

No. 24-1267

**IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

ST. MARY CATHOLIC PARISH IN LITTLETON;
ST. BERNADETTE CATHOLIC PARISH IN LAKEWOOD;
DANIEL SHELEY; LISA SHELEY;
THE ARCHDIOCESE OF DENVER,

Plaintiffs-Appellants,

v.

LISA ROY, in her official capacity as Executive Director
of the Colorado Department of Early Childhood;
DAWN ODEAN, in her official capacity as Director
of Colorado's Universal Preschool Program,

Defendants-Appellees.

On Appeal from the United States District Court
for the District of Colorado
Case No. 1:23-cv-2079-JLK – Hon. John L. Kane

APPENDIX VOLUME IV

Eric C. Rassbach
Mark L. Rienzi
Joseph C. Davis
Nicholas R. Reaves
Jordan T. Varberg
Amanda G. Dixon
The Becket Fund for Religious Liberty
1919 Pennsylvania Ave. N.W., Ste. 400
Washington, DC 20006
(202) 955-0095
nreaves@becketlaw.org

Counsel for Plaintiffs-Appellants

Appendix Table of Contents

VOLUME I

Docket	1.App.0001
First Amended Complaint (ECF 30)	1.App.0018
Defs.’ Motion to Dismiss (ECF 38)	1.App.0055
Declaration of Dawn Odean (ECF 38-1)	1.App.0077
Response in Opposition to Defs.’ Motion to Dismiss (ECF 42)	1.App.0084
Reply in Support of Defs.’ Motion to Dismiss (ECF 47)	1.App.0115
Supplemental Declaration of Dawn Odean (ECF 47-1)	1.App.0135
Surreply to Defs.’ Motion to Dismiss (ECF 51).....	1.App.0138
Supplemental Declaration of Elias Moo (ECF 51-1)	1.App.0145
Joint Status Report (ECF 62)	1.App.0147
Order on Joint Status Report (ECF 65).....	1.App.0164
Defs.’ Supplemental Brief in Support of Motion to Dismiss (ECF 72)	1.App.0174
Exhibit 1: Elias Moo Deposition Excerpts (ECF 72-1)	1.App.0191
Exhibit 2: Tracy Seul Deposition Excerpts (ECF 72-2).....	1.App.0207
Exhibit 3: Avery Coats Deposition Excerpts (ECF 72-3).....	1.App.0222
Exhibit 4: Pls.’ Supplemental Answers to Defs.’ First Set of Interrogatories (ECF 72-4)	1.App.0233
Pls.’ Supplemental Response to Defs.’ Motion to Dismiss (ECF 75).....	1.App.0247
Exhibit 1: Elias Moo Deposition Excerpts (ECF 75-1)	1.App.0263
Exhibit 2: Avery Coats Deposition Excerpts (ECF 75-2).....	1.App.0281

Exhibit 3: Tracy Seul Deposition Excerpts (ECF 75-3)	1.App.0287
--	------------

VOLUME II

Exhibit 4: St. Mary Preschool’s 2020-23 CCCAP Agreement and Amendments (ECF 75-4)	2.App.0293
Minute Order Substituting Amended Order on MTD, MSJ, and motion to exclude experts (ECF 98)	2.App.0309
Amended Order on MTD, MSJ, and motion to exclude experts (ECF 99)	2.App.0311
Answer (ECF 107)	2.App.0343
Pls.’ Proposed Findings of Fact and Conclusions of Law (ECF 108)	2.App.0373
Findings of Fact, Conclusions of Law, and Order for Entry of Judgment (ECF 116)	2.App.0445
Final Judgment (ECF 117)	2.App.0546
Notice of Appeal (ECF 120)	2.App.0549
Transcripts	
Status Conference Transcript (ECF 37)	2.App.0552

VOLUME III

Trial Transcript: Day 1 (ECF 103)	3.App.0577
---	------------

VOLUME IV

Trial Transcript: Day 2 (ECF 104)	4.App.0757
---	------------

VOLUME V

Trial Transcript: Day 3 (ECF 106)	5.App.0949
---	------------

Trial Exhibits

Unified Exhibit List (ECF 79)..... 5.App.0976

Plaintiffs' Exhibits

Exhibit 1: Archdiocese of Denver Catholic Schools
Administrator's Manual (ECF 32-2) 5.App.0989

Exhibit 2: Catholic School Community Beliefs and
Commitments (ECF 32-3) 5.App.0999

Exhibit 3: Mission and Charter of Catholic Schools
in the Archdiocese of Denver (ECF 32-4)..... 5.App.1007

Exhibit 4: Archdiocese's Code of Conduct (ECF 32-5)..... 5.App.1009

Exhibit 5: Guidance for Issues Concerning the
Human Person and Sexual Identity (ECF 32-6) 5.App.1044

