page?

Q Page six. Maybe start with page five. Page five and six?

A Yes.

Q Thank you, Ms. Chilelli. And then just one more situation. Does this document include any guidelines on how to handle a situation in which a student is

enrolled in a school but begins asserting an identity that's at odds with his or her biological sex?

A Yes. It includes guidance for that particular situation.

Q And what is that guidance?

A Sure. The guidance is that assuming and hoping for a relationship with the parents to share with the parents the church's teaching on identity as being inextricably linked with biology, observable reality, and so in that way, the school leader is asked to share with the family how we understand biological sex.

And because of that, out of abundant respect for the good of the child's body and their identity that's linked with that, we ask our school leaders to explain that we would not be able to make accommodations that we might see in secular institutions, but those kinds of accommodations wouldn't be able to be made. And so in communication and conversation with the parents, we specifically say in the guidance, reference to a few different accommodations that we could not honor or provide in the Catholic school.

For example, we can't use pronouns – we wouldn't be able to use pronouns inconsistent with the child's biological sex. We wouldn't be able to allow things like bathroom use for use of a bathroom inconsistent with a child's biological sex. We also wouldn't be able to perhaps allow a child – in this guidance allow a child to wear a uniform that may be inconsistent with their biological sex.

And so after explaining those conditions to the parents, if the parents decide that they would like those accommodations or they would like their child's

identity that they're sharing with us to be affirmed, we explain that maintaining the relationship with the family with the child's enrollment would not be possible. The school wouldn't be able to fulfill their mission to support parents in their education of their children.

Q Okay. And are the Archdiocese preschools expected to follow this guidance?

A Yes. Every preschool is expected to follow this guidance.

Q Great. Thank you, Ms. Chilelli.

A Sure.

Q Is there any other way besides the ones we've just been discussing that a preschool's enrollment policies are tailored to its Catholic faith?

A Sure. So, at the time of enrollment, many of our schools are excellent, and so they often find themselves with waitlists. And so because our faith teaches that Catholic parents have a duty to educate their children, be that in the home or in a Catholic school, Catholic parents have a duty to provide a Catholic education for their children. So, because of that, we prioritize Catholic families who desire the mission of Catholic Schools, especially in situations with a waitlist.

Q And how does the Archdiocese view the relationship between parents and its schools?

A Yeah. To use the term again, sort of inextricably linked. And the mission of the Catholic school as taught through the church only exists to serve the family, to serve the parents in their duties as primary educators or principal educators of their children. And

so in that way our schools only exist to serve parents, and that's why the relationship with the school and the parents is so critically important.

We actually – we can't fulfill our mission without that partnership or that understanding of parents, understanding the mission of our schools and desiring it. Desiring to teach it within their family, to promote it, to defend it, and have their children formed in what we call a Catholic worldview.

Q Thank you, Ms. Chilelli. Switching gears here, are you familiar with the Colorado Universal Preschool Program?

A I am familiar with the Universal Preschool Program.

Q Did the Archdiocese's preschools participate in that program?

A No. Currently our schools do not participate in UPK.

Q And why is that?

A We desired to. Currently we've asked all of our preschools not participate, given the current differences regarding the user agreement.

Q Okay. And maybe you just touched on it there, but why did the Archdiocese ask its schools not to participate?

A Yeah. There were particularities in the user agreement, especially having to do with our reading of the nondiscrimination clauses that would make it impossible for us to act within our own policies related to enrollment and admittance of the Catholic school, and would – the user agreement nondiscrimination

policies would make it such that our school leaders, especially our school pastors and then our teachers, would not be able to fulfill their duties threaded through their own contracts and work agreements and policies they need to abide by.

Q Thank you. If you could turn to the document that's tabbed as Exhibit 10. Is that the communication from the Archdiocese directing its preschools not to participate in UPK?

A Yes. Earlier this year, we sent – Father Randy Dollins, who is the vicar general of the Archdiocese, sent this email to all of our priests of the Archdiocese with direction regarding UPK, stating do not enter into any agreement for Universal Preschool in Colorado.

Q At the bottom of the first page of this document and the top of the second, it looks like it quotes the quality standards provision.

A Yes.

Q And it says that elements of the nondiscrimination requirements clearly run contrary to church teaching. If you see that, if you could just explain what church teaching do you understand that to be referring to?

A Sure. We saw conflict with the nondiscrimination clause in regards to our teaching on human sexuality, especially sexual orientation and gender identity.

Q Thank you. I'd like you to –

A And religious affiliation in our enrollment process, as I explained before, does prioritize Catholic families.

Q Thank you, Ms. Chilelli. If you could turn to the document tab as Exhibit 13. And you were just

discussing the nondiscrimination provisions in the provider agreement. Is this the UPK provider agreement, as far as you can tell?

A Yes. This is the UPK agreement that we've reviewed.

Q And if you could turn to page two, just to make sure we're all on the same page. Can you point us to the quality assurance nondiscrimination provision that we were just discussing?

A Sure. I'm referring to the fourth bullet down under quality assurance. That reads, requirement that each preschool provider provide eligible children an equal opportunity to enroll and receive preschool services regardless of race, ethnicity, religious affiliation, sexual orientation, gender identity, lack of housing, income level, and disability.

Q Okay. And it's the religious affiliation and sexual orientation and gender identity portions that the Archdiocese is objecting to?

A Yes. Only those.

Q Okay. Were there any other issues with the provider agreement besides this language at the fourth bullet point?

A Yes. It was our understanding that there was no ability to have religious exemptions for particular pieces of the quality assurance.

Q Okay. And then at least at the time that the Archdiocese issued its directive, there was another nondiscrimination provision in the contract; right?

A Yes, there was.

Q Okay. And that's paragraph 18B of the contract?

A Yes.

Q Did the Archdiocese make any effort to find a way for its schools to participate in the program?

A Yes. A few different efforts. So, first, we joined with a coalition of other faith-based organizations in writing to Governor Polis asking for religious exemption for the user agreement. Following that, we did a few different things, but in related – related to the letter to Governor Polis' office, we received a letter back from Dr. Roy, explaining that that was not permissible for her to be able to do that per the law, to provide us that religious exemption.

So, once we received that back from Dr. Roy, we advised our schools who desired to participate in UPK – we advised them to go ahead and sign up as providers, but send back the user agreement unsigned, as we weren't able to sign that and still act within our own local policies and guidelines, and accompany it with a letter explaining why we weren't able to sign that user agreement.

Q Okay. And when you said the Archdiocese advised the preschools to do that, was that mandatory on the preschools to take that second option of sending the letter?

A It wasn't mandatory, but if they wanted to continue to try to be a provider for UPK, they were able to do so.

Q Okay. And were either of those efforts successful, the coalition letter or returning the agreement unsigned?

A No. The coalition letter was not – like I said, Dr. Roy explained that that was not permissible for her to

provide that religious exemption. And then the second attempt, one of our preschools did attempt that effort, signing – sending back the unsigned user agreement with the form letter, but they did not hear back.

Q Just for the record, if you could go to the exhibit tabbed as Exhibit 11. And I just wanted to ask, is that the coalition letter you were just referring to?

A Yes. Exhibit 11 is the letter from a variety of different faith-based organizations that we sent to Governor Polis.

Q And you understand Exhibit 12 to be Dr. Roy's response to that coalition letter?

A Yes.

Q Okay.

A A portion of it. Oh. Yes. The entirety of it.

Q Thank you. Ms. Chilelli, why – why did the Archdiocese want to get its schools an opportunity to participate in UPK?

A Yeah. We wanted to participate in UPK because many of the parents that send their children to our schools would be really blessed by the support of financial assistance in this program that we think is good and worthy. And we wanted our parents who choose our Catholic Schools to be able to benefit from that good legislation. And our schools are excellent, and so we wanted to ensure that parents continued to have the ability to make choices for their children that they discerned were good for their family.

Q Ms. Chilelli, do Archdiocesan Catholic Schools participate in any other government funding programs?

A Yes. Multiple. Specifically to preschools, we participate in DPP, Denver Preschool Program. We participate in CCCAP. Yes.

Q Okay. If we could just talk about those two in turn. Let's talk about the Denver Preschool Program first. If you wouldn't mind turning to – this is going to be the second binder, Exhibit 35. And just whenever you're there, if you could tell me if you recognize this document.

A Yes. I recognize this. This is the provider agreement for the Denver Preschool Program.

Q And if you could just briefly say, what is your understanding of what the Denver Preschool Program is?

A Sure. The Denver Preschool Program is similar to UPK in that it provides financial assistance to parents in providing early childhood education for their children. So, a good program for families living in Denver to receive financial assistance in providing preschool for their children.

Q Are you aware that it has a nondiscrimination requirement in this agreement?

A Yes. I'm aware of that.

Q So, why is the Archdiocese comfortable with its schools participating in the Denver Preschool Program?

A Sure. We're comfortable with Denver Preschool Program because our understanding is that Denver Preschool Program is different than UPK in that UPK has the element of matching such that families sign up for UPK, and then they are matched with a preschool, whereas DPP, or the Denver Preschool

Program reimburses families after the time of enrollment.

And so parents have the freedom to sort of exercise their own discernment of the best school for their children, but schools in turn then have the ability to run their enrollment processes. So, ours have particular guidance related to enrollment, and so DPP allows us to have that enrollment process. And after enrollment, then families are able to be reimbursed for those tuition dollars.

Q Great. Any other reason that the Archdiocese is comfortable with DPP?

A Sure. It's my understanding that DPP also has a religious exemption embedded within it. And though it has a nondiscrimination clause, it has a religious exemption for that.

Q Okay. And just for the record, if you turn to page 11 of the agreement, does this page have the religious exemption that you're referring to?

A Yes, it does.

Q Okay. And is that the language, nothing in this agreement shall be construed as to affect the provider's rights to engage in privately-funded, inherently religious activity, or affect the independence of providers, including any rights protected by the Colorado and U.S. Constitutions and applicable law? Is that the provision, Ms. Chilelli?

A Yes. That's the religious exemption that I was referring to.

Q Okay. If you were wrong in how you understand the Denver Preschool Program agreement, would the

Archdiocese change its mind about whether its schools could participate?

A If I was wrong that there was a religious exemption?

Q Or if you were wrong about the way the schools could follow their ordinary enrollment processes?

A Yes. If there's any government program that we participate in or any program that we participate in that would compromise our ability to enact the policies that help us incarnate our mission, we would cease a relationship with that particular entity.

Q I'd like to discuss the Colorado Child Care Assistance Program. I think you've called it CCCAP a moment ago?

A Yes.

Q If you could turn to the document that's tabbed as Exhibit 36. Do you recognize this document, Ms. Chilelli?

A Exhibit 36?

Q Yes.

A Yes, I do.

Q Okay. Is this the CCCAP agreement?

A Yes. This is the user agreement that a provider would sign if participating in CCCAP.

Q Okay. Can you say a bit about, as you did before with Denver Preschool Program, what your understanding of CCCAP is?

A Sure. Very similar to UPK or DPP in that it offers families financial assistance and tuition for early childhood education for their children.

Q Are you aware that it has a nondiscrimination requirement in this agreement?

A Yes. I am aware of that.

Q Okay. And is that the requirement in this agreement that looks like it's at page two and paragraph 12? Is that what you're referring to?

A Yes. It says that the provider must accept referrals for child care without discrimination with regard to race, color, national orientation, age, sex, religion, marital status, sexual orientation, or physical, intellectual, or mental health disability.

Q Thank you. So, why is the Archdiocese comfortable with its schools participating in CCCAP?

A Sure. CCCAP is similar to DPP, and that helps us to feel comfortable in that the tuition reimbursements happen after the time of enrollment. Again, for the reasons I just explained regarding CCP – I'm sorry – DPP, that allows our schools to operate within the guidance we issue them related to enrollment or admittance. CCCAP also doesn't have in their nondiscrimination clause the notion of gender identity.

And then when we read the user agreement for CCCAP, our understanding is that the nondiscrimination clauses here are related not to the family, but rather the child. And so in that way, sexual orientation of the four-year-old is not typically a difficulty that would come with regards to enrollment at the preschool level.

Q And if you were wrong in your understanding of CCCAP in any of the ways that you just discussed,

would the Archdiocese change its mind about whether its schools could participate?

A Yes. Again, any program that we participate in that would compromise Catholic faith or morals and our policy – our ability to operate within our local policies, we would cease operations with if there became apparent to us a conflict.

Q Thank you. Are you aware that Catholic Charities operates some preschool programs within – in the Denver area?

A I am aware of that, yes.

Q Okay. What is Catholic Charities?

A Sure. Catholic Charities operates under the umbrella within the Archdiocese of Denver. It's a beautiful ministry that exists to exercise what we call the Corporal – Corporal Works of Mercy: feeding the hungry, housing the homeless, providing monetary help for the poor. And so within that assistance, especially to parents who are homeless or significantly at a significant poverty level, Catholic Charities operates Head Start programs or Early Head Start programs, specifically directed to assist parents who find themselves in poverty.

Q Okay. Were those programs subject to the Archdiocese's directive not to participate in UPK?

A No, they were not.

Q Okay. And why is that?

A These are two different ministries within the Archdiocese of Denver. So, the Office of Catholic Schools issued the guidance related to UPK for the schools that we oversee, which are our Catholic

Schools. The Catholic Schools have a distinct ministry. It's an educational ministry ordered towards the formation of the human person, towards its – towards the human persons, and of discipleship, discipleship and friendship with Jesus Christ.

Separately, the ministry of Early Head Start or Head Start programs under Catholic Charities is ordered differently not towards the ends of discipleship but towards the end of providing for the poor, material resources, or in this case child care resources, especially for parents who need child care, the watching over of their children as they go back to work, work to reestablish themselves financially.

Q Thank you, Ms. Chilelli. Turning back to the Archdiocese's Catholic preschools, so not the Catholic Charities programs, are you aware that the UPK program permits faith-based providers to have a preference for members of their congregation?

A Yes. I'm aware of that provision.

Q And why isn't that sufficient for the Archdiocese to be able to participate in UPK?

A Sure. Largely because of how we understand the notion of congregation and how our own churches are organized. So, the notion of a congregation is a group of faithful; right? Belonging to a particular church, good, but it's separate and different than how we understand our churches.

Our churches are set up as parishes. Parishes represent a geographic reality. So, churches are established across – parishes, excuse me, are established across northern Colorado. Anyone in that region who lives in that parish is a parishioner. Any

Catholic, excuse me, is a parishioner of that parish. You could be formally enrolled at the parish, but anyone in that geographic area is a parishioner.

And so in that way, it's different than a congregation in that there's an incredible amount of numbers, excuse me, of Catholics. There's a difficulty with the provision related to congregation in that we have a number of parishes, 136, I believe – maybe it's 140. Excuse me. A high number of parishes, but a limited number of preschools. So, we operate 36 preschools. So, by ratio, if we were to limit our preschool enrollment to only those members of that parish, it would significantly limit the number of families – Catholic families who could be served by that preschool.

And then on the other end, I suppose of the understanding of this, is that our Catholic Schools certainly prioritize and exist for Catholic parents to be able to fulfill their duties, but we also welcome non-Catholics into our schools. And so in that way, if we were limited to our own congregation, we wouldn't be able to fulfill the mission of supporting any parent who desires the church's assistance in fulfilling their duties as parents.

We call this evangelization, but certainly many non-Catholics see the beauty happening in our schools and desire it as the education for their children. And so being limited to a congregation wouldn't allow us to do that.

Similarly, there are Catholics who are baptized Catholics who enroll in our – who desire to enroll in our Catholic Schools who wouldn't be able to sign the statement of community beliefs or the local school's

handbook that delineates those beliefs, because though they're Catholic, they may not desire to form their children in the church's teachings. And so limiting it to our congregation wouldn't allow us to have that discernment process with the families where we ask them to take seriously the teaching of their children in the beliefs, faith, morals that we're going to teach in the school.

Q And those last two points you mentioned, evangelization and the inability of even some Catholics to agree with the school on all issues, those would still be there even if "congregation" were defined broadly to include any Catholic; is that right?

A Yes.

Q Just a few more questions, Ms. Chilelli. Do the Archdiocese's preschools, do they have child care licenses?

A Yes. All of our preschools have Colorado child care licenses.

Q Are you aware of any complaint that's ever been filed with the State against one of the Archdiocese's preschools for – or from an LGBTQ-identifying family?

A At the preschool level, I am not aware of any complaint to the State of Colorado regarding our enrollment processes.

* * *

THE COURT: Cross examination, please?

MS. CARRENO: And, Your Honor, we do not have any questions for Ms. Chilelli, but we just ask that the Court would take notice of Exhibit 52, which has been

stipulated to by the parties. Specifically pages five and six, and responses number three, four, and five to those interrogatory questions.

THE COURT: Okay. And you don't need this witness, then?

MS. CARRENO: No. Thank you, Your Honor.

* * *

MR. VARBERG: Jordan Varberg for plaintiffs. We would like to call Ms. Tracy Seul to the stand.

(The Witness is Sworn)

THE COURTROOM DEPUTY: Please be seated. State your full name for the record, and spell your last name.

THE WITNESS: Tracy Seul, S-E-U-L.

DIRECT EXAMINATION

BY MR. VARBERG

Q All right, Ms. Seul. Good afternoon. Who do you work for?

A I work for St. Mary Catholic Parish.

Q And what's your job title at the parish?

A I'm the director of preschool and development.

Q And who actually employs you? Is it the school or the parish?

A I actually work for the parish.

Q And where is St. Mary's located?

A In Littleton, Colorado.

Q And how long have you been the director of preschool at St. Mary's?

A Just over five years.

Q And who is your supervisor there?

A Our principal, Father James DeCandra.

Q And could you describe your responsibilities as director of the preschool.

A I oversee the operations of the preschool, ensure safety and quality of the program, curriculum, work with the staff, coaching, and recruitment of new families.

Q And what grades does St. Mary's serve?

A We serve preschool through eighth grade.

Q And for the preschoolers, what ages can they be?

A We start at two and a half, and go until five.

Q And is St. Mary's licensed as a child care facility in this state?

A We are.

Q And are you aware of the Colorado Shines rating system?

A I am.

Q Could you describe what that is.

A Colorado Shines is a five-star rating program that this state has for early childhood programs to be able to follow quality standards and criteria for staffing.

Q And the maximum number of stars a school can receive is how many?

A They can get up to five stars.

Q And what is St. Mary's rating?

A We're a four-star school.

Q So, Ms. Seul, could you please – in the exhibit binder in front of you, it will be binder number one – move to Exhibit 17.

A Yes.

Q And do you recognize this document, Ms. Seul?

A I do. It's the parent-student handbook for the school year.

Q For the 2023 school year?

A '23-'24 school year, yes.

Q And does this handbook apply to the preschool's operations?

A It does.

Q And now if you could move to Exhibit 18, which should be in the same binder.

A I see that.

Q And do you recognize this document, Ms. Seul?

A Yes. This is our preschool parent handbook.

Q Is that for the 2023 school year?

A Yes.

Q Could you describe how this handbook relates to the handbook we looked at a moment ago.

A This is the preschool handbook for preschool parents. It is superseded by the school's handbook, but it provides information for parents about our preschool, and helps with some of the licensing information that they need to know.

Q Okay. And, Ms. Seul, could you please describe the preschool's relationship to the parish.

A The preschool and the school are ministries of the parish.

Q And when you say ministries of the parish, what do you mean by that?

A Sorry. I'm having trouble with the binder. We are there to be able to help the – help families to be able to be part of our Catholic education.

Q And could you also describe the parish's relationship to the Archdiocese of Denver?

A The parish is one of hundreds of parishes in the Archdiocese.

Q And, Ms. Seul, is the preschool subject to the religious authority of the Archdiocese?

A We are.

Q Can you explain what that means.

A All of our programs and activities follow the Archdiocesan guidelines for Catholic doctrine, morals, and faith. They're also there to help us with, you know, specifics to operational things for Catholic Schools. They're there to help us consult with us for questions and issues that we might have. The day-to-day functioning, though, is the responsibility of the principal, Father James DeCandra; and our pastor, Father Jose Noriega.

Q And how do you describe the mission of St. Mary as a school?

A Our mission is to work with families to be able to make sure that we can help our students flourish in

not only academic rigor and academic excellence, but also to learn and know their value – their virtues and grow in those virtues as well.

Q And what role do teachers play in that mission?

A They play – they play a central role in the moral development and passing on the faith.

Q And how would you describe the role of educators at St. Mary more broadly?

A Just like every educator, we want academic excellence from our students, make lifelong learners out of them. But at St. Mary, we educate also the hearts and minds of the students. So, we want to make sure that we instill virtue in our students and help them to be able to be successful with that through their lives.

Q And are teachers expected to witness to the Catholic faith in their own lives?

A Yes.

Q And are teachers – and let's talk about preschool teachers in particular. Are they expected to make faith a part of the classroom?

A Yes. You know, it starts at the beginning of our day and goes throughout the day. They create lesson plans and play based on Bible themes and religious stories. And then they also make sure that they have a – that they've – that they have good moral behavior so that they can be good witnesses and character – help the students learn right from wrong, learn character development as well. And if there were a problem with behavior or something like that, we use restorative discipline to help build those relationships back up in a virtuous way.

Q And is prayer ever a part of the preschool curriculum?

A Oh, yes. Absolutely. We have prayer and religious songs, stories, Bible verses, things like that as well.

Q Ms. Seul, let's go back to the first binder there. It's Exhibit 2. If you could please pull that up.

A Okay.

Q And are you familiar with this document, Ms. Seul?

A Yes. This is the statement of community beliefs that the Archdiocese has created.

Q And is St. Mary's staff required to sign this document?

A We are.

Q All staff, or a portion of them?

A I'm sorry. Yes. As you can see by the document, there is different forms of the document. There's one for administrators. There's one for teachers, for other staff, and for parents. So, there's different versions of the document, but all with the same purpose of making sure that we understand and are led by and comprised of a community of believers and understand what our beliefs are.

Q Okay. Now, at St. Mary, are teachers required to be Catholic?

A They are.

Q Can you explain what that looks like, practically speaking?

A Well, our student – sorry. Our teachers need to obviously be good role models in the morals and faith

of the church. So, they need to be able to instill those values to our students as well. In doing so, they are practical in their – in their faith and in their guidance with the students.

Q And speaking about the employee population, are all employees required to be Catholic at St. Mary?

A Not all of our staff is required to be Catholic, but they need to be supportive of our beliefs, and they also need to make sure that they understand and are supportive of our teaching and theology.

Q Now, does the school have anything in place to help teachers grow in their own faith?

A We do. We pray together as a team all the time, and encourage each other in our faith. We have book studies, articles that we read, and discussions and workshops that the priests help us to – or lead us through as we grow and learn more about our faith.

Q And could you walk us through the preenrollment interview and screening process for preschool applicants.

A Yeah. So, if a family is interested in our school, they will go to our website and fill out an inquiry form. That inquiry form asks them a few questions about who they are and why they want to come to our school. We will then call and set up a tour with them.

During that tour, it's kind of a discernment on both – from both perspectives. We ask them lots of questions about who they are and what their faith life is like, what their home life is like, and then what their expectations are for their education of their students. And we give them a lot of information about who we are, what our values and vision is, and what

we believe and how we teach our religious teachings as well as how we teach them academically.

So, it's a good way for them to be able to get a feel for what our school is like and who we are, and certainly they get to meet our teachers and so forth as well so that they understand and feel comfortable with where they're coming.

After the tour, if they choose to still apply to the school, they are sent an application that's also online, where they're asked a few more questions, a few more detailed questions about coming to the school. After the application, then they are – once that application is received, then we set up a meeting with Father James. And he likes to meet all of our applicants so that he can also explain the vision and mission and make sure he understands where they're coming from from their perspective as well.

Q And why do you offer tours of the school, Ms. Seul? And feel free to grab some water before you answer.

A Thank you. Sorry. We offer tours so that – for a couple of different reasons. First of all, we want to make sure that the families understand who we are and understand what our values and mission and vision is.

But then we also provide tours for the families to get to know us. And I can especially speak for preschool, these little pumpkins that come to us are less than a thousand days old, and so in some cases it may be the first time that their parents have sent them away from their homes, and so they want to get a good feel for us as well. So, it's a good way for them to be able to decide if they are comfortable with us,

and also a good way for us to make sure that they fit the beliefs and values of – in our teachings as well.

Q And in the enrollment process, does St. Mary consider the family's beliefs or conduct?

A Absolutely. They need to make sure – we need to make sure that they are supportive of our teachings, that they're willing to live in accordance with our values and our beliefs, and we want to make sure that they know, you know, who we are.

Q Is there any fear of creating conflicts of some sort if you don't know enough about the family?

A Oh, absolutely. We don't want to create any conflicts that would cause there to be a problem in the preschool or beyond in the school as well. You know, when they continue on through the school. When you come to St. Mary, we don't want you to just join the preschool. It's really we want you to be part of the family of families. So, we want you to start in preschool and continue through eighth grade.

To do that, you want to make sure that they know what the preschool is all about, and then going forward. And so if there's a conflict, we don't want to start in the preschool and then have conflict later on as well. We want to make sure that the messages from home and the family are the same.

Q Now, is there anything that parents need to sign for their preschooler to be fully admitted?

A Yes. So, once they've met with Father James and he's approved their application, then we go ahead and send them an enrollment packet where they have a lot more forms, hear a lot more information. They've signed the commitment of – I'm sorry. The family –

I'm sorry. The community beliefs statement. They've signed the parent handbook and other compliance forms that are necessary for our licensing agreements for the preschool.

Q And the community belief statement you just referred to, is that one of the documents we looked at a moment ago?

A Yes. I think it was in the exhibits before, and it was – it's the parent version of that community belief.

Q Now, during the process, do families ever decide not to go forward with an application at St. Mary's?

A Yeah. Absolutely. There's many reasons, I'm sure, but there's opportunities for people – because of the tour, they have opportunities to be able to decide whether or not it's a good fit for your family.

Q We'll go back to the exhibit binders. We will pull up Exhibit 5 this time, Ms. Seul. And do you recognize this document?

A Yes. This is the statement of theological guidance concerning the personhood and sexual identity from the Archdiocese.

Q And does St. Mary's consider itself bound by this document?

A Absolutely.

Q Do you follow it in running the preschool's operations?

A I do.

Q Has St. Mary's ever received an inquiry from a same-sex parent or student?

A Not to my knowledge.

Q Has St. Mary's ever had a student in a same-sex relationship?

A Not that I know of.

Q Has St. Mary's ever received an inquiry from a student who identifies as transgender?

A Not to my knowledge.

Q Has St. Mary's ever enrolled a student who identifies as transgender?

A Not to my knowledge.

Q And has St. Mary's ever received a complaint from an LGBTQ person about discrimination?

A No.

Q If you were to have a preschool waitlist, how would St. Mary's decide which preschoolers and families to admit?

A We prioritize admission based on a number of different factors. We start with people who are parishioners – or, I'm sorry – siblings of our parishioners or siblings of our students. And then we would go to the parishioners of our St. Mary. Then the next on the list would be people who are affiliated with other Catholic churches in the area, parishes in the area. We would then go to people who have moved into the area from other Catholic churches or other Catholic Schools. And then we would then offer it to unaffiliated Catholics and non-Catholics.

Q And why does St. Mary's prioritize these types of students?

A Well, we're obligated to start with our parishioners first, because we're a ministry of the parish. But then

we're obligated also to make sure that we provide Catholic education for those Catholic parents who want that for their children.

Q Now, are parents required to be Catholic to send a child to St. Mary's?

A No.

Q Are there any requirements for parents when it comes to the school's Catholic faith?

A Well, they definitely need to make sure that they understand our beliefs and are willing to live in accordance with those beliefs. If it were a family who – under this provision that we're talking about, the guidance, if it was a family who were living an LGBTQ lifestyle, we would have to discern that as well. And in some cases and other cases, we may not be able to provide an application invitation to them.

Q Ms. Seul, are you aware of any non-Christian preschoolers in your time at St. Mary's?

A Not that I can recall.

Q So, what role do parents have in the educational mission of the school?

A They're an integral part of making sure that we are providing not only a Catholic education that they want for their children, but they also are integral in that education and going forward with the education as they – as their kids progress.

Q And is there a way in which that relationship with parents is formalized?

A We have a few different ways. We have an educational covenant that we follow, and it's really a covenant between our families, our staff, and our

students, and really God, to help to make sure that we can truly believe – help the students flourish. And so to do that, we need to build that friendship with Christ so that they can understand who he is in their lives.

Then we also – of course academic excellence in the rigor of our academic program is important for us in that covenant and helping them to understand that that's important for us as well. In that educational covenant, we also explain that the narrative project is very important, that the books that we read are how we become the characters that we – the character traits that we have and become, and how we instill that virtue.

And then, you know, all of that is in making sure that the students understand who they are and what their – God's vocation is for them. And all that is really important, because in that covenant we're trying not to have any conflict in – we're trying to prevent conflict from happening so that they understand our expectations and we understand theirs, and then when there's a conflict, then we know that they – that we come from common goals, and we want the same things for the students.

Q Are there parent-teacher conferences for preschoolers at St. Mary's?

A Yes. It seems unreal, but we want to make sure that we progress as preschoolers as well. So, we have three conferences per year. It actually starts with an individual learning plan that the – that we develop as staff, and as the teachers in the classrooms, where we find out who those students are, who they like to play with, what they like to play, how they like to interact

with others, and kind of basic skill information, where they are.

And then from that, the first conference is with parents talking about their goals, and what they're looking for, what their expectations are, and kind of filling in more information about that individual learning plan to make sure that they have a really good picture of who their student is.

The second conference we talk more about, you know, having to assess some of the skills and some of the developmental milestones that they've been reaching. We meet those, and we find that – meet with them about those.

And then the last one is more about what that next skill level is all about. So, it's not just developmental and academic progress that we talk about during those conferences. It's also we're bold about, you know, what their family life is like and what their faith life is like, because that's what we're teaching at school, and we want to make sure that that's instilled at home as well.

And all of that, again, is just to make sure that we're all on the same page as we go forth in the conferences. And then there may be times when they meet with me individually as well, just one on one if they have developmental concerns or behavioral concerns that are beyond the scope of the classroom and I can help guide them towards some help as well.

Q And are parents permitted to visit the preschool classrooms at any point?

A We love visitors in our classrooms. They come to share their times and talent – time and talents, but

they also come to, you know, read Bible stories, or they host our parties for religious events and feasts, or we have – they come and read, you know, do all sorts of things in our classrooms, help us with centers and things like that as well.

Q And in terms of the preschool curriculum, is faith a part of that in any way?

A Absolutely. Faith starts at the beginning of the day, from the time they walk in the door to the time they leave, and everything about who they are and how they treat others has to do with our faith. But then also we follow – the Archdiocesan curriculum standards help us incorporate not only our academic instruction, but weave in our faith with that so that we make sure that we have a Catholic worldview within our curriculum throughout the days. We also have Catechesis of the Good Shepherd, and, you know, just songs and prayer and learning how to go to mass and all sorts of the religious pieces as well.

Q And you mentioned the Catechesis of the Good Shepherd. Could you explain more what's involved with that.

A Yeah. Catechesis of the Good Shepherd is a Montessori-based program based on scripture and liturgy that is a way for our students to learn about Jesus and understand who he is in their lives, that they can become his friend. And so they go to Catechesis of the Good Shepherd once a week and learn instruction about being in friendship with Christ.

Q How would you describe the ultimate goal of the preschool curriculum?

A The ultimate goal of our program is to make lifelong learners out of our students. We want to make sure that they are great people and great students going forward. We try to make saints, heroes, and geniuses out of all of our students.

Q And you mentioned earlier that St. Mary's is a Virtue School. What does that mean for it to be a Virtue School?

A It's a pastoral project that takes a – you know, I talked earlier about how the – we want our families to start in preschool and go all the way through eighth grade. And so this pastoral project is called Polaris, and it helps students – it gives each student a virtue each year, and they – those virtues build on each other, so when they start in preschool they go all the way through eighth grade, and each one of those virtues they have projects and learn more about that virtue and become – make habits out of those characteristics so they can learn to be very virtuous students.

So, in preschool we start with a pre-virtue called wonder, because they're very curious and naturally imaginative and want to be able to ask questions and explore and discover. And so we find that teaching them to be good thinkers and learn about the world around them is very important, and wonder helps to be able to ask those questions.

And when we look at creation, we see that – the beauty of the world around us, and ask those questions and want to be able to wonder. So, that's what the three-year-olds do. And then the four-year-olds, they build on that creation. They see the appreciation of creation, and they are gracious about

it. So, they learn to be – the four-year-old virtue is gratitude. And so they build on that wonder and learn to be grateful not only of each other and of their parents, but then they also learn to be grateful of the world around them and what God has given them.

And then those virtues go all the way through eighth grade and to obedience and piety and so forth throughout their career at St. Mary.

Q And is St. Mary's able to provide services to students with disabilities?

A We are. We have a resource department at the school, but then we also have – that allows us to be able to offer services for students. We have students with Down syndrome, with autism, and we help identify other delays, maybe in speech or developmental delays, processing, sensory disorders, things like that.

Q Ms. Seul, are you familiar with a program that's often shortened to CCCAP? It's the Colorado Child Care Assistance Program?

A I am.

Q So, is St. Mary's a qualified provider for CCCAP families?

A We are.

Q If you could now flip over to Exhibit 37. So, that's going to be in the second binder, binder two of two.

A Yes.

Q And, Ms. Seul, are you familiar with that document?

A Yes. It's the fiscal agreement that I signed for – in 2020 with Arapahoe County to provide CCCAP at St. Mary's.

Q And in your experience, Ms. Seul, how has CCCAP interacted with the schools' admissions or enrollment process?

A Well, CCCAP is a federally-funded program that the families receive authorization from the County to be able to receive these funds, and then they are able to go to any program that they want to be able to provide those services for them. So, it doesn't bother our enrollment process at all, because they come, they choose us, and we are able to be able to provide services for them if we are able to.

Q And has St. Mary's ever determined that participating in CCCAP is inconsistent with Catholic teaching?

A No. We don't feel like it's inconsistent with Catholic teaching, and more importantly, the Archdiocese has told us that it's okay to do so. And so since they've approved it, then we are able to sign the agreements.

Q And are any families of the school currently receiving CCCAP?

A We have one family.

Q Did you have any families last year?

A No.

Q And are you familiar with a program called the Denver Preschool Program?

A I am.

Q In your time at the school, has St. Mary's ever had families participate in that program?

A No, we haven't.

Q So, shifting gears to the UPK program, when Colorado announced it was creating a program to fund Universal Preschool education, did St. Mary's plan to participate?

A We did.

Q Did you do anything to look into the program?

A I did. Of course I attended all of the UPK meetings that I could that the State was putting on as they were going through the process. When we – during the process, when the local coordinating organizations were being formed, that's when I had first gone to the Archdiocese about UPK. Once they were formed and I knew that Arapahoe County Early Childhood Council was our LCO, I went to them to find out more about how the process was going to work. So, I looked into it quite a bit.

Q Did St. Mary's end up participating in UPK?

A We did not.

Q Why is that?

A As the process continued to roll out, we found that the agreement would conflict with our beliefs, and then we were provided a directive from the Archdiocese that told us that we couldn't participate because of the conflict in our belief – or our beliefs.