Exhibit 6: Archdiocese's Full-Time Teacher and
Formator Contract Terms and Conditions (ECF 32-7) 5.App.1062

Exhibit 7: The Splendor of the Human Person (ECF 32-8)..... 5.App.1067

Exhibit 8: School of the Lord's Service (ECF 32-9)..... 5.App.1095

Exhibit 9: Archdiocese of Denver Curriculum
Guidance (ECF 32-10) 5.App.1122

Exhibit 10: Archdiocesan Directive on UPK Colorado
(ECF 32-11) 5.App.1160

Exhibit 11: Coalition Letter to Gov. Polis (ECF 32-12)..... 5.App.1162

Exhibit 12: Dr. Lisa Roy Letter to Coalition (ECF 32-13)..... 5.App.1164

Exhibit 13: Universal Preschool Provider Agreement
and Exhibits (ECF 23-15)..... 5.App.1166

VOLUME VI

Exhibit 14: Wellspring Student & Family
Handbook (2022-2023) (ECF 32-17)..... 6.App.1205

Exhibit 15: Wellspring Preschool Handbook Addendum (2023-2024)	6.App.1262
Exhibit 16: Wellspring Student & Family Handbook (2023-2024)	6.App.1293
Exhibit 17: St. Mary’s Parent / Student Handbook	6.App.1349
Exhibit 18: St. Mary’s Preschool Handbook	6.App.1418
Exhibit 19: Colorado Department of Early Childhood’s webpage entitled “Browse participating UPK Colorado providers”	6.App.1441
Exhibit 20: UPK Colorado provider listings	6.App.1442
Exhibit 21: Proposed Universal Preschool Program Rules	6.App.1449
Exhibit 22: Colorado Department of Early Childhood’s webpage entitled “Submit an application for UPK Colorado for the 2023-2024 school year”	6.App.1460
Exhibit 23: Article: “Polis: Catholic schools that want universal pre-K must not discriminate”	6.App.1461

VOLUME VII

Exhibit 24: UPK Colorado Provider Guide	7.App.1463
Exhibit 25: Colorado Department of Early Childhood’s webpage entitled “Universal Preschool Colorado”	7.App.1523
Exhibit 26: Designations of Deposition Testimony of Dawn Odean by Plaintiffs	7.App.1525
Exhibit 27: Designations of Deposition Testimony of Lisa Roy by Plaintiffs	7.App.1605
Exhibit 28: Defendants’ Answers to Plaintiffs’ First Set of Interrogatories	7.App.1631
Exhibit 29: Defendants’ Answers to Plaintiffs’ First Set of Requests for Admissions	7.App.1642

Exhibit 30: Colorado Department of Early Childhood UPK Exception Requests Data (excerpted from Excel original).....	7.App.1648
Exhibit 31: Colorado Department of Early Childhood Individualized Exception Request Form.....	7.App.1701
Exhibit 32: Colorado Department of Early Childhood Approved Decline Process for Exceptions.....	7.App.1704
Exhibit 33: January 30, 2023 LCO Office Hours Transcript	7.App.1705
Exhibit 34: Colorado Department of Early Childhood UPK Exception Requests Response Data (excerpted from Excel original)	7.App.1729

VOLUME VIII

Exhibit 35: 2022-2023 DPP Provider Agreement Form.....	8.App.1735
Exhibit 36: 2022-2023 CCCAP Provider Agreement Form	8.App.1768
Exhibit 37: 2020 St. Mary’s CCCAP Provider Agreement	8.App.1776
Exhibit 38: Update on Guidance for Participation in UPK Slideshow.....	8.App.1796
Ex. 39: Declaration of Dawn Odean.....	8.App.1807
<u>Defendants’ Exhibits</u>	
Ex 45: Dr. Abbie E. Goldberg Expert Report.....	8.App.1814
Ex 71: Draft UPK Colorado Program Rules and Regulations	8.App.1827

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF COLORADO

3 Civil Action No. 23-cv-2079-JLK

4 ST. MARY CATHOLIC PARISH IN LITTLETON, et al.,

5 Plaintiffs,

6 vs.

7 LISA ROY, et al.,

8 Defendants.

9 -----
10 REPORTER'S TRANSCRIPT

11 Bench Trial, Vol. 2
12 -----

13 Proceedings before the HONORABLE JOHN L. KANE, Judge,
14 United States District Court for the District of Colorado,
15 commencing on the 3rd day of January, 2024, in Courtroom A802,
United States Courthouse, Denver, Colorado.

16 APPEARANCES

17 For the Plaintiffs:

18 NICHOLAS R. REAVES, JOSEPH C. DAVIS, AMANDA G. DIXON, ERIC C.
19 RASSBACH, and JORDAN T. VARBERG, The Becket Fund for Religious
20 Liberty, 1919 Pennsylvania Avenue NW, Suite 400, Washington, DC
20006

21 For the Defendants:

22 VIRGINIA R. CARRENO, NICOLE S. RUST, and J. GREGORY WHITEHAIR,
23 Colorado Attorney General's Office, 1300 Broadway, Denver, CO
80203

24 and

25 JANNA K. FISCHER and HELEN L. NORTON, Colorado Department of
Law, 1300 Broadway, Denver, CO 80203

Reported by KEVIN P. CARLIN, RMR, CRR, 901 19th Street, Room
A259, Denver, CO 80294, (303)335-2358

23-cv-2079-JLK Bench Trial 01-03-2024

I N D E XDEFENDANTS' WITNESSESPAGE

DAWN ODEAN

Direct Examination By Ms. Carreno183

Cross Examination By Mr. Davis236

Redirect Examination By Ms. Carreno273

ABBIE GOLDBERG

Direct Examination By Ms. Rust282

Cross Examination By Mr. Reaves300

Redirect Examination By Ms. Rust322

AMY TISHELMAN

Direct Examination By Ms. Rust332

Reporter's Certificate372

23-cv-2079-JLK DAWN ODEAN - Direct 01-03-2024

P R O C E E D I N G S

(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

23-cv-2079-JLK DAWN ODEAN - Direct 01-03-2024

1 around early childhood in support of young children and
2 families, and had been as a provider at the time engaged in the
3 work of the Early Childhood Leadership Commission, Colorado
4 Children's Campaign around Prop EE, House Bill 1295, and was
5 just excited about that truly epic opportunity for children and
6 families in Colorado, and really wanted to be a part of it.

7 Q How did you get that position?

8 A So, as I said, I applied online, and then went through a
9 series of interviews to get the position.

10 Q And in your role as UPK director, what does that entail?

11 A It entails the startup and implementation of Universal
12 Preschool statewide.

13 Q And what type of things do you do as the UPK director?

14 A A lot of our work initially in year one was ensuring that
15 we had families aware of the opportunity, that we had a unified
16 application system in place for them to find providers and apply
17 and get connected to providers, as well as ensuring that we had
18 providers register so that there was opportunities for families
19 to bring their children to preschool around the state. Another
20 big component in year one was operationalizing the system for
21 payment of providers based on the families enrolled.

22 Q Have you collaborated with any other state partners or
23 agencies in your role?

24 A Yes. We have done a lot of work talking to folks locally
25 and around the United States about what's worked, what hasn't

23-cv-2079-JLK DAWN ODEAN - Direct 01-03-2024

1 worked, what would work best for Colorado. That's a big part of
2 our effort, and really how the department was founded. So,
3 certainly recognize that collective voice, and truly years of
4 early childhood leaders bringing us to this point in Colorado,
5 and wanted to continue that and ensure that we had collective
6 voice as we move forward and were responsive to the needs in
7 Colorado. But also seeing other opportunities that might have
8 been available around the United States that worked that we
9 could implement or things that worked locally that we might be
10 able to leverage as well.

11 Q Were there any differences in Colorado's system compared to
12 the other states that the department spoke with?

13 A There are many. And I would say Colorado was really bold
14 in making decisions around having a mixed delivery system, and
15 that was one of the biggest differences in implementation. So,
16 many states offered Universal Preschool previous to Colorado in
17 a model that's similar to K-12, for example, where it's school
18 district managed.

19 And Colorado was really thoughtful in ensuring that
20 families had a choice and that they were able to make informed
21 decisions and find that just-right provider that we've talked
22 about that best met their family's needs and so that they could
23 have different opportunities for young children that they may
24 not have previously had.

25 Q And Ms. Cooke spoke yesterday about local coordinating

23-cv-2079-JLK DAWN ODEAN - Direct 01-03-2024

1 organizations, or OCLs -- LCOs. Can you describe the work that
2 you've done with local coordinating organizations?

3 A We have 32 local coordinating organizations around the
4 state, and they are critical in our efforts to ensure that local
5 communities have an understanding of our programs and our
6 department. The first year working with LCOs, the priority has
7 been navigating Universal Preschool, so helping families locally
8 understand what the opportunities might be and get connected and
9 engaged, and as well as providers.

10 And so their local relationships and local voice have
11 really been critical with the new state department for me
12 particularly being new in the role, not having local
13 relationships that -- to the depth that they have around the
14 state has been really important for us to kind of have those
15 trusted partners and really be able to be responsive to the
16 startup of the program.