Q So, if you could return to the first binder, Exhibit 10 in particular.

A Uh-huh.

Q And do you recognize that email?

A Yes. This is the directive from Father Dollins that told us that we could not participate with the UPK program.

Q And you're familiar with that email?

A Yes.

Q If you could now turn over to Exhibit 13 in the same binder. Do you recognize that document, Ms. Seul?

A Yes. This is the Universal Preschool Program service agreement that we were supposed to sign.

Q On that point, is it your understanding that to participate in UPK, St. Mary's would need to sign that document?

A Absolutely.

Q How has not participating in UPK affected St. Mary's?

A You know, one of my jobs is to recruit families to our school and to provide a Catholic education for those families who want to come there. And when we couldn't participate, you know, they made some formative changes to the way families chose preschools. And when that happened, we couldn't provide the type of monetary assistance that UPK could for them. So, it was really disappointing not to be able to give them that.

Then the advertisements started coming out that UPK would save families \$600 a month, or up to \$600 a month on child care for 15 hours, and that's really important to families. Even our Catholic families who

really want to come to our school, they couldn't maybe decide if it was up to the monetary decision.

And then there were bonuses for people who are – had heard that there were bonuses for providers who were – started at the beginning, and it's just those kinds of things help us with ways to be able to provide more quality, better payment for our teachers, all sorts of different ways for us to be able to participate.

Q Ms. Seul, if St. Mary's were to participate in UPK Colorado, would the school pass along the tuition benefit to the families enrolled at the school?

A Absolutely.

Q Has anyone reached out to see if St. Mary's is participating in the program?

A They have. During the application process, or during the touring process, people have asked if we're participating. They have asked if we've, you know – when that might be and that sort of thing, but – some of them come back and say that it's not a problem, but a lot of those people who have asked, we haven't seen again, and so they haven't pursued the process. I assume it's because of UPK.

Q And, Ms. Seul, could you now turn to Exhibit 24. That's going to be in the second binder again.

A This is the UPK Colorado provider guide.

Q And are you familiar with this document?

A I am.

Q Do you recall when you first saw it?

A I believe late fall, early winter last year.

Q And could you turn to page 37 in that document. Let me know when you're there.

A I am there.

Q Could you describe what you see on that page.

A This was the exception criteria in the UPK program for providers. This is the exception criteria that we were given as ways that providers were prioritized in the matching system.

Q And did you review that risk when the guide first came out?

A I did.

Q And, Ms. Seul, would St. Mary's seek to participate in UPK if the Archdiocese confirmed that doing so was consistent with Catholic teaching?

A Yes.

* * *

CROSS EXAMINATION

BY MS. RUST

Q Good afternoon, Ms. Seul. On your direct you spoke a little bit about what would happen if a student who identified as LGBTQ tried to enroll in your school. Do you remember your testimony?

A I do.

Q Okay. Could you let us know how would you treat a student who identifies as LGBTQ after they enrolled in one of your preschools?

A Well, we would have to take that on a case-by-case basis, but as I said, we would always look to the Archdiocese for guidance in anything in that regard,

as well as the document that we talked about before with the guidance.

Q And has that happened before?

A It has not.

Q Okay. And then, Ms. Seul, you spoke a little bit during your direct about how not participating in the UPK program has affected St. Mary's. Do you remember that section of your direct?

A I do.

Q Okay. And you spoke about how people have reached out to ask if you were participating; is that correct?

A Yeah. They – when – during the tour, they will ask me if we participate.

Q Do you remember who that was?

A No. Just random – we have a – we get a lot of tours that come through the school, so I don't know exactly who it is.

Q Okay. Do you remember a timeframe of when that happened?

A Most of them have been last spring and this fall, for sure.

Q Okay. And when you were giving a tour, did you ask them if they were searching specifically for a Catholic education?

A No. We assume they are because they're there.

Q And do you know if they ended up finding another school?

A I don't know exactly if they were. I mean, I'm sure they found another school, but I'm not sure why or which ones they went to.

Q Okay. And, Ms. Seul, I think you were in the room earlier today when Ms. Chilelli testified that later in the spring, the Archdiocese did tell preschoolers that they could – or preschool programs that they could participate in the UPK. Do you remember that testimony?

A I do.

Q Okay. When did that message come about?

A That happened at a meeting in May that the Archdiocese conducted for the preschools and for pastors and the Archdiocese.

Q And what was the reason given for their change of directive?

MR. VARBERG: Your Honor, I would like to object. I think this misstates the prior testimony from Ms. Chilelli.

THE COURT: You may bring that out on redirect if it was misstated. Go ahead, please.

THE WITNESS: The directive that came from Father Dollins said that we shouldn't participate in the program. The meeting in May was to say that we could participate in the program under certain guidelines, not to sign the agreement, but to go ahead and participate if we felt that we would like to.

But at that time, I had already knew a little bit about the program itself and how the – how the operation went with the local coordinating association

or organizations, so I knew that I couldn't participate, so I didn't do anything at that time.

Q. (By Ms. Rust) Okay. So, is your testimony today that the Archdiocese said you could participate in UPK in May of 2023? Is that correct?

A No. What they said was that we didn't have – that we couldn't sign the agreement, but that if we would like to sign the agreement – or, I mean, I'm sorry. If we would like to participate without signing the agreement and give the letter with that stating why we weren't going to sign the agreement, we could do so. But I knew that the local coordinating organization wouldn't accept that and said that they wouldn't help to do that.

Q So, at that point, the Archdiocese told you you could fill out a UPK application. You just couldn't sign the user agreement; correct?

A We could set up a provider profile if we wanted to, but we could not sign the agreement.

MS. RUST: Okay. Nothing further, Your Honor.

THE COURT: Is that it? Redirect, please?

REDIRECT EXAMINATION

BY MR. VARBERG

Q Ms. Seul, with respect to these conversations in May, did you understand the May meeting to be a directive from the Archdiocese that you should participate in the program?

A No. They suggested that we could if we wanted to, but it was not – we were not required to do so.

* * *

MS. DIXON: The plaintiffs call Mrs. Sheley.

(The Witness is Sworn)

THE COURTROOM DEPUTY: Please be seated. State your full name for the record, and spell your last name.

THE WITNESS: Lisa Sheley, S-H-E-L-E-Y.

DIRECT EXAMINATION

BY MS. DIXON

Q Good afternoon, Ms. Sheley. Are you and your husband both plaintiffs in this lawsuit?

A Yes. My husband, Dan, and I are named as plaintiffs.

Q And I think you just said it, but just for the record, what's your husband's name?

A Daniel.

Q Where do you work?

A I work for St. Mary Catholic Virtue School.

Q What's your role there?

A I'm the front office coordinator.

Q And what does Dan do?

A Dan is a police officer.

Q How long have you and Dan been married?

A We have been married for 14 years.

Q And are you and Dan both Catholic?

A Yes. Dan was raised Catholic. I was confirmed in the Catholic Church at Easter of 2017.

Q Are you and Dan parishioners of a parish within the Archdiocese of Denver?

A Yes. We are parishioners at St. Mary's.

Q Is that St. Mary's Catholic Parish in Littleton?

A Yes, ma'am.

Q How long have you been parishioners of St. Mary's?

A We've been parishioners since we got married in 2009.

Q How many children do you have?

A We have six children.

Q And can you tell me their ages?

A Fourteen-year-old boy, eleven-year-old boy, eight-year-old girl, four-year-old boy, three-year-old boy, and one-year-old girl.

Q Thank you. Where are your children currently in school?

A Currently our oldest is in high school at Mullen High School, and then the next four attend school at St. Mary's. And the youngest is in daycare.

Q And you said the oldest is at Mullen?

A Correct.

Q Is that a Catholic school?

A Yes, ma'am.

Q Why did you and Dan decide to send your kids to St. Mary's?

A Given the faith formation, but then also as Catholics, that's something that's very important, and

that we value highly is giving our children a Catholic education.

Q And you said your four-year-old is in preschool in St. Mary's?

A Correct.

Q And will your four-year-old be going to kindergarten at St. Mary's?

A Yes, he will.

Q Do you plan to keep your three-year-old at St. Mary's through Pre-K?

A Yes, we do.

Q And do you plan to send your one-year-old to St. Mary's?

A Yes, we do.

Q Have your children always attended St. Mary's?

A No, they have not. We attended public school for the older two, through fourth grade for the oldest, and first grade for the next one.

Q Why did you switch?

A In 2019, when we switched to St. Mary's, they had joined the Archdiocese variable tuition program, and that allowed us the financial means to afford Catholic school.

Q How much tuition in total do you and Dan pay for all – to send all of your children to Catholic Schools?

A Approximately \$22,000.

Q Is that a significant part of your and Dan's budget?

A Absolutely, it is.

Q Why do you choose to invest that much money in Catholic education for your children?

A We feel that not only is that our directive as Catholics, but that it's well worth the value of our children being raised in a Catholic education.

Q How much do you pay in tuition to St. Mary's?

A Approximately \$12,000.

Q Do you know if your four-year-old would qualify for Colorado's Universal Preschool funding if he attended a school that could participate in the program?

A As far as I am aware, yes, he would.

Q Do you know approximately how much money the UPK program reimburses schools for four-year-olds eligible for 15 hours of free preschool?

A I believe in our situation it's approximately \$5,800.

Q Is it your understanding that St. Mary's would deduct that amount of money from your tuition?

A Yes. That's my understanding.

Q Would that affect any of your tuition assistance in any way?

A Yes. We would likely lose the parish assistance that we currently receive of approximately a thousand dollars.

Q So, practically speaking, about how much money would you save if St. Mary's were eligible for the benefits of UPK this year?

A Approximately \$4,700.

Q How would it affect your family if you were able to receive that UPK funding to send your youngest children to preschool at St. Mary's?

A Obviously with inflation, everything is extremely expensive, but even more so for a family of eight. So, anything we could save would be extremely helpful.

* * *

CROSS EXAMINATION

BY MR. WHITEHAIR

Q Good afternoon. We've only met on our Zoom deposition; is that right?

A Correct, sir.

Q I only have a couple of questions. With regard to the UPK preschool program as you understand it, does it mandate your four-year-old child have to attend school, any school?

A Not to my knowledge.

Q Does it mandate that St. Mary's has to provide preschool program operations?

A Not that I'm aware of.

MR. WHITEHAIR: Thank you, ma'am.

THE WITNESS: Thank you, sir.

* * *

THE COURT: And your next witness is right there in a hospital bed. She's on my camera.

MR. VARBERG: Yes, Your Honor. We would like to call Ms. Avery Coats for testimony.

THE COURT: All right. Would you please administer the oath to this witness.

(The Witness is Sworn)

THE COURTROOM DEPUTY: So, please state your full name for the record, and spell your last name.

THE WITNESS: Avery Coats, C-O-A-T-S.

DIRECT EXAMINATION

BY MR. VARBERG

Q Good afternoon, Ms. Coats. Thanks for calling in. Just for the record, could you please state where you're calling in from for your testimony today?

A Presbyterian-Saint Luke's Hospital.

Q And, Ms. Coats, do you have any notes with you?

A I do not.

Q Ms. Coats, are you on any type of medication that would affect your ability to provide accurate testimony today?

A No.

Q Ms. Coats, who do you work for?

A I work for St. Bernadette Catholic Parish as well as the Archdiocese of Denver.

Q And is there a specific school within St. Bernadette that you work for?

A Yes. Wellspring Catholic Academy of St. Bernadette.

Q And where is Wellspring located?

A We are on the campus of St. Bernadette Catholic Parish in Lakewood, Colorado.

Q And what's your job title at Wellspring?

A I am the principal and head of school.

Q You mentioned you also have a role at the Archdiocese. What's your job title for the Archdiocese?

A I work as a part-time consultant to the director of student support services.

Q And specifically with respect to your role as principal at Wellspring, how long have you been the principal?

A I began July 1, 2022, so about a year and a half.

Q And who is your supervisor at Wellspring?

A Our pastor, Father Joseph McLagan.

Q And his title is pastor. We will move on. What grades does Wellspring serve?

A We serve kindergarten through eighth grade, and we also have a preschool program, there being three-, four-, and five-year-olds.

Q And is Wellspring licensed as a child care facility in Colorado?

A Yes.

Q And are you aware of the Colorado Shines rating system?

A I am.

Q And what is your preschool's Shines rating?

A We are currently a four star out of five.

Q And, Ms. Coats, how would you describe Wellspring's relationship to the St. Bernadette Catholic Parish?

A We – like I said, we're on the same campus geographically, but we also share an organizational hierarchy. Father Joseph oversees all. We're merely a ministry of the parish. So, we work in tandem with the overall parish.

Q And what is the parish's relationship to the Archdiocese?

A We are one of many Catholic churches within the Archdiocese of Denver. We answer to the Archdiocese in a lot of ways, and seek guidance from them.

Q And on that subject, is Wellspring subject to the religious guidance of the Archdiocese?

A Yes. We follow their guidance on church teachings, faith and morals.

Q All right. So, we're going to pull up Exhibit 2 on the screen. I believe it's actually already pictured. Do you see that document on your screen, Ms. Coats?

A I do.

Q And can you describe what that document is.

A This is our statement of community – sorry. Statement of commitments and beliefs set forth by the Archdiocese of Denver.

Q And is Wellspring staff required to sign this document?

A Yes. At the time of our contract signing.

Q Is Wellspring's staff required to sign any other paperwork?

A Yes. So, at the time of contract signing, you sign your contract, this document, the Archdiocese code of conduct, and the terms and conditions of your contract.

Q Now we're going to display Exhibit 4 on the screen. One moment for that. And, Ms. Seul, can you see that document?

A I do.

Q If we could scroll down just a bit. Right there. Okay. Do you recognize this document?

A Yes. This is the Archdiocesan code of conduct.

Q And is this the document you referred to a moment ago?

A It is.

Q Ms. Coats, how would you describe Wellspring's mission?

A We – we're a Catholic school that works hard to raise up disciples of Christ. We do this through our motto of dig deep, share more, and – sorry – find more, and share greatly. And we have four pillars through – that we've really achieved this. Through academics, faith, service, and adventure.

Q And what role does Wellspring expect teachers to play in fulfilling this mission?

A A critical role. We expect all of our teachers to uphold our mission in their teaching, and who they are as people as well.

Q And how would you describe the role of educators at Wellspring more broadly?

A We're all passionate about our mission to raise up disciples of Christ, and we work together to do so. So, we all have a critical role in understanding not only Wellspring's mission, but our mission and alignment with the Archdiocese of Denver, and the values of the Catholic Church as well.

Q Does Wellspring have any requirements regarding teacher conduct?

A Yes. So, this would be outlined in the code of conduct, which we're required to sign each year as well.

Q Does Wellspring do anything to help teachers grow in their faith?

A Yes. We offer quite a bit of opportunity. The church remains open throughout the day. We encourage them to use their free time, their planning time, to go and pray if they need to. There is daily mass, and if it works with their schedules, they're free to attend. If it doesn't and they want to attend, I work with them in order to do that.

We have the PD cycle every second week of the month, I believe. We focus on faith formation. Right now we're working as a staff to read a book to understand our path of faith, our identity as a Catholic school, and to really dig deep into our mission as well. Some of our teachers are in discipleship groups, growing in fellowship and understanding in their faith as well.

Q And, Ms. Coats, does Wellspring expect teachers to uphold the values and beliefs of the Catholic Church?

A Yes.

Q And you mentioned teacher faith formation. Could you say a little more about what that is.

A Yeah. Faith formation happens on a lot of different levels. It could be personal, their inner spiritual life. Just, we would offer opportunities for them to have silence on their own in the church. We also offer education. Like I said, we're going through a book study right now. It could mean being more tangible in the faith, like attending prayer services, things like that.

Q And at Wellspring, are all employees required to be Catholic?

A No.

Q So, are there any requirements for staff with respect to the Catholic faith?

A We ask that all of our staff, no matter if they're Catholic or not, to uphold the values of the Catholic Church. So, yeah. We just – we ask for that – that respect and to join the mission in that way.

Q Pivoting to the school's demographics, as of today, how many students are attending the preschool at Wellspring?

A As of today, we have 17 enrolled.

Q Can you describe their demographic makeup.

A Yes. The majority – sorry. The majority receive free and reduced lunch. Roughly a third fall under the poverty line. Over half are learning English as a second language. We have several different countries represented in that room alone.

Q And do students at the preschool receive tuition assistance?

A Yes.

Q Could you describe what that looks like.

A Yes. We offer many scholarship opportunities for all of our students and their families, and so we partner with a couple different specific programs. A lot of times that still leaves a gap, because we do serve a majority of low-income families, and so the remainder would be fundraised on behalf of them.

Q Could you describe the application and enrollment process for the preschool.

A Yeah. It's not different than the rest of the school. We ask for – when we receive an inquiry, whether it's through the website or phone call or sometimes people just driving by, we set up a tour, and we meet with the family. Oftentimes that turns into a shadow day for the student, and then we would just get to know them and progress towards registration.

Q And you mentioned a tour and a meeting with the family. What do those meetings entail?

A The tour and the meeting would be – we always encourage the students to come to the tour. I'm sorry.

Q No problem. Take your time.

A Everything is okay. He just fell off the monitor, which he's very squiggly. Sorry.

Q No problem.

A So, a lot of times we ask the student to come. We like to see how they do in the classroom, how they do with interactions with others, and then we meet with the families. And this could be pretty informal, pretty casual. I just like to understand their family life. I like to understand what brought them to Wellspring, what

intrigues them about our mission. And then we just learn a little bit more of their own personal dynamics. Jordan, if I may?

Q Yes.

A Because he fell off, I might have a member of the medical team come in. Is that okay?

MR. VARBERG: Your Honor, could we take a 15-minute recess to allow Ms. Coats to – we're also happy to have her continue testifying, if that would be okay with you, Avery? It's up to you.

THE WITNESS: It's fine with me. I just feel a little embarrassed. I'm sorry.

THE COURT: That's all right. Don't be embarrassed. Is there anybody that can't hear or understand? Okay. Then go ahead.

THE WITNESS: Okay.

MR. VARBERG: So, you can bring in the medical team.

THE COURT: If that's the only annoyance I have today, it will be a very fortunate day.

THE WITNESS: Okay. Thank you, Your Honor. You're good to come in.

THE COURT: Voilà. Okay.

Q. (By Mr. Varberg) Ms. Coats, why is it important that the school have meetings with the family?

A When we enroll a student, one of our just crucial understandings of being educators is that we partner with parents. It's a partnership towards their student and their child's education. So, it's vital that we understand who we're partnering with, that we

understand who – the dynamics of their family and what brought them to us.

Q And is there anything that parents need to sign for their preschooler to become admitted?

A Yes. All of our families are required to sign the Archdiocese code of conduct, the – and our handbook as well. The Archdiocesan code of conduct is kind of embedded in our handbook.

Q Is there any preschool-specific document such as a handbook?

A Yeah. So, our preschool families receive our student family handbook. They would receive a preschool addendum as well as this code of conduct, and they would be asked to sign all of those.

Q We're going to pull up now Exhibit 16 on the screen. And, Ms. Coats, do you see that document on there?

A I see it.

Q And do you recognize it?

A Yes, I do.

Q And can you describe what it is?

A This is our student and family handbook for the school year.

Q And does this handbook apply to the preschool's operations?

A It does, as well as their own preschool addendum.

Q And now we will turn to Exhibit 15. And do you see that document?

A I do.

Q And can you describe it?

A This is the preschool addendum which I was referring to for the school year.

Q And families are required to sign this; correct?

A Correct.

Q Ms. Coats, when making admissions decisions, is there anything that the Archdiocese directs Wellspring to consider?

A Yes. We're asked to consider alignment with the church's teaching, and they offer us guidance, especially with regards to the teaching of sexuality.

Q We're now going to pull up Exhibit 5 on your screen. Ms. Coats, do you recognize that document?

A I do.

Q Can you describe what it is?

A Yes. This is the guidance which I was referring to on human sexuality.

Q Does Wellspring consider itself bound by this guidance?

A Yes.

Q And do you follow it in running this preschool?

A Yes.

Q Ms. Coats, in your time at the school, has Wellspring ever determined that admitting a family or a student would cause a conflict?

A Yes.

Q Are there any recent examples of that?

A Yes. Last year we had a fifth grade student whose parents were interested in enrolling –

MS. RUST: Your Honor, I would like to object to relevance.

THE COURT: I'm sorry. I can't hear you.

MS. RUST: Sure. Is this – can you hear me better now, Your Honor?

THE COURT: Yes.

MS. RUST: I would like to object to relevance. I know this testimony was previewed in the opening and that it will be about a fifth grade student, but I do think we're here today talking specifically about preschoolers and the circumstances of preschoolers in the UPK program and these parish schools.

THE COURT: The objection is overruled. Go ahead, please.

Q. (By Mr. Varberg) Ms. Coats, you can continue.

A We had a family inquire last year, and we – they did the inquiry. We invited them for a tour. I actually never met the student. It was just the parents. The parents were a same-sex couple. And we met a couple different times and discussed the mission and the family dynamics, just our normal procedure. We ultimately decided that would not be a good fit, because we teach what's called Theology – Theology of the Body.

It's a crucial part of our curriculum for theology, Catechesis and theology, and we were concerned that this teaching would cause great conflict within their own family system and their own family structure. So,

we didn't feel like it would be a good fit for us at that time.

MS. RUST: And, Your Honor, could we just ask the witness to elaborate as to who "we" is that she keeps stating?

MR. VARBERG: Your Honor, I find this inappropriate. If she would like to cross examine her about that –

THE COURT: You can bring that up in cross. Go ahead.

Q. (By Mr. Varberg) Ms. Coats, does Wellspring often receive inquiries from same-sex parents or students?

A No. This is the only one, to my knowledge.

Q And, Ms. Coats, I would actually like to return to that situation you were describing a moment ago with the fifth grader and the same-sex parents. Did this process occur while you were principal and head of school at Wellspring?

A Yes.

Q And were you involved in the discussions about how to handle the situation?

A Yes. Very much.

Q Ms. Coats, to your knowledge, has Wellspring ever enrolled a student who identifies as LGBTQ?

A Not to my knowledge.

Q To your knowledge, has Wellspring received any enrollment inquiries on behalf of students who identify as LGBTQ?

A Not to my knowledge.

Q Has Wellspring ever received a complaint from an LGBTQ person about discrimination, to your knowledge?

A Not to my knowledge.

Q Ms. Coats, if Wellspring were to have a preschool waitlist, how would the school decide which preschoolers and families to admit to the preschool?

A We would first prioritize families that have siblings in the school already. We would then prioritize parishioners at St. Bernadette, and then other Catholic families that are parishioners elsewhere.

Q And why does Wellspring prioritize these groups?

A Well, as stated before, we partner with our families. So, we definitely prioritize keeping families together. It's difficult enough having multiple schools to go to, so we want to keep that partnership with our families who understand our mission, who desire us. We then partnership – or we then prioritize St. Bernadette, because we're a ministry of this parish, so when they thrive, we thrive. And then we prioritize other Catholic families, because we just share a foundational mission in life.

Q And has a family that went through any part of the process ever determined that Wellspring is not a good fit?

A Yes.

Q Does Wellspring require parents to be Catholic to send a child to the preschool?

A No.

Q So, are there any requirements for parents with respect to the Catholic faith?

A We would – we ask the same of non-Catholic employees. We ask that they abide by – they uphold the values of the Catholic Church, that we partner together in the education of their children, that they fully understand our mission and would support it in their own home as well.

Q And, Ms. Coats, have you ever enrolled a non-Catholic family in your preschool?

A Yes.

Q And how many preschool students and their families are Catholic?

A The majority. I don't have an exact number, but the majority.

Q So, we're going to pivot again here. Ms. Coats, are you familiar with a program called the Denver Preschool Program?

A Yes.

Q Can you describe what that program is.

A It is a program that offers tuition assistance to families living within Denver city limits.

Q Has Wellspring ever had families participate in the Denver Preschool Program?

A Yes, we have.

Q And are there any families currently participating?

A Not currently, no.

Q Has Wellspring ever determined that participation in the Denver Preschool Program is inconsistent with Catholic teaching?

A No. We've always followed the guidance from the Archdiocese.

Q And what was that guidance?

A That participating in this program was okay.

Q And has Wellspring changed any of its enrollment practices so that it can participate in the Denver Preschool Program?

A Of course not.

Q What role do parents play in Wellspring's educational mission?

A A vital role. We believe that parents are the primary educators of their students, so we partner with them. And we invite them in as much as possible to all of our – all of our school gatherings, whether it be – we start in prayer as a whole school in the morning, actually. A lot of parents take us up on that. A lot of our religious practices they're invited to, our school assemblies, and then we offer fellowship and education outside of the typical schoolday as well.

Q And does Wellspring provide any programming for parents of admitted preschoolers?

A Yeah. We have – we have educational classes a few times a year, and then they're always invited to anything that the parish is doing. We try to join the two ministries very often through our newsletter, and a lot of our parents will attend our weekly school mass with us. They'll attend our assemblies.

Q Is there any faith formation program for families?

A Yes. Our parish – so, this is strictly through the parish, not through our school. It's called Family Faith Formation. And typically a family that has a student in a sacrament year, that means at the end of the year they could be receiving first reconciliation or Eucharist or something like that. They would attend classes together as a family.

Now, students who are not in a sacrament year, their family is still welcome to participate in this program. There is a theme each week. I believe that there's monthly mass and adoration. Once a month the students meet in a class, and the parents meet in a separate class, and then on off weeks there are programs that they take home and do together as a family. They could build something. They could read something together. They could go to an activity, and it's all to better understand our faith.

Q And, Ms. Coats, is faith a part of Wellspring's curriculum?

A Absolutely, yes. Yeah. So, faith is embedded in everything that we do. So, not only does it have its own block, which I will explain, but teachers are encouraged to bring in their faith into their everyday lesson planning, their learning targets, the way that they are explaining the lesson. And then we also have dedicated time, which those are called Theology and Catechesis. Catechesis is for the younger grades. Theology starts in middle school.

Q Is there any type of curriculum on Catholicism's view of the body?

A Yes. So, there are several standards through the Archdiocese of Denver that we follow, and a main section of this is Christian anthropology. In that we

target theology in the body. We use a program called Ruah Woods as a curriculum for this. Yeah.

Q Now, what is the religious curriculum at the preschool like?

A Yeah. The preschool, they also have dedicated time, very similar. All of my answers don't really differ for preschool. It's also embedded into their day-to-day, beginning in prayer. They have a prayer table. The adoration, they go to mass just like the rest of us. Ruah Woods doesn't necessarily have a targeted curriculum for preschool. However, Theology of the Body is still very much talked about. It's Christian anthropology. It's hard not to talk about it. And we do this in vocabulary like mommy and daddy and marriage and family. So, it's a developmentally-appropriate level.

Q And, Ms. Coats, we're going to pivot to the UPK program. When Colorado announced it was creating a program relating to Universal Preschool education, did Wellspring plan to participate?

A Yes, we did.

Q And did Wellspring end up participating in UPK?

A No, we did not.

Q Is there any specific reason why you were interested in participating in UPK?

A Yeah. We were extremely excited. As I stated before, the majority of our families are low-income families. We're very passionate to serve this population. I don't want it to change, but any assistance that we can get so that we can continue our mission in this way is hugely helpful. So, we were

excited by the opportunity of UPK, and we were pretty sad when – when we couldn't participate.

Q And why were you unable to participate?

A The guidance of the Archdiocese was that at that time, it would be impossible to uphold our religious beliefs and participate in this program at the same time.

Q I'm going to pull up Exhibit 10 for you, Ms. Coats. Do you see that exhibit on your screen?

A I do.

Q And do you recognize it?

A I do. This was a letter sent by a vicar of clergy, Father Randy Dollins. And this was the guidance telling us not to participate in UPK.

Q And, Ms. Coats, do you recall a meeting with the Archdiocese in May of this year about the UPK program?

A I do.

Q And did the Archdiocese give any additional guidance in that meeting?

A Yeah. Yes. There was an option to not sign an agreement, but begin the portal and then return an unsigned agreement, which we did not do.

Q Ms. Coats, has Wellspring lost anything by not being able to participate?

A I believe we have, yes. It's my understanding that UPK offers a provider – not only tuition assistance to the families, but provider bonuses as well as their bandwidth to be able to recruit and enroll, and we've lost all three of those.

Q And has anyone reached out to see if Wellspring is participating in the UPK program?

A Yes. We've had phone calls from parents here and there asking if we participate.

MS. RUST: And, Your Honor, I would object to that statement as hearsay.

THE COURT: Bronco game.

MS. RUST: Bronco game. Your Honor, I would object to the statement as hearsay, and any statements that Ms. Coats may have heard from others regarding UPK participation.

THE COURT: Overruled.

Q. (By Mr. Varberg) You can continue, Ms. Coats.

A I don't remember where I was. I'm sorry. Yes. It's my understanding – yes. We have had inquiries if we are participating in UPK, and we have said no. Yeah.

Q And, Ms. Coats, would Wellspring seek to participate in UPK if the Archdiocese confirmed that doing so was consistent with Catholic teachings?

A Yes.

* * *

CROSS EXAMINATION

BY MS. RUST

Q Hi, Ms. Coats. I'm glad to see you again, but not glad to see you in a hospital bed. So, we will try our best to keep this quick. Ms. Coats, during your direct, you testified that in May of this year, the Archdiocese presented you with an option to begin filling out the UPK portal and then not sign the provider agreement; is that correct?

A Yes.

Q And you just testified that you did not do those next steps; correct?

A No. Correct.

Q Can you tell us why, please.

A Yeah. Very – very quickly after that – May of any school year is very – it's one of the worst months for an administrator. Honestly, it got really busy. And then the guidance shortly after was that it was just not in line, and to not enter into this at all.

Q So, before you got very busy, and before the additional guidance you're testifying to today, was it your intention to fill out the provider portal?

A The pastor, Father Joe and I attended the meeting, and we said we would check back in and discuss it later after just praying and thinking about it. And that didn't happen. It seems like very shortly after that the guidance had switched. So, I don't really have an answer.

Q Do you remember what the time period was where that guidance shifted again?

A No, I don't.

Q Okay. Ms. Coats, you were also asked if you've ever enrolled a non-Catholic family in your preschool. Do you remember that question?

A I do.

Q What other religions are enrolled in your preschool?

A We don't ask, unless they want to share. So, anything I would say – I don't know if it would be

accurate. We ask if they have affiliation with a Catholic Church, and that's about it.

Q Okay. So, if – so, if a family says no affiliation with Catholic Church, you do not ask further; is that correct?

A It's not really an algorithm to the conversation. Sometimes it happens organically and casually, and sometimes not. It's not part of our protocol to figure out what faith they practice.

Q Okay. And is it a part of your – any of your preschool paperwork that a family must say that they are affiliated with a Catholic Church or parish?

A Yes.

Q Okay. Great. Thank you for clarifying that for me. Ms. Coats, we talked about – on your direct talked a little bit about circumstances in which you would allow families to enroll and circumstances where you wouldn't. During that conversation, we talked specifically – your direct talked specifically about an instance with a fifth grader. Do you remember that part of your direct?

A I do.

Q Okay. During it, you kept referring to we decided, we discussed, we thought it was not a good fit. Can you please elaborate on who the "we" is in those statements.

A Yes. I mainly collaborated with Father Joe, our pastor. And then we also sought guidance from the Archdiocese during this time.

Q Okay. During that situation, did that family communicate to you that they were seeking a Catholic education for their child?

A I don't remember it being very specifically Catholic, but they wanted – they were seeking – they liked our mission.

Q Okay. Did the family during your interactions with them give you any reason outside of your mission as to why they wanted to enroll their child in your school?

A Yes. I do know the reason why they wanted to.

Q Okay. What was that reason?

A Their daughter was attending a public school and a public elementary school. And this school was shifting their bathrooms to be non-gender-specific. And they were quite appalled and upset and did not want their daughter exposed to this.

Q Okay. What was this couple's reaction when – or, sorry. Strike that. What was the reason you gave them for denying their child enrollment?

A We were concerned that it would create – that our teaching within our school would create an intrafamily conflict and cause confusion for the family, and we didn't want to disrupt their family system.

Q And is that what you told them?

A Yes.

Q Okay. And did you tell them specifically what part of your teachings you thought would disrupt their family?

A Yes. Our teachings in Theology of the Body.

Q Okay. And what – how did they take that information?

A They were understanding. They were very kind.

Q Ms. Coats, during your direct you also talked about how in terms of preschool, you have not had the experience of having to enroll an LGBTQ child; is that correct?

A Correct. Not to my knowledge.

Q Have you had the experience of ever having to disenroll an LGBTQ preschooler who was already enrolled?

A No.

Q What would you do in that situation?

A I would seek guidance from the Archdiocese. Like I said many times throughout this testimony, we partner with families. So, I would partner with this family and understand more about this situation. I've never had this occur, so it's hard to speculate.

Q Okay. And is your testimony today – and I'm trying to understand your definition of "family" today that you're testifying to. So, can you just tell me again – I know you stated in your direct, what is your school's teaching and definition of "family"?

A Hmm. When we say "family," the environment in which our potential student is raised in, what their home life looks like.

Q Okay. And what is the definition of "marriage" you guys teach at Wellspring?

A That marriage is between a man and a woman, and happens under the Catholic Church.

Q Okay. Have you ever admitted a student who comes from divorced parents?

A Yes.

Q Have you ever had a student whose parents divorced during the school year?

A I – I'm not sure. I think so. I'm not sure.

Q Okay. In a circumstance where a child's parents divorced during the school year, do you disenroll them?

A No.

Q And one last question, Ms. Coats. When you spoke on direct for your demographics, and I know I had confusion with this during our deposition, so forgive me again, but the 17 children that are enrolled this year, is that preschool in total, or just your four-year-olds?

A That's preschool in total. And I did verify that for you after our deposition. Sorry.

Q No problem. And then what was the number of four-year-olds?

A I believe it's around seven or nine.

MS. RUST: Okay. Great. One second, Your Honor. (Pause in the proceedings.)

MS. RUST: Thank you, Your Honor. I am complete. And thank you, Ms. Coats.

* * *

THE COURT: All right. Thank you very much. We're sorry to put you through this hardship when you're in the hospital, but it's been valuable to have you here. And I hope that you recover quickly, and you have my best wishes.

THE WITNESS: Thank you. It's been my pleasure.

THE COURT: All right. Next, please?

MR. DAVIS: Your Honor, before the plaintiffs close their case, if we could just circle back and touch on one issue that we discussed at the beginning of the morning about deposition designations?

THE COURT: Yes.

MR. DAVIS: I understand Your Honor doesn't want the parties to designate entire transcripts.

THE COURT: That's right.

MR. DAVIS: But to be clear, what we've given the Court in exhibits, I think it's 26 and 27 of the binder that you have is just specific limited excerpts of the transcripts that we were hoping to –

THE COURT: That's fine.

MR. DAVIS: Okay. To designate as part of our affirmative case. We thought that would be more efficient than trying to get all that testimony out on cross examination of Ms. Holguín and Dr. Roy. In fact, neither party had actually called Dr. Roy as a witness at all. So, if we're not able to designate, we might have to call her as a witness tomorrow. Does Your Honor – are we able to do the deposition designation? Can we move that into evidence, Exhibits 26 and 27?