17 Q Besides working with other state agencies and states and
18 LCOs, have you worked with stakeholders or providers in the
19 startup of the Universal Preschool Program?

20 A Yes, I have. We have. That's a priority for us. So, it's
21 part of our daily work, working with families, working with
22 providers, certainly in conversations with our direct customers,
23 if you will, on a daily basis, but also have really worked hard
24 even under the compressed timeline to ensure that we're engaging
25 and hearing, really listening and being responsive so that we

23-cv-2079-JLK DAWN ODEAN - Direct 01-03-2024

1 can continuously improve our efforts, and have worked to be very
2 intentional and thoughtful about being inclusive to
3 stakeholders, to providers in this new model of mixed delivery
4 and ensure that families have the opportunities that are set
5 forth for them through our program.

6 Q Before working in your role as UPK director, what was your
7 employment position?

8 A I was the executive director of early learning for Jeff.
9 Co. Public Schools.

10 Q And what did you do in that position?

11 A In that position, I oversaw the preschool programming for
12 Jefferson County Public Schools. At the time we had about 93
13 classrooms serve 2,500 to 3,000 students each year, threes and
14 fours. Supported each school leadership, training, professional
15 learning and development, really worked to align the transition
16 into preschool with our early childhood providers in the
17 community and other resources for families, as well as their
18 transition into kindergarten and through third grade. So, at
19 the district level, we were really working toward longterm
20 outcomes that we could gain by providing quality programming for
21 preschool in the district.

22 Q How long were you in that position?

23 A I started in that position in 2016 and worked there until I
24 attained this position in 2022.

25 Q And before that position, what were you doing?

23-cv-2079-JLK DAWN ODEAN - Direct 01-03-2024

1 A I was an elementary school principal. Prior to that, I was
2 an instructional coach. And prior to that, I was an elementary
3 teacher.

4 Q And I want to direct your attention to the screen to
5 Exhibit 49. Ms. Odean, do you recognize this document?

6 A Yes. That's my current resumé.

7 Q And is that resumé a true and accurate representation of
8 your qualifications?

9 A Yes.

10 Q And who prepared that resumé?

11 A I did.

12 Q And is that resumé up to date?

13 A It is.

14 MS. CARRENO: And, Your Honor, I would like to proffer
15 Exhibit 49.

16 THE COURT: All right.

17 Q. (By Ms. Carreno) Now, Ms. Odean, I want to turn to some
18 more of the background on the Universal Preschool Program and
19 the system. And you heard Ms. Cooke describe yesterday the
20 process for the creation of the new department and the Universal
21 Preschool system. She also talked a little bit about the
22 Colorado Preschool Program. And so can you describe what if any
23 experience you had with the Universal Preschool -- sorry. What
24 if any experience you had with the Colorado Preschool Program?

25 A In my role in Jeff. Co. Public Schools, we coordinated with

23-cv-2079-JLK DAWN ODEAN - Direct 01-03-2024

1 the Colorado Department of Education for the Colorado Preschool
2 Program to serve students in Jefferson County. The Colorado
3 Preschool Program was the previously state-funded preschool
4 opportunity in Colorado, which was school-district-managed. So,
5 it wasn't mixed delivery, unless the school district chose to
6 contract with outside community partners.

7 And it was targeted. So, different than universal in
8 that it was for children with specific risk factors. And so we
9 implemented that -- I think that was in place probably for 30
10 years. So, that was implemented well before I was in the role,
11 but certainly continued that effort to ensure that families had
12 access to funding for preschool prior to universal.

13 Q Now, when you say it was targeted at certain risk factors,
14 what were those risk factors?

15 A So, risk factors included families living in poverty,
16 included children with a native language other than English,
17 developmental delays, foster care. That's what I can remember
18 off the top of my head.

19 Q And how many children did the Colorado Preschool Program
20 serve?

21 A Statewide, I believe 18,000 was the last count. Right
22 around 18,000.

23 Q And so if Colorado already had the Colorado Preschool
24 Program, what was the need for the Universal Preschool Program?

25 A I think what we saw with the Colorado Preschool Program was

23-cv-2079-JLK DAWN ODEAN - Direct 01-03-2024

1 it did what it was intended and really supported children in
2 their growth and development. And so the universal opportunity
3 was so that more children could have access to that leading up
4 to their kindergarten year.

5 Q And was the Colorado Preschool Program income-based?

6 A That was one of the risk factors.

7 Q So, why universal rather than a targeted program?

8 A So, universal allows for all children in the year before
9 they're eligible for kindergarten to have 10 to 15 hours of free
10 preschool access. And that's important so that all of those
11 children can have access to that high-quality environment and
12 get to the learning outcomes that we know come from a
13 high-quality program. But it also allows for families to have
14 opportunity and options, all families. And uniquely in the
15 Colorado statute that gives us the foundation for the program,
16 it certainly recognizes what CPP was able to accomplish and
17 calls out what some priorities -- the same children.