THE COURT: Yeah. You can do that. I will have to read them, and the designations in there that you are

asking me to read. And I'm not going to do it and keep everybody waiting while I do it.

MR. DAVIS: Sure, yes. Yes, Your Honor.

THE COURT: So, you can read into the record what you want me to read on those, and I will do that before tomorrow morning.

MR. DAVIS: Yes, Your Honor. There's specific highlighted portions of the depositions at Exhibits 26 and 27.

THE COURT: And defendants have the right to designate further. So, you will have to give them that opportunity as well.

MR. DAVIS: Yes, Your Honor. Those are also their counter-designations that are reflected in that document, as are a couple of objections. So, we can – that's our last witness other than the designations. So, if Your Honor is willing to take the designations into the record, then we could be done and hand it over to the defendants.

THE COURT: Okay. Mr. Whitehair?

MR. WHITEHAIR: Thank you, Your Honor. We just want to be sure we're understanding which of the designations he's putting in. I had thought I heard the Court say if they're going to testify, let's not have their depositions in.

THE COURT: Well, that's right. Because if they're testifying to something, there's no reason to read the deposition which says the same thing. And I realize that attorneys have a different view of depositions than I do, but I've found that they have about 90 percent that are irrelevant. So, maybe you join me in that.

MR. WHITEHAIR: I concur, Your Honor, but this is not the time for us to have that debate.

THE COURT: No. I understand that. Do you need some time now to go over it?

MR. WHITEHAIR: No. I think I just need to hear what plaintiffs are proposing is coming through, because they've now had witnesses testify, and –

THE COURT: I think you need a little bit of time to do that, don't you?

MR. DAVIS: No, Your Honor. It's Exhibits 26 and 27.

MR. WHITEHAIR: Who?

MR. DAVIS: Dr. Roy and Ms. Odean.

MR. WHITEHAIR: So, for Dr. Roy, we didn't anticipate that she would testify. They didn't put her on her list – their list. We didn't put her on our list. So, we're comfortable with the Dr. Roy designations being read tonight by the Court. We did counter-designations, and there are objections inside of those.

THE COURT: And they're in there. Okay. I will read her deposition, the designated parts of it. And you had another one?

MR. DAVIS: And then Ms. Odean, Your Honor. And she is testifying tomorrow, so we're happy to elicit testimony from her on cross, of course.

THE COURT: That would be better.

MR. DAVIS: Okay. I mean, I just note for the record, I think that because she is a party opponent, under Rule 32, I think we could designate her, but

we're happy to do that on cross exam. So, we will leave our case open.

THE COURT: I don't want to get caught up in a judicial jockstrap. So, what you want to do to get it done, it's fine with me.

MR. DAVIS: Okay, Your Honor. We're going to have some cross examination as well, I anticipate. There's just a few points –

THE COURT: If there's something that comes up that you didn't anticipate and you want to bring it out in a further reading or something, I will be happy to do that.

MR. DAVIS: Okay. Thank you, Your Honor.

THE COURT: All right. So, you're resting now with that understanding?

MR. DAVIS: With that understanding. Yes, Your Honor.

THE COURT: Okay. Let's have the defendants' first witness, please.

MS. FISCHER: Defense calls Michael Cooke. And just one bit of housekeeping, Your Honor. Because of the issues at the Carr Center this morning, we were unable to retrieve our physical binder of exhibits. We can – I believe the witness has a monitor. We can pull them up electronically. Oh, and the Court does have a binder? Okay.

* * *

THE COURT: I'm a little picky about this, but I don't like other activity going on while an oath is being administered, because what happens from that is it becomes trivialized, and it's anything but trivial for

the person taking the oath. So, that's why I want all other activity to stop. Please go ahead, Bernique.

(The Witness is Sworn)

THE COURTROOM DEPUTY: Please be seated. State your full name for the record, and spell your last name.

THE WITNESS: My name is Mary Michael Cooke. Last name is spelled C-O-O-K-E.

DIRECT EXAMINATION

BY MS. FISCHER

Q Good afternoon, Ms. Cooke. What is your current job title?

A I am state director for the Colorado office of Council for a Strong America.

Q And how long have you held that position?

A I joined Council for a Strong America in February of 2017.

Q And have you worked for them continuously since February of 2017?

A In December of 2021, Council for a Strong America granted me a leave of absence to go to work for the State of Colorado, the governor's office as early childhood transition director for an 18-month window. I returned to Council for a Strong America on July 1st of 2023.

Q And during that 18-month window as transition director, what did you do?

A So, my role as transition director was to launch the new Colorado Department of Early Childhood, and to implement Universal Pre-K for the State.

Q And how did you get that position?

A I did apply for that position. It is a position that was created in statute through legislation and posted by the governor's office. I was aware of the posting and applied for the position, interviewed for it, and was selected.

Q And why were you interested in taking on that role?

A I've been working in early childhood advocacy with Council for a Strong America, again, since 2017. Prior to that time, several years in K-12 education. I have a real passion for early childhood and had worked on the legislation leading up to the creation of a new state department and implementation of Universal Pre-K.

Q And why was a transition director needed?

A The general assembly in 2021 in House Bill 1304 created the position to assist the governor's office in establishing this new cabinet level agency and implementing Universal Pre-K in accordance with the wishes of the voters through the 2020 ballot issue known as Proposition EE.

Q And was that transition director role always intended to be temporary?

A Yes. It was a term-limited role.

Q And what degrees do you hold?

A I hold a bachelor of administration in communications and a public policy and administration certificate.

Q I'm going to ask Jen to pull up Exhibit 48, which also will be in that defendants' exhibit binder. What is this document?

A This is my most recent resumé.

Q And is it up to date?

A Yes, it is.

Q And does that accurately reflect your qualifications and experience?

A Yes, it does.

Q Thank you. You mentioned the Colorado Department of Early Childhood, or the CDEC. What is that department?

A So, if I can go back to the passage of Proposition EE, once that ballot amendment was passed which created Universal Pre-K for the State of Colorado, there was much discussion and deliberation amongst advocates and state agencies around how to proceed with placement of that program and where it should reside.

And it was through those discussions that the Early Childhood Leadership Commission made a recommendation – a formal recommendation to designate the last constitutional remaining department to early childhood so that we could remove the silos that existed across state government for early childhood and house everything in one place.

Q And when was the, I guess, formal creation of the department?

A So, House Bill 1304 did designate that final state cabinet level department to early childhood. What followed was a very robust stakeholder process that was led by the Early Childhood Leadership Commission to talk about what that state department should look like. And what followed that process was

additional legislation to operationalize the department, which opened on July 1st of 2022.

Q And what was the additional legislation to operationalize the department?

A That was House Bill 1295. And it operationalized the department and gave us the roadmap for implementation of Universal Pre-K.

Q And you mentioned stakeholder input. What input did you get from stakeholders during this process?

A So, prior to my joining the governor's office as early childhood transition director, I was very involved in the stakeholder process that was led by the Early Childhood Leadership Commission. And part of what they started was a series of monthly town halls that were open to all Coloradans: providers, parents, advocates, anyone with an interest in the work around the establishment of the new department and Universal Preschool. And once I came into my role in December of 2021, we continued those town hall meetings to continue to solicit and engage stakeholders in our process.

Q And who were some of the participating stakeholders?

A We had a variety of stakeholders that we worked with from the time I was hired. Some were state agency representatives. Again, providers. Providers, including school district providers, center-based providers, home-based providers, faith-based providers, families. We encouraged participation throughout this process.

Q And what type of feedback did these stakeholders offer?

A We had certainly a variety of feedback as we were working. And, again, this was a two-pronged effort, establishing the department and also Universal Pre-K, but a tremendous amount of feedback, especially from the provider community, about how implementation of pre-K would affect their programs, some of the unique circumstances of the various programs.

Q And what were some of those unique circumstances?

A Well, I will talk about school districts first. School districts, we continued to meet with a group of school district preschool administrators, and we had a number of different groups that we met with in addition to our town hall efforts and other efforts to solicit feedback.

But for our school district partners, there were concerns around boundary issues. As we all know, there are approximately 176 or 178 school districts in Colorado, and they all have unique boundary lines. And they have different requirements relative to open enrollment across boundary lines. And so there were concerns with school districts about how boundaries would be managed. Also, students with individualized education programs, or IEPs.

Q And just so we're clear on the timeline, were these conversations happening before the July – you know, July 1, 2022, implementation of the department?

A Yes. They were. They were happening right along with the movement of House Bill 1295, which passed in April of 2022. So, these conversations really began in very early 2022.

Q And when did the department actually become operational?

A July 1st, 2022.

Q And what were some of the initial challenges faced with setting up the department?

A Logistically, we needed to find space for the department. We needed to arrange to move employees that were currently employed by other state agencies or departments over to the new department. We needed to hire leadership staff for the new department. So, it had been over 30 years since a new state department had been opened, and so we didn't really have a template to work with, and so it was really from the ground up, putting that department together.

Q And prior to the creation of the department, did Colorado have any type of preschool program?

A Yes. Colorado has operated for many, many years, decades, I should say, prior to Universal Pre-K coming into play, operated under the Colorado Preschool Program, which was a state-funded program administered by school districts and the Department of Education.

Q And going back to some of the conversations with stakeholders when HB 1295 was in process, you mentioned school districts. Did you – what other concerns did other stakeholders raise?

A We had concerns raised by providers that had relationships with families that had spanned a great deal of time, maybe families already enrolled in a provider setting or siblings enrolled in a provider setting. We had discussions with providers that

offered as a benefit to their employees space for child care of the employees.

We also worked with providers that operate co-ops, where all of the families partner with the provider to support the preschool program by volunteering time, which is a requirement of the co-op. And so these different providers all had questions that would come up, as did faith-based providers, around how the Universal Pre-K program would operate within their settings.

Q And what were some of the questions faith-based providers had?

A So, for our faith-based providers, the first questions to come to me were around serving the church community, if you will, the congregation of a particular church preschool, say. And in addition to that question, questions around the provider rate and how it related to the tuition.

Q So, turning back to the passage of House Bill 1304, did that occur prior to your role as transition director?

A Yes, it did. It passed in the 2021 legislative session at the end of the session, as I recall.

Q And did you have any involvement with the passage of that legislation?

A As an advocate, I did, yes.

Q And can you describe that involvement.

A In my role as state director with Council for a Strong America, again, we are an advocacy organization primarily for early childhood, but policies and investments for children and youth

generally. I worked very closely on the legislation that placed Proposition EE on the ballot.

Subsequently, I worked with House Bill 1304 providing testimony, sign-on letters from members of our organization, et cetera. And then after House Bill 1304 passed, my position was created, and I moved into that role at the end of that year.

Q And was – and so you were in that role when you worked on House Bill 1295?

A Yes.

Q And so what were some of the main features of House Bill 1295?

A I mentioned the Early Childhood Leadership Commission work that was a result of House Bill 1304, which really tasked that commission with looking at the new state department and at Universal Pre-K to help develop the components for each. What agency should move to the new state department, and what should its governance look like? And for preschool, what are the components of a Universal Pre-K program that should be in place in accordance with Proposition EE?

So, that stakeholder process resulted in two reports. The first was issued in November of 2021, and that was the report on the new state department. And the second was released to the general assembly in January of 2022, and that was on Universal Pre-K. The general assembly in developing and the sponsors of House Bill 1295 used those reports as the foundation for that legislation.

Q And so was mixed delivery a part of the UPK program from the beginning?

A Yes, it was.

Q And was the nondiscrimination a feature of UPK from the beginning?

A Yes. The nondiscrimination was certainly part of the stakeholder process and work of the Early Childhood Leadership Commission. Their report stated that this should be a program that was equitable and grounded in equity. This was a preschool-for-all program, and House Bill 1295 carried that forward by putting the equity statement into that legislation.

Q And why was that considered important?

A The voters, in approving Proposition EE, again, Universal Preschool Program for all Coloradans in the year before they were eligible for kindergarten intended this program to be available to all families, and equitably delivered to all families. And that carried through the stakeholder process and into 1295. It was important that all families had equal access, equitable access to preschool programs of their choosing, and would not be discriminated against based on any of the factors that are included in the legislation and now in statute.

Q Was there opposition to HB 1295?

A There was opposition to House Bill 1295. It certainly did not pass the general assembly unanimously, but the opposition largely had more to do with whether or not it was appropriate for the State to enter into state-funded preschool of this nature.

Q Was any of that opposition driven by faith-based schools?

A I did not experience in my work leading up to the passage of 1295 – and I worked very closely on the drafting, on the passage. I testified on 1295 in support. I did not hear any opposition relative to faith-based.

Q And did HB 1295 include the quality standards?

A House Bill 1295 outlined the quality standards that must be developed by the new department, and put those in the language of the bill, but left it to the department to adopt those standards by rule. However, in House Bill 1295, there were components of the quality standards that were spelled out that must be included.

Q And so why include those components rather than just stopping at licensing?

A It was important to the general assembly that this program delivered a quality experience. It was intended to be a high-quality preschool program, which goes beyond licensure. Licensure is certainly a requirement in 1295, and so all of the providers that participate must be licensed. But the quality standards go beyond that and talk about the length of the school year or the number of hours a student must attend in order to be considered eligible for funding to go to the provider, curriculum issues, a variety of quality standards.

Q I'm going to ask you to turn to Exhibit 13, which will be in the plaintiffs' binder. I believe plaintiffs' binder one, and if I could ask Jen to pull that up? Which may be easier, since we have a screen.

A I've got it. Yes. Thank you.

Q And do you recognize this document?

A Yes. This is the UPK, Universal Preschool Colorado program service agreement. This is our provider agreement.

Q And did you have any involvement in the drafting of it?

A Yes, I did.

Q And what was your involvement?

A So, I worked very closely with the Universal Pre-K director, Dawn Odean, once Dawn was on board and part of the leadership team for the new department to draft the bones of this agreement, basically. So, we started it with drafting. We received some help from contracts and procurement team in the Department of Human Services, which was managing contracts and procurement for the new department at that time, with some templates to give us some idea of formatting and also language that should be included. And we drafted this agreement, and once we had what we thought was a solid draft, shared that more broadly with others in the department and Dr. Roy and others, as well as individuals outside of the department.

Q And in terms of timing, you mentioned you started working on this. Then Ms. Odean was hired. When did Ms. Odean come on board?

A August of 2022.

Q And when was Dr. Roy hired?

A Dr. Roy was hired in May of 2022. We actually ran a special bill – a special piece of legislation to allow us to hire certain leadership positions ahead of the July 1 launch so that Dr. Roy and others could be part of the launch of the new department.

Q I'm going to ask you to turn to page two, and pull up page two on the screen. And under the quality assurance header, I'm going to direct your attention to the fourth white bullet. I know there's a black bulleted paragraph and then several white bullets underneath it.

A Yes.

Q And so what does bullet four say there?

A So, bullet four reads, requirement that each preschool provider provide eligible children an equal opportunity to enroll and receive preschool services regardless of race, ethnicity, religious affiliation, sexual orientation, gender identity, lack of housing, income level, or disability, as such characteristics and circumstances apply to the child or the child's family.

Q And so more broadly, what are quality standards?

A So, again, the quality standards are outlined in House Bill 1295. And in that legislation, the department was directed to by rule adopt quality standards that would ensure that the preschools participating in UPK were adhering to the standards that are outlined in this section, and therefore considered quality preschools.

Q And why was paragraph four included in the quality standards?

A Paragraph four, again, it goes to the equity work that came out of the Early Childhood Leadership Commission and ensures that every child would have an opportunity to attend a preschool of their choosing.

Of course, given that we have the matching factor in place, but could select and be given the same

opportunity as any other child to attend a preschool of their choosing.

Q And where did this particular language come from in the agreement?

A The exact language, I can't tell you exactly where, but through drafting of House Bill 1295, this language was developed.

Q So, does this language track the language in House Bill 1295?

A Oh, I'm sorry. You were asking about the language here. My apologies. Yes. And I misunderstood that you were asking about 1295. This language on the page I'm looking at now under quality assurance is literally a cut and paste in its entirety from 1295.

And the reason for that is that we knew once we got deeply into this provider agreement drafting that we were not going to be able to have quality standards adopted in time for year one of UPK. And we had providers that were very hesitant to sign a provider agreement, and understandably so, without knowing what was going to be adopted in rule and placed upon them as a potential burden or requirement as a participant in the program.

So, we made the determination to take the language directly from House Bill 1295 and place it into this provider agreement, giving our providers clear understanding of the direction we were headed in adopting quality standards for year two.

Q And did these quality standards go to the health and safety of the children?

A Yes. Our goal in the mixed delivery program was to recruit and engage providers, again, of all types,

school districts, center-based, home-based, faith-based, that could provide a safe, nurturing, inclusive, nondiscriminatory environment for children.

Q And did you draft – I think this is a 39-page agreement. Did you draft the entirety of the agreement?

A No.

Q And which part were you responsible for?

A So, we drafted – and I'm not certain of exactly how many pages this goes, but we drafted the agreement up to the exhibits. There are two exhibits to this agreement, Exhibit A and Exhibit B, that were put together by the contracts and procurement offices for Department of Human Services and for the state comptroller's office. They put those pieces together that became part of this agreement.

Q Did you consider doing rule-making to create the quality standards at the – during the time you were drafting this contract?

A We did. And we actually were really optimistic that we would be able to get that done before preschool launched in August of 2023. Our hope was to go to rule-making in the May or June timeframe, giving providers time to see the quality standards and to opt out of the agreement before school started if there was something contrary to what they were hoping to see.

We realized as we got into this work that it was not going to be possible to achieve a rule-making process before the start of year one. And so that's why we put this language here in lieu of the adopted quality standards.

Q Now, when was this contract released to providers?

A It was released in November of 2022.

Q And how did providers sign up for UPK?

A So, they went through the BridgeCare portal. BridgeCare is the software system that we selected for Universal Pre-K. And that system allowed for providers to enter the portal and register as a UPK provider there. Once they had done so, the provider agreement was made available to them by their local coordinating organization, and then they would review and execute that agreement in the portal.

Q And what is a local coordinating organization?

A So, one of the things, again, that came out of the stakeholder process led by the Early Childhood Leadership Commission was a model that recognized that local organizations, whether that be providers, advocates, other community-based organizations, know their communities better than the State does.

And rather than develop Universal Pre-K in a top-down model, we should really do it in a bottom-up model. So, the Early Childhood Leadership Commission's report suggested the creation of local organizations that would be partners with the Department of Early Childhood in implementing the UPK at the local level.

That left us – and that was incorporated into House Bill 1295, the description of a local coordinating organization, or LCO as we call them. The description of an LCO, the responsibilities of an LCO, the process for bringing an LCO on board, that left the department with the responsibility of determining regions of the state for the LCOs so that we could determine how many local coordinating organizations

we would need throughout Colorado, and how to divide them geographically across the state.

And we ended up with 35 LCO regions, I believe, and went through an application process and selection process to choose those organizations.

Q And so when did the department make the portal available for providers to sign up?

A November of – November of 2022, I believe.

Q And did the department conduct any outreach to find providers?

A Yes. We worked really in multiple ways to encourage providers to take interest in this program and participate if they were qualified to do so. Our local coordinating organizations were put into place in June timeframe of 2022, and so they were up and running and became immediately involved in the process, working with providers in their communities.

And, again, the premise of an LCO is they know their communities. We don't know necessarily all of the providers well, or where they are. Certainly we have a provider database, but we did conduct outreach in other ways. We also continued, as I said, to host our town hall meetings monthly, which did attract providers. We reached out to provider organizations that were umbrella organizations, to also work with them to bring providers to the table.

Q And can you tell me about what kind of feedback you got from providers during this process?

A The feedback was really very positive. Providers were excited about this opportunity and the opportunity it would afford their families. Certainly providers have their questions or concerns, some of

which I have raised earlier, about how this program would affect them specifically or how they operate their program. But generally, the response was very good. And when the provider portal opened, the response there really emphasized that.

Q I know you were on – here for this morning's testimony, and I heard some mention of a faith-based working group. Do you recall that?

A Yes.

Q Were you involved with the faith-based working group?

A Yes. I actually created that working group.

Q And how did that come about?

A I had been working with a particular faith-based organization just to answer questions of this organization, always be available. It was always our goal to be transparent and meet with any individuals that were interested in the program and wanted to meet. And so I had been working with this particular program. And through discussion, we thought it made good sense and would be of interest to open it up to other faiths.

Q And what – so, who is the faith-based provider you were working with at that point?

A Yes. So, it was the Efshar Project, which is an umbrella organization for Jewish preschools.

Q And who participated in this faith-based working group?

A So, we did some outreach to try to let faith-based preschool providers of various faiths know that we were convening this group as an informal working

group. And we ended up with participation from not just the Efshar Project and members of those preschools, but also St. Mary's participated. Tracy Seul was one of our early and lasting members. We had members of the Lutheran faith, Presbyterian. We had a representative from the Colorado Council of Churches and the Interfaith Task Force, and nondenominational Christian representation.

Q And how often did this group meet?

A We began meeting weekly because this was such a, you know, a lot of work that was condensed into a short period of time to get Universal Pre-K launched. And so we met weekly. And then as time went on we went to every other week, and then to monthly.

Q And so what topics did these providers raise at these meetings?

A Yes. So, we talked about a variety of topics. We talked – the two that we probably spent the most time on once we had been meeting for a short period of time were the equity statement in House Bill 1295 and in the provider agreement. And we spent time talking about the provider rate that had been established.

Q And what concerns did providers have about the nondiscrimination statement?

A The concerns that were raised went squarely to sexual orientation and gender identity.

Q And who raised those concerns?

A So, they were raised by Tracy Seul, and we also had a representative from a Lutheran network of preschools that affirmed that that network was also in discussions with their leadership about those provisions.

Q And how did CDEC respond to those concerns?

A We had already been working on a number of preferences that we would be able to provide for providers of different types. These preferences were meant to really identify and acknowledge certain relationships, I guess I would say that existed between the provider and the community the provider served or families the provider served.

And so in looking at some of these situations – and I will go to school districts as my first example. In looking at the school district's concerns that had been raised around boundaries, we determined that we could offer the school district a preference that would allow them to decline a student that was outside of their boundary or require that student to go through the open enrollment process for that particular school district.

And so the preference really was designed to protect, I guess I would say the seats in a particular provider setting from the unintended consequences of our computer algorithm which managed matching.

Q So, was the preference targeted at the matching process?

A It was totally targeted at the matching process. It was not in any way giving a provider any kind of exception to the agreement or to anything in rule or statute, but rather to address circumstances with the particular provider by going to the matching process.

Q Now, did CDEC try to work with Ms. Seul and the Lutheran providers who raised concerns about the sexual orientation?

A Yes. So, what we had been working on, and I shared with that working group, was a preference for all faith-based organizations, regardless of denomination, that would allow them to – to designate a number of seats for members of their congregation. So, their church family, their church community, their parish, whatever that might be, such that they could hold all or a portion of their seats. They did not have to dedicate all of their seats, but they could, or they could dedicate a portion of their seats for members of their church family – church community.

Q I'm going to ask you to turn to Exhibit 24, which I believe is in that plaintiffs' binder. And, Jen, if you could pull that up on the screen. Do you recognize this?

A Yes. That is the UPK provider guide, which we created as a tool for providers.

Q And I'm going to ask you to turn to page 37.

A Okay.

Q And so what does that header say next to 14?

A Indicate if you are one of the following exception criteria for your program.

Q And so what are exception criteria?

A So, again, these are exceptions to the matching process. And so these are preferences that, again, that we agreed to with certain provider types, faith-based, for instance, the co-op, the co-op requiring family participation as a part of its preschool program. We had granted a preference for the co-op to limit their participation for Universal Pre-K to members of the co-op.

Q And why are they called exception criteria?

A The term “exception” I believe was part of the software system, or used in the BridgeCare system. BridgeCare is, again, software as a solution product that has been used in multiple states, as well as in other areas of Colorado for other purposes. And so much of the language that is in that software or in that portal was already developed in the BridgeCare system.

Q So, BridgeCare wasn't a custom product?

A It's customizable. It is an off-the-shelf, or a software product that is customizable.

Q And so how did these – what this provider guide calls exception criteria, and we've been calling preferences, how did they work?

A So, the way a preference would work, any one of these. So, faith-based provider, that may require families to be part of their congregation. When the computer algorithm matches families, and they will only – it would only match families to one of the family's choices. Families were given at the time up to five choices of a preschool provider.

So, it didn't randomly match families to a provider they weren't interested in, but when that algorithm would match families to a preschool provider, if the faith-based provider was a participating provider and received – once the algorithm ran, the providers receive a list of the families that have been matched to them, the children that have been matched, the provider then has an opportunity to review those matches and to exercise a decline option if the match

does not fit the preference that has been granted to the provider.

When the providers exercise that decline option, then we would go back in and review all those decline options to make sure that they were actually accurate for the provider that exercised them.

Q So, can any provider utilize any of these preferences?

A Another provider could utilize and did on occasion the congregation preference, for instance. But then our review would catch that, and we would reverse that decline.

Q And you mentioned the congregation preference. Is that bullet one on this document?

A It is.

Q And what does bullet one say, just for the record?

A It reads, I am a faith-based provider and may require families to be part of my congregation.

Q And where did the idea for that congregation preference come from?

A It stemmed from early conversations that we had, and certainly my early conversations with Efshar, with bill sponsors, other members of the community that had asked questions about how it would work within a particular church family if members of that church family all lost their seats because of a computer algorithm.

Q And is the term DAA one you're familiar with?

A Yes. That is the deferred acceptance algorithm. It's the algorithm I'm referring to.

Q And now – so, turning back to that bullet one, congregation preference, what’s your understanding of how that was meant to work?

A Again, that gave faith-based providers an opportunity to designate all or a portion of their licensed capacity, licensed seats, to members of their church community, their faith community, church, parish, congregation. So, that – that are really attached to that preschool.

Q And was it particular to any one faith?

A No. It was open to all faiths.

Q Now, you were here this morning. Do you recall discussion about a letter to Governor Polis from faith-based groups?

A Yes, I do.

Q I’m going to ask Jen to pull up Exhibit 11. And if you prefer paper, it’s in plaintiffs’ binder. Do you recognize this document?

A Yes, I do.

Q Is that the letter to Governor Polis that was referenced earlier?

A Yes, it is.

Q And it’s the date on – can you tell me what the date on it is there below the Colorado Catholic conference logo?

A Yes. It’s dated Friday, February 17th, 2023.

Q And do you recall, did you read it around that time?

A Yes.

Q Do you know if the department responded to it?

A The department did respond to it.

Q And were you involved in drafting that response?

A Yes, I was.

Q I'm going to ask Jen to pull up Exhibit 12. And are you familiar with this document?

A Yes, I am.

Q And what is it?

A This is the draft response dated February 28th, 2023, signed by Executive Director Lisa Roy.

Q I'm going to direct your attention to the last two paragraphs on page one. And it will take a little bit of scrolling. So, were you involved in drafting these two paragraphs?

A Yes.

Q So, what does the second paragraph from the bottom mean?

A That paragraph goes specifically to Executive Director Roy's authority to grant an exception to this coalition or really any other request that would come in to ask for an exception from what is in statute.

Q And did Dr. – does this letter state that Dr. Roy had the authority to grant one?

A It actually is contrary to that. Dr. Roy does not have the authority to – by rule or policy, to grant an exception to statute.

Q And why did the department say that?

A Well, it's factual that Dr. Roy would not be able to change law unilaterally. And also, as is stated here,

Dr. Roy made it clear that only the legislature has the authority to do so. And so that was an appropriate response.

Q And looking at the last paragraph on page one, what does that last paragraph mean?

A That paragraph really invites the providers to participate in the Universal Pre-K program and to work with our faith-based working group, and to participate there as well with other members of the faith communities.

Q And why did the CDEC state that faith-based providers were welcome to participate?

A Faith-based providers have always been envisioned to be part of the mixed-delivery model. We had a mandate to deliver a mixed-delivery model, and that includes faith-based providers. That's an important component of family choice, and mixed delivery is really grounded in family choice. And we wanted to certainly give families every opportunity to seek a provider of their choosing, and that includes faith-based providers.

* * *

Q. (By Ms. Fischer) Ms. Cooke, just one further question. Do you recall testifying that Ms. Seul participated in the faith-based working group?

A Yes.

Q Did she state that St. Mary wanted to or intended to participate?

MR. REAVES: Objection, Your Honor. This is clearly hearsay, and Ms. Seul was on the stand earlier. If they wanted to ask her that question –

THE COURT: Overruled.

MR. REAVES: – they could have asked her as well.

THE WITNESS: Yes. Ms. Seul expressed on more than one occasion her desire to have St. Mary's participate in the UPK program. At one point she asked me to provide her with screenshots of the provider portal and what a faith-based provider would see when they are registering in the portal relative to the congregation preference. And she felt that that would help the Archdiocese get comfortable with the program, knowing that they could serve members of their congregation first or exclusively.

And so I did provide her with screenshots of every step that a faith-based provider would see as they were registering their seats in the portal. And she was hopeful at that point in time that that would satisfy the Archdiocese, since she would be able to participate.

Q. (By Ms. Fischer) And did St. Mary in the end participate?

A No.

MS. FISCHER: I don't have any more questions for Ms. Cooke. I do have one point where I'm seeking the Court's clarification that we would move to admit Exhibit 48, which is Ms. Cooke's resumé into evidence in support of her qualifications to render statements that might be deemed expert opinions.

THE COURT: Well, I'm going to rule on these matters later, but you can tender it, and I will consider it. If there's any objection to it, then I will consider it later.

MS. FISCHER: Okay. Then we will tender it for consideration later.

THE COURT: All right.

CROSS EXAMINATION

BY MR. REAVES

Q Good afternoon, Ms. Cooke.

A Good afternoon.

Q Are you familiar with the state statute that directed the department to create the UPK program?

A Yes, I am.

Q And the UPK statute directed you to implement a mixed delivery system; correct?

A Correct.

Q When thinking about what providers to include in the UPK program, what factors did you consider?

A We were looking for, again, a variety of provider types. As I mentioned earlier, school district, center-based, home-based providers, faith-based providers. But primarily, in search of providers that could offer a safe, nurturing, and nondiscriminatory space for Colorado's children.

Q And did the UPK statute require providers to be licensed?

A Yes.

Q And when you were talking about what makes a provider safe, what types of things are included in that?

A I think that's a – a variety of factors, going first to licensure. Licensure ensures physical safety, building

safety, making sure buildings meet appropriate codes for the jurisdiction, a number of other safety – physical safety factors that weigh into that. But also, when we’re looking at space for – safe space for children, it’s that space that supports a child’s well-being, their total well-being, again, nurturing and inclusive space.

Q Okay. I’d like you to turn to Exhibit 13 in the plaintiffs’ volume one binder, please.

A Okay.

Q If you could go to page two of this document, please.

A Okay.

Q And are these the quality assurance provisions we were talking about earlier?

A Yes.

Q And if you look at the second bullet point down under the quality assurance header, could you read that statement, please?

A Quality standards relating to the health and safety as a condition of participating in UPK Colorado.

Q And you testified earlier that you wrote this portion of the contract; is that correct?

A I testified that I incorporated this portion into the draft agreement, but I did not write this. It came out of statute.

Q So, is it your understanding that that language is directly in the UPK statute?

A It is. It comes from UPK statute. There may be some word variations, but nothing that would change meaning.

Q And at the time you wrote this, what did you understand the quality standards relating to health and safety to entail?

A Well, again, quality standards relating to health, what will be likely developed into those standards, and I'm removed from that process now. So, those standards are working their way through rule-making, still, as I understand it. But relating to health would include some health screenings, vision screenings, for instance. But general well-being of a child also factors into health.

Q And you required preschool providers to sign this agreement to participate in the program; correct?

A Correct.

Q And how did you expect providers to understand what you meant by health and safety if that wasn't explained in this provision?

A So, again, because we didn't have the quality standards fleshed out, because they were not developed and ready for rule-making, we incorporated language from statute to really define and give providers a sense of what we would be looking at and developing in concert with providers as we moved forward to prepare the quality standards for rule.

Q And at the time you were putting these provisions together, did you understand any of the other bulleted points on the list there to be health and safety quality assurance requirements?

A Well, I think that many of these are really overlapping in many ways. I'm not certain specifically what you're asking.

Q Well, my question is you're asking providers to agree to abide by the quality standards relating to health and safety as a condition of participation in UPK Colorado. I'm just trying to understand which of the quality assurance provisions are the ones that you thought at the time were health and safety related.

A So, again, the quality standards are identified in the legislation, the expectation for the quality standards. And so we, as I said earlier, really pulled from statute to put these into the provider agreement knowing that they had yet to be fully developed, and so this is – this is really an outline or barebones of what will be ultimately in the quality standards. So, the work to further develop these standards included provider feedback.

Q So, at the time you put this together, you weren't sure which provisions were health and safety standards?

A I need perhaps for you to clarify that question for me, because I'm not certain what you're referring to relative to this list.

Q Yeah. Let me take a step back, I guess. When talking about the health and safety of quality assurance provisions, do you think the legislature had a particular understanding of what those entailed when it passed the UPK bill?

A I can't speak to what the general assembly's thoughts were in terms of whether or not they had particular expectations in mind as these were built

out. But general – I mean, health and safety is a critical component of the delivery of Universal Pre-K, making sure that every child is in a safe and, again, nurturing, supportive environment. And so what the department put into each of these bullets to further define them, I can't address here today.

Q I'd like to talk a bit more about the programmatic preferences that you were discussing earlier. The statute doesn't mention programmatic preferences, does it?

A No, it does not.

Q And so these were all created by the department?

A Yes.

Q And one of the purposes of this was to allow providers and families to bypass the mandatory matching requirement?

A It was to recognize unique circumstances within certain provider types, certain provider settings, and to make sure that families were protected from unintended consequences of the matching algorithm such that if a provider offered employees of that pre-K seats for their own children, that they would not be bumped by a computer algorithm.

Q So, Ms. Cooke, when a family goes to the UPK website to apply for preschool, will they see if a provider has been given a preference?

A They will typically see that – not necessarily that the provider has a particular preference, but they will be asked questions to – depending on the preference to determine whether or not they qualify for that preference.

Q That's really helpful. So, just to confirm, the UPK application website itself will ask families whether they meet certain qualifications necessary to enroll with certain providers?

A In some cases. So, for instance, a family will be asked if they're employed by the provider. A family will be asked if they have a sibling with a provider. A family would be asked if they are currently enrolled with a provider, but not necessarily be told that that provider has a particular preference, et cetera. But they would ask – they would see those questions.

Q I'd like to talk about the congregation exemption specifically. When you and the department were coming up with this exemption, was there a specific definition of "congregation" that you had in mind at that time?

A There was not a formal definition of "congregation." We took "congregation" to really represent that church community. Again, church parish, a church community that would be likely to request seats in that church's pre-K.

Q And was your testimony earlier that one of the reasons this exemption was developed was in response to provider feedback and questions?

MS. FISCHER: Objection. Mischaracterizes testimony, to the extent Ms. Cooke did not testify as to exemption.

THE COURT: You can bring that out on redirect. Go ahead.

Q. (By Mr. Reaves) Yeah. Just to repeat the question, was your testimony earlier that when you were developing with the department the congregation

exemption, was that in response to feedback and questions you received from providers?

A The preferences that we developed really were all generated through feedback from various providers, whether it be a co-op provider, providers concerned about continuity of care with families that were a part of their program, et cetera. School district providers, faith-based providers.

Q And so for the congregation exemption, was it your testimony that it was in part responsive to concerns raised by faith-based providers about the equity statement?

A It was not at all directed to the equity statement. It was solely to allow these providers to protect members of their church community from losing seats based on the computer algorithm. And so the exception only goes to the algorithm.

Q And you no longer work with the department; is that correct?

A That's correct.

Q Have you kept up on all the developments in the program and the various regulations that have been passed or may be passed regarding the UPK program?

A I really have not. I have limited knowledge about where the department is headed for year two.

Q So, you're not necessarily aware of whether there's a new definition of "congregation" or what that might entail?

A I am not.

Q So, is it possible for a church that has a statement of faith that providers must agree to to limit their

enrollment to families who have agreed to that statement of faith?

A If that statement of faith is contrary to the equity statement in law, then that would be problematic.

Q So, just to give an example, could a Jewish preschool require families to sign a statement of faith that says we will abstain from eating pork, and we will keep kosher? Would that be okay?

A Again, as long as a – let me back up and restate that. Providers certainly have, as we've heard today, provider manuals and various other requirements that they may hold a family to. And that could be around hours of operation, late pickup, et cetera, et cetera. And we have not in any way objected to providers having families go through enrollment processes, you know, that fit a provider's particular program.

Where we would object is if there was something in a statement that a family needed to sign or acknowledge that is contrary to anything that's in statute or in policy or rule for the UPK program.

Q That is helpful clarification. So, just to kind of confirm regarding my question, presumably then, it would be okay to require, you know, a provider to have a statement of faith regarding keeping kosher, since that's not a specifically-listed requirement; is that correct?

A Yes. I mean, that is not – that is a question that has not been posed, but again, as long as there is not anything that is contrary to statute or rule or policy around the UPK program, a provider may have a number of requirements for children within their care

around, you know, physical activity. I'm just trying to think of different things that – that the department's rules do not address.

Q Yeah. That makes sense. I'd like to touch briefly on the other preferences that you've allowed in the provider manual. One of the programmatic preferences is for Head Start programs; is that right?

A Correct.

Q And Head Start programs can have certain income qualifications, income level qualifications for families; is that right?

A Right.

Q Another programmatic preference is for providers that support children with special needs; is that right?

A Yes.

Q And this preference was put in place because not every preschool setting can accommodate children with various special needs; is that right?

A Correct.

Q And UPK providers could decline a match based on this preference; is that right?

A A UPK provider cannot decline a match based on that particular preference, unless that UPK provider is a school district. That particular preference applies only to school districts.

Q Thank you. So, this preference would allow school districts to place children with specific special needs in a particular classroom, in a particular location based on what that child needs; is that right?

A Consistent with a child's IEP.

Q I'd like to talk briefly about the Archdiocese's request for religious accommodation from the UPK provision. Just to confirm, you were the primary drafter of the response to that request; is that right?

A Correct.

Q Why was the religious accommodation denied?

A The religious accommodation, as stated in that letter, the request was for relief from the department, and the response from Executive Director Roy was clear that the department and Dr. Roy did not have the authority to grant that relief, and that only the legislature could do so.

Q So, you testified earlier that basically the law, the statute wouldn't allow you to grant an exception or an exemption; is that correct?

A That is correct. The department did not have the authority to grant an exception.

Q When the department was considering the Archdiocese's request, did it also consider whether the UPK statute's requirements were inconsistent with the U.S. Constitution and the requirements of the First amendment?

MS. FISCHER: Objection. Ms. Cooke is not a lawyer. Calls for a legal conclusion.

THE COURT: I'm sorry. I did not hear you.

MS. FISCHER: I said Ms. Cooke is not a lawyer, and it calls for a legal conclusion.

MR. REAVES: Your Honor, I'm just asking what they considered.

THE COURT: Yeah. I think it's not asking for her opinion as to the legality of it. The objection is overruled. You may answer the question.

MR. REAVES: I can repeat it, or if you remember the question?

THE WITNESS: Please repeat it.

Q. (By Mr. Reaves) Yes. I was basically just asking if in addition to considering whether you had authority under the UPK statute to grant an exemption, whether the department and whether you also considered the obligations and requirements that the Constitution and the First amendment specifically impose on the department.

A In drafting the response for Dr. Roy, I considered the – her ability, the department's ability to grant an exception to a UPK provider that is contrary to statute.

Q I'd like to have you briefly turn to Exhibit 34, which I think should be in the second binder. Do you see this document, Ms. Cooke?

A Yes.

Q Do you recognize this document?

A Give me just a moment to look at it. Yes. This is a form that the department created relative to preferences or request for preferences.

Q And if you look at the second column on the first row, and again on the last row, you see the name Michael appears there?

A Yes.

Q Is that referring to you?

A Yes.

Q Can you turn to the second page of the exhibit. Thank you. And do you see at the top there, it says River Canyon School listed?

A Yes.

Q And do you see where, under the exception requested, it says, we are declining these families for school enrollment policies that we have in place?

A Yes.

Q Right at the top there?

A Mm-hmm.

Q And that exception was approved; is that right?

A Yeah. It appears that it was.

Q Ms. Cooke, do you know what specific enrollment policies this is referring to?

A I cannot recall what the specific policies were.

Q Do you recall if at the time this exemption was considered you all knew what specifically that school was asking an exemption from?

A Well, I'm certain that in reviewing this request, more information would have been received by the department relative to what those policies were.

Q But you're not recalling that at this time?

A No, I'm not.

Q And you don't see that anywhere on the spreadsheet itself, do you?

A No. The description of the policies?

Q Yes.

A No.

Q Okay. You can put that one down. You testified earlier about both voter intent and what the general assembly intended or meant when it passed the UPK statute. Do you recall that?

A Yes.

Q Are you yourself a member of the general assembly?

A I am not.

Q Have you talked to all the legislatures – or legislators who are members of the general assembly about their views on the UPK program?

A I have not.

Q Was your testimony about what the general assembly intended approved by the general assembly?

A Can you repeat that, or give me more context?

Q Yeah. I'm just trying to figure out how you know what the general assembly intended when they – when each individual legislator voted to pass the UPK statute. And so I was asking did the general assembly approve your testimony today before you came and provided it to the Court?

A No.

Q No. And similarly, did you ask voters why they approved the UPK statute when they voted on Proposition EE?

A No.

Q In your role as transition director of the UPK program, were you ever in direct contact with the governor regarding the program itself?

A I had regular meetings with the governor. I met with the governor on numerous occasions.

Q And specifically with regard to the faith-based coalition letter and the request, were you ever in communication with anyone in the governor's office about the request?

A I was in communication with the governor's policy adviser on early childhood. She is the person that sent the letter over to me and asked me to draft a response.

* * *

REDIRECT EXAMINATION

BY MS. FISCHER

Q Ms. Cooke, were the preferences intended to provide an exemption or exception from any of the quality standards?

A Absolutely not.

Q And is any preference an exemption from a statutory provision?

A Absolutely not.

MR. REAVES: Objection, Your Honor, to the extent it calls for a legal conclusion.

THE COURT: Overruled.

Q. (By Ms. Fischer) And, Ms. Cooke, are you here today testifying for the general assembly?

A I am not.

Q And are you testifying as to the department implemented what you read of the statute?

MR. REAVES: Objection. Vague, Your Honor.

THE COURT: Overruled.

THE WITNESS: Can you repeat that, please?
Thank you.

Q. (By Ms. Fischer) Are you here today testifying as to the department implemented the statute?

A Yes.

Q And just one clarification. You've testified you no longer work for the department?

A Correct.

Q So, when you describe the website, is it the website as you understood in year one?

A Yes.

Q And are you familiar with the website as it appears now?

A I am not.

MS. FISCHER: Okay. Thank you, Ms. Cooke.

THE WITNESS: Thank you.

THE COURT: Okay. That concludes the testimony of this witness. Thank you very much. You may stand down. And it's too late in the day to have another witness. We will recess until 9:00 a.m.

MS. CARRENO: Your Honor, just one housekeeping matter. We have a – it was Exhibit Number 21. As you know, the rule-making is –

THE COURT: Excuse me. Exhibit 21?

MS. CARRENO: It was Exhibit 21 that the parties had stipulated to, but as you know, rule-making for the new department is underway, and so the draft version that was submitted and stipulated to, we have

an updated version that was just released this morning. And so I had conferred with opposing counsel, and we are going to add an exhibit to the end of the exhibits that were already submitted to the Court, and just wanted to check as to procedurally what the best way for us to do that would be.

THE COURT: Well, you don't know when you're going to get it; is that right? Today or tomorrow?

MS. CARRENO: We have it now, and we've exchanged it. We just haven't filed it with the Court yet.

THE COURT: Well, give it to Ms. Abiakam if you have it now. That's fine. And we will look at it as well as the deposition overnight. All right. Thank you.

MR. DAVIS: To be clear, one note on that, just like we kept our affirmative case open with the exception of the Court weighing in on the deposition designations, this new proposed regulation may also be relevant to our affirmative case as well. We just got it two hours ago ourselves, so we're going to digest it.

THE COURT: You want to renew whatever objection you had in the morning after you've had a chance to look at it?

MR. DAVIS: Yes, Your Honor.

THE COURT: All right. We will do that, and you can wait until tomorrow to give them an opportunity to look at it.

MS. CARRENO: Thank you.

THE COURT: Okay. We'll be in recess.

(Proceedings concluded at 4:52 p.m.)

JA 259

REPORTER'S CERTIFICATE

I, KEVIN P. CARLIN, Official Court Reporter for the United States District Court for the District of Colorado, a Registered Merit Reporter and Certified Realtime Reporter, do hereby certify that I reported by machine shorthand the proceedings contained herein at the time and place aforementioned and that the foregoing pages constitute a full, true, and correct transcript.

Dated this 8th day of January, 2024

/s/ Kevin P. Carlin

Kevin P. Carlin, RMR, CRR
Official Court Reporter

REPORTER'S TRANSCRIPT

Bench Trial, Vol. 2

Proceedings before the HONORABLE JOHN L. KANE, Judge, United States District Court for the District of Colorado, commencing on the 3rd day of January, 2024, in Courtroom A802, United States Courthouse, Denver, Colorado.

* * *

PROCEEDINGS

(Proceedings commenced at 9:04 a.m.)

THE COURT: Your next witness, please?

MS. CARRENO: Yes. Thank you, Your Honor. We are going to call Ms. Dawn Odean.

(The Witness is Sworn)

THE COURTROOM DEPUTY: Please be seated. State your full name for the record, and spell your last name.

THE WITNESS: Dawn Odean, O-D-E-A-N.

DIRECT EXAMINATION

BY MS. CARRENO

Q Good morning, Ms. Odean. Can you please tell us what your current job title is.

A I currently serve as the director of the Universal Preschool for the Colorado Department of Early Childhood.

Q And when did you start in that position?

A I started August 15th, 2022.

Q How did you get the job of director of the Universal Preschool Program?

A It was posted on the state employment website, and I applied and was interviewed and hired for the position.

Q Why were you interested in that position?

A I have been working locally on early childhood administration, overseeing multiple preschool sites, working with community partners to really build a strong local community around early childhood in support of young children and families, and had been as a provider at the time engaged in the work of the Early Childhood Leadership Commission, Colorado Children's Campaign around Prop EE, House Bill 1295, and was just excited about that truly epic opportunity for children and families in Colorado, and really wanted to be a part of it.

Q How did you get that position?

A So, as I said, I applied online, and then went through a series of interviews to get the position.

Q And in your role as UPK director, what does that entail?

A It entails the startup and implementation of Universal Preschool statewide.

Q And what type of things do you do as the UPK director?

A A lot of our work initially in year one was ensuring that we had families aware of the opportunity, that we

had a unified application system in place for them to find providers and apply and get connected to providers, as well as ensuring that we had providers register so that there was opportunities for families to bring their children to preschool around the state. Another big component in year one was operationalizing the system for payment of providers based on the families enrolled.

Q Have you collaborated with any other state partners or agencies in your role?

A Yes. We have done a lot of work talking to folks locally and around the United States about what's worked, what hasn't worked, what would work best for Colorado. That's a big part of our effort, and really how the department was founded. So, certainly recognize that collective voice, and truly years of early childhood leaders bringing us to this point in Colorado, and wanted to continue that and ensure that we had collective voice as we move forward and were responsive to the needs in Colorado. But also seeing other opportunities that might have been available around the United States that worked that we could implement or things that worked locally that we might be able to leverage as well.

Q Were there any differences in Colorado's system compared to the other states that the department spoke with?

A There are many. And I would say Colorado was really bold in making decisions around having a mixed delivery system, and that was one of the biggest differences in implementation. So, many states offered Universal Preschool previous to Colorado in a model

that's similar to K-12, for example, where it's school district managed.

And Colorado was really thoughtful in ensuring that families had a choice and that they were able to make informed decisions and find that just-right provider that we've talked about that best met their family's needs and so that they could have different opportunities for young children that they may not have previously had.

Q And Ms. Cooke spoke yesterday about local coordinating organizations, or OCLs – LCOs. Can you describe the work that you've done with local coordinating organizations?

A We have 32 local coordinating organizations around the state, and they are critical in our efforts to ensure that local communities have an understanding of our programs and our department. The first year working with LCOs, the priority has been navigating Universal Preschool, so helping families locally understand what the opportunities might be and get connected and engaged, and as well as providers.

And so their local relationships and local voice have really been critical with the new state department for me particularly being new in the role, not having local relationships that – to the depth that they have around the state has been really important for us to kind of have those trusted partners and really be able to be responsive to the startup of the program.

Q Besides working with other state agencies and states and LCOs, have you worked with stakeholders or providers in the startup of the Universal Preschool Program?

A Yes, I have. We have. That's a priority for us. So, it's part of our daily work, working with families, working with providers, certainly in conversations with our direct customers, if you will, on a daily basis, but also have really worked hard even under the compressed timeline to ensure that we're engaging and hearing, really listening and being responsive so that we can continuously improve our efforts, and have worked to be very intentional and thoughtful about being inclusive to stakeholders, to providers in this new model of mixed delivery and ensure that families have the opportunities that are set forth for them through our program.

Q Before working in your role as UPK director, what was your employment position?

A I was the executive director of early learning for Jeff. Co. Public Schools.

Q And what did you do in that position?

A In that position, I oversaw the preschool programming for Jefferson County Public Schools. At the time we had about 93 classrooms serve 2,500 to 3,000 students each year, threes and fours. Supported each school leadership, training, professional learning and development, really worked to align the transition into preschool with our early childhood providers in the community and other resources for families, as well as their transition into kindergarten and through third grade. So, at the district level, we were really working toward longterm outcomes that we could gain by providing quality programming for preschool in the district.

Q How long were you in that position?

A I started in that position in 2016 and worked there until I attained this position in 2022.

Q And before that position, what were you doing?

A I was an elementary school principal. Prior to that, I was an instructional coach. And prior to that, I was an elementary teacher.

Q And I want to direct your attention to the screen to Exhibit 49. Ms. Odean, do you recognize this document?

A Yes. That's my current resumé.

Q And is that resumé a true and accurate representation of your qualifications?

A Yes.

Q And who prepared that resumé?

A I did.

Q And is that resumé up to date?

A It is.

MS. CARRENO: And, Your Honor, I would like to proffer Exhibit 49.

THE COURT: All right.

Q. (By Ms. Carreno) Now, Ms. Odean, I want to turn to some more of the background on the Universal Preschool Program and the system. And you heard Ms. Cooke describe yesterday the process for the creation of the new department and the Universal Preschool system. She also talked a little bit about the Colorado Preschool Program. And so can you describe what if any experience you had with the Universal Preschool – sorry. What if any experience you had with the Colorado Preschool Program?

A In my role in Jeff. Co. Public Schools, we coordinated with the Colorado Department of Education for the Colorado Preschool Program to serve students in Jefferson County. The Colorado Preschool Program was the previously state-funded preschool opportunity in Colorado, which was school-district-managed. So, it wasn't mixed delivery, unless the school district chose to contract with outside community partners.

And it was targeted. So, different than universal in that it was for children with specific risk factors. And so we implemented that – I think that was in place probably for 30 years. So, that was implemented well before I was in the role, but certainly continued that effort to ensure that families had access to funding for preschool prior to universal.

Q Now, when you say it was targeted at certain risk factors, what were those risk factors?

A So, risk factors included families living in poverty, included children with a native language other than English, developmental delays, foster care. That's what I can remember off the top of my head.

Q And how many children did the Colorado Preschool Program serve?

A Statewide, I believe 18,000 was the last count. Right around 18,000.

Q And so if Colorado already had the Colorado Preschool Program, what was the need for the Universal Preschool Program?

A I think what we saw with the Colorado Preschool Program was it did what it was intended and really supported children in their growth and development.

And so the universal opportunity was so that more children could have access to that leading up to their kindergarten year.

Q And was the Colorado Preschool Program income-based?

A That was one of the risk factors.

Q So, why universal rather than a targeted program?

A So, universal allows for all children in the year before they're eligible for kindergarten to have 10 to 15 hours of free preschool access. And that's important so that all of those children can have access to that high-quality environment and get to the learning outcomes that we know come from a high-quality program. But it also allows for families to have opportunity and options, all families. And uniquely in the Colorado statute that gives us the foundation for the program, it certainly recognizes what CPP was able to accomplish and calls out what some priorities – the same children.

So, we're thinking about children with disabilities, children who are low-income and so forth on the risk factors to ensure that the work of the Colorado Preschool Program wasn't diminished through going to a universal model, but to continue to be thoughtful about ensuring those outcomes continue for children who haven't had that opportunity historically.

Q And how did the department go about ensuring that those families that benefited from CPP weren't harmed by the universal system?

A Well, again, we really wanted to understand providers' experiences with families and with children and where they've gotten to those positive outcomes

and what would be helpful. We certainly built the application system to ensure that we understood who was applying and what might be helpful for them to find the best provider for that particular family, but also knew that, for example, with school districts and their federal mandates around IDA, that there would be considerations we needed to make to ensure that it was a fluid process for families, and that it didn't compromise the expectations of school districts to serve.

Q And can you talk a little bit about what the qualifying factors are.

A Sure. So, the qualifying factors are put in place in rule based on what the expectation was in statute for. If there is funding remaining after the initial ten hours are served and students with IEPs are served, that qualifying factors could allow for families to receive additional hours for free.

Q And what were the specific qualifying factors that were established in rule?

A So, the qualifying factors established in rule were what was called out in statute, which are low-income families, families with children with disabilities, or an individualized education program. Dual language or multi-language families and their children, and we also added homelessness through rule. That was from the stakeholder input and feedback, as well as foster or kinship care.

Q And yesterday you heard Michael Cooke's testimony about the quality standards, and I want to talk about how the department went about implementing those quality standards into the system and in practice. So, if I could direct your attention back

to the screen, to section 26.5-205. In looking at subsection (1)(a) of the quality standards statute, I want to ask you about what some of these terms mean and how the department has implemented them into the UPK program. So, let's start with within section (1)(a), the statute refers to national and community-informed best practices. Can you please tell the Court what that means and how that was implemented into practice in the UPK system.

A Best practices are associated with how we get to the best child outcomes in the preschool setting in early childhood in general, and then specifically for us in the statute for Universal Preschool. And we know that locally we have done a lot of work around quality. So, the Office of Early Childhood, previous to the new department, built the Colorado Shines program that really was thoughtful about what are those best practices, and what are we looking for, and how can we support high quality across programs?

And then individual providers have different frameworks that they've utilized as well. So, if you think about Head Start, they have a framework that is the foundation of the work that they build on, primarily focused on trauma-informed care and best practices to support families and children in that environment.

There's – school districts have educator effectiveness and performance programs, unified improvement plans where they're really being thoughtful about strategies and outcomes and how they get to the best child outcomes they can in a safe and healthy environment.

Nationally, there certainly are different frameworks that have been developed by different organizations as well. And so the statute really called for us to consider those frameworks locally and nationally to ensure that we were being really thoughtful about what's worked and what might work in Colorado, and where do we have some challenges or gaps that we can through this new program and the new department collectively kind of raise the bar in support of providers and educators and young children.

Q And, Ms. Odean, can I just encourage you to maybe speak up a little bit more, or get closer to the microphone just to make sure that we can hear you.

A Is that better?

Q I think so, yes.

A Okay.

Q And so also looking at that same subsection (1)(a), can you tell me about the term "cognitive development" and how that was implemented in practice within the UPK system?

A Yes. So, what you see here is really an acknowledgment of how important whole child development is, cognitive development being one of those areas that are critical to a child's development. And that's typically associated with academics or thinking. So, it might be early literacy, early communication, early numeracy components of cognitive development. So, the statute is asking us through our quality standards to be thoughtful about ensuring that we're including that, as well as the whole child.

Q What is whole child development?

A So, whole child, you will see here, that main domains are covered in ensuring that children have access to the cognitive development, but also inclusive of physical development, as well as social-emotional development.

Q And then moving on to healthy environments, what are healthy environments, and how were those incorporated into the UPK system?

A Healthy environments are really critical to ensure that, one, we're being supportive of the child and their family in that they have access to resources around their child's health, but the environment component is really contemplating being thoughtful about the actual environment that a child is in. So, we know we have licensing child care regulations for health and safety, but this kind of goes beyond that in a way that ensures children in the classroom are in a space where they can learn and grow. So, it's physical safety, yes, but also that they're in an environment that's welcoming, that they feel a part of, and maximizes through best practices that development.

Q And then the last term within the section I want to ask you about is social and emotional learning. Can you describe how the department has implemented that in its quality standards?

A So, the social-emotional learning component is required for us in statute to consider in our quality standards specifically to be thoughtful about how children engage in their community, how they engage with other children, how they engage with adults, how they interact with the environment. And, again, it's all

with that focus on a supportive nurturing environment for their growth and development.

Q And then I want to ask you about Roman numeral IV, but before we get to Roman numeral IV, (1)(a) states that in developing, reviewing, revising, and adopting the quality standards, the department shall consider four things. Before we get to number four, do you remember what the first three factors are that the department must determine in developing the quality standards?

A So, the statute asks us to ensure that all children have access to learning, and it calls out the nondiscrimination provision.

Q And, Ms. Odean, is there anything that might refresh your recollection for those three standards that come before Roman numeral IV?

A If you have that specific portion of statute.

Q And is this the portion of statute that you were referring to?

A Yes.

Q And just let me know when you've had a chance to review that.

A Okay. So, it also includes that assurance that we discussed about nationally accepted standards are considered, that licensing requirements are considered, and that the availability of preschool services for eligible children are considered.

Q Okay. Now, going back to Roman numeral IV, how has the department taken efforts to ensure both availability of preschool services and maintain the quality of preschool providers?

A So, the availability really is through our approach in mixed delivery, to be as inclusive as possible, so that families have choice in where they might enroll their child. So, to ensure availability, we've worked really hard to hear from providers around the state to encourage them to participate, to be a thought partner and work through why or why they may not participate so that we have opportunities for families to have that access. The quality component comes in once the children are in program and in the classroom where we're really being thoughtful about, again, continuing that equitable access to learning in a safe and healthy environment.

Q And what – why do those two factors go hand in hand?

A Well, they really go hand in hand. We certainly know that this opportunity of Universal Preschool provides access that many families haven't had yet. And so really the statute has told us to ensure that families have choice through this mixed-delivery model, and that families have confidence that those are safe and healthy environments, and that they're in place not only for supervision, but so that their child can grow and begin a positive journey for learning.

Q And so I want to move on to subsection two of 26.5-4-205, and ask you about the antidiscrimination provision that's at issue in this case. Why was this provision, subsection (2)(b), included in the quality standards component of the statute?

A My understanding of why it was included in the statute is to ensure that children who historically have been discriminated against aren't. So, going through as a provider through the participating in the bill

writing, it was my understanding that it was critical for this to be in place to ensure that by creating a universal program, we weren't inadvertently putting children in a place where they weren't able to continue the gains that were made through the previous program, but also be thoughtful about not putting children in an unsafe or unhealthy environment as well. So, to be really intentional about children having that environment so that they can grow to their maximum ability, and that we're collectively working toward that as a community in the state of Colorado.

Q And does this provision apply to both children and families?

A It does.

Q And why is that?

A Part of a child feeling safe and being safe and healthy is also that their family feels safe and healthy and that they feel a part of their family. And we certainly want them and their family to feel a part of the community and the learning environment that they're in.

Q And you've said "safe environment" a bunch of times. What is a safe environment?

A I think the way I understand it is – and the way that we're interpreting it for the program is that when a child is in the preschool setting, they feel safe so that they aren't worried about being unsafe. They feel welcome so that they aren't concerned about being unwelcome. And in that way, they can access learning engagement with their peers, engagement with their educators in a way that maximizes their growth and development.

Q And so is safety about more than just licensing requirements?

A It is. In a really thoughtful way that that was called out in the law.

Q And health as well?

A Health as well. So, we definitely want of course to ensure physical health and development and safety, but when we think about health, we're also considering that social-emotional learning component, behavioral health, certainly, and at this young age really want to maximize that health as well, as part of the whole child.

Q And what is your understanding of why this antidiscrimination requirement was included within the quality standards section of the statute?

A My understanding is that we absolutely understand access is important. So, we want children around the state to be able to access programming that best fits their family's needs and want to be supportive of that access. But the access doesn't stop at enrollment. It really also is once children are in the setting, to ensure that they have equitable access to learning and growth, and that our department is supporting educators and providers with resources and tools to be able to do that.

Q I want to turn now to the proposed quality standards rules. And as you know, Michael Cooke testified yesterday that she couldn't testify about these rules or the next stages of the implementation of the system, since her position was time limited. So, I'm turning now to – or directing your attention to what has been marked as Exhibit 71, and apologize that I

think yesterday we may have marked this as 68, because we didn't have our exhibit binders that had held some spots for the deposition transcripts, but we are marking this exhibit as 71.

And, Ms. Odean, do you recognize this document?

A Yes. This is the draft rule for quality standards.

Q And how would you describe the quality standards rules?

A So, the quality standards rules – I think I will back up a little. In statute, there wasn't a specific timeline or date tied to the implementation and development of the quality standards rules. While it was very clear that we consider what has worked in Colorado and what has worked nationally, that we go through an authentic process with integrity to ensure that we're being thoughtful about what we know and how we collectively raise the bar, if you will.

So, when I started in August, we had a pretty compressed timeline to start up for the statewide program for providers to register and families to enroll. That enrollment started in January. So, the primary focus at that time was around access and really being thoughtful about ensuring that the anticipated number of families would be able to find a provider and actually get registered and sign up and be able to be in program. So, we had a very focused effort during that timeline.

And because we wanted to be very intentional and thoughtful and go through a full rule process, not an emergency rule process, so that we had stakeholder input and feedback, and then also knowing that a lot of work toward quality has been done in Colorado that

we would consider drafting the rules not immediately, but with that integrity in the process for rule-making. And so that's the process that we're currently in.

Q And so how did the department go about drafting these rules or undergoing that process you just described?

A Sure. So, we have worked with a contractor to do research and review of the standards locally, of the standards, I believe 27 different frameworks, do a crosswalk of those, really talk to providers, have webinars, focus groups, working groups, around what of this are you currently doing? What has worked? What hasn't? What would you recommend? How – getting input, being responsive to that input, and drafting the rule.

There were certainly specifics called out for us in statute that we knew we had to incorporate and did, and then also have really worked hard to have that collective voice to ensure that this is an effort across the state together, certainly with the support of the department.

Q And you said that these are draft rules?

A They are.

Q What does that mean?

A So, when we go through the rule process, we first introduce concepts, had survey providers as well, and had information from them that we could share out around the state with stakeholders, and then drafted the rule. The rule in draft has a time period where stakeholders can continue to give input. We're still in the input-receiving part of the rule process.

And then the rule goes through a county subcommittee, a rules advisory, the rule – the rules advisory council has time to review and give input from themselves and from their stakeholders, and then the rule can then be promulgated by the executive director.

Q And who makes up the rules advisory council?

A The rules advisory council is a diverse group of stakeholders from around the state.

Q And then they will also weigh in on these rules?

A Yes.

Q Where in the process are these rules?

A So, these rules have gone through the initial drafting with stakeholder input and feedback, and will go to the county subcommittee next, of the rules advisory council this month.

Q And then when does the department anticipate that these rules will be adopted?

A The rules could be promulgated, I believe yet this month. And then the way that they're written and the way that the department is approaching them is a phased approach. And so really working providers, we've heard that, like a one-time deadline for change isn't supportive of the actual practice and outcomes coming. So, we've developed a phased approach to ensure that we're working side by side with providers to support their growth and incorporate child outcomes as we move forward with quality together.

Q And the version of the rules that you're looking at now, when were these finalized, or when were these updated?

A I think the last revisions were made probably Monday of this week.

Q Okay. Thank you. Now, I want to direct your attention to the top of page eight of the rule packet, under section 4.111, capital letter A, which talks about the quality standards for learning approaches. What are learning approaches?

A Learning approaches are how the educator engages in the classroom to support the learning and development of the children in the room.

Q And how did the department come up with the language for this section of the learning approaches rule?

A Again, this was through review of what was expected in statute, as well as stakeholder input. So, you will see that it's – we're aligning with the Colorado early learning and development guidelines, as well as the Colorado academic standards. And then being thoughtful about all of the expectations for us, using assessment findings for instructional decision-making that are culturally and developmentally and linguistically appropriate, and inclusive of and appropriate practices for diverse needs of each individual learner.

Q Ms. Odean, I just want to encourage you to speak up again, if possible.

A Sorry. I keep looking over at the document.

Q No problem. And under requirement number four that you just mentioned, is inclusive of and appropriate for the diverse needs of each individual learner, can you tell us more about that?

A Yes. That's – what we know works best in early childhood and likely for all is being responsive to knowing the children and being responsive to their needs so that you can take instructionally the just-right next step or approach to help them continue to grow and develop.

Q And then moving down a little further on the page to subsection capital B.1, lower case b, the section talks about the measurement of providers' environmental quality, and section B.1.b references the quality of the overall learning environment, including student and staff supportive services. Can you tell us what the quality of the overall learning environment means?

A The quality of the overall learning environment is really speaking to the engagement between children and other children in the classroom, children and their educator, and children and the actual physical environment. And we know that if those are all positive, the child can grow and develop more efficiently and effectively.

Q And what are student supportive services?

A Student supportive services refer to alignment of a child's needs with the services that are provided for that child. And again, that starts with a healthy, safe environment that's welcoming for the child, where they feel comfortable and nurtured to grow and learn, and it also has that whole child understanding.

So, supportive of the educator knowing the child, what we're referring to as all of the aspects of the whole child. And so being thoughtful about where each child is in their development, certainly can be a range,

and being thoughtful about those just-right next approaches, activities, and so forth in the classroom.

Q And then turning to page ten of the same document, under section 4.113, capital A, one, lower case c, the section is under family and community engagement, and it states that providers must create and make available publicly and for the department the policies and procedures which ensure seeking input from participating families on priorities, interests, home routines, and cultural and social practices. What does this provision mean?

A So, this provision really honors work that most of our providers around the state participate in, but really calls out specific indicators to ensure that families and children are understanding what the expectation of that particular provider might be, approaches that are utilized, and make the best choice for them and their child.

And it helps to continue the conversation. So, as children learn and grow and participate in preschool, that the conversations with families around that child's development are in alignment with these components.

Q And now the antidiscrimination statutory language that we spoke about, is that included in these quality standards rules as well?

A It is.

Q And I want to direct your attention to page six, same document, under 4.109.B.

A Okay.

Q And this is what you were referring to?

A Yes.

Q Are there any exceptions or exemptions from that requirement, subsection B, which is also the statutory requirement, where a provider does not need to follow this requirement?

A There aren't.

Q And why is that?

A That is in statute, and so that's why it's repeated here. It wouldn't be changed through rule, because it's in the law. And so it is incumbent upon us at the department for the program and for participating providers to follow that.

Q And so you heard some references yesterday to a temporary waiver in statute, and I want to direct your attention to that provision now. And I'm referring to subsection (1)(b), Roman numeral II, of the statute. Are you familiar with this provision?

A I am. This is the provision that aligns with what I was referring to as far as the phased process of implementation of the quality standards. So, we certainly recognize that the practices and approaches may take time to develop, and we want to support providers in that development.

Q And in looking at that provision, subsection (1)(b), Roman numeral II, it says, if necessary to ensure the availability of a mixed delivery system. What does that mean?

A So, that's really honoring the uniqueness that each provider might bring. So, mixed delivery is in-home family child care settings, is small centers, large centers, Head Start programs, school-district-based programs, faith-based programs, and so really being

thoughtful that with that uniqueness and the variety of settings that the approach to quality may have been different than some of the frameworks that we've reviewed or the work that we're doing to ensure quality across all settings.

Q So, under what circumstances would the department be allowed to offer a temporary waiver of some of the quality standards?

A An example might be where in-home family child care provider may not have done formative assessment around documenting child observations to inform their practices. It might be an approach that they utilized, but it might look different than it looked, for example, in a school district setting. And so while we're working with educators and providers to make informed decisions on whole child development, we certainly would support that process and that growth for that educator and that provider.

Q And within that same subsection of statute, what does a limited time while working toward compliance with the quality standards mean?

A It depends on what the work is, potentially. So, there might be opportunities, for example, for us to provide a tiered approach for different providers. For example, you might have educators coming in who are new to the profession in what is typically called an induction setting, where you're giving more support early, and then over time – you might have masterful educators who have been working in the field for a very long time who still continue to want to be the best that they can for children and grow and change, and that differentiated support might look a little different based on those different educator types.

And so we are really working across our department with our workforce team, with coaching, with our local coordinating organizations to consider what resources might be available and how we can leverage those in this effort.

Q And then also within that same section, it says that except that a preschool provider must meet all quality standards relating to health and safety. What quality standards would relate to health and safety? What does that mean?

A So, those are the things that we've been talking about this morning in regards to health and safety, where certainly only licensed providers are participating in assurances of that minimum safety, physical safety, but also that health and safety as it refers to the learning environment as well. Those are certainly a minimum bar, but very important as well.

Q Has the department allowed any preschool provider to participate in the UPK program without following all the quality standards at this point?

A At this point, we are in development of the quality standards. So, we're really being thoughtful about providers' work that they've done so far. We're engaging with providers on what that work is and what that looks like so we can help support the implementation of the quality standards as they're implemented.

Q So, has the department allowed any preschool providers to exercise this temporary waiver in the statute?

A We haven't had a waiver request at this point.

Q And under this provision, could a provider that wasn't complying with the antidiscrimination quality standard participate in UPK on a temporary basis?

A The waiver doesn't exempt a provider from what's in the law, so that wouldn't be a waiver associated with this process.

Q And is the nondiscrimination language – is the nondiscrimination statute a health and safety requirement?