18 So, we're thinking about children with disabilities,
19 children who are low-income and so forth on the risk factors to
20 ensure that the work of the Colorado Preschool Program wasn't
21 diminished through going to a universal model, but to continue
22 to be thoughtful about ensuring those outcomes continue for
23 children who haven't had that opportunity historically.

24 Q And how did the department go about ensuring that those
25 families that benefited from CPP weren't harmed by the universal

23-cv-2079-JLK DAWN ODEAN - Direct 01-03-2024

1 system?

2 A Well, again, we really wanted to understand providers'
3 experiences with families and with children and where they've
4 gotten to those positive outcomes and what would be helpful. We
5 certainly built the application system to ensure that we
6 understood who was applying and what might be helpful for them
7 to find the best provider for that particular family, but also
8 knew that, for example, with school districts and their federal
9 mandates around IDA, that there would be considerations we
10 needed to make to ensure that it was a fluid process for
11 families, and that it didn't compromise the expectations of
12 school districts to serve.

13 Q And can you talk a little bit about what the qualifying
14 factors are.

15 A Sure. So, the qualifying factors are put in place in rule
16 based on what the expectation was in statute for. If there is
17 funding remaining after the initial ten hours are served and
18 students with IEPs are served, that qualifying factors could
19 allow for families to receive additional hours for free.

20 Q And what were the specific qualifying factors that were
21 established in rule?

22 A So, the qualifying factors established in rule were what
23 was called out in statute, which are low-income families,
24 families with children with disabilities, or an individualized
25 education program. Dual language or multi-language families and

23-cv-2079-JLK DAWN ODEAN - Direct 01-03-2024

1 their children, and we also added homelessness through rule.
2 That was from the stakeholder input and feedback, as well as
3 foster or kinship care.

4 Q And yesterday you heard Michael Cooke's testimony about the
5 quality standards, and I want to talk about how the department
6 went about implementing those quality standards into the system
7 and in practice. So, if I could direct your attention back to
8 the screen, to section 26.5-205. In looking at subsection
9 (1)(a) of the quality standards statute, I want to ask you about
10 what some of these terms mean and how the department has
11 implemented them into the UPK program. So, let's start with
12 within section (1)(a), the statute refers to national and
13 community-informed best practices. Can you please tell the
14 Court what that means and how that was implemented into practice
15 in the UPK system.

16 A Best practices are associated with how we get to the best
17 child outcomes in the preschool setting in early childhood in
18 general, and then specifically for us in the statute for
19 Universal Preschool. And we know that locally we have done a
20 lot of work around quality. So, the Office of Early Childhood,
21 previous to the new department, built the Colorado Shines
22 program that really was thoughtful about what are those best
23 practices, and what are we looking for, and how can we support
24 high quality across programs?

25 And then individual providers have different frameworks

23-cv-2079-JLK DAWN ODEAN - Direct 01-03-2024

1 that they've utilized as well. So, if you think about Head
2 Start, they have a framework that is the foundation of the work
3 that they build on, primarily focused on trauma-informed care
4 and best practices to support families and children in that
5 environment.

6 There's -- school districts have educator effectiveness
7 and performance programs, unified improvement plans where
8 they're really being thoughtful about strategies and outcomes
9 and how they get to the best child outcomes they can in a safe
10 and healthy environment.

11 Nationally, there certainly are different frameworks
12 that have been developed by different organizations as well.
13 And so the statute really called for us to consider those
14 frameworks locally and nationally to ensure that we were being
15 really thoughtful about what's worked and what might work in
16 Colorado, and where do we have some challenges or gaps that we
17 can through this new program and the new department collectively
18 kind of raise the bar in support of providers and educators and
19 young children.

20 Q And, Ms. Odean, can I just encourage you to maybe speak up
21 a little bit more, or get closer to the microphone just to make
22 sure that we can hear you.

23 A Is that better?

24 Q I think so, yes.

25 A Okay.

23-cv-2079-JLK DAWN ODEAN - Direct 01-03-2024

1 Q And so also looking at that same subsection (1)(a), can you
2 tell me about the term "cognitive development" and how that was
3 implemented in practice within the UPK system?

4 A Yes. So, what you see here is really an acknowledgment of
5 how important whole child development is, cognitive development
6 being one of those areas that are critical to a child's
7 development. And that's typically associated with academics or
8 thinking. So, it might be early literacy, early communication,
9 early numeracy components of cognitive development. So, the
10 statute is asking us through our quality standards to be
11 thoughtful about ensuring that we're including that, as well as
12 the whole child.