A It is.

Q I want to turn now to talking about some of the logistics of Universal Preschool. How many children have been able to take advantage of UPK in year one?

A We're at almost 40,000 children around the state.

Q And do you have any idea what percentage of four-year-olds that would make up?

A That's about 60 percent of eligible four-year-olds.

Q And what was the department hoping in the first year of implementation of UPK?

A We were anticipating 50 percent. Certainly what we've seen around the United States is a much lower uptake in year one, but because of the success of the Colorado Preschool Program previously, and because of the quality providers around the state, we anticipated that Colorado might have a higher uptake than 50 percent, and have exceeded that.

Q And how many more children has UPK been able to serve compared to the Colorado Preschool Program?

A So, the Colorado Preschool Program, I believe in its last years, was at about 18,000.

Q And Ms. Cooke went through the basics of how a family signs up and selects Universal Preschool providers, but I wanted to back up on something we didn't talk with Ms. Cooke about. Can a family meet with a provider before making their selections for their top five preschool providers?

A They absolutely can. And we encourage that, and our local coordinating organizations encourage that as well. The system, the application system was never intended to replace the interactions between the family and the provider, but to facilitate that enrollment and to allow for families, especially who were seeking formal care for the first time, or a change, that they had a place, a one-stop shop, if you will, that they could go to to find information in a way that they hadn't been able to before. But certainly have – providers even in their profiles have listed opportunities for tours or for introductions, phone calls, and so forth, and the system absolutely doesn't replace that relationship.

Q And you heard testimony from the plaintiff preschools, St. Mary's and St. Bernadette's Preschools yesterday about their process of encouraging families to take tours of the preschool and having conversations with the families. Is that permissible within the UPK program?

A It is.

Q And you also heard Ms. Cooke talk about the deferred acceptance algorithm, or the DAA. Are there any factors that that algorithm can't account for?

A What we found was that it doesn't account for mixed delivery. So, it's a standardized supported lottery algorithm, if you will, in an information

technology landscape. But it wasn't built specifically for our unique program in Colorado.

Q And so how did the department address that?

A So, we heard from our LCOs, from providers, and from families very early on as we began the development of this system. We had different user experience – user experience testing scenarios. And then through our outreach with our LCOs, really heard from families that there were some things that weren't – didn't feel like they were being contemplated, and that were a priority, and that we know lead to positive child outcomes, and that included continuity of care.

So, really wanted to recognize that these quality providers around the state have been working with a family over the years. If you think about an in-home child family care, they might have had that child since they were an infant and would have them until they go on to kindergarten.

And we know that continuity of care yields high outcomes for children, and we wanted to honor that. We didn't want this algorithm to not consider that. So, that was one of the weights that we applied to the algorithm.

We also applied siblings at location and employee's child. And so both of those are really being thoughtful about that community, honoring that safe and healthy community, and the continuation of that for the child and the family.

Q Why is continuity of care important?

A Continuity of care limits the transitions for a child. And so there's certainly a lot of research around that

opportunity for continuity of care to provide positive outcomes for growth for the child and supportive environment for that community and the family.

Q And you also mentioned certain relationships that the department would want to honor. Why are those relationships important, or what examples of relationships can you give us?

A So, the sibling priority or weight was to ensure, again, that continuity of the community for the family, but also to support the family in thriving, if you will. So, we don't want them to have to go to – so, if you have a child who is Universal Preschool age, and then you have an infant that you might be able to go to the same location and not have to go to multiple locations within a day, which we know has an impact overall on the family.

The employee's child is a priority, because we certainly know from our department's workforce team and from our providers very clearly that many of our educators have young children who are eligible to participate and may not be able to work if their child can't participate at the program that they're working in.

Q Would it be possible to have both a universal and a mixed delivery preschool program if every provider had to accept every child matched to that provider?

A It would be really hard to do that. It would be – when we look at what other states have done, where they've prioritized school districts as the lead provider or as the sole provider, that's where universal – at each location might work. Mixed delivery, because of the variety of programming that providers offer and the variety of settings that they offer, completely

universal at every setting, it would be really difficult and would be difficult to have providers be able to participate.

And so in the consideration of mixed delivery, the department has worked very intentionally about being inclusive of a variety of providers to ensure that they can participate, and really with the aim that families have that choice.

Q And so it wouldn't be possible for a mixed delivery system if every provider had to accept every child?

A I don't know how. That would be really hard.

Q Ms. Cooke talked yesterday about the faith-based working group. Were there any other working groups that met to discuss the different needs of different types of providers and communities?

A Could you say that again?

Q Sure. Were there any other types of groups that met to discuss the different types of needs of communities and providers besides the faith-based work group?

A Yes. As I said earlier, we on the program team certainly met with providers daily, a variety of providers who are participating or those that were considering it. We had different working groups specifically with school districts, with Head Starts, with in-home family child care, with corporate providers. We really wanted to hear from folks and continue that collective voice as we developed. We were moving really quickly to start up, and so it was important that we were engaging regularly, and now that we are working toward year two to really

formalize stakeholder input and feedback as we continue to move forward.

Q And when you say working toward formalizing, what do you mean by that?

A When the bill was being written, the ECLC had very formal working groups where they were established and scheduled on a regular basis for stakeholders to engage and be involved in and around the state. In our compressed timeline, following that same calendar was a challenge, and so we offered town halls. We offered small groups with our LCOs. We provided our LCOs with support to do local information gathering and provide that to us.

We certainly had, again, through the work, were having a lot of conversations and being responsive to what we heard, and then we began to create different working groups around specific tasks, like enrollment, for example. So, certainly recognized that at many providers, it wasn't one person who did it all, although we do have providers where one person does it all, and certainly wanted their input and feedback, but also wanted to understand that there might be an early childhood director. There might be an office manager. Those folks might have very different impacts from the change of a new program, and we wanted to be supportive of the roles that help uplift the program.

Q And just – I know that early childhood has a lot of acronyms, so I just want to make sure, what does the ECLC stand for?

A It's the Early Childhood Leadership Council.

Q And then the LCO?

A Local coordinating organization.

Q Great. And Ms. Cooke also yesterday talked about the preferences which were implemented in year one prior to the rule-making. Are those preferences now being incorporated into the proposed rules we started talking about earlier?

A They are. Again, what we heard was the algorithm wasn't developed to consider mixed delivery in a variety of settings that might be provided through preschool. And we had to create a way for that to be a part of the process. And so those preferences were developed based on what we heard from providers in that engagement that would be helpful, one, to inform the family and support the family in making the best decision, but also helping providers to be able to meet their programmatic policies.

Q So, I want to go back to the proposed rules, which are now Exhibit 71, and direct your attention to page seven, under section 4.110. And is this what you were just referring to?

A It is.

Q And so under the top – the bottom of page six, before we get to page seven, the rules say that an eligible preschool provider may utilize the following programmatic preferences during the matching process. I want to start with the preference number two. And can you please tell me what are cooperative preschool providers, or co-ops, as I believe they were referred to yesterday?

A They are preschool providers that have an expectation of the family's involvement through volunteering in the preschool setting.

Q Why were co-ops, or cooperative preschools, included as a preference?

A Those providers had expressed that they wouldn't be able to participate if they didn't have that commitment from families. So, we really worked through these preferences to kind of be expansive of mixed delivery and inclusive of the uniqueness of what the providers and the communities they've established bring.

Q And does this cooperative preference give cooperative providers an exception from the antidiscrimination provision?

A No.

Q And I want to turn to the next preference, number three. What are school districts maintaining enrollment consistent with their established boundaries?

A So, each school district has geographic boundaries where they're required to serve K-12, the children that live within those boundaries. And this actually has a tie to continuity of care as well. So, we heard from school districts that for the preschool component, they wanted to honor those boundaries as well, and many districts don't have the capacity to serve children beyond their boundaries. And so this preference was put in place so that they could honor both continuity of care for their families and ensure that they could prioritize that geographic expectation that they have for K-12.

Q Why was this preference included in the proposed rules?

A So, this was included so that school districts could prioritize those families and ensure that continuity of care.

Q Does this preference allow school districts an exemption or an exception from the antidiscrimination provision?

A No.

Q Turning to the next one, participating preschool providers reserving placements for a student with an individualized education program to ensure conformity with obligations incurred pursuant to law. What does that preference mean?

A That preference ensures that school districts and their contracted partners can meet their federal mandate under IDA. And that might include ratios in the classroom, aligned resources and services, the development – evaluation and development process for an IEP with the family and so forth.

Q And what is an IEP?

A It's an individualized education program.

Q And what does that mean?

A So, that supports specific aligned services for a child with a disability.

Q Why was this preference included in the proposed rules?

A It was included because it was called out in statute as a priority, and also in our work with our partner state agency Colorado Department of Education and school district providers we heard right away that it was critical for them to be able to participate and be able to meet the mandate.

Q And this preference only applies to school districts?

A This specifically applies to school districts and their contracted partners.

Q Does this preference allow school districts or their contracted partners an exception from the antidiscrimination provision?

A No.

Q Why doesn't the department interpret the antidiscrimination provision from prohibiting providers from prioritizing kids with disabilities?

A Children with disabilities were specifically called out as a priority in the law that developed the department and the program as a priority. I believe because historically, they haven't had equitable access or aligned care that meets their needs. And so programmatically, we wanted to ensure that those children who participated previously, that we didn't miss a beat, if you will, as we moved into the new program, but that we had assurances that those children would continue to be served.

Q And when you say continue to be served or were being served previously, you mean through the Colorado Preschool Program?

A Yes.

Q Turning to the next preference, number five, what are Head Start programs?

A Head Start programs are federally funded programs that prioritize comprehensive supports for young children and their families who are living in poverty, are low-income, or have children with disabilities.

Q And what is your understanding of Head Start eligibility requirements?

A As a Head Start grantee, there are federal expectations of who is enrolled and the priorities of the children that are enrolled, in alignment with their expectations around low-income, poverty, and children with disabilities.

Q And are there any other eligibility requirements for Head Start besides just income level of a family?

A I believe that they also look at other assistance that families might be receiving as an indicator of qualification, but I haven't been a Head Start grantee, so I'm not an expert.

Q Why did Head Start providers receive a preference in the proposed rules?

A They were also called out, again, because it's a program that has shown positive outcomes for children and families over the years. And certainly was intentionally written into the law that they were prioritized as participants and that the children they serve were prioritized as participants.

Q Are Head Start providers able to utilize any type of an exception or an exemption from the nondiscrimination requirements of statute in the proposed rules?

A No.

Q Why doesn't the department understand prioritizing low-income children and families to violate the antidiscrimination provision?

A The antidiscrimination provision prioritizes families who have historically been discriminated

against. And so the department has been called out to ensure that they're protected moving forward, and that they have assurances around everything that the program can provide.

Q And were there any concerns that this population wouldn't continue to benefit from preschool under the new system as it did under the prior system?

A I believe that's why it was written into the law to have assurances that even though the program moved to universal, that there was still a priority for these specific children and their families.

Q Turning to number six, why – well, can you describe what preference number six is?

A Preference number six gives priority or preference for providers who have employees whose children may attend, again, to ensure that we have a sustainable workforce. But there are also providers who are employee-based, or employer-based providers who give priority to their employees' children in the programs that they provide.

Q And why did these types of providers receive a preference in the proposed rules?

A It really was what we heard from them that was the only way that they could participate. So, certainly workforce has been a challenge through the pandemic and previous to the pandemic, and so we know in early childhood that as we value early childhood and we value early learning, we want to ensure that our educators are able to continue to educate, but also have the same services for their children, and that they may not be able to if it isn't in the same setting.

And for employer-based providers, which I think probably will become more and more popular, but we certainly see growth in that around the state where employers understand that their employees can participate in the workforce if they have access to a quality environment for their children, and they want to be able to provide that so that their employees can –

Q Is this a preference that can be utilized by any type of preschool provider?

A It is.

Q Turning to number seven, can you describe what this preference is.

A So, this is the preference for continuity of care. And this is what we discussed earlier, where it's – we understand that through research, that continuity of care is a strong indicator of child success, and we typically see children who have fewer transitions are able to grow and develop in a healthy manner.

Q And can any type of preschool provider take advantage of this preference?

A Yes.

Q Turning to preference number eight, can you describe what that preference is.

A That's the preference for providers to consider the enrollee child for preschool if they have siblings attending the same program. So, it gives a preference to children whose siblings are already attending there.

Q Why did this – why was this called out as a preference in the proposed rules?

A This was something we heard very clearly from families was important in their decision-making, and we also heard from providers, again, to ensure that continuity of community with a family, that the sibling priority was critical to participate.

Q And can any preschool provider utilize the sibling preference?

A Yes.

Q Turning to number nine, can you describe what that preference means.

A Number nine is a preference for providers who offer preschool services in languages other than English. And we have a variety of providers who do so. So, we have school district providers who have specific programming for dual or multilingual programs. Some of those have federal expectations around how those children are served or the ratios that the children are served. For example, if it's a bilingual classroom, there may be a certain number of children expected that are native English-speaking and a certain number of children who are native Spanish-speaking.

We have community providers who offer in their communities preschool services in a range of languages that meet the needs of the families in that community.

Q And does this preference provide an exception for providers that serve multilingual children, an exception or an exemption from the antidiscrimination provisions?

A No.

Q I want to back all the way up to number one, which is the faith-based provider preference. And can you please describe what that preference means.

A That preference was put in place as we heard from faith-based providers considering to participate and being thoughtful about being inclusive of faith-based providers being able to, again, be inclusive to their community, and be able to participate and their families to be able to have access.

Q What is a faith-based provider?

A In Universal Preschool, when providers register, they can define themselves as faith-based. So, that might be a religious-based community that they're a part of. It might be a specific faith that they build their program around.

Q Why did faith-based providers include a preference in the proposed rules?

A We included the preference in the proposed rules to ensure, again, that we could be expansive in mixed delivery and inclusive of a variety of provider types, including faith-based providers. And the preference, again, wasn't a part of the standard algorithm. And so like the other preferences, was included to ensure that they were able to align to their program.

Q And in looking at this preference, it says, faith-based providers granting preference to members of their congregation. Is "congregation" defined in the proposed rules?

A It is.

Q And if I could direct your attention to page two on the same document. Is this what you're referring to?

A Yes.

Q Why did the department decide to define “congregation” in the proposed rules?

A In year one, with the word “congregation,” there were a lot of questions from providers about what that meant. And so we certainly listened to stakeholder input to define that further to help support, again, that expansive inclusion of provider types.

Q How did the department develop this proposed definition?

A So, again, same as everything in the rule. Looked at what other providers had done, what had worked, what hadn't, talked to providers, and this is the current draft.

Q What types of providers did the department speak with?

A Through the standards process, all provider types. And definitely had faith-based providers weigh in as well.

Q And when you say that the department believed that this definition was a way to be inclusive of faith-based providers, can you tell me more about that.

A Again, it's about that continuity of care for a community and being intentional about honoring mixed delivery and those different communities that families and providers engage in.

Q And so were there some concerns in year one that the congregation preference wasn't broad enough?

A Yes.

Q And how did the department believe that this definition addressed those concerns?

A We believe this definition expands on what was maybe initially understood as the word "congregation."

Q And are providers allowed to define what their congregations are?

A They are.

Q Can faith-based providers continue to provide feedback on this proposed definition and the preferences in general?

A Yes.

Q Does this preference give faith-based providers an exception from any of the antidiscrimination requirements?

A No.

Q Why not?

A The preferences set forth by the program and in rule don't change the law. So, the law still has the antidiscrimination provision that we follow.

Q Why doesn't the department interpret this provision to allow faith-based providers to discriminate on the basis of religious affiliation or religion?

A Again, it's the law to ensure that these children and their families who historically have been discriminated against aren't so that we can ensure that they have access to a safe and healthy environment.

Q And so is the department's understanding of a congregation broader than religion?

A It is. And I'm not – I'm not a religious expert, so I can't speak to each religion or their specific beliefs, but definitely as the program director wanted to be inclusive of faith-based providers as they define themselves and as families engage with them, and certainly in the services that children receive.

Q You also heard Michael Cooke or Ms. Cooke yesterday talk about where a provider could fill out a form if none of the preferences that were part of the system applied to that provider. Was that process put into the proposed rules as well?

A It was.

Q And if I could direct your attention back to page eight. Sorry. Page seven, and preference number ten. Is this the preference that you were referring to?

A It is.

Q What was the reason for this preference?

A We have almost 2,000 participating providers, and as a new department and as a new director, don't know all of the programmatic opportunities that each provider might have. And so heard from providers as we developed the preferences initially in our first year of enrollment that we may not have caught all of the preferences that would be helpful to honor a mixed delivery system.

And so wanted to have an opportunity to be responsive again to providers, to our stakeholders, where a provider could tell us, hey, you didn't consider us, but we have this programmatic expectation. Could it fall within the preferences that you provided, or is

there a unique preference that might be helpful for us to be able to participate?

Q And, again, was this an effort to be more inclusive of different types of communities?

A Yes. Again, really to honor mixed delivery and family choice and be inclusive of those communities.

Q And yesterday, Ms. Cooke was asked about a request from the River Canyon School District. Do you remember that testimony?

A I do.

Q Are you familiar with River Canyon School District?

A I am.

Q I'm sorry. And it's River Canyon School, not school district. Are you familiar with River Canyon School?

A I am.

Q What type of school is River Canyon?

A It's a Montessori program.

Q And what type of preference did that school request or what type of community does River Canyon serve?

A They have as part of their policy or process similar to a co-op, an expectation of volunteering in the program of families that register their children.

Q And so is your understanding that the policies Mr. Reaves asked about yesterday, they're similar to the policies of cooperative preschool providers?

A Yes.

Q And what was the basis for the department granting River Canyon a preference?

A Because it was aligned with the preference of a cop, and yeah. It met those expectations, and we certainly wanted them to be able to participate.

Q And then scrolling down to page eight, I want to direct your attention to subsection B at the top of page eight. What does that provision mean?

A That provision means that the preferences don't allow for discrimination as defined in our antidiscrimination provision.

Q Next I want to turn to Exhibit Number 13, which is the UPK provider agreement that was talked about at length yesterday. And Michael had – or Ms. Cooke had talked about working with you on the quality standards part of that agreement, but said that the exhibits or the terms and contracts of that agreement largely came out of a template. Would you agree with her testimony on that?

A I do.

Q And can you tell me more about where those terms and conditions, or Exhibit A of that contract came from?

A The terms and conditions came from a template written by the Colorado Department of Human Services, where the office of early childhood had previously been housed before the new department. And they were a part of the transition support of the new department.

Q And if I could direct your attention to page five of Exhibit 13. Are those the exhibits that you and Ms. Cooke are referring to as the ones that were drafted by the contracts and procurements team?

A Yes.

Q Turning to page 27, which is contractual provision 18B, why was this language included in the initial draft of the – or the inaugural year of the program contract?

A It was a part of the contract terms and conditions template.

Q And did the department ever intend to analyze providers' employment decisions based on this provision?

A No.

Q Why not?

A We were completely focused on support and expectations of the program, the child, and their family. In recruiting providers, it certainly wasn't part of our understanding that we would have any authority on hiring practices beyond licensing credentials, expectations for workforce.

Q And do you recall providing a disavowal in regard to this litigation for faith-based providers?

A I do.

Q And what was the purpose – what was the reason for providing that disavowal?

A To give assurances that that wasn't action that would be taken by the program or by the department.

Q This contractual provision 18B, is this going to be included in year two of the provider agreement?

A It is not.

Q And why not?

A For that exact reason.

Q Will this provision apply to any providers?

A No.

Q We can close out of this exhibit. You heard the testimony from St. Mary's and Wellspring's witnesses yesterday talk about their religious curriculum. Does the department have any intention of interfering with the curriculum of faith-based providers?

A No.

Q Why not?

A Again, it's to honor mixed delivery and what each provider uniquely brings to the preschool setting for children and for families.

Q I want to direct your attention back to the same exhibit we've just been talking about, Exhibit 71 of the proposed rules, on page eight. And under subsection C, can you please read that language.

A Nothing in these rules shall be construed to affect an eligible preschool provider's right to engage in privately funded, inherently-religious activity, or affect the independence of eligible preschool providers, including any rights protected by the Colorado and U.S. Constitutions and applicable law.

Q Why is this language included in the proposed rules?

A Again, to give assurances that we will be inclusive in mixed delivery.

Q Had the department heard any concerns from faith-based providers about the prior version of the rules?

A There were questions and concerns around if the day would have to be delegated, if you will, by what was Universal Preschool and what was programmatically specific to that provider. And so we wanted to give assurances that that wasn't the case.

Q And this language applies to all types of faith-based providers?

A It does.

Q Are there any faith-based providers that are participating in the Universal Preschool Program currently?

A We have 40 faith-based providers participating currently.

Q And what type – do you know what types of faith-based providers are participating?

A It's a variety. Many types, I would say. Nondenominational Christian, Catholic Charities, the Efshar Jewish Early Childhood community group has participants.

Q And was the department hoping that as many different types of faith-based providers would participate in the UPK program?

A Yes. We really worked for expansive of mixed delivery and have an inclusive environment for providers to participate in.

Q And did the department work with other types of providers that decided not to participate in the UPK program?

A Yes.

Q And did that include Catholic providers?

A It did.

Q How many children have been matched to faith-based providers in year one?

A I think we're currently at just over 900.

Q And you had mentioned Catholic Charities as participating in the UPK program. Do you understand Catholic Charities to be associated with the Archdiocese of Denver?

A I do.

Q And was there any attempt on the department's behalf to limit the participation of the Catholic Charities preschools from participating in the preschool program?

A No.

Q Why not?

A To ensure that as many providers could be accessed for families as possible, and certainly new families were interested in attending their programs.

MS. CARRENO: And if I could just have one moment to confer with my colleagues, Your Honor?

THE COURT: Yes.

(Pause in the proceedings.)

MS. CARRENO: No further questions at this time, Your Honor.

* * *

CROSS EXAMINATION

BY MR. DAVIS

Q Good morning, Ms. Odean.

A Good morning.

Q Ms. Odean, is one of the goals of UPK to achieve a mixed delivery system of preschool?

A It is.

Q And that means a mix of different types of providers; is that right?

A Yes.

Q And that includes faith-based providers?

A Yes.

Q Is the point of that so that families can find the provider that's just the right fit for them?

A It is.

Q Ms. Odean, I think you answered this earlier, but about how many providers are currently participating in UPK?

A About 2,000.

Q And those providers generally have agreed to the UPK provider agreement; right?

A Yes.

Q And new providers are still able to join right now; is that right?

A Correct.

Q Is there a fixed number of providers that's able to participate in UPK?

A There isn't.

Q Okay. So, when a new provider begins participating, it doesn't take the place of a provider that's already in the program, does it?

A Correct.

Q It would participate alongside the current providers?

A Yes.

Q Ms. Odean, Head Start providers can participate in UPK; isn't that right?

A That is right.

Q And Head Start providers prioritize low-income families?

A They do.

Q In fact, you understand that Head Start programs might have income qualifications for students to enroll; right?

A To define the qualifying factor? Is that what you're referring to?

Q That's correct. Yes.

A Yes.

Q And so families that are above a certain income threshold, they may not have the opportunity to enroll at a Head Start provider; is that right?

A It depends on the Head Start provider.

Q But they might have to meet additional qualifications?

A Correct.

Q And some UPK providers reserve seats for children with disabilities; isn't that right?

A Yes.

Q Okay. And in fact some UPK providers only serve children with certain disabilities; isn't that right?

A Yes.

Q Faith-based providers are allowed to reserve seats for members of their congregation; correct?

A Yes.

Q And we discussed earlier, or you were discussing with your counsel earlier that the department has proposed a formal definition of "congregation," hasn't it?

A It has.

Q If I could have you look at what's been marked as Exhibit 71, which is the – and it should be in your binder on the third volume there. We could also put it on the screen, if that would be easier. There we go. Great. It's on your screen now, Ms. Odean.

A Yes.

Q And this is the newly – the new draft regulations for UPK that came out recently; right?

A It is.

Q Okay. So, if we could look at the middle of page two, that's the formal definition of "congregation"; correct? Sorry. This is paragraph L.

A Yes.

Q Would you mind reading that definition aloud?

A "Congregation" means a religious-based convocation or multiple religious-based convocations of multiple individuals in a geographic area who share a common set of beliefs and who collectively engage in

conduct with the direct nexus to the shared common set of beliefs.

Q Thank you. So, under that definition, a congregation, that could be all Catholics in a particular area?

A Yes.

Q Or all Lutherans?

A Yes.

Q And so the Catholic provider could reserve seats for Catholics?

A Yes.

Q Lutheran provider for Lutherans?

A Yes.

Q And if the Catholic provider limited its seats to members of its congregation, it wouldn't have to provide an opportunity to enroll to Lutherans; right?

A Correct.

Q You testified earlier that this preference was broader than religion. Do you remember that?

A I do.

Q Okay. But if you look at the definition, it begins by saying, "congregation" means a religious-based convocation or multiple religious-based convocations, and then there are some other requirements; isn't that right?

A Yes.

Q Okay. So, the congregation does have to be religious-based?

A When I said that earlier, I was referring to it didn't have to be a specific religious organization or a church-based, but that it had faith-based or is related to religion.

Q Okay. Thank you for that, Ms. Odean. So, it does have to be religious-based; right?

A Yes.

Q Thank you. Just to back up a moment, we're looking at this Exhibit 71. And I think you testified earlier that this was the current draft version of the department's UPK rules; right?

A Yes.

Q When did this draft version come out?

A Monday.

Q Monday. Had it ever been put in front of the Court before today?

A I believe, yes. Previous drafts were.

Q Right. Not this draft, though; right?

A Not this draft. Yeah.

Q Okay. So, it came out on Monday. That's New Year's Day; right?

A That's when I received the last draft, yes.

Q Okay. And then it was put in front of the Court for the first time today; right?

A Yeah. I don't remember if it was an exhibit yesterday, but yeah.

Q Or, yeah. That's right. Excuse me. We put it into the record yesterday. We're discussing it for the first time today?

A Yes. Correct.

Q Thank you. So, I mean, it's curious timing. It was finalized on New Year's Day, put in front of the Court for the first time in – at the beginning of our trial in this case. Why did the new draft come out on that timeframe?

A We're as a department in process of the draft and incorporating stakeholder input. That's regular and ongoing for our department team. We don't have an open period of time with input where we wait, if you will. We're continuing to revise, take in input and feedback, and adjust so that we can follow the rule process and timeline.

Q Okay. You were aware that the trial was – in this case was this week; correct?

A Yes.

Q Okay. It was finalized on Monday, on New Year's Day. Was it provided to plaintiffs that day? Are you aware of that?

A I'm not aware of that.

Q Okay. Are these new draft rules – are they publicly available anywhere? Can somebody look them up online?

A We typically post the drafts through revisions on our website. I don't know if these are posted yet. I haven't checked –

Q Okay.

A – to ensure that, but that's typically the process that occurs. As revisions are released, they're posted.

Q Okay. But if I told you that they weren't publicly available, would that surprise you?

A I haven't checked.

Q Okay. Thank you for that, Ms. Odean. So, at least prior to this draft coming out, there were nine different preferences – programmatic preferences that were recognized in the rules; right?

A I believe that's correct, yes.

Q Okay. But then yesterday – or, excuse me. When this new draft came out, there was a tenth programmatic preference that was added?

A Yes.

Q Okay. Did you approve this new preference?

A Yes.

Q Okay. If you turn to page seven, I think is where the preferences are.

A Okay.

Q And I'm looking at paragraph ten. That's the new preference, just for the record; right?

A Yes.

Q Okay. And it says, providers may grant preference to an eligible child based on, and then there's a few different things here, but one of them is the child and/or family being a part of a specific community, having specific competencies or interests, or participating in a specific activity; is that right?

A Yes.

Q Okay. But to claim this preference, it looks like under subsection A there, that the provider has to

impose the same requirement on all participating children or families; is that right?

A Yes.

Q Okay. So, a provider can require all of its children or families to be part of a specific community or have specific competencies or interests?

A They can.

Q Okay. I just want to understand what that means, Ms. Odean, if I could. Could a preschool be just for children in foster care, for example?

A Yes.

Q Because that would be part – that would be part of a specific community?

A Yes.

Q Okay. Could a provider under this preference say that all of its children needed to be children of veterans or current service members?

A Potentially, yes.

Q Yeah. Same reason; right? Part of a specific community? Right?

A Sure.

Q Okay. Could it require all of its children or families to be interested in music?

A Yes.

Q Okay. Could a school be just for gender-nonconforming children?

A Any preference was put into place to allow for mixed delivery and different provider types to be able to participate and be inclusive of the communities that

they serve. It is not put in place to change the law of the nondiscrimination provision.

Q Yeah. And my question is just if you have a provider that wants to be for gender-nonconforming children, would this preference allow them to do that?

A It would.

MS. CARRENO: Objection as to speculation.

THE COURT: Overruled.

THE WITNESS: So, again, the preferences as they are now – so, we had the exhibits of the form initially, which was our department response to hearing from providers who had different programmatic expectations that they felt they wouldn't be able to participate unless they were honored. Those preferences didn't negate the part of the law that ensures that children aren't discriminated against who historically have been.

Q. (By Mr. Davis) Right.

A Yeah.

Q Okay. Just to clarify, so the school could be just for gender-nonconforming children, and that would not run afoul of the part of the law prohibiting discrimination?

MS. CARRENO: Objection to the extent it mischaracterizes her testimony.

THE COURT: You can bring that out on redirect.

THE WITNESS: As with any of these, it would be a conversation to determine whether that was appropriate or not. But, yeah. So, we would definitely look into it and follow through. As long as there wasn't

discrimination that was aligned to the antidiscrimination provision, they would be accepted.

Q. (By Mr. Davis) Okay. Could a school under this preference prioritize children of color from historically underserved areas?

A Yes.

Q And then, again, the preference says schools may grant preference to an eligible child based on the child and/or family being a part of a specific community. Does that include the LGBTQ community?

A Yes.

Q Ms. Odean, shifting gears here. UPK's nondiscrimination requirement, what you've been calling its nondiscrimination requirement, that's one of the quality standards that's set out in the UPK statute; right?

A Yes.

Q And the department is allowed – is it true that the department is allowed to permit providers who don't meet quality standards to participate under some circumstances?

A Yes. But it doesn't allow them not to follow the law.

Q To clarify – well, strike that. If a quality standard is not health and safety related, I think you agreed with your counsel earlier that the department had discretion to make exceptions for those quality standards on a temporary basis; right?

A Correct.

Q Does the statute specify which of the quality standards are health and safety related?

A The statute defines health and safety as a priority in alignment with licensing and in alignment with the expectations of the law. I understand that as the director of the program to ensure a safe and healthy environment of learning for children.

Q Thank you for that, Ms. Odean. My question was does the statute tell the public or you which of the quality standards are health and safety related, or is that something that you just are understanding yourself?

A It doesn't specifically define that, except for in consideration of national and local best practices, which that would be a part of.

Q Okay. Has the department ever issued any guidance as to which of the quality standards it understands are health and safety related?

A That's what's in process through the development of the standards. Then there will be guidance alongside that as well.

Q So, not yet; right?

A Correct.

Q Okay. I think you testified earlier that you view the nondiscrimination requirement – what you've been calling the nondiscrimination requirement as health and safety related; is that right?

A Yes.

Q Okay. When did the department first determine that the nondiscrimination requirement was health and safety related?

A I don't know that there was a specific point in time where that was a decision point. Having participated

in, you know, as a provider in the stakeholder – in writing the bill, it was always contemplated that that was a part of health and safety from my engagement in that.

Q No specific point in time; right?

A Yeah.

Q Okay. Have you ever issued any guidance document to the public saying the nondiscrimination requirement is a health and safety related quality standard?

A No. Again, that's – the quality standards are in process, and certainly we'll continue to provide guidance as that evolves.

Q Okay. The nondiscrimination requirement, it's not the only minimum quality standard that's expressly set out in the statute, is it?

A It isn't.

Q Yeah. There are others?

A Yes.

Q Okay. Has the department determined that any of the other quality standards that are expressly set out in the statute are health and safety related?

A We haven't written any specific guidance, but when you look at other frameworks and have conversations with stakeholders, certainly here the complexities of – the overlap of health and safety with positive learning environments, positive learning engagements with children and their classmates, children and their educators.

Q So, has it determined that any of the other quality standards expressly set out in the statute are not health and safety related?

A We haven't specifically defined them that way, but certainly there are differences between cognitive and academic. What we're really looking at with health and safety is the overall environment. And they all contribute, but some specifically to, again, access to the program, and then access for the child in the learning environment.

Q So, you haven't made a specific determination that any of the other quality standards set out in the statute are or are not health and safety related except the nondiscrimination requirement?

A Correct.

Q How did the department arrive at its view that the nondiscrimination requirement was health and safety related?

A Again, I think that was contemplated prior to the department. I think that in my experience in engaging in the bill writing, that was intentionally written in to ensure access to programs, but also being really intentional and thoughtful about children's access to learning once they're in that classroom, and that they – their social-emotional development is dependent on their feeling safe and healthy and welcome in the environment that they're in so that they can grow and develop.

Q Yeah. It was contemplated?

A It was part of the conversation in the bill-writing process.

Q Part of the conversation. Okay. Why didn't it get written into the statute that the nondiscrimination requirement was health and safety related?

A Yeah. I don't know that, because I wasn't a bill writer, but I participated as a stakeholder.

Q Okay. Ms. Odean, even before the UPK statute, I think you may have agreed with your counsel, but I will just ask the question anyway. Colorado child care centers were subject to health and safety requirements before UPK; right?

A Yes.

Q Okay. And but then you – and that's the licensing requirements? Is that generally where those appear?

A Licensing and Colorado Shines.

Q Okay. But I think you also testified earlier that safety is more than licensing requirements; is that right?

A Yes.

Q And I think you testified something like in a really thoughtful way, that was called out in the law. Do you remember saying that?

A I do.

Q Where specifically in the law is it called out that safety goes beyond licensing requirements?

A Again, I can't point to a specific citation. I can review the 500 pages where that's my understanding, but what I'd say is there's the requirements of licensing for safety, and there's the requirements of health and safety for the environment. And that's my understanding, having been a provider, and as we

develop these quality standard rules to support providers.

Q You testified a bit earlier with your counsel about what the statute means when it says this or that, but you weren't part of the general assembly when the statute was passed, were you?

A No.

Q And you haven't talked to all the members of the general assembly about what the statute means, have you?

A No.

Q Okay. So, when you were making those – when you were giving that testimony, you were testifying about your understanding; right?

A Yes. And what is written.

Q Your understanding of what is written?

A Yeah.

Q But for providers, is it your understanding that's binding on them, or is it what the statute says that is binding on providers?

A The law is binding for all of us.

Q Yeah.

A Yeah.

Q The law, but not your understanding; right?

A Well, and how we operationalize and implement the program.

Q Okay. But not your testimony here today. That's not what's binding on all providers; right?

A I'm not sure what you're asking.

Q I can move on. So, I want to circle back to the health and safety regulations that predated UPK, some of them in the licensing requirements like we were just discussing. Does the department make those regulations available to providers?

A The licensing regulations?