13 Q What is whole child development?

14 A So, whole child, you will see here, that main domains are
15 covered in ensuring that children have access to the cognitive
16 development, but also inclusive of physical development, as well
17 as social-emotional development.

18 Q And then moving on to healthy environments, what are
19 healthy environments, and how were those incorporated into the
20 UPK system?

21 A Healthy environments are really critical to ensure that,
22 one, we're being supportive of the child and their family in
23 that they have access to resources around their child's health,
24 but the environment component is really contemplating being
25 thoughtful about the actual environment that a child is in.

23-cv-2079-JLK DAWN ODEAN - Direct 01-03-2024

1 So, we know we have licensing child care regulations
2 for health and safety, but this kind of goes beyond that in a
3 way that ensures children in the classroom are in a space where
4 they can learn and grow. So, it's physical safety, yes, but
5 also that they're in an environment that's welcoming, that they
6 feel a part of, and maximizes through best practices that
7 development.

8 Q And then the last term within the section I want to ask you
9 about is social and emotional learning. Can you describe how
10 the department has implemented that in its quality standards?

11 A So, the social-emotional learning component is required for
12 us in statute to consider in our quality standards specifically
13 to be thoughtful about how children engage in their community,
14 how they engage with other children, how they engage with
15 adults, how they interact with the environment. And, again,
16 it's all with that focus on a supportive nurturing environment
17 for their growth and development.

18 Q And then I want to ask you about Roman numeral IV, but
19 before we get to Roman numeral IV, (1)(a) states that in
20 developing, reviewing, revising, and adopting the quality
21 standards, the department shall consider four things. Before we
22 get to number four, do you remember what the first three factors
23 are that the department must determine in developing the quality
24 standards?

25 A So, the statute asks us to ensure that all children have

23-cv-2079-JLK DAWN ODEAN - Direct 01-03-2024

1 access to learning, and it calls out the nondiscrimination
2 provision.

3 Q And, Ms. Odean, is there anything that might refresh your
4 recollection for those three standards that come before Roman
5 numeral IV?

6 A If you have that specific portion of statute.

7 Q And is this the portion of statute that you were referring
8 to?

9 A Yes.

10 Q And just let me know when you've had a chance to review
11 that.

12 A Okay. So, it also includes that assurance that we
13 discussed about nationally accepted standards are considered,
14 that licensing requirements are considered, and that the
15 availability of preschool services for eligible children are
16 considered.

17 Q Okay. Now, going back to Roman numeral IV, how has the
18 department taken efforts to ensure both availability of
19 preschool services and maintain the quality of preschool
20 providers?

21 A So, the availability really is through our approach in
22 mixed delivery, to be as inclusive as possible, so that families
23 have choice in where they might enroll their child. So, to
24 ensure availability, we've worked really hard to hear from
25 providers around the state to encourage them to participate, to

23-cv-2079-JLK DAWN ODEAN - Direct 01-03-2024

1 be a thought partner and work through why or why they may not
2 participate so that we have opportunities for families to have
3 that access.

4 The quality component comes in once the children are in
5 program and in the classroom where we're really being thoughtful
6 about, again, continuing that equitable access to learning in a
7 safe and healthy environment.

8 Q And what -- why do those two factors go hand in hand?

9 A Well, they really go hand in hand. We certainly know that
10 this opportunity of Universal Preschool provides access that
11 many families haven't had yet. And so really the statute has
12 told us to ensure that families have choice through this
13 mixed-delivery model, and that families have confidence that
14 those are safe and healthy environments, and that they're in
15 place not only for supervision, but so that their child can grow
16 and begin a positive journey for learning.

17 Q And so I want to move on to subsection two of 26.5-4-205,
18 and ask you about the antidiscrimination provision that's at
19 issue in this case. Why was this provision, subsection (2)(b),
20 included in the quality standards component of the statute?

21 A My understanding of why it was included in the statute is
22 to ensure that children who historically have been discriminated
23 against aren't. So, going through as a provider through the
24 participating in the bill writing, it was my understanding that
25 it was critical for this to be in place to ensure that by

23-cv-2079-JLK DAWN ODEAN - Direct 01-03-2024

1 creating a universal program, we weren't inadvertently putting
2 children in a place where they weren't able to continue the
3 gains that were made through the previous program, but also be
4 thoughtful about not putting children in an unsafe or unhealthy
5 environment as well.

6 So, to be really intentional about children having that
7 environment so that they can grow to their maximum ability, and
8 that we're collectively working toward that as a community in
9 the state of Colorado.