Q Health and safety requirements that predated UPK.

A The department programs who operate Colorado Shines and who operate licensing make those available to providers, yes.

Q Does the department itself have a part of its website specifically about health and safety requirements?

A I'm not aware.

Q Not aware?

A One way or the other, yup.

Q Okay. All right. Just to be clear, we've been talking – or you talked with your counsel a lot about the nondiscrimination provision in the UPK statute. I'd like you to take a look at Exhibit 13, if you could, and just let me know when you're there. It will be in your binder, I think in the first volume. Take your time.

A Exhibit 13?

Q Yes.

A Okay.

Q And if we could turn to the second page, fourth bullet down. Is that what you and your counsel were referring to as the nondiscrimination requirement?

A The fourth bullet says about a student withdrawing?

Q Excuse me. I'm sorry. If you look under the heading, quality assurance, sort of midway down the page, and then the fourth bullet down from that.

A Could you repeat the question? Sorry.

Q Yes. Is that the one beginning, requirement that each preschool provider, is that what you and your counsel were referring to as the nondiscrimination requirement?

A Yes.

Q Okay. Could you please read it out loud, Ms. Odean.

A Requirement that each preschool provider provide eligible children an equal opportunity to enroll and receive preschool services regardless of race, ethnicity, religious affiliation, sexual orientation, gender identity, lack of housing, income level, or disability, as such characteristics and circumstances apply to the child or the child's family.

Q Does the word "discrimination" appear anywhere in that provision?

A No.

Q Does it say instead that providers have to provide an equal opportunity to enroll, regardless of, and then a list of protected characteristics?

A It does say that.

Q So, similarly, I would like to take a look at the statute again. If you could turn to Exhibit 67. This is

in defendants' exhibit binder. I'm sorry for all the binder flipping.

A I believe it's on the screen.

Q Great. Thank you. Is this 67? Give me one moment, Ms. Odean. Scroll down a little further. There we go. Thank you for your patience. If you look at subsection B there, is that the part of the statute that you and your counsel were referring to as the nondiscrimination requirement?

A Yes.

Q Okay. And do you see the term "discrimination" or "nondiscrimination" or "antidiscrimination" in that provision?

A No.

Q You testified earlier that this provision was designed to protect groups that have been historically discriminated against. Do you remember that?

A Yes.

Q If you look at the provision now, does it say that?

A It doesn't.

Q Are you aware that Catholics have historically been

discriminated against?

A No.

Q You're not aware of it; right?

MS. CARRENO: Objection. Asked and answered.

THE COURT: Overruled.

THE WITNESS: Not specifically.

Q. (By Mr. Davis) Okay. Ms. Odean, you were discussing the matching process earlier. And I think the general idea is that providers are required to accept the matches unless one of the programmatic preferences applies; is that right?

A Yes.

Q Okay. And then I just said the preferences, but the department has several programmatic preferences that are exceptions from that general matching requirement; right?

A We have preferences to the algorithm to ensure mixed delivery, yes.

Q Okay. Thank you. Do you know how many providers have claimed at least one of the preferences?

A I believe it's about a thousand.

Q About a thousand? If I told you that in your interrogatory responses, you said the number was 1,091, at least at that time, would that sound about right?

A Okay. Yes.

Q Okay. And the department has also allowed providers to request other preferences besides the ones that were recognized as programmatic preferences; right?

A Yes.

Q If we could look at Exhibit 31, and this will be back in the plaintiffs' binder, or maybe on the screen momentarily. I think it's on your screen now, Ms. Odean.

A Okay. Thank you.

Q Do you recognize this document?

A Yes.

Q Is this a document that allowed providers to request other exceptions to the matching process besides the programmatic preferences?

A Yes.

Q Okay. And if you look at the end of the document, we'll scroll down, under exception requested, it gives examples of the different kinds of preferences that someone might request using this form?

A Yes.

Q Okay. And one of these is my location only serves teen moms enrolled at a neighboring high school; is that right?

A Yes.

Q And one of them is my location only serves children with specific disabilities; is that right?

A Yes.

Q Did the department in fact receive some requests for other exceptions under this form?

A We did.

Q And it considered those requests on a case-by-case basis; right?

A Yes.

Q And it granted some of them; right?

A Yes.

Q If we could look at Exhibit 36. Is that the wrong exhibit? 34. Do you recognize this document, Ms. Odean?

A Yes.

Q Is this a spreadsheet showing the department's responses to exceptions that were requested by way of that form we were looking at?

A Yes.

Q Did the department grant an exception requested under the form allowing a provider to only accept fully-vaccinated children?

A I don't recall specifically.

Q Okay. But if on this spreadsheet, in the approved column it says yes, it would be your testimony that that exception was granted?

A Yes.

Q Okay. All right. If we could flip to Exhibit 23. Ms. Odean, the parties have stipulated that this is an authentic copy of a news article that has some quotes from Governor Polis in it. Do you see that that's what it is? And Mr. Reaves can scroll through it.

A Yes.

Q And you see that the article appears to be about this lawsuit; is that right?

A Yes.

Q Okay. Do you see where Governor Polis is quoted as saying – and it's right there on the first page, Nick. I think our focus has always been kids first, of course no discrimination, serve everybody if you want to take public funds. Do you see that?

A I do.

Q Do you agree with that statement?

A Certainly it's great to see preschoolers going into program, and I would say I agree that we want to serve as many eligible children and have an inclusive mixed-delivery model. But I can't – I'm not – obviously I'm not the governor and can't speak to the intention or meaning of what he's saying.

Q Sure. I'm asking, here is what he's saying, and I'm asking do you agree with it?

A Yeah. But I don't know beyond the context of a quote taken out of context what the meaning is. So, I can say that I do agree that we're excited about children. We're excited to get as many participating. We're excited to get as many providers participating as possible and get the funding out in service of families, and certainly we will follow the law on the antidiscrimination provision.

Q Thank you for that. Do you agree, serve everybody if you want to take public funds? Do you agree with that idea?

A I would ask him what he meant by that specifically to understand what he's referring to specifically there.

Q If he really meant everybody, you would disagree; right?

A I don't know that. I interpret it as this is a voluntary program; right? So, Universal Preschool was set up as voluntary for families and voluntary for providers. It's not mandated. If we had chosen a mandated system in Colorado, it would likely be similar to K-12, where you're required to attend first

grade through – or have a documented way that you’re achieving that education.

This is voluntary. So, I believe that’s what he’s referring to. Again, I don’t know, but I would say I do agree that it should be voluntary. Families can choose to participate or not, and so can providers. And we want to provide as many opportunities for both as possible.

Q Yeah. I see what you mean by “voluntary.” He says, if you want to take public funds, but I want to focus on that first part. He says, serve everybody if you want to take public funds. Do you agree with that?

A I believe if people choose to participate, they should have access, yes.

Q And if providers choose to participate, they should serve everybody?

A In alignment with the law. Mm-hmm.

Q Okay. Thank you. Ms. Odean, your lawyers in this case have compared this lawsuit to cases involving academies in the 1970s that were segregated based on race. Are you aware of that?

A Yes.

Q Do you agree with that comparison?

A Any specific –

Q Yeah. Do you think that –

MS. CARRENO: Objection, Your Honor, to the extent that this calls for a legal conclusion from this witness.

MR. DAVIS: I’m not asking for comparison to precedent. I’m asking about the facts.

THE COURT: It's a cloudy area, but he's not asking her for that reason, and it wouldn't be accepted as evidence of that reason, but it would be accepted as evidence concerning the behavior of the administrators in administering the act, as to what they do. So, the objection is overruled.

MR. DAVIS: Thank you, Your Honor.

THE WITNESS: In that regard, I haven't gone through our attorneys' comparison and compared it to our program and made programmatic decisions at this time. I recognize that they utilized that as part of the planning for this trial, but not specifically for the design of the program moving forward or how we would integrate or consider those.

Q. (By Mr. Davis) Yeah. Yeah. Thank you for that. And my question is really about the comparison between the schools. So, you heard St. Mary's and Wellspring testify yesterday about their enrollment practices; right?

A Yes.

Q With respect to sexual orientation and gender identity?

A Yes.

Q Do you think that those preschools, given those enrollment practices, are similar to segregationist academies in the 1970s?

MS. CARRENO: Objection, Your Honor. To the extent that there's not foundation that she understands exactly what Mr. Davis is referring to.

THE COURT: It goes to the credibility of the witness. Overruled.

MR. DAVIS: Thank you, Your Honor. You can answer the question. I will reask, if you like.

THE WITNESS: That would be great.

Q. (By Mr. Davis) Sure. You heard the testimony yesterday of St. Mary's and Wellspring about their enrollment practices; right?

A I did.

Q Specifically with respect to sexual orientation and gender identity?

A Yes.

Q Do you think that those preschools, given those enrollment practices, are similar to segregationist academies in the 1970s?

A I don't believe I'm an expert on either. What I would say from the testimony I heard yesterday is as a program, we need to consider what we have in the law that we're implementing, including the antidiscrimination provision, and ensure that if a child is in a preschool setting of a participating provider, that it's safe and healthy for them to be able to engage, and that it isn't – that safe and healthy isn't compromised by discrimination.

Q So, the problem with St. Mary's and Wellspring is just the law. It's the antidiscrimination provision that's your problem with their practices?

A I don't fully know all of their practices. I certainly learned a lot yesterday, as you pointed out. But since that's our focus in this conversation, that would be obviously something that we would have to consider.

Q Yeah. If there were no antidiscrimination provision in the law, you would be okay with them participating in UPK?

MS. CARRENO: Objection. Speculation.

THE COURT: Overruled.

THE WITNESS: It is in the law, and I believe it's intentionally in the law to ensure that children have a safe and healthy environment, and I do agree with that.

Q. (By Mr. Davis) Yeah. So, the law is the obstacle to their participating; right?

A Is that a question?

Q Yes.

A If they're choosing to discriminate, it is.

Q Okay. In defending you in this case, your lawyers have also cited studies about the impacts of bullying and stigmatization on LGBTQ children. Are you aware of that?

A I am.

Q Do you agree that the policies that you heard about from the plaintiffs yesterday, that those are akin to bullying and stigmatization?

A Potentially.

Q Okay. Thank you. Ms. Odean, if we could look at Exhibit 20. Me and my colleagues can get that pulled up. Do you recognize this document, Ms. Odean?

A I do.

Q Does it – well, what is it?

A So, when a family is in our application system, and they choose and rank providers before they submit an application, it shows what preferences those providers might have.

Q Okay. Why does it show those preferences?

A So that families understand and are making an informed choice about the provider that they've listed.

Q Okay. Thank you. Are licensed child care providers subject to licensing requirements?

A Yes.

Q And does the State sometimes receive complaints about licensed child care providers?

A Yes.

Q Does it keep records of those complaints?

A Yes.

Q Do schools associated with the Archdiocese of Denver hold child care licenses?

A I can't speak to if they all do, but they certainly have licensed providers.

Q Some do?

A Yes.

Q Has any of those schools ever been the subject of a complaint from an LGBTQ-identifying family?

A Not that I'm aware of.

Q What about from any other person alleging LGBTQ discrimination?

A Not that I'm aware of.

Q And you're saying not that I'm aware of, but to be clear, you've looked through these complaint records for purposes of this case; right?

A Yes.

Q And in those complaint records, there is no such complaint of the kinds that I just described?

A Yes. I'm just not a licensing specialist or on the licensing team.

Q Yeah. I understand. Thank you.

A Yeah.

Q And to be clear, the Archdiocese's license providers, you said you weren't sure if they all had licenses, but St. Mary's and Wellspring do; right?

A They do.

Q Do you recall how long Wellspring has had a child care license?

A I don't.

Q St. Mary?

A I don't recall.

Q Okay. Ms. Odean, are you aware that there's a preschool in Buena Vista called Darren Patterson Christian Academy?

A I am.

Q And that school is participating in UPK; right?

A They are.

Q So, the department is providing UPK funding on the same basis as other providers?

A Yes.

Q Ms. Odean, you testified earlier that the provision of the provider agreement that we've been calling paragraph or provision 18B, that that was going to be removed from future versions of the provider agreement; is that right?

A Yes.

Q And I think you said that's because the department has no authority to regulate the hiring practices of faith-based providers?

A It's not our intention to regulate the hiring practices, because there's laws in place that do. And we have workforce credentialing components that are a part of licensing, and that's our priority to ensure.

Q I do think you said the word "authority." Are you walking that back now, or –

A No, I'm not.

Q So, no authority to – sorry. Excuse me. So, no authority to regulate the hiring practices of faith-based providers.

A With the understanding that there are laws in place that do regulate that, and that's not our agency or department's role.

Q Thank you. So, provision 18B is not only being removed from next year's agreement, but you wouldn't expect it to ever be put back in; right?

A Correct.

Q Can we flip back to Exhibit 71. I'm looking at subsection C, and thank you for your patience, Ms. Odean.

A Yes.

Q The provision starting, nothing in these rules shall be construed, and it goes on.

A Yes.

Q Would you mind reading that for the record.

A Nothing in these rules shall be construed to affect an eligible preschool provider's right to engage in privately-funded, inherently-religious activity or affect the independence of eligible preschool providers, including any rights protected by the Colorado and U.S. Constitutions and applicable law.

Q Thank you. When was this provision added to the draft regulations?

A I don't recall the specific point in time when it was added.

Q Okay. But before this version that was just finalized on New Year's Day, it wasn't in the prior draft that was released to the public; right?

A I don't think so.

Q Okay. So, this is the first time it's been put in front of the Court?

A Yes.

Q Were you involved in the decision to add this provision?

A I was.

Q Can you tell me where the language for this provision came from?

A I can't remember where the specific language came from, but I will tell you the intent was to ensure that providers – let me start over.

Q Sure.

A So, this was – this was the intent to put this in with the intent to ensure our providers knew that they could follow their programmatic expectations and decisions, and with the assurances that, regardless of the time of day, for example, they could be following through with that particular program, and that we wouldn't be separating out what was universal preschool. And really to be thoughtful, again, about the uniqueness that providers bring, and be inclusive of mixed delivery and specific models that might be in place for quality.

Q Got it. So, the intent wasn't to give an exception to the nondiscrimination requirement; right?

A Correct.

Q Okay. So, you heard St. Mary's and Wellspring's witnesses testify yesterday about their enrollment practices with respect to sexual orientation and gender identity; right? And so this exception wouldn't change the requirements of them one way or the other with respect to those enrollment practices; is that right?

A The rule doesn't change that provision of antidiscrimination, because that's in the law. So, the rule, the department can't or a provider handbook can't change the law.

Q So, this provision in subsection C doesn't change whether St. Mary's and Wellspring's enrollment practices are allowed or not allowed under the UPK program?

A Correct.

Q Thank you. Ms. Odean, you testified a lot about how the department is subject to the law, can't change the law. You're referring to the UPK statute; right?

A Yes.

Q Are you aware that the department is also subject to the United States Constitution?

A Yes.

Q Okay. So, is it your understanding that if the UPK statute requires one thing, the U.S. Constitution requires another, the department would have to follow the United States Constitution; right?

MS. CARRENO: Objection. Legal conclusion.

THE COURT: Sustained.

MR. DAVIS: So, you're not –

THE COURT: That's what we're here to decide, ultimate question. Whether the practice of the State, according to its statute and its public referendum, meets the requirements of the First amendment.

MR. DAVIS: Absolutely, Your Honor.

THE COURT: It's not a question for a witness to answer. It's for me to answer.

MR. DAVIS: Fully agree, Your Honor.

THE COURT: All right.

MR. DAVIS: Can I try rephrasing the question one more time, and if you sustain an objection, that's okay?

Q. (By Mr. Davis) Ms. Odean, what I'm asking is not what the U.S. Constitution requires. I'm just saying if there were a difference in what the statute required

and the Constitution required, would the department have to follow the Constitution or the statute?

MS. CARRENO: Same objection.

THE COURT: That's the same question. Sustained.

MR. DAVIS: Okay. Thank you, Your Honor.

Q. (By Mr. Davis) Exhibit 71, these are the draft new rules. We've discussed it several times; right, Ms. Odean?

A Yes.

Q These draft preferences, you view them as consistent with the UPK statute; right?

A I do.

Q Okay. Also, the definition of "congregation" in the draft?

A Yes.

MR. DAVIS: If I could confer with my colleagues for a moment, Your Honor?

THE COURT: Yes.

MR. DAVIS: Just a few more questions.

Q. (By Mr. Davis) Ms. Odean, I believe you were testifying earlier about one of the reasons the department wanted to allow for continuity of care preferences is because of the importance of continuity of care for children; right?

A Yes.

Q And their families? Do you think that access to a religious education is also important for religious children and their families?

A I don't want to speak on behalf of families, but I would say we have heard from providers and families that continuity of care in that setting is important to them.

Q Okay. More important than access to religious education?

A I don't – I haven't had that specific conversation about priorities that a specific family might have in that regard.

Q Yeah. I'm asking for your view, Ms. Odean.

A Could you state it again, then?

Q Sure. Is continuity of care more important for families to have access to than access to religious education?

A I would say continuity of care is more globally applied. That's something that is important regardless of setting. So, I would say that weighs pretty heavily, yeah.

Q Okay. More heavily than access to religious education?

A Yeah. I don't – in our program, it isn't about that priority. It's about access to mixed delivery, and continuity of care is expected in all of those settings, where religious education isn't. So, our focus has been on operationalizing what we've been charged with, which isn't religious education in the setting or the priority of that.

Q You testified earlier that some of these preferences arose because the department learned from providers that they wouldn't be able to participate unless they got a preference like that; right?

A Correct.

Q Okay. But in this lawsuit and then yesterday, you heard St. Mary's and Wellspring Catholic Academy saying that they are not able to participate unless they get an exception like the one they requested; right?

A I heard that, yes.

Q Okay. But the department granted some preferences when told by providers that they wouldn't be able to participate, but it has not granted Wellspring and St. Mary's request; right?

A That's correct.

MR. DAVIS: Nothing further, Your Honor.

* * *

REDIRECT EXAMINATION

BY MS. CARRENO

Q And welcome back, Ms. Odean.

A Thank you.

Q During your cross examination earlier today, you were asked a number of questions about the rule-making process and the proposed rules in this case; is that correct?

A Yes.

Q Was the rule-making process for the quality standards contemplated prior to this lawsuit?

A Yes.

Q And why was it contemplated prior to this lawsuit?

A Because it was the expectation of the program to set quality standards in rule in statute.

Q And as a new department, is the rule-making for the quality standards and other rules an ongoing process?

A Yes.

Q Does the department continue to refine and adjust its rules after they're proposed?

A They can, yes.

Q And is that also true after rules are adopted?

A Yes.

Q And are these rules following the same rule-making process that all of the other Department of Early Childhood rules are following and have been following?

A Yes.

Q And why is that?

A The rule process has been established. It's not a program process. It's a department process to have the rules advisory council and a rules promulgation process in place for the new department.

Q You were also asked a number of questions about the "congregation" definition and the faith-based provider preference. So, talking about the congregation preference in these rules, these are just proposed rules at this point; correct?

A That's correct.

Q And is it possible that the definition of "congregation" can change before it's adopted either later this month or sometime next month?

A That's correct.

Q And can Catholic providers or any other faith-based providers continue to make suggested changes to that definition?

A Yes, they can.

Q And is the department open to listening to that feedback and those suggestions?

A Yes.

Q Why is that?

A Again, it's a part of that authentic rule process and to honor that with integrity. It's inclusive of stakeholder input and feedback throughout the process. And then also I would say as the director of the program, it has been a priority to ensure that collective voice that developed the program continue through, and as you've heard it been said, that it's our aim as a new state department not to be top-down, but rather alongside our stakeholders and providers in order to serve.

Q And those stakeholders include faith-based providers?

A Yes.

Q You were also asked about the purpose of the faith-based provider preference. Is the purpose of that preference to allow providers to discriminate on the basis of religion?

A No.

Q What is the purpose?

A The purpose is to be inclusive of providers in mixed delivery and the programs that they bring for families in that community, and continuity of care.

Q And you were also asked about whether faith-based providers get to define their own congregations. Why do faith-based providers get to define the members of their community?

A That's something we wouldn't know at the state level. And so faith-based providers are considered faith-based providers because they attest to being so, and that preference for faith-based providers – the word “congregation,” for example, was used to be as expansive as possible so that faith-based providers could define their community in the way that they have.

Q Is any faith-based provider allowed to discriminate on the basis of religion or religious affiliation?

A No.

Q Why does the department not consider the congregation preference a workaround or a way to allow providers to discriminate on the basis of religion?

A It is about an inclusive community, and being able to ensure that providers can continue to serve the communities that they have served, and families can continue to participate.

Q If the department learned that a provider was utilizing the congregation preference in a discriminatory way, would the department investigate the use of the preference in that way?

A Yes.

Q And why would the department do that?

A To ensure that we're all following the expectations set forth for us in the law.

Q Would that be true for all of the preferences?

A Yes.

Q What was the purpose of not just the congregation preference, but all of the preferences?

A The purpose of the preferences came about because of the system's use of the deferred acceptance algorithm, which was – which is an algorithm for a lottery matching. That specific algorithm didn't consider mixed delivery or early childhood enrollment, for example, but is an accepted algorithm for a lottery match. And so the weights that are provided or the preferences that are provided are to honor the unique program we have in Colorado and the expectations around mixed delivery.

Q And can providers use any of the preferences in a way that discriminates in violation of the statute?

A The preferences are an exception to the algorithm, not to the law.

Q And so I also want to direct your attention to some of the questions and hypotheticals you were asked about earlier on cross examination. Do you remember getting some hypothetical questions about scenarios earlier today?

A Yes.

Q And do you remember being asked about students of color, gender-nonconforming students?

A Yes. I remember.

Q Have you ever received any of those types of requests for a preference on those bases before?

A No.

Q And you were asked a number of hypotheticals and expected to answer those hypotheticals on the fly this morning. If you did encounter a situation like that, how would the department typically address those types of requests?

A As a new request, as a new program, we would have a conversation as a department with our leadership team, and likely with our attorneys to determine what the next steps would be.

Q And why would you do that?

A Because it is tied to the law, and because it's new.

Q You were asked about the possibility of a request from a preschool that serves only African-American children. Has the department ever received a request from a provider to turn away white children?

MR. DAVIS: Objection. Misstates the question, Your Honor.

THE COURT: You may conduct a surcross on that point if you wish.

MR. DAVIS: Thank you, Your Honor.

THE COURT: Go ahead.

Q. (By Ms. Carreno) Do you need me to repeat the question?

A Yes.

Q You were asked about the possibility of a request from a preschool that might serve only African-American children. Has the department ever received a request from a provider to turn away white children?

A No.

Q And you were asked about the possibility of a request from a preschool that serves only gender-nonconforming children. Has the department ever received a request from a provider to turn away cisgender children?

A No.

Q You were asked about the possibility of a request from a preschool that serves only LGBTQ children or LGBTQ families. Has the department received a request from a provider to turn away straight children or families?

A No.

Q And had you ever thought about those possibilities prior to this morning?

A No.

Q And if you were asked any of those hypothetical scenarios or questions, what would you do?

A Again, I would go to our senior leadership team and to our attorneys to determine the appropriate process and next steps.

Q Is that how the department typically makes decisions around the preferences?

A Yes.

Q Would you consult with any other people within the department before making that type of determination?

A I would.

Q And if during going through that process of analyzing one of these requests the department learned that any of these hypothetical situations were

in violation of the law, would the department allow a provider to utilize those?

A Not if they were in violation of the law.

Q And I want to turn back to questions around the preferences allowing providers to prioritize low-income children or children with disabilities. You had talked about on direct that the statute specifically directs the department to prioritize those children from low-income families or those children with disabilities; is that correct?

A Yes.

Q And can you describe – can you describe what that means?

A My understanding is that means we as a program and as a department have to ensure those children have access to a high-quality setting for Universal Preschool, and specifically that we don't diminish the access that they had in the previous state-run program, but that we continue to serve and are able to meet those children's needs specifically.

Q And those children are specifically identified in statute?

A They are.

Q You were also asked about a school that only serves a community of teen moms. Would the department investigate the decision of a provider if it refused a teen dad access to that preschool solely on the basis of his gender?

A Would we investigate?

Q Yes. Would you investigate the decision to not serve a person solely on the basis of his gender?

A If a father of a child in that program was denied access, we would investigate.

MS. CARRENO: And, Your Honor, just one moment to confer?

THE COURT: Yes.

MS. CARRENO: Those are all the questions I have on redirect, Your Honor.

THE COURT: Thank you. Do you want to do a surcross on that point?

MR. DAVIS: No, Your Honor. Thank you.

THE COURT: You may stand down and relax.

THE WITNESS: Thank you.

THE COURT: Next witness, please?

* * *

(The Witness is Sworn)

THE COURTROOM DEPUTY: Please state your full name for the record, and spell your last name.

THE WITNESS: Abbie E. Goldberg, G-O-L-D-B-E-R-G.

DIRECT EXAMINATION

BY MS. RUST

Q Thank you, Dr. Goldberg. Dr. Goldberg, could you please tell the Court what degrees you hold.

A Sure. I have a bachelor's in psychology from Wesleyan University. I hold a master's in clinical psychology from UMass Amherst and a PhD in clinical psychology, UMass Amherst.

Q Do you practice clinical psychology?

A I am primarily a research psychologist, so I do not – I am not a licensed psychologist in the state of Massachusetts.

Q And what is your current employment?

A My current employment is professor of clinical psychology at Clark University. I am also the past director of clinical training and the director of women and gender studies at Clark University.

Q Do you teach any classes at Clark University?

A Yes. I teach ethics in clinical psychology to doctoral students, which I've been doing for 15 years. I teach a course in human sexuality. I teach courses in research methods, psychology of sexual orientation, contemporary families, true crime.

Q Dr. Goldberg, have you received grants for your research?

A I have. I've received several dozen grants, including to MIH, International Institute of Health Grants, and a number of grants from private foundations.

Q Do you have a current research project?

A I have several current research projects. One is a longitudinal study of adoptive families, which has been ongoing since 2005. I have some other projects right now looking at the legal context for LGBT families and adoptive families.

Q Have you written any peer-reviewed articles – oh. You're back.

A Do you want me to repeat that?

Q Yes, please.

A I have over 150 peer-reviewed articles.

Q And have you written any books?

A I am the author of four books and the editor of five books.

Q If you remember, could you tell us what your books are about, generally?

A Yeah. Mostly adoption and LGBT parent families.

Q And, Dr. Goldberg, is your work nationally recognized?

A Yes.

Q Is it internationally recognized?

A It is.

Q Have you ever given lectures on your expertise in LGBTQ parenting?

A I have given over 100 lectures, over 60 of which have been invited, including in other countries.

Q Has your professional work ever been cited before in a court case?

A Yes. Oh. I'm back; right?

Q Yup. You're back.

A Okay. Yeah. I don't know what's going on. Yes. It has been cited in a number of different amicus briefs, including Obergefell, Fulton, and several others.

Q And have you ever testified before as an expert?

A I've provided written testimony and affidavits for cases, but all of those cases were resolved prior to trial, so I never actually had to appear.

MS. RUST: Thank you. And, Your Honor, at this time I would tender a copy of Dr. Goldberg's CV to the Court, which is Exhibit 44, for review later. Do you want me to pull it up for you to see, Your Honor, or are you okay?

THE COURT: You don't have to pull it up. It's not necessary. I am going to review it with all the other documents.

MS. RUST: Thank you, Your Honor. I just wanted to make sure my understanding was correct.

Q. (By Ms. Rust) Dr. Goldberg, were you contacted by the Colorado Attorney General's Office to give expert testimony in this case?

A Yes.

Q When?

A I think it was November 21st.

Q Are you being compensated for your testimony?

A Yes.

Q Were you asked to write an expert report?

A I was.

MS. RUST: And, Your Honor, at this point I would tender Exhibit 45, which is Dr. Goldberg's expert report, to the Court.

THE COURT: It's the same ruling that I gave previously.

MS. RUST: Thank you, Your Honor.

Q. (By Ms. Rust) Dr. Goldberg, did you review any materials in preparation of writing your expert report?

A Yes.

Q What were they?

A A number of peer-reviewed articles, including those of my own and other colleagues and scholars, as well as a number of white papers, which are usually prepared for the public, which summarize data, but are not in peer-reviewed journals.

Q Is that typical in your line of work to review such materials?

A Yes.

Q And is it also typical in your line of work to cite to other journal articles when writing a report?

A Yes.

Q Dr. Goldberg, you stated earlier that you've done research studies on LGBTQ parenting and families; is that correct?

A Yes.

Q Can you tell us about your professional path that led to this expertise?

A Sure. I started my graduate work at UMass Amherst in the late '90s doing research on heterosexual married couples who were low-income and experiencing the birth of their first child. In the context of doing that work, I realized that there was no research looking at the transition to parenthood for same-sex couples. So, I did the first study, the first longitudinal study of same-sex couples becoming parents, and so that formed the basis of a lot of the work that has followed since.

Q In your work, have you found a – let me rephrase that. In your work, has your research found a common environment that LGBTQ parents are found in?

A They're actually found in all environments. You know, they're all over the country in every – they've established every county, every zip code. They do – you know, they're in suburban, urban, rural environments. When you look within same-sex couples in various geographic regions, there is a disproportionate number of LGBTQ parents parenting in rural areas, meaning when you look at same-sex couples in rural areas, a greater percentage of them will be parents than, say, in urban areas.

Q Okay. How about, has your research found that LGBTQ parents compared to heterosexual parents in terms of socioeconomic status?

A Yeah. So, it's not my specific research, but it's the research of many, you know, well-known demographers in the field. We're usually using national data to establish that LGBT parents are about twice as likely to live in poverty as compared to heterosexual cisgender parents. I think the number was 29 percent.

Q Do environments of poverty in rural environments constrain LGBT families when they are looking for early childhood education options?

A Yes. Parents who have less money have fewer options. They can't afford private preschools, so they're often limited in terms of what public or free options are available, which obviously constrains their options.

Q Has any of your research touched on this?

A Yes. So, I've looked at a pretty socioeconomically diverse sample, and have found that those folks with less money do report having fewer options, and also

that they struggle with finding accessible and affordable preschools.

Q Okay. And why was that finding important in your area of expertise?

A I think basically just the fact that we know that children benefit from, you know, good-quality early childhood education. And if there is a group, for example, that is more likely to live in poverty and more likely to have fewer options in terms of preschools and accessible early childhood education, that those families may be at risk for, you know, inadequate, you know, outcomes in terms of children that have, you know, ultimately no relationship to their own parenting, but their lack of access to the kind of environment that will support the children and family.

Q Was this study of yours published in a known academic journal?

A Yes.

Q Was the study subject to scrutiny of your peers?

A Yes.

Q And, Jen, could you pull up Exhibit 55, please. Dr. Goldberg –

THE COURTROOM DEPUTY: Give me just a minute.

MS. RUST: Sorry. Ms. Bernique, it's okay. I can do this an alternate way that doesn't have to be on the computer screen.

THE COURTROOM DEPUTY: Do you want to put it on the Elmo? Hold on just a second. Do you have it on?

THE WITNESS: I have the title of it, so as long as you tell me the title, I don't know if that's acceptable.

MS. RUST: We can do it that way. That way we don't mess up our technology too much.

Q. (By Ms. Rust) So, is the title of that journal article Preschool Selection Considerations and Experiences of School Mistreatment Among Lesbian, Gay, and Heterosexual Adoptive Parents?

A Yes.

MS. RUST: Okay. Your Honor, I would tender this as Exhibit 55 to Your Honor.

THE COURT: Yes.

Q. (By Ms. Rust) Dr. Goldberg, does living in a rural region put any additional constraints on an LGBT parent in preschool experiences?

A Well, folks who live in rural areas usually have far fewer options in terms of preschools, so there's fewer that are actually in their immediate geographic area.

Q Okay. How about if that family lives in a conservative area?

A Yes. They're likely going to find – face barriers in terms of both where they feel comfortable sending their children to school, as well as whether that school will necessarily accept them.

Q And, Dr. Goldberg, have you done a study on this?

A I've done several studies that have addressed the sociopolitical context, and as well as the rurality or urbanicity of the immediate environment and its effect on LGBT families.

Q Well, you've done several studies, you said. So, could you speak to us generally what your findings have been.

A So, some of the – sort of collectively the research has found that LGBT families who reside in areas that are more sociopolitically conservative, which is usually – categorized that way based on recent voting history, for example, the county that they're living in, laws and so on, that they tend to face more stigma in the school environment, sort of trickle-down effects from the community. They also report greater victimization of their children in schools. So, those are sort of two, I think, key findings. Both parents and children are reporting often worse outcomes.

Q Was there – sorry. One second. Did any of your studies have findings regarding how LGBT parents' interaction with the school influenced their child's school performance?

A Not specifically academically, unless I'm forgetting a paper of mine. Mainly the findings really are around the children's mental health and well-being.

Q Can you elaborate on those findings, please.

A Yeah. So, parents who, again, report, you know, living in areas that they deem less gay friendly or more conservative sociopolitically, and also in more rural regions, do report more challenges in terms of school climate. So, a less supporting or affirming school climate, and then in turn more mental health problems in their children.

Q Okay. Dr. Goldberg, you mentioned victimization, that you found more victimization of children of LGBT

parents in one of your studies. Are there any unique victimizations of children of LGBT parents?

A Yeah. So, yes. They are. They're more likely to be victimized in these less supportive environments, and specifically more likely to be, for example, teased about their own sexual orientation or gender identity or their parents' sexual orientation and gender identity.

Q Okay. Does that in turn affect a child's mental health?

A Yes. It is fairly well established in the literature that victimization is strongly correlated with in turn self-esteem, depression, anxiety, and so on.

Q Can it also affect a child's behavior?

A Oh, yes. Certainly. And it has been linked to behavioral challenges.

Q You also mentioned your studies regarding LGBT parents feeling alienated by a school environment. What are some consequences of that?

A So, when parents feel alienated both by teachers, the general school climate, other parents, they generally are less satisfied with the school. They may be less likely to, for example, engage with the school in ways that would benefit the school. For example, volunteering in a child's classroom or school events and activities. Generally we know that strong parent-school collaborations and partnerships are good for kids. So, when parents feel alienated, this can have an indirect effect on children's development as well.

Q Was there any part of your study that touched on LGBT parents and their interaction with their peers in the school environment?

A Several studies look at parents' experiences and perceptions of acceptance by other parents. And that research, definitely when parents feel less accepted by other parents at their children's school, they are less involved at their children's school. They are less involved with their children's school experience, and they have actually more negative interactions with teachers.

Q In your study of LGBT parents, did you find any examples of these parents feeling marginalized?

A Yes. Many examples, mostly categorized in terms of more explicit marginalization, having sort of explicitly negative things said to them. And more implicit examples of marginalization like curricular exclusion, paperwork not encompassing their families, et cetera.

Q Did your study also look at what happens when an LGBT parent feels accepted in a school environment?

A Yes.

Q What were those findings?

A So, when parents feel respected and appreciated as parents in a school community, they tend to report more positive relationships with the schools. They also tend to be more engaged, volunteer, feel more connected to their children's schools.

Q Okay. Did your research in this area include any findings of how schools can include LGBTQ parents more effectively?

A Yes. Parents usually report really valuing, again, the kind of efforts to explicitly include them. Expanding, for example, Mothers Day to Parents Day, having room for them to identify themselves on school

paperwork, such as parent one, parent two, parent three, having opportunities for their children to complete assignments in a way that doesn't alienate or marginalize them for not having a father, for example.

Q And do these things in turn create a safe school environment for children?

A They do.

Q How so?

A They allow children to feel that their family is respected, included, appreciated, that they are a member of the school, a complete member of the school community, and allows children to have access to an equal education. It allows children to participate fully in the life of the school, to not be identified as different.

Q Dr. Goldberg, I did want to ask you, when we were answering questions up to this point, do all of your opinions also cover LGBTQ parents, or is it just LGBT parents?

A Which is – what is the distinction? Which is the letter that you are –

Q Yeah. That's a better question. I think just in our conversation, I've been saying LGBT, and you've been saying LGBTQ. Do you understand there to be a difference between those two?

A Well, the Q is queer. And so for me, depending on generational issues with the age of the parent, for example, "queer" is an increasingly-used term, as is "pansexual," but that's sort of encompassed in the queer. So, to me, it's a generational issue, that older parents might not identify as queer, but younger parents might.

Q Understood. Thank you. So, when you say LGBT, you're not necessarily excluding the Q as we're talking?

A No.

Q Okay. Thank you.

A I sort of have an implicit asterisk or plus sign when I use different terms. So, I would be clear, though, if I was excluding a group, saying this applies to lesbian parents but not gay parents or lesbian parents but not trans parents, for example.

Q Thank you for allowing me that point of clarification, Dr. Goldberg. Okay. We were just discussing some of your additional research. So, instead of pulling them up again, I am going to ask if one of these additional papers is entitled Lesbian, Gay, and Heterosexual Adoptive Parents' Experiences in Preschool Environments.

A Yes.

MS. RUST: Okay. And then is the other one we were discussing – oh. I'm sorry, Your Honor. That's been previously marked as Exhibit 57, and I will tender that one to the Court at this time.

Q. (By Ms. Rust) And then, Dr. Goldberg, was the other study of yours we were just discussing Predicting Parents' School Engagement Among Lesbian, Gay, and Heterosexual Adoptive Parents of Kindergarteners?

A Yes.

MS. RUST: Okay. And I believe – sorry. That has been previously marked as Exhibit 58, Your Honor.

THE COURT: All right.

Q. (By Ms. Rust) Okay. Dr. Goldberg, does the context in which a child with LGBTQ or LGBT parents is raised matter?

A Yes.

Q Why?

A Well, children are impacted by the environments that they spend the most amount of time in, and that would include the family, and usually includes school.

Q Have – I believe we talked about, you studied this; correct? The school environment?

A Yes.

Q Have you done any research on the internal environment of schools and school communities and their effect on LGBTQ parents?

A Yes.

Q Okay. And, again, I believe we touched on this, but why is an affirming school environment important to children of LGBTQ parents?

A I think, again, to reiterate, children receive messages from schools about whether their families and in turn they are valid and accepted. So, when a school curriculum, classroom, the physical environment of schools, reflects and or at least doesn't marginalize their family, that has an impact on their sense of self.

Q Okay. Did your research find any of the impacts that has on sense of self of a child?

A Yeah. Mainly through parents' reports, but parents do report that when – when their children attend schools that are explicitly validating and inclusive,

that their children feel more positively about their school environment.

Q And does feeling more positively about a school environment have any consequences for the child?

A Yes.

Q What are they?

A Well, when a child feels, you know, accepted and included at a school, they in turn have better self-regard for themselves. If a child alternatively is being implicitly or explicitly told that there is something wrong with them or their family, this can create negative self-views.

Q And what about if a child has a same-sex attraction? How does the internal environment of a school or a school – school community affect them?

A Similarly if a child is getting messages that their identity or presentation is non-normative, not accepted, equated with negative qualities or attributes, they will internalize those qualities as applying to themselves.

Q And have you done research into that topic?

A Some research. My predominant focus and expertise is LGBT parents, but some of my work has focused on LGBT youth, and we find very similar things. I will say that I know that literature, and it's very consistent in terms of the effects of school climate, for example.

Q Okay. And I believe that is Exhibit 66. And that one is entitled When Parents Separate and One Parent Comes Out as Lesbian, Gay, or Bisexual, Sons and Daughters Engage with the Tension That Occurs

When Their Family Unit Changes. And was that article cited in your expert report?

A It was. That specific paper, I think has to do with children of LGBT parents. I think it's the Wilkinson that's regarding the youth that are LGBT.

Q Thank you. That one is School Culture and the well-being of Same-Sex Attracted Youth; is that correct?

A Yes.

Q Okay. So, that's Exhibit 66. And I beg Your Honor's pardon for the confusion of my exhibits. Okay. I believe you mentioned that you have done studies about messaging regarding lesbian, gay, or bisexual parents, how they can affect children. Can you explain your 2007 study, how does that make a difference?

A Sure. Yeah. Most of my work focusing on children of LGBT parents, I've interviewed young adults about their experiences. So, how specific do you want me to get with this particular study?

Q Great question. Were there any significant findings of that study?

A Yes. For the most part, this study, which, you know, I've essentially replicated with other studies, documents, the fact that for youth who are raised by LGBT parents, the struggles that they face in life don't stem from their parents' sexual orientation or gender identity, but rather from the environment that may or may not stigmatize their parents. So, the pain that they might experience, the teasing they might experience is due to other people's perceptions of their family. So, they love their parents, but they struggle

with other people's perceptions or reactions to their families.

Q And was that study of yours published with those findings?

A Yes.

Q And then would you explain just a general overview of your 2023 study Cherished Families that was in the Journal of Marriage and Family?

A Yeah. This paper kind of built on a couple decades of work, and the purpose of it was actually to explore the experiences of LGBT families who have encountered a lot of difficulty. So, you know, this is not a representative sample of specifically a group of folks whose parents had, for example, struggled with mental health issues, or they had struggled with mental health issues. And, again, the findings really were that the challenges that they faced in life stemmed from societal homophobia, not from their parents' sexual orientation.

Q Okay. And was that study of yours published?

A Yes.

MS. RUST: Your Honor, I'm just going to take a break and look at my outline of Dr. Goldberg and make sure I'm not missing anything. One second.

(Pause in the proceedings.)

MS. RUST: All right. Dr. Goldberg, I am done for the moment. Thank you.

THE WITNESS: Thank you.

CROSS EXAMINATION

BY MR. REAVES

Q Good afternoon, Dr. Goldberg. Can you hear me okay?

A Yes. Thank you.

Q Just to introduce myself, my name is Nick Reaves. I am one of the counsel for the Catholic Schools in this case. During your direct testimony with Nicky a few minutes ago, I didn't hear you talk specifically about the effective enrollment policies on LGBTQ families; is that correct?

A Correct.

Q Also during your testimony, I didn't hear you talk about anything specific to preschool environments; is that correct?

A I believe that indirectly we did speak about some of my research on parents' experiences in preschools as well as choosing preschools, indirectly when we spoke about poverty and rurality and the effects on choosing preschools.

Q Thank you. You mentioned in your expert report that you had a very short time to consider this case; is that correct?

A Yes.

Q Have you read or reviewed the religious curriculum used at St. Mary's Preschool?

A I have.

Q Have you read or reviewed the religious curriculum used at Wellspring Preschool?

A Yes.

Q Have you reviewed how the online portal works, where families can sign up for UPK Colorado?

A I believe so.

Q Have you reviewed how the UPK program makes decisions regarding matching families to particular UPK providers?

MS. RUST: Your Honor, I would just make an objection that this is outside of this witness' expertise. We're now veering into how UPK works, and never once did I offer her as an expert in UPK.

THE COURT: Overruled.

Q. (By Mr. Reaves) Are you familiar with the programmatic preferences permitted by the UPK program?

A Can you specify what you mean by "programmatic preferences"?

Q Yes. There's essentially a list of exception criteria to a matching process for the UPK program. Are you familiar with those criteria?

A You'd have to refresh my memory. There's a lot of material. Yeah. If you could just tell me –

Q No. That's fine. I will move on. Have you ever published research regarding the effects of including non-affirming preschools in a government funding program?

A No.

Q Have you ever published research regarding LGBTQ enrollment for Universal Preschool Programs?

A No.

Q Have you ever published research regarding the impacts of including Catholic preschools in a pool of Universal Preschool providers?

A No.

Q Have you ever published research regarding the psychological impacts of denying a family enrollment at a Catholic school?

A I have had families in my research who have been denied enrollment at Catholic Schools.

Q And was your research study specifically looking at that question and the impact of the enrollment decision?

A No. It was looking at parents' experiences seeking out and then becoming enrolled in preschools.

Q Would you say that as a researcher, you approach the topics you research with neutrality?

A Yes.

Q So, as a researcher, your goal isn't to try to support a particular narrative or point of view; is that right?

A My goal is to understand the experiences of largely marginalized populations. So, people who have typically been overlooked in research. That's probably – whether that's a neutral stance is, I think, a question, but when I am actually interviewing people and writing out findings, I do try to to the best of my ability encompass the full spectrum of their experiences.

Q I'd like to talk a bit about your expert report. And do you recall putting that together?

A Yes.

Q In your expert report, you start by focusing on LGBTQ+ parents who are, quote, living in more rural and/or politically conservative regions. Do you recall that?

A Yes.

Q Are you aware that both St. Mary's and Wellspring Preschools are in the Denver metropolitan area?

A Yes.

Q Would you describe Denver as either, quote, more rural, or as a, quote, politically conservative region?

A Probably not.

Q So, in your report, when you talk about the importance of preschools serving as affirming environments, quote, particularly in rural or politically conservative communities, that part of your report and your testimony isn't really about this case; is that right?

A Well, to back up, affirming environments are important everywhere to children and families. They are more easily found in urban areas. The point I was trying to make is that folks who are in rural or impoverished areas or have less income are disproportionately more likely to face a paucity of supportive environments.

Q Another thing you talk about in this portion of your expert report is the benefits to LGBTQ families of being able to find, quote, accessible and cost-effective childhood education; is that right?

A Yes.

Q And as you explained earlier, you're generally familiar with how the UPK system works?

A Generally familiar.

Q So, you're aware that the UPK program offers 15 hours of free preschool to all Colorado families; is that right?

A Yes.

Q And are you aware that over 2,000 preschools participate in the preschool program and have agreed to Colorado's sexual orientation and gender identity nondiscrimination requirements?

A Yes.

Q Are you aware of any research regarding how accessible Colorado as a UPK program is specifically for LGBTQ families?

A No.

Q Are you aware of any evidence showing that LGBTQ families in Denver are unable to access cost-effective early childhood education through the UPK program?

A No. I don't think there's any research on that.

Q So, you don't know whether UPK Colorado is already making preschool services more accessible for LGBTQ families or not?

A No.

Q Have you ever conducted research that looked at how often lesbian and gay parents encounter challenges related to their sexual orientation in accessing early childhood education?

A Yes.

Q And from that research, do you recall how often lesbian and gay parents in metro areas reported

experiencing challenges related to their sexual orientation in the early childhood education context?

A Well, it is hard to say how often when that is not a very specific question that I've asked, but I would say that those experiences do exist. So, again, it's hard to put a percentage on that in this moment, but challenges certainly do exist.

Q I'd like to pull up a document, if we can. Just give us one second, Doctor. Great. Dr. Goldberg, do you recognize this document?

A Yes.

Q And if you look about halfway through the abstract, one of your top-level findings on this first page states that, quote, the majority of parents were open about their lesbian and gay and adoptive family status, and had not encountered challenges related to family diversity. Did I read that correctly?

A Yes.

Q Let's go to page 12 of this document. Great. Do you see the second full paragraph there entitled challenges related to LG parent status?

A I do. It's very small. So, I might have to pull up my own copy.

Q That's okay. I will try to read out the relevant portions for you as well. And just for the transcript, this document is titled Lesbian, Gay, and Heterosexual Adoptive Parents' Experiences in Preschool Environments. This is one of defendants' exhibits.

So, I'd like to read out a sentence from that paragraph, and it states, most lesbian and gay, or LG

as it says here, participants, namely 75 percent of lesbians and 89 percent of gay men, stated that they had not encountered any challenges related to their sexual orientation. Did I read that correctly?

A Yes, you did.

Q And on the next page, about halfway through the first full paragraph, your research states that notably, all of the seven participants who described teachers' apparent discomfort, and I will add that that's talking about discomfort with their sexual orientation, but you can correct me if I'm wrong, Dr. Goldberg, resided in nonmetro areas. Is that your understanding of what this research found?

A Yes.

Q And this study was published in 2014; is that right?

A Yes.

Q And that was actually before same-sex marriage was legalized; is that right?

A Yes.

Q So, in your opinion, since this study has been completed, has the general population become more or less accepting of same-sex couples?

A That is a very complicated question to answer, and it depends on what question folks are asked in surveys. So, large-scale acceptance for marriage has increased, but depending on where you're actually surveying folks, their acceptance of families is not necessarily greater.

Q And just to summarize before I move on, this research that you did, you spoke to parents about their

experiences enrolling children in preschool environments; is that right?

A Yes.

Q And one of the findings of this research was that none of the families in – none of the LG or lesbian and gay families in metro areas had encountered challenges or difficulties in the school environment; is that right?

A Explicit challenges. So, you know, the most sort of extreme form of challenge.

Q Have you ever researched whether lesbian and gay couples seek out schools that will be supportive and affirming of their family structure?

A Yes.

Q And did your research find that lesbian and gay families do seek out and prioritize finding schools that are supportive and affirming of their families?

A I have found that they do when they can. So, the things that might limit that are, for example, income or a child's special needs, for example. Which might require them to sort of decrease the value that they are able to place on the affirmingness of the school.

Q But on the whole, generally speaking, your research has found that a large percentage of lesbian and gay families do seek out and try to find preschools that are affirming of their sexual orientation?

A To the extent that they can, given, you know, all the other considerations that they're also making.

Q Makes sense. Thank you. You also talked a little bit earlier about the importance of messages related to

family diversity. That's something you testified about, and that's in your report; is that right?

A Yes.

Q And you were talking earlier, and you cite in your report a study from Wilkinson and Pearson from 2009. Do you recall that study?

A Yes.

Q And just for the record, I will note that this is Exhibit 66 of defendants' exhibits. Actually, let's go ahead and pull that one up, if you don't mind. Exhibit 66. Oh. You've already got it. The screen changed. Are you aware that this study looked at health effects for same-sex attracted adolescents?

A Yes.

Q Did this study purport to or include any research or findings on preschool students?

A No.

Q Thank you. I'd like to turn back to your expert report, if that's okay. And that's Exhibit 45, for the record. You state in your expert report – and this is on page eight, but I will just read it out for you, since I know it's small on the screen. You state on page eight that some messages, quote, negatively impact children; is that correct?

A Yes.

Q And I guess a little bit before that, actually, near the end of the first paragraph on page seven, you say, specifically, preschool-aged children, specifically, are impacted by the messages they receive about their families at home and at school, as well as potential

disconnects between those messages. Did I read that correctly?

A You did.

Q You don't cite any studies or research to support this point in your report; is that right?

A So, some of the citations are – let me – what page is this?

Q This is on page seven. End of the first paragraph. I just read out the sentence, and at the end of the sentence, there's no kind of citation for that assertion.

A I'm just searching for it. There are papers cited elsewhere to support that point. I'm just having a hard time finding that.

Q That's okay. That's okay.

A Maybe it's the copy, but –

Q Yeah. I have a couple more questions about kind of the messages – the messages that you talked about there. So, is it your expert opinion that children in a preschool environment can actually pick up on the types of messages that are being sent by, for example, school policies or teacher conduct or something like that?

A Yes.

Q Do you think asking a preschool student to dress according to their biological sex is sending a message to that student?

A I do.

Q And do you think the message that these schools are sending by having policies like those at issue in this case – do you think those messages are important?

A They are consequential. Yeah.

Q So, in your opinion, would you say that the Archdiocese's policies and the policies of the two plaintiff schools in this case, that they're sending the wrong message to students and their families?

A I am not saying – they are sending a message. They are sending a message that – about what is valued. They're sending a message about who is accepted and who is not accepted. They're sending a message about gender and sex. You're asking whether I personally think it's bad or –

Q Yeah. Just to reframe –

A I think it has consequences, yeah.

Q I'm sorry, Dr. Goldberg. I didn't mean to speak over you. Just to reframe, I guess I would say it's your opinion that those messages we are discussing are harmful or can be harmful to LGBTQ students and families; is that right?

A Yes.

Q What about messages that other parents could be sending at the school? Have you ever researched that, and can that be harmful as well?

A Yes.

Q What kinds of messages could other parents be sending in the school environment?

A Other parents communicate messages both to parents, but also to children through their own children, around, for example, the legitimacy of two women being married. So, a parent could suggest to a child or to another parent that two women being

married, you know, that's not a real marriage. It's not a real family. That's just one example.

Q Thank you. You also state in the conclusion of your report, and this is on page ten, that LGBTQ+ parents appreciate – I will say, quote, appreciate inclusive language in the classroom and on school forms, e.g., parent one and parent two; is that correct?

A Yes.

Q Speaking about parent one and parent two, you also mentioned earlier in your testimony parent three. Could you just describe kind of what – how this language would be more inclusive, and what you mean by that.

A Sure. So, parent one, parent two, that would assume, for example, a two-parent family, but there are families where there is a stepparent, for example. Or in some cases – in the case of a two-mom family, it might be an active sperm donor father. Or, again, in the case of a divorced family, it could be a new partner. So, the idea is that this more expansive language actually allows for a lot of different kinds of families to more accurately represent themselves.

Q Your report also talks specifically about harms caused by messages like, quote, equating homosexuality with mental illness and other messages, quote, perpetuating stigmatizing ideas against LGBTQ+ people; is that right?

A Yes.

Q And it talks about the importance of LGBTQ-friendly curriculum too; is that right?

A Yes.

Q And you also talk about the importance of anti-bullying policies that include sexual orientation and gender identity language; is that right?

A Yes.

Q Have you reviewed the anti-bullying policy at St. Mary's and St. Bernadette's to see if it forbids bullying on sexual orientation and gender identity?

A I recall reviewing it, and I didn't – I don't recall seeing anything about sexual orientation or gender identity within the spectrum of what kind of bullying is discouraged.

Q Do you know if St. Mary and St. Bernadette or Wellspring teach that homosexuality is a mental illness in their preschools?

A I did not see the mental illness language, but I did see messages around homosexuality.

Q Okay. So, that language about mental illness from your expert report isn't necessarily specific to the plaintiffs in this case?

A No.

Q Are you aware that Ms. Odean and the new UPK regulations specifically said that they would not interfere with the religious preschool curriculums that are used by faith-based providers?

A No.

Q Do you know how often St. Mary and Wellspring have had to tell a student or family that they are not a good fit for their preschool?

A No.

Q Do you know how often they've had to deny enrollment more generally?

A No.

Q Also on page eight of your expert report, you talk about research that has, quote, established links between school culture and family outcomes in LGBTQ+ parent families; is that correct?

A Yes.

Q And you talk specifically about harms to LGBTQ+ families from, quote, less positive school climates, e.g. less LGBTQ+ friendly; is that right?

A Yes.

Q So, these harms that you talk about in your report come from attending a school that has a less positive school climate; is that right?

A Yes.

Q If a child of LGBTQ parents was in a school with an unfriendly climate, would you advise them to switch to a more LGBTQ-friendly school?

A Some families do not have the ability to switch schools, and it's my professional opinion that it should not be on the parents to have to switch their school if the school environment is unaffirming.

Q But presumably, you would encourage LGBTQ families looking for preschools to try to find ones that would be LGBTQ-affirming?

A Depending on the number and type of constraints on their decision-making.

Q I'd like to pull up a document entitled For LGBTQ Parents, and we will get that up on the screen momentarily. Are you familiar with this document?

A Yes.

Q And I guess, did you create this document?

A I did.

Q And do you see the heading there that says finding an LGBTQ-friendly daycare or preschool? Correct?

A Yup.

Q Okay. So, right below that, I'm just going to read out a couple sentences, and then I will ask you if I read that correctly. It says, quote, if you are an LGBTQ+ parent seeking a daycare or early childhood educational environment for your children, you should evaluate programs with the following questions in mind. Of note is that some of this information can be gleaned from online materials, whereas in some cases, it can be obtained through speaking with the school or program administrator or visiting the site itself.

Did I read that correctly?

A Yes.

Q And could you just describe the various things you suggest families should look for in this document.

A Sure. Images of families that look like theirs, whether, you know, curriculum and activities are explicitly inclusive of their families, what kind of physical environment are they walking into, is the paperwork inclusive of them.

Q Okay. I'd like to talk about the last section of your report, which is really talking about the interaction

between parents and schools. Your report states that, quote, children do better when their teachers and parents are partners in their educational experience; is that right?

A Yes.

Q So, in your expert opinion, what happens if a school teaches something that's different from what the parent teaches at home?

A That can create friction in the relationship, or at least a sense of disconnect for the family.

Q So, presumably, in your opinion, it's important for LGBTQ parents to be able to send their children to a school that is on the same page when it comes to teaching about LGBTQ issues; is that right?

A If they are teaching about them, yes.

Q Could you just explain that last point? Are you saying in some cases, a school just wouldn't have – wouldn't say anything about the issues?

A It depends on what you mean, because there is, again, kind of environmental, climate-related considerations, and then there's also curricular considerations. So, at a preschool level, for example, there's not going to be a lot of curriculum devoted to sexual orientation and gender identity, but there are kind of more implicit messages that children and families receive.

Q And is the importance of being on the same page and finding a school that I guess passes on the implicit messages that are consistent with what the parent is sharing in the home, is that only important for LGBTQ parents, or is that important for all parents when they're picking a preschool?

A I would say it's important to most parents that, you know, whether you're a member of an LGBTQ family or a multiracial family or an adoptive family, you want to feel like the school respects you and your family and the people in it.

Q So, yesterday, we heard testimony from one of the plaintiffs in this case, Ms. Lisa Sheley, and she talked about how she and her husband, Dan, specifically chose St. Mary's Catholic Preschool because they share the Catholic faith and wanted an affirming school environment for their child. Do you think that's a good thing for them?

A I don't know if I understand the question. You're asking what, exactly?

Q Yeah. Let me rephrase that, maybe in a more general way. You were talking about how it's important for LGBTQ families, adoptive families, and other families to be able to find a school environment that is supportive and affirming. Is it also important for religious parents to be able to choose a school that is a good fit for them and for their family?

A Yeah.

Q If a family believes that their young child, maybe a preschooler, is struggling with gender dysphoria but sincerely believes it would be in the child's best interest not to affirm the child's beliefs about their gender, should they be allowed to make that choice as parents?

A "Allowed" is an interesting word. Parents have a lot of power to make the choices that they want to make, but the clinical and research evidence suggests that parents not affirming their children's gender creative

or gender atypical preferences or behavior has negative consequences for that child.

Q Did you know that some Catholic Schools in Denver currently receive funding from other government programs?

A I would believe it. Yeah. It makes sense. I did not know that, but I would believe it.

Q Obviously this case is about whether Catholic Schools can participate in the UPK government funding program; is that right?

A Yes.

Q And the State of Colorado has taken the position that they should not be able to participate; is that right?

A Yes.

Q So, do you think Catholic Schools that participate in these other government funding programs shouldn't be allowed to receive government funds from those programs?

MS. RUST: Your Honor, I'm going to object again. I don't know how this goes to her expertise and relevance of her expertise at this point.

THE COURT: The objection goes to weight, not relevance. The objection is overruled. Go ahead.

MR. REAVES: Thank you, Your Honor. And I am almost done. I just have a few more questions.

THE COURT: Okay.

Q. (By Mr. Reaves) Similarly – well, I guess, sorry. We had an objection. Do you want me to restate that question, or do you recall what I was asking?

A I think you're asking do I think that they should also be denied funding from these other entities?

Q That's right.

A Is that correct? I really would need to know more, I think, to answer that question about those different entities and be able to research more about them. It's a hard question for me to answer. I'm sorry.

Q No. That's totally fair. It is complicated. Are you aware that both St. Mary's and St. Bernadette's Preschools are licensed preschools, and they're licensed by the State of Colorado?

A Yes.

Q Do you think that the State should revoke their licenses based on the fact that they're not providing these affirming environments that you think are critical?

A I think that the question that this case seems to concern is about receiving state funding for preschools. So, I don't think I can answer a question about licensure, as I'm not really familiar with Colorado's licensure of different kinds of preschools. It's a hard question for me to answer.

Q So, your expert opinion and testimony today is focused on specifically the receipt of government funding by these preschools; is that right?

A I think so, yeah.

Q And –

A If I – honestly, if there's any specific questions that you want me to answer about licensing, I just would need to know more to be able to answer that question.

Q Thank you. No. That was it I had on licensing. So, I guess my question, then, is if your testimony and your expert opinion is focused on specifically the receipt of government funding and, you know, why that is problematic, what is the – what is the harm specifically that arises when St. Mary's or – or Wellspring Catholic Academy receives funding, and that harm is not present when they're just a licensed preschool provider not receiving funding?

A To me there's an inconsistency between the expectations of nondiscrimination, which enables full access in order to obtain those funds, and then the religious schools who receive those funds but are engaging in practices that ultimately result in some people being denied acceptance.

Q So, the schools are operating the same way. That was the testimony yesterday, that the schools for religious reasons can't change their enrollment practices. So, assuming they operate the same way whether or not they receive this UPK funding, what is the additional harm that you think accrues to LGBTQ families or parents from receiving this government funding?

A Well, I think that a family who is looking for affordable schooling for their children are more likely to potentially choose or access or consider this schooling environment, which ultimately may not be the most affirming.

Q Just a few more questions. I'm almost done. You mentioned at the beginning of your testimony that your work was cited in an amicus brief filed in the *Fulton* case at the Supreme Court. Do you recall that?

A I was ultimately one of the co-signors of the Williams Institute at UCLA's brief, which was, I believe, entered.

Q So, you signed on to the brief yourself?

A Yeah.

Q Do you recall whether your brief was filed on the side that prevailed at the Supreme Court or the side that lost?

A I think it's pretty clear where my – where I was actually aligned, but I'm not sure of the question.

MR. REAVES: No further questions, Your Honor.

THE COURT: Thank you. Redirect?

REDIRECT EXAMINATION

BY MS. RUST

Q Hi, Dr. Goldberg. You ended that cross being asked a lot of questions about government funding. Are you an expert in government funding?

A No.

Q Were you requested to give your expert opinion regarding government funding by the Colorado Attorney General's Office?

A No.

Q Were you ever given documents to review regarding funding of any of the Colorado programs at issue here today?

A No.

Q You also were asked questions on direct regarding an online guide you had authored for LG parents looking for a school. Do you recall that?

A I do.

Q Is that guide meant for a parent with all school options available to them?

A It is a nonspecific guide, really supposed to be the first kind of – first stop for a parent who is just starting to think about preschool.

Q In your research, do LGBTQ parents always have all the options available to them as their cisgender peers?

A No.

Q What kind of constraints are usually on LGBTQ parents' search for schools?

A Well, as I noted, they're often more constrained by things like income. They are also constrained by the fact that some schools will deny them. Whether or not they're clear that that's related to their sexual orientation or gender identity, you know, they may say that they don't have room for them for other reasons, but we know from other research that that's not always the full story.

Q Okay. And in your research regarding LGBTQ parents who are living in poverty, does that mean they might have restricted access to transportation?

A Yes.

Q Does it mean they might have – that their transportation might be unreliable?

A Yes.

Q Does that mean that they may have to utilize public transportation?

A Yes.

Q Does it also mean that those parents might have a work location that also must utilize public transportation?

A Yes.

Q So, did you find in your research that LGBTQ parents who are living in poverty and when they are looking for an early childhood program often have to consider how to get their child to that school?

A Yes.

Q How did that weigh in in their factoring of a school environment?

A Well, I had to consider, for example, where they worked compared to where the school was located, the hours that the school operated, whether it was even possible for them to get their kid to their school and to get to their own place of work. They had to consider cost, both gas or public transportation.

Q Okay. And did that in your research limit the amount of early childhood options available to those parents?

A Yes. Significantly.

Q All right. How does living in a rural area limit the options of early childhood education available to LGBTQ parents?

A Well, there are fewer early childhood education environments in rural areas. They're much more spread out, and there's just fewer options, and folks have to drive a lot farther to actually access those options.

Q In your research of LGBTQ parents in rural environments, did you find that sometimes the only

option available to them was a religious early childhood provider?

A Yes. There were instances of parents who had, you know, one, maybe two options, and one or both of them were religiously affiliated.

Q Okay. So, in that situation, if a parent had to choose a less-affirming environment, would that be understandable?

A Yes.

Q And I know, Dr. Goldberg, you note the basics about Colorado's UPK program. And you were asked by counsel various questions about LGBTQ families' experiences in a metro area and Denver, but is it your understanding that the Colorado's Universal Preschool only applies to Denver?

A My understanding is it does not just apply to Denver.

Q Is it your understanding that it just applies to metropolitan areas?

A My understanding is it does not just apply to metro areas.

Q And did your findings in your research regarding how often lesbian and gay parents face challenges accessing preschool and early childhood that Mr. Reaves talked to you about that said they didn't have as many challenges accessing those services in the metro area – is that correct?

A Yes.

Q Okay. Does that mean they don't have any challenges at all, ever?

A Absolutely not.

Q Okay. Does that mean LG parents never face discomfort in metro areas?

A No.

Q Okay. And how is acceptance of LG families different than acceptance of LG people? I believe you mentioned that in one of your answers.

A Yes. There are some folks that are relatively accepting of, for example, the idea that a man could marry a man, but would not be accepting of two men adopting a child.

Q I believe also in your answer to Mr. Reaves' line of questioning regarding that article that you stated the findings he talked to you about were not regarding explicit challenges. So, were there findings in your study regarding other challenges of LG parents?

A Yes. So, he pointed out that 75 percent of them did not experience significant challenges. I will point out that obviously that means a quarter of them did, which is not an insignificant number. The kind of challenges may not have been, you know, people calling them names, but they were things like, you know, lack of experience of teachers with LGBT parents, a lack of books, inclusion, pictures that were encompassing of their families, other parents' negative attitudes towards them. Things like that.

Q And is that type of – or those types of challenges any less damaging than the explicit challenges?

A They are challenging in different ways. They're harder to confront, because they don't seem as explicit, and they don't seem as directly harmful. Which can actually make it harder to resolve, because it's easier

for schools, for example, to dismiss those kinds of concerns. They're also more likely to just simply go unacknowledged, because they are sort of less overt.

Q Okay. Mr. Reaves asked you a bunch of questions about whether, you know, an LGBTQ family should try and find an affirming early childhood environment. Do you remember those questions?

A Yes.

Q As a clinical psychologist, why should parents do their best to find a supportive or affirming school environment for their child?

A To enhance their child's self-esteem, positive self-regard.

Q So, is that – is it a bad thing to try and find such an environment for your child?

A No. It's a very good thing for both parents and children.

Q Okay. And I think in that same line of questioning, Dr. Reaves [sic] spoke to you about what should an LGBTQ parent do should they find themselves in a situation where their child is not in an affirming school environment. Do you remember that question?

A Yes.

Q And I think you – your answer was that is not on the parent to fix that school environment. Can you explain that answer more, please.

A Yes. Putting the onus on parents to choose a new school when they may not even have that choice if their child is confronting bullying, harassment, a generally inhospitable environment, is inappropriate, because all things being equal, many parents don't

have that choice, and schools are supposed to provide safe environments for children.

Q Okay. Mr. Reaves also asked you a lot about school messaging. Do you remember that line of questioning, Dr. Goldberg?

A Yes.

Q If a school engages in discriminatory conduct against an LGBTQ student, does that discriminatory conduct send any message to that student?

A Yes.

Q What kind of message does it send?

A I think depending on the type of conduct, it certainly sends the message that that child is not valued as a full human being, is not seen as equal – deserving of equal treatment compared to other children and other families. It also sends the message to other children and staff and teachers that that kind of behavior or attitude is permitted, even encouraged.

Q Does that discriminatory conduct inflict harm apart from the message sent?

A Yes. It helps to cultivate an environment of intolerance.

Q How about if a school engages in discriminatory conduct against LGBTQ parents? Does that conduct send any message?

A Yes.

Q And does that conduct inflict harm apart from that message?

A Yes.

MS. RUST: Thank you. Nothing further.

THE COURT: Thank you. Thank you very much, Doctor. May I see the –

THE WITNESS: Thank you.

THE COURT: Pardon me?

MS. RUST: The doctor just said thank you. Dr. Goldberg just said thank you, Judge.

* * *

(The Witness is Sworn)

THE COURTROOM DEPUTY: Please be seated. State your full name for the record, and spell your last name.

THE WITNESS: Amy Tishelman, T-I-S-H-E-L-M-A-N.

DIRECT EXAMINATION

BY MS. RUST

Q Thank you, Dr. Tishelman. Could you please tell us what degrees you currently hold.

A I have a BA from Clark University, where Dr. Goldberg teaches, and a PhD in child clinical psychology from West Virginia University.

Q Thank you. And do you have any professional licensures?

A I'm licensed as a clinical psychologist in the state of Massachusetts.

Q Okay. And, Dr. Goldberg [sic], have you participated in any fellowships?

A You mean Dr. Tishelman.

Q I'm sorry. Dr. Tishelman. Yes.

A Yes, I have.

Q And have you ever trained and supervised students?

A Yes, I have.

Q Have you taught any college courses?

A Many.

Q And where are you currently employed?

A I'm employed at Boston College in Chestnut Hill, Massachusetts.

Q Are you currently teaching any courses?

A Yes. Well, I'm in between semesters, but yes.

Q What will you have taught this year?

A Interpersonal violence, which I taught in the fall semester, and developmental psychopathology, and is starting in a couple weeks.

Q Okay. With your clinical license, have you ever treated any patients?

A Yes.

Q Have you ever worked in the – in a hospital?

A Yes.

Q Okay. Would you please describe your regional work related to your area of expertise.

A Yes. Well, would that include my work at Boston Children's Hospital, as well as in the region outside? So, I worked in the child protection program for 20 years at Boston Children's Hospital, where I was for a time director of child protection clinical services. I was

also director of research and training in the child protection program there.

And I did – I filled in in pediatric psychology in various areas in the hospital, including as director of psychology in the urology department. And I worked in developmental medicine doing diagnostic evaluations for autism, and the obesity program.

I was more recently director of clinical research in the gender multi-specialty service, and it was called the Differences of Sex Development program, but the name changed to the Being You program, which is a program that serves youth and their families when there are variations in sex traits.

In the region – would you like me to continue?

Q Yes, please.

A I served on many boards, and in some leadership capacities. I was on the governor's commission of sex and domestic violence, and I co-chaired a probate and family court subcommittee. I co-chaired or chaired a guardians ad litem committee to do training around the area. I worked with the board of education on a safe and supportive education initiative to help traumatized children learn, among other activities.

I worked with the Suffolk County, which is Boston, area child advocacy center for ten years also, observing forensic interviews of children and as a mental health consultant.