10 Q And does this provision apply to both children and
11 families?

12 A It does.

13 Q And why is that?

14 A Part of a child feeling safe and being safe and healthy is
15 also that their family feels safe and healthy and that they feel
16 a part of their family. And we certainly want them and their
17 family to feel a part of the community and the learning
18 environment that they're in.

19 Q And you've said "safe environment" a bunch of times. What
20 is a safe environment?

21 A I think the way I understand it is -- and the way that
22 we're interpreting it for the program is that when a child is in
23 the preschool setting, they feel safe so that they aren't
24 worried about being unsafe. They feel welcome so that they
25 aren't concerned about being unwelcome. And in that way, they

23-cv-2079-JLK DAWN ODEAN - Direct 01-03-2024

1 can access learning engagement with their peers, engagement with
2 their educators in a way that maximizes their growth and
3 development.

4 Q And so is safety about more than just licensing
5 requirements?

6 A It is. In a really thoughtful way that that was called out
7 in the law.

8 Q And health as well?

9 A Health as well. So, we definitely want of course to ensure
10 physical health and development and safety, but when we think
11 about health, we're also considering that social-emotional
12 learning component, behavioral health, certainly, and at this
13 young age really want to maximize that health as well, as part
14 of the whole child.

15 Q And what is your understanding of why this
16 antidiscrimination requirement was included within the quality
17 standards section of the statute?

18 A My understanding is that we absolutely understand access is
19 important. So, we want children around the state to be able to
20 access programming that best fits their family's needs and want
21 to be supportive of that access. But the access doesn't stop at
22 enrollment. It really also is once children are in the setting,
23 to ensure that they have equitable access to learning and
24 growth, and that our department is supporting educators and
25 providers with resources and tools to be able to do that.

23-cv-2079-JLK DAWN ODEAN - Direct 01-03-2024

1 Q I want to turn now to the proposed quality standards rules.
2 And as you know, Michael Cooke testified yesterday that she
3 couldn't testify about these rules or the next stages of the
4 implementation of the system, since her position was time
5 limited. So, I'm turning now to -- or directing your attention
6 to what has been marked as Exhibit 71, and apologize that I
7 think yesterday we may have marked this as 68, because we didn't
8 have our exhibit binders that had held some spots for the
9 deposition transcripts, but we are marking this exhibit as 71.

10 And, Ms. Odean, do you recognize this document?

11 A Yes. This is the draft rule for quality standards.

12 Q And how would you describe the quality standards rules?

13 A So, the quality standards rules -- I think I will back up a
14 little. In statute, there wasn't a specific timeline or date
15 tied to the implementation and development of the quality
16 standards rules. While it was very clear that we consider what
17 has worked in Colorado and what has worked nationally, that we
18 go through an authentic process with integrity to ensure that
19 we're being thoughtful about what we know and how we
20 collectively raise the bar, if you will.

21 So, when I started in August, we had a pretty
22 compressed timeline to start up for the statewide program for
23 providers to register and families to enroll. That enrollment
24 started in January. So, the primary focus at that time was
25 around access and really being thoughtful about ensuring that

23-cv-2079-JLK DAWN ODEAN - Direct 01-03-2024

1 the anticipated number of families would be able to find a
2 provider and actually get registered and sign up and be able to
3 be in program. So, we had a very focused effort during that
4 timeline.

5 And because we wanted to be very intentional and
6 thoughtful and go through a full rule process, not an emergency
7 rule process, so that we had stakeholder input and feedback, and
8 then also knowing that a lot of work toward quality has been
9 done in Colorado that we would consider drafting the rules not
10 immediately, but with that integrity in the process for
11 rule-making. And so that's the process that we're currently in.

12 Q And so how did the department go about drafting these rules
13 or undergoing that process you just described?

14 A Sure. So, we have worked with a contractor to do research
15 and review of the standards locally, of the standards, I believe
16 27 different frameworks, do a crosswalk of those, really talk to
17 providers, have webinars, focus groups, working groups, around
18 what of this are you currently doing? What has worked? What
19 hasn't? What would you recommend? How -- getting input, being
20 responsive to that input, and drafting the rule.

21 There were certainly specifics called out for us in
22 statute that we knew we had to incorporate and did, and then
23 also have really worked hard to have that collective voice to
24 ensure that this is an effort across the state together,
25 certainly with the support of the department.

23-cv-2079-JLK DAWN ODEAN - Direct 01-03-2024

1 Q And you said that these are draft rules?

2 A They are.

3 Q What does that mean?

4 A So, when we go through the rule process, we first introduce
5 concepts, had survey providers as well, and had information from
6 them that we could share out around the state with stakeholders,
7 and then drafted the rule. The rule in draft has a time period
8 where stakeholders can continue to give input. We're still in
9 the input-receiving part of the rule process.