Q Okay. And I think I forgot to ask you, would you please describe your area of expertise.

A Yeah. I have a number of areas of expertise, in general child and family mental health, pediatric psychology, which is the intersection of illness and

well-being in children, and interpersonal violence, child maltreatment, and trauma, as well as gender diversity and development, and variations in sex characteristics in children.

Q Thank you, Dr. Tishelman. Could you also briefly describe your national work related to your areas of expertise.

A Yes. I've been on some national – I presented nationally in my areas of expertise many, many times at national conferences, and given many workshops. I've also participated on task force, and I currently co-lead a national task force for the American Psychological Association on variations in sex traits, were some examples.

Q Okay. And then how about internationally? Have you done any work internationally?

A Yes. Again, I presented quite often internationally, and I recently completed taking the lead in developing standards of care for gender-diverse or transgender children for the World Association of Transgender Health – World Professional Association of Transgender Health, WPATH.

Q Okay. What age children were those standards for?

A Excuse me?

Q What age of children were those standards for?

A They were for children up to the time of puberty. So, before puberty.

Q So, Dr. Tishelman, can you tell us a little bit about your professional journey that led you to have an expertise in gender-diverse and transgender children.

A Yes. Well, I was – I was recruited, actually, at Boston Children’s Hospital to work with the programs that I work with, with the transgender program, as well as the program for youth with variations in sex traits. So, my journey started then, and I have developed a significant expertise since that time.

Q Okay. You’ve mentioned a few times variations of sex traits. Can you explain that a little bit to us laypeople, please.

A Yes. Variations of sex traits are known by various different terminologies. There’s not one terminology people prefer. It’s sometimes called differences of sex development, other times disorders of sex development, or variations in sex characteristics. Sometimes they’re known as intersex or intersex variations. And many people prefer to just have their own diagnosis used, and none of those broader classifications.

Q Okay. What does it – what does it mean to have those things?

A A variation in sex characteristic or sex trait are congenital biological conditions whereby there’s an atypicality in reproductive or sex anatomical or hormonal expressions, and –

Q Okay. And I would assume if there’s a clinic at a hospital for this, do these things happen often?

A They – the estimates of how often it happens varies quite a bit, from as low as one in 200 or 300 individuals, to about one in 4,400.

Q Okay. And how about, can you describe a little bit to us what “gender diverse” or “transgender” means.

A “Gender diverse” and “transgender” may be different terms, but “transgender” is an umbrella term to refer to somebody whose gender identity differs from what their gender identity was assumed to be at birth. And “gender diversity” is a broader term than that. That can refer to diverse gender expressions that maybe aren’t expected in a particular community, and not necessarily gender identity differences.

Q Do you also happen to know how often gender-diverse and transgendered children are in our population?

A Well, the statistics are varying so greatly that it’s really hard to say right now. It can be considered to be relatively rare to as many as one in five or ten people, depending on the study that you look at, currently.

Q And why are the statistics so rare?

A Why are the statistics so rare, did you say?

Q Yes.

A Well, the statistics just vary by the time point at which they were collected, what questions were asked, where they’re being asked, et cetera. So, the statistics of numbers of youth who are identifying as gender diverse or transgender have increased more currently from what they were in the past in the United States and across the world, actually.

Q Okay. How come – how come they’re increasing? Are more studies being done?

A Actually, that’s a complicated question that I probably can’t answer specifically, because people have different hypotheses about that. And I don’t think we know.

Q Okay. Thank you, Doctor. Dr. Tishelman, you mentioned in your introduction that you are a child psychologist. As a child psychologist, are you trained in child development?

A Yes.

Q Okay. Can you tell me a little bit about – well, strike that. Let me go back a step. Are you trained in early childhood development?

A Yes.

Q Okay. What is important about early childhood development versus just childhood development?

A Early childhood is a time of very rapid change for children. It's a time when basic academic and relationship skills and understandings occur. When children are born, they don't have language. By the time they're two, they have a tremendous amount of language. So, you can think of young children as almost sponges.

It's also a time when first relationships develop, and a schema or understanding of the world develops as a safe place, whether they can have strong attachments and trust the adults around them, particularly primary caregivers, and that kind of trust and secure attachment often leads to safety and ability to function in a more regulated way in environments over time.

Q So, all these foundational skills, are they built in this early childhood developmental stage?

A Yes. That doesn't mean that change is impossible over time, but it is a time of great learning and a time when a sense of self really starts to develop.

Q Okay. And why is sense of self important in child development?

A A sense of self gives a child confidence to explore the environment and to learn, and a sense of safety and security in their relationships and trust of others.

Q Okay. You've mentioned trust of others a few times regarding early childhood development. Why is that important?

A Without trust in others, it's very hard for children to be safe, comfortable, and secure in environments outside of their families. Sometimes it's very hard for children to do that within their families, depending on whether their families are nurturing and accepting. That kind of stress and chronic stress can interfere with positive development over time for children and cause harm for them.

Q Okay. So, you just mentioned stress interrupting positive development and causing harm. What type of stress can happen in early childhood development?

A Well, there's quite a huge robust literature right now on early life adversities, also sometimes referred to as adverse childhood experiences, and the relationship between those adversities and subsequent development for youth. And so these kinds of early experiences have been demonstrated to be extremely important in terms of development.

Q Okay. Why have they been shown to be extremely important?

A So, would you mind if I take a step back and describe what an adversity is, or what an early adversity is?

Q Yes. Let's take a step back. And, Dr. Tishelman, can you tell us what an early life adversity is.

A Early life adversities can be child maltreatment in the forms of extreme neglect, which can take many forms; child physical abuse; emotional abuse and emotional neglect; or sexual abuse. It can also constitute other kinds of stressors, like death and loss of a parent, homelessness, et cetera. Maybe even chronic illness for a child. They basically are experiences that have the potential to cause trauma for a child, and they can be single incidents or chronic stress, chronic extreme stress.

Q Have any of these early life adversities been found in a school environment?

A Yes. A child can be abused in a school environment, neglected, or significantly bullied in a school environment, which can cause harm.

Q So, you've mentioned a few times causing harm. I'd like to talk a little bit about that now. So, what kind of physical harm can an early childhood experience have on a child?

A Physical harm?

Q Mm-hmm.

A Physical harm can have many different impacts on a child depending on the physical harm. The early – actually, the earliest time in life is when a child is most vulnerable to severe physical harm. For instance, most fatalities that occur to children who are being abused in the first year of life, and up to the age of three, where if they're in an abusive home environment and vulnerable without recourse, they're more likely to be severely harmed.

So, physical harm can cause injury that's irreversible, as well as death, and can – if it doesn't cause irreversible injury or death, can carry with it a sense of a lack of trust and safety in others, fears, and an idea of the world as an unsafe place where they're likely to be harmed. And we can talk a little bit more about how that might impact a child when they're older in the way they interact with others, if you would like.

Q Okay. Yeah. Let's – how does physical harm during early childhood experiences then, as you say, affect a child when they're older?

A So, aside from physical harm, it can create emotional harm. And research shows that children who have been abused when they're younger may be more likely to see the world as hostile even when it's neutral, and expect others to hurt them even if they're not going to hurt them, and will sometimes react with defensive hostility. That means they will try to protect themselves even when they're not in danger, and will interpret neutral stimuli as negative sometimes.

Q And these adverse childhood experiences, can they also negatively affect an individual's mental health?

A Yes. So, adverse childhood experiences in general, not just physical abuse, but all of them, have been linked to poor outcomes with relation to mental health, propensity for addictions, propensity for employment disruption, and propensity for injury, as well as early morbidity and mortality in terms of poor physical health for adults.

Q Has there been a why discovered yet, Dr. Tishelman?

A Yes. Well, there's an understanding now that the question isn't really is nature important or is nurture important, but actually the interaction of a person's biology with their environmental experiences, which is sometimes considered an ecological, biological, developmental kind of framework for understanding development. And so when a child experiences adversity or extreme stress, and often chronic stress, which is sometimes labeled toxic stress, it can affect their neurodevelopment and ability to learn and interact with others over time.

Q Okay. So, are you saying that this type of stress could actually affect the way a child's brain develops?

A Yes.

Q And has that been shown in studies?

A Yes.

Q Okay. What are some of the effects that this can have on a child's brain?

A Well, a lot of research has examined the HPA axis within the brain, the hypothalamic, pituitary, adrenal axis, and the way that stress is processed in the brain. And it's often very different in kids who have been exposed to chronic stress and adversity.

So, we can find hormonal differences as well as structural differences in the developing brain of a child who has been exposed to chronic stress. So, this is often referred to as a developmental cascade, or the fact that early adjustment informs later adjustment and adaptation.

Q Okay. Yeah. That was going to be my next question. Not to be dense, but could, you know,

changes in hormones and your brain structure have lifelong effects?

A Yes.

Q Do you have any examples of those?

A Yes. Youth who are exposed to early adversities have a higher likelihood of diseases as adults, for instance heart diseases and cancers. And actually exposure to early adversities has been redefined as not just a risk for mental health disorders in adulthood, but as a pediatric problem as well because of the links with physical health of exposure to adversities. So, there can be higher addiction, higher trauma, and PTSD in adulthood, higher suicidality, but also higher disease ramifications because of the effects of stress on the body.

Q Okay. You've mentioned a few times the phrases "chronic stress" and "toxic stress." Are those related to these adverse childhood experiences?

A Yes. And in the early years of studying trauma, often research examined Vietnam – veterans who came back from war or adults who were exposed to a rape – a rape and a one-time experience. But research has now focused on people whose children develop in a situation where they're in a chronic stress condition as opposed to a one-time trauma experience, and have been able to understand the effects of chronic stress, sometimes called toxic stress, when it's extreme stress on child development.

Q Okay. How does a child – what is a situation in which a child experiences this toxic stress? Can you give an example?

A When a – I will give you an extreme example, because I worked in child abuse for so many years. Children who are living in homes where they're physically abused or observing their parent being exposed to domestic violence on a routine basis is a child who is living with chronic stress. Other children who are attending a school where they're being bullied and they're not safe are also children who experience chronic stress. I can give you a clinical example, if you would like.

Q Sure, Dr. Tishelman. If you would give us a clinical example from your experience, of course not revealing any private information.

A For instance, I had a patient that comes to mind who I saw in the urology department, because if you remember I was the director of psychology and urology. And he was attending school but encountering difficulties because he was afraid to use the bathrooms at school. And so he was developing medical sequelae from not using the bathrooms. And when I talked to him, it turned out that when he was growing up, he didn't express himself as a typical male was assumed to express themselves, and in fact his family thought he was transgender.

And he was bullied so badly in bathrooms that he no longer even, 15 years or so later, felt comfortable using bathrooms in public places. Which was inhibiting his ability to be educated, because he was trying to go to college, and he needed to be able to use public bathrooms in order to function. So, that's one example. And he had posttraumatic – he had trauma from this experience of going. I can give you other clinical examples.

Q I think that one is good. I want to move on to you brought up this example of how chronic stress can affect a person. Are transgendered individuals – or, excuse me. Strike that. Are transgendered children affected by chronic stress?

A Often.

Q Okay. How does that – how have you observed that in your work?

A I've seen many children who have been very adversely affected by their experiences in school when they've been gender diverse or transgender. By gender diverse, I mean expressing their gender differently than was accepted in the school environment.

Q Okay. Dr. Tishelman, we also spoke about how ACEs might – or an example of ACEs or adverse childhood experiences might be significant bullying. Does that also – have you observed that happening with the gender-diverse and transgendered youth you work with?

A I missed a word that – in the first sentence. So, I'm sorry. I'm a little hard of hearing myself.

Q No problem. I will speak up. You spoke about how an example of early childhood experiences – or, excuse me – adverse childhood experiences or ACEs can be bullying in school. Have you observed that happening with gender-diverse or transgendered youth in your work?

A Yes.

Q Okay. What have you observed as a result of that bullying?

A Many times children I work with have had to be homeschooled or removed from a school environment because they didn't feel safe. Other children, I've seen really sort of fall apart because of bullying, including younger children. So, that it's – if a child is in an unaccepting environment, it can be very profoundly difficult for them.

Q How about suicidality in gender-diverse and transgendered youth?

A Yes. I have had patients who have been suicidal because of nonacceptance, whether at school or because of their families. I had one child I could give you an example of that comes to mind who was very young, maybe in kindergarten, where he was being bullied. I actually don't remember the correct pronouns. And went to the principal's office, and just completely fell apart, and threw things all over the principal's office, and threw everything off the desk, and was taken to Boston Children's Hospital in an ambulance. That's one example.

Q Okay.

A It's very much like anybody who is in an unsafe environment. It's very hard to function.

Q Yeah. That example of that young child having those behaviors in the principal's office, can these adverse childhood experiences affect a child's behaviors in that way?

A Yes.

Q Is it common for that to happen?

A Yes. Children have different ways of expressing stress, and they can express stress through behavioral outbursts and emotional dysregulation, or through

what we call internalizing problems, such as deep depression, apathy, and anxieties, withdrawal, and not necessarily acting out. Children express stress in different ways.

Q Okay. Going back to adverse childhood experiences, you gave some examples earlier on. Is discrimination a form of an adverse childhood experience?

A Yes.

Q Have you observed that yourself?

A Yes. And frankly, I've observed discrimination in different forms over my career. So, it's not just gender discrimination that's hard for children. If a child is autistic, for example, and bullied or not accepted, it's hard for those children. There's a lot of different kinds of ways for children to be different, and if they're treated poorly because of that difference, it can create a lot of anxiety and low self-esteem.

And the way that it works for other children is the way that it works for gender-diverse and transgender children in the sense that if they're rejected for something they can't change about themselves, that can be very hard, because they didn't have a way to be different.

Q Okay. And thank you earlier for giving us examples of gender diverse. I think I neglected to ask you while we were talking about variation in sex traits. If you could give an example of – for us laypeople of what that might physically manifest as, or medically manifest as.

A So, they're very, very variable conditions. For instance, a child with CAH, congenital adrenal

hyperplasia, might have XX chromosomes but be born with attributes that are often associated with males, such as – such as an enlarged phallus, for example. So, sometimes visual anatomy doesn't match with chromosomes.

Other people, for example, with AIS may develop and look externally like a typical girl, and not be diagnosed until later on as when puberty doesn't go as expected, as having XY chromosomes, for example. Those are some – those are a couple of examples. But actually variations in sex traits really encompass a broad array of diagnoses up to about 40 or more diagnoses. So, there's a lot of different ways there can be differences.

Q Okay. And this sex trait variance and diagnoses, they're not new, are they?

A No.

Q How old has this been around? How long?

A I am not an expert on that, but I imagine, because they're biological conditions, that they've been around as long as people have been around.

Q Okay. Dr. Tishelman, I'm going to turn us back to we were talking about school environments. Have you done any professional work with children, clinical psychology in school environments?

A Yes.

Q Okay. Would you tell us what that work is.

A Well, very long ago, at the beginning of my career, I was actually a professor at Binghamton University in Binghamton, New York, and there I participated in a home-school partnership study, where I was a liaison

between home and school to try to get home and school to collaborate more effectively. We published a paper on that in 1993.

And I did do research in school on children who are rejected, and that was part of my dissertation to try to understand what caused children to be disliked by other children or liked by other children. But while I was in the last 30 years, I did work with a safe and supportive school environment initiative to try to create schools that were safer and more supportive for children, and I did a lot of training around the state of Massachusetts on helping traumatized children learn, for instance, and how children behave in a school setting when they're experiencing extreme stress or trauma.

Q Okay. I want to go back to your discussion of the 1993 paper you wrote. What were the reasons you found that those children were rejected in school?

A Actually, that study didn't – that study wasn't about kids who were rejected. That was a different study.

Q Okay. My misunderstanding.

A That study was about kids who had emotional and behavioral dysregulation, and demonstrated that bringing homes and schools together in a partnership in coordination helped to decrease the emotional-behavioral dysregulation of the children.

Q Okay. And why does bringing a home and school together decrease emotional dysregulation in a child?

A Well, it's kind of like that idea that you probably heard of that if children have two parents at home, and they use different disciplinary strategies, the child can

sort of get away with more by working with one or working with the other.

Getting the parents and school on board together in a coordinating – a coordinated approach to helping the children is helpful. It also helps school to understand cultural and other important aspects of a family so they can be respectful of that child and respectful of the family and develop a consistent understanding of that child's needs.

Q What if a school does not want to follow how a family treats their child at home?

A Well, that's when it's helpful to develop an intervention like – sometimes published to help coordinate home and school. And that doesn't always happen. Sometimes there are differences between homes and schools, but generally we find that developing partnerships has positive effects for children. And that's why there is initiatives to try to do that.

Q What about an example of a family using she/her pronouns for their child, and a school refusing to use those pronouns, and only use he/her [sic] pronouns for that child?

A That can be very confusing for a child if they prefer – if they identify as one gender and they're being treated as a different gender at school. It develops a discordance for the child and also a sense of rejection for their identity that they are asserting.

Q So, Dr. Tishelman, I want to go back to your safe and supported schools that you talked about. I believe you stated you came up with a framework; is that correct?

A We did. This was an interdisciplinary group of people who work together to come up with this framework. The safe and supportive school initiative was led by lawyers and had head psychologists and other educators on it, and the psychologists published a paper together on our framework for school-based evaluation from a gender lens. Do you want me to describe the framework?

Q Yes. If you could give us an overview, and then maybe we can dive into each one.

A Okay. The domains that trauma affect – the summary of domains that are affected for children across all important – or across all important areas of function, including self-regulation, sense of self, and relationships, academic and nonacademic performance at school, and physical and somatic well-being.

Q Okay. Let's start with physical and somatic well-being. What were your recommendations or findings?

A Well, children who are traumatized sometimes can incur injuries that have physical ramifications from being bullied or abused in a setting. But there are also others, sometimes other physical ramifications from stress. Very commonly with children, headaches and stomachaches or gastrointestinal issues can occur. And then I don't know how relevant it is, but for children who have been abused physically or sexually, they may have boundaries which makes it difficult if anybody comes near them or touches them, because of their fears of the recurrence of abuse.

It can happen in the other way as well. Sometimes children who have been sexually abused can have poor boundaries with others and actually get attention or

not understand what are important sexual boundaries, and can touch others in ways that are inappropriate as well.

Q Okay. Have you in your work identified what, in this domain, might affect gender-diverse or transgender children?

A Yeah. Sometimes with transgender children who – they're very uncomfortable about their bodies. Sometimes especially older children or sometimes younger children who feel like their anatomy doesn't match their gender, and so that can make it embarrassing for them to change clothes in a locker room or to – for instance, I have had patients who had anatomy that's typical to a boy, but did really enjoy gymnastics, and would have to try to develop means to participate in gymnastics without, for instance, some parts of their body parts being visible for their own comfort, as an example.

Q I believe there was a domain relating to being emotionally safe; is that correct?

A Well, I don't – I said the self-regulation.

Q Okay.

A Relationships and self confidence.

Q Can we talk about that domain next?

A Self-regulation domain is ability to be able to – be able to understand your own emotions and express them appropriately. So, sometimes children who are exposed to chronic trauma and unsafe environments will have – will develop extreme emotional responses and fear responses to stress, and it can be harder for them to calm down once the stress is – has subsided, or once their exposure to a feared situation has gone

away, they may have a very hard time going back to baseline.

So, they may have a really hard time monitoring their emotion and expressing it in appropriate ways. They may also have trouble sometimes being able to label their own emotions and understand what they're feeling and why they're feeling the way they are feeling. And many times kids who are traumatized or have been exposed to unsafe situations are hypervigilant, we call it. So, they're scanning the environment all the time for things that might be dangerous for them in order to try to prevent something from harming them if they've been exposed to harm before.

For instance, a child who has been hurt at school, who has been humiliated or teased, may have trouble relaxing in certain situations in school, because they may be scanning the environment to make sure nobody is going to attack or hurt them at school.

Q Okay. And have you observed that in your gender-diverse and transgendered clients?

A Yes.

Q And, Dr. Tishelman, what were the other two domains?

A Relationships and sense of self. I believe –

Q Okay. Can you touch on those briefly, please.

A A sense of self is understanding of one's self in relation to others. Children pick up when they are rejected or when they're not supported in who they are, and can develop – internalize a sense of low self-worth and low self-esteem because of that.

It sometimes happens in families, and it can happen from other children. And so their ability to form trusting relationships and adaptive peer relationships can be impaired because of that. And their own confidence in developing those relationships can be impaired.

I also talked before about how children may be taught not to trust the adults in the environment if they're treated harshly or disciplined harshly, and therefore they may not even feel comfortable going to adults, including teachers, to ask for help or ask for intervention when they are being harmed if they feel rejected or disliked by adults in an environment.

Q Okay.

A And the last domain was academic and nonacademic success. Both because of a lack of safety and possibly because of neurological changes, it can be very hard for children to pay attention and learn in school when they're not safe in a school environment, or when they're anxious about not – about being hurt in other environments.

It's as if I were talking here to you today, but you knew on the way home you were going to be attacked and hurt, you would probably have trouble paying attention to me now, because you would be distracted. And many of the children I have worked with who had trauma were first diagnosed with attention deficit disorder, because they weren't paying attention in school. It was likely because their trauma was being misinterpreted as primarily an attention deficit disorder, and not as trauma.

Trauma can also lead to dissociation, which is sort of a child's emotional removal from where they are in

a setting to emotionally distancing themselves and not being able to learn as well.

And finally, anxiety and depression are associated with toxic stress, and depression emotionally affects children in the sense of not being invested in learning, not being – not having the motivation or the energy to engage in school. And in that way, that can affect school adjustment and ability to learn and perform that potential.

Q Okay. And have you seen those last two domains affect your gender-diverse and transgendered clients in the school setting?

A Yes.

Q Okay. Dr. Tishelman, do – in your observations and experiences, do gender-diverse and transgendered children face more or less adversity than their cisgender peers?

A More adversity.

Q Is there any adversity unique to a gender-diverse or transgendered child?

A Gender-related stressors that are encountered are sometimes called gender minority stressors that are more likely to be encountered by gender-diverse children than other children.

Q Can you give us an example of those stressors.

A If people in – if people intentionally use pronouns that a child doesn't identify with or a name that a child doesn't identify with, for example, or tease a child because of their atypical gender expressions, for example, that would be gender minority stress.

Q Okay. Would a child be impacted from being disenrolled in a school due to their gender diversity or transgender identity?

A They can be.

Q Have you observed that?

A I've observed children honestly who left the school setting because it was an adverse setting for them more than children who were – who were expelled from a school based on gender.

Q Okay. Would a child who is denied enrollment to a school feel rejected?

A If they knew about it. That's something that parents don't necessarily tell a child.

Q Okay. When a child does know about the rejection, how can that affect them?

A And this is speculatively, because I encounter more children who had negative experiences at school than children who were actually not admitted to school. But speculatively, any child, including a transgender child, who's rejected from a school setting based upon an unmodifiable aspect of who they are would feel – would feel badly.

For instance, I am short, and if I weren't allowed in school settings because I was short, even though I can't change it, that would be a negative adversity that would make me feel badly about being short.

Q And speaking about these stressors, do chronic stressors affect children in the early childhood range of ages differently than other children?

A Well, children's brains are in a rapid developmental phase in early childhood. And so early

developmental stressors may shape the brain in more profound ways than for older children. And there is more brain neural flexibility during those times, and there's critical and sensitive periods for learning and for neurological development.

Q Okay. And have you observed that in your own professional work?

A Well, I really would have to say I don't observe the child's brains.

Q Sure.

A So, I have observed more the phenotype, the expression and differences than I have directly observed the neurodevelopmental differences.

Q And how does that manifest itself that you've observed?

A So, in the ways that I was discussing previously in terms of significant emotional dysregulation and mental health consequences, social consequences, relationship consequences, and ability to learn and acquire foundational academic skills.

Q Okay. Dr. Tishelman, can discrimination cause trauma to a child?

A Yes.

Q Okay. Dr. Tishelman, can you explain to us your definition of gender dysphoria?

A Well, gender dysphoria is an emotional response to a difference between a child's identified gender and their biological anatomy.

Q Okay. And have you worked with clients who were experiencing that?

A Yes.

Q Okay. Have you worked with children in preschool who were experiencing that?

A Yes.

Q When you're working with children in preschool experiencing gender dysphoria, do you work with their parents also?

A Yes.

Q What happens – or have you had an experience where a parent did not want to recognize that their child is experiencing gender dysphoria and may be transgendered?

A Yes.

Q Can you tell us a little bit about how you handled that situation.

A Well, it varies by situation. In the clinical settings in which I was working, parents brought their children in voluntarily to be seen. So, usually when parents came in, it was to try to understand their child's gender diversity, and sometimes if there was a conflict between two parents related to their child's gender diversity or they wanted some advocacy. So, I have seen children particularly when there's a conflict between parents about their child's gender diversity and how to best parent that child given that diversity.

Q Okay. And how did you navigate that family's choice?

A Well, it so varies by the family and by the situation. I think gender diversity in early childhood is serious and important, and it's good to do a thorough evaluation if possible and if the family is requesting it

to try to understand what's best in that particular family, and in their situation. So, it's really hard to give a – an answer that would be applicable to everybody.

Q Is that what one of your international standards of care for transgendered prepubescent children states?

A So, we should have an individualized approach to gender care that every child who is gender diverse in childhood before puberty doesn't necessarily need to see a mental health practitioner, but that it can often be very helpful if they have their requisite skills.

Q Okay. How come they don't always have to see a mental health professional at that age?

A Sometimes children are well adjusted and doing well, and they don't necessarily need any intervention, or they have enough support, and they don't need more supports.

Q Is it also typical at the early childhood developmental age for a child to still be figuring out their identity?

A Can you repeat that question?

Q Sure. Is it also typical at the early childhood developmental stage for a child to still be figuring out their identity?

A Yeah. And developmental literature suggests that children start to understand their gender very early on at ages three, four, and five, but with gender-diverse children, they may assert a gender that's different from what their parents thought their child's gender was going to be at an early age, and I saw quite a few preschool children. But a child's gender can also

evolve over time, and their understanding of their gender identity can evolve.

Q Okay. Dr. Tishelman, going back to the international standards of care that you helped write, for prepubescent children, is it ever recommended to do hormone therapy?

A No.

Q How about any of the – I don't know the correct term, so please correct me if I'm wrong, the gender reassignment surgeries?

A No.

Q Okay.

A Not at this point in time.

Q Yeah. What is the appropriate work that you're doing with a prepubescent child?

A You know, when I would see patients, basically I would tell them that my priority is for this child to be well adjusted, to feel confident in themselves, to have good family relationships and good peer relationships, and to be able to function in all the settings in which they need to function.

Sometimes that would involve taking certain steps to help that child to be more comfortable in their home or their school or sports or other environments. So, every situation is different. Every family's goals is different. But there aren't – the interventions are often family interventions, school interventions, to make sure every setting is safe for that child, and sometimes there can be a consideration or an actual social transition for a child.

Q Okay. Dr. Tishelman, how does discrimination negatively impact a child?

A Well, again, children express their own happiness and their stress in all sorts of ways, so that a child who is being discriminated against can express their discomfort and distress differently. It's called in psychology with the word "multifinality," meaning that you can have a child who's experiencing bullying, physical and psychological bullying in childhood, and one child will act out and express themselves by being disruptive at school, and another might be withdrawn and anxious and depressed and not socialize and stop doing their schoolwork.

So, we really – just by knowing a child is being exposed to adversities, we really can't say how their distress will be expressed.

Q Okay. Dr. Tishelman, how would you foster a safe environment at school?

A There are different ways to do that. In fact, in Massachusetts, we had a person who was hired by the Board of Education who would go to schools to try to develop a safe environment for schools. And when I was working in the safe and supportive school environment project, we had – the legislature gave some money for that, and we had different schools develop grants for how they were going to change their atmosphere to be more trauma-informed.

Other schools would try to be more inclusive. There are schools that try to be more inclusive so that all students can be educated in the same classroom, and that would mean children with developmental disabilities in the same class environment as children without developmental disabilities, or children with

physical disabilities such as cerebral palsy being able to learn in the same setting as others so that there can be adaptations in an educational setting to make it more supportive for children, and people can learn to live with all the different diversities that children can present.

Q Okay. Dr. Tishelman, in your opinion, how would a school environment be safe for a gender-diverse or a transgender child?

A It would be a school in which bullying was not accepted, and a school with a no-bullying policy. A school in which people can accept that there are differences between children and respect that, but not reject others because they're different from them. Children are different from one another in all different ways. Being transgender is one of them, but not all of them.

Q Should a school's bullying policy specifically identify being gender diverse or transgendered for it to be effective in this situation?

A Yeah. It can do that, and also some of the areas of most controversy with transgender children have to do with which bathrooms they go to, which locker rooms they might use, and to develop policies that don't stigmatize children or make them feel uncomfortable because of their gender.

Q Dr. Tishelman, what is a social transition?

A A social transition is when a child chooses to express themselves in one or more ways that's consistent with their gender identity as it's known to them.

Q Can that be clothing?

A That can have to do with clothing, did you say?

Q Can that be clothing?

A Yes. That can be clothing.

Q Can that be a haircut?

A That can be a haircut.

Q How about how they want to be addressed by others?

A It can have to do with how they want to be addressed in terms of pronouns as well as their names.

Q Okay. Why is social transitioning important for a transgender child?

A So, all transgender children – and we also call it gender diversity, because children may evolve in their gender over time. It's important for children to be free to express themselves in the way that's comfortable for them, as long as they're not destructive to others in every setting in which they wish to do so. All children who are gender diverse don't wish to do that.

And things like clothing and haircuts, what's typical in one setting and subculture may not be typical in another. So, it may be typical for all girls and boys to wear jeans and T-shirts to school, and not be a lot of diversity in what's a typical clothing for kids, so that it's hard sometimes to know what's gender typical versus not gender typical clothing, or haircuts sometimes, depending on the time in history, where a child lives, and their culture.

Q Okay. Are there ever times that a social transition is not helpful to the child?

A There can be times when a child doesn't feel ready to do that. I've had children who said to me, my gender is still a secret at school. I'm scared to tell people at school what my gender is. And so sometimes children will choose to socially transition in one environment and not another, or tell some people and not others. There are kids who are uncomfortable telling their parents and will want to tell schools, which is sometimes an area of controversy. But not usually in young children of the ages we're discussing.

Q Okay. Do those situations sometimes cause stress in the child?

A Yes.

Q Does that stress ever rise to the level in your observation of chronic or toxic stress, as we talked about?

A Can you specify which situation you're talking about?

Q Sure. Situation where maybe their gender is still a secret.

A It can. But it can be an outgrowth of a child not feeling comfortable about being open in certain settings, and that discomfort or expectation of rejection can be – can have a negative effect on a child.

Q Dr. Tishelman, should a parent be allowed to decide what is best for their child in this realm we're talking about of gender diversity and transgendered children?

A Yes. Usually parents make important decisions on behalf of their children under the law, except in extreme circumstances when a child may be subject to

unacceptable behaviors on the part of a parent, such as sexual abuse or other extreme and illegal behaviors.

Q Okay. You don't understand this case to have anything to do with sexual abuse, though; correct?

A Yes. I was just giving an example.

Q Yes. Thank you. Have you in your professional capacity observed what happens when an environment, whether it be a social environment, a school environment, when that environment undermines the family's acceptance of a transgendered or gender-diverse child?

A Yes. It's well documented in a robust collection of literature that transgender youth who have been exposed to stressors have a higher likelihood of anxiety, depression, and suicidality. And on the other hand, acceptance and support is associated with well-being in transgender youth.

Q Okay. Can conflict over a child's identity between family and school be harmful?

A Yes. Conflict in general between families and school can be harmful to children. That's why there are initiatives to try to draw schools and families together in support of children in general and for transgender children as well. And there is research to show that bullying for transgender children is related to higher rates of suicidality. For instance, The Trevor Report has published the data, and in general, bullying for all children, not just transgender children, is demonstrated to be correlated with higher rates of suicidality. Those data are usually with older children, but can be presumed to be relevant to younger children as well.

Q Is there – can conduct in the school environment negatively impact a transgendered child or harm them?

A Yes. I think bullying refers to that.

Q Okay. Any other examples you've observed of conduct in a school environment?

A Aside from bullying, being treated discordantly from other children, not being able to join activities that a child would find gratifying or actually being ejected from activities that a child wants to belong to, being excluded at school, even if it's not active bullying, but being isolated and excluded can be very hard for children as well.

Q Okay. One second, Dr. Tishelman. Okay. Dr. Tishelman, you've referred a lot to bullying in the school context. Can bullying just be done by peers?

A No. Bullying can also emanate from the behavior of adults.

Q Okay. And in the school context, has that ever happened with teachers?

A Yes.

Q Administrators?

A It can.

Q And any other ways that bullying can manifest in a school situation outside of peers interaction?

A Adults can have a lot of power in school settings. I'm thinking back to even when I worked on the home-school partnership projects, where teachers sometimes had implicit biases, so they expected and sometimes

inaccurately understood certain children to have less academic or social ability than others.

There can be ways to have unconscious biases that can affect children badly in terms of school placement, in terms of academic expectations, and just social interactions are very subtle. So, there can be even things that are hard to put your finger on, like tone of voice, how often a person is called on, whether they're treated with condescension or not, et cetera. Those kinds of subtle behaviors are often referred to as microaggressions, but they may single out a child.

Q Thank you, Dr. Tishelman. Dr. Tishelman, I neglected to ask you at the very beginning of your testimony, but were you hired to write an expert report for the Colorado Attorney General's Office?

A Yes, I was.

Q Okay. And were you paid for your time to write that report?

A Yes. Not yet.

Q We are the State. It takes a little bit.

THE COURT: There's a delay because their building is shut down.

MS. RUST: Your Honor, I'm going to give you a couple exhibit numbers that I would like to tender to the Court now that I am done with Dr. Tishelman's direct. Exhibit Number 46 is her resumé, Your Honor. Exhibit 47 is the expert report she wrote for us.

And then these following exhibit numbers are journal articles that Dr. Tishelman referred to their points in her testimony today, and they're also cited in her report. That's number 59, High-Conflict Divorce, a

Form of Child Neglect; 60, Developmental Cascades; 61, The Lifelong Effects of Early Childhood Adversity and Toxic Stress; 63, Disparities in Childhood Abuse Between Transgender and Cisgender Adolescents; 64, Suicidality Disparities Between Transgender and Cisgender Adolescents; and 65, Assessment of Gender-Diverse Children Incorporating the Standards of Care, Eighth Edition. And those are the world standards of care that Dr. Tishelman referred to her help in authoring this past year, Your Honor.

THE COURT: Thank you.

* * *

(Proceedings concluded at 4:31 p.m.)

REPORTER'S CERTIFICATE

I, KEVIN P. CARLIN, Official Court Reporter for the United States District Court for the District of Colorado, a Registered Merit Reporter and Certified Realtime Reporter, do hereby certify that I reported by machine shorthand the proceedings contained herein at the time and place aforementioned and that the foregoing pages constitute a full, true, and correct transcript.

Dated this 9th day of January, 2024.

/s/ Kevin P. Carlin

Kevin P. Carlin, RMR, CRR
Official Court Reporter