10 And then the rule goes through a county subcommittee, a
11 rules advisory, the rule -- the rules advisory council has time
12 to review and give input from themselves and from their
13 stakeholders, and then the rule can then be promulgated by the
14 executive director.

15 Q And who makes up the rules advisory council?

16 A The rules advisory council is a diverse group of
17 stakeholders from around the state.

18 Q And then they will also weigh in on these rules?

19 A Yes.

20 Q Where in the process are these rules?

21 A So, these rules have gone through the initial drafting with
22 stakeholder input and feedback, and will go to the county
23 subcommittee next, of the rules advisory council this month.

24 Q And then when does the department anticipate that these
25 rules will be adopted?

23-cv-2079-JLK DAWN ODEAN - Direct 01-03-2024

1 A The rules could be promulgated, I believe yet this month.
2 And then the way that they're written and the way that the
3 department is approaching them is a phased approach. And so
4 really working providers, we've heard that, like a one-time
5 deadline for change isn't supportive of the actual practice and
6 outcomes coming. So, we've developed a phased approach to
7 ensure that we're working side by side with providers to support
8 their growth and incorporate child outcomes as we move forward
9 with quality together.

10 Q And the version of the rules that you're looking at now,
11 when were these finalized, or when were these updated?

12 A I think the last revisions were made probably Monday of
13 this week.

14 Q Okay. Thank you. Now, I want to direct your attention to
15 the top of page eight of the rule packet, under section 4.111,
16 capital letter A, which talks about the quality standards for
17 learning approaches. What are learning approaches?

18 A Learning approaches are how the educator engages in the
19 classroom to support the learning and development of the
20 children in the room.

21 Q And how did the department come up with the language for
22 this section of the learning approaches rule?

23 A Again, this was through review of what was expected in
24 statute, as well as stakeholder input. So, you will see that
25 it's -- we're aligning with the Colorado early learning and

23-cv-2079-JLK DAWN ODEAN - Direct 01-03-2024

1 development guidelines, as well as the Colorado academic
2 standards. And then being thoughtful about all of the
3 expectations for us, using assessment findings for instructional
4 decision-making that are culturally and developmentally and
5 linguistically appropriate, and inclusive of and appropriate
6 practices for diverse needs of each individual learner.

7 Q Ms. Odean, I just want to encourage you to speak up again,
8 if possible.

9 A Sorry. I keep looking over at the document.

10 Q No problem. And under requirement number four that you
11 just mentioned, is inclusive of and appropriate for the diverse
12 needs of each individual learner, can you tell us more about
13 that?

14 A Yes. That's -- what we know works best in early childhood
15 and likely for all is being responsive to knowing the children
16 and being responsive to their needs so that you can take
17 instructionally the just-right next step or approach to help
18 them continue to grow and develop.

19 Q And then moving down a little further on the page to
20 subsection capital B.1, lower case b, the section talks about
21 the measurement of providers' environmental quality, and section
22 B.1.b references the quality of the overall learning
23 environment, including student and staff supportive services.
24 Can you tell us what the quality of the overall learning
25 environment means?

23-cv-2079-JLK DAWN ODEAN - Direct 01-03-2024

1 A The quality of the overall learning environment is really
2 speaking to the engagement between children and other children
3 in the classroom, children and their educator, and children and
4 the actual physical environment. And we know that if those are
5 all positive, the child can grow and develop more efficiently
6 and effectively.

7 Q And what are student supportive services?

8 A Student supportive services refer to alignment of a child's
9 needs with the services that are provided for that child. And
10 again, that starts with a healthy, safe environment that's
11 welcoming for the child, where they feel comfortable and
12 nurtured to grow and learn, and it also has that whole child
13 understanding.

14 So, supportive of the educator knowing the child, what
15 we're referring to as all of the aspects of the whole child.
16 And so being thoughtful about where each child is in their
17 development, certainly can be a range, and being thoughtful
18 about those just-right next approaches, activities, and so forth
19 in the classroom.

20 Q And then turning to page ten of the same document, under
21 section 4.113, capital A, one, lower case c, the section is
22 under family and community engagement, and it states that
23 providers must create and make available publicly and for the
24 department the policies and procedures which ensure seeking
25 input from participating families on priorities, interests, home

23-cv-2079-JLK DAWN ODEAN - Direct 01-03-2024

1 routines, and cultural and social practices. What does this
2 provision mean?

3 A So, this provision really honors work that most of our
4 providers around the state participate in, but really calls out
5 specific indicators to ensure that families and children are
6 understanding what the expectation of that particular provider
7 might be, approaches that are utilized, and make the best choice
8 for them and their child.

9 And it helps to continue the conversation. So, as
10 children learn and grow and participate in preschool, that the
11 conversations with families around that child's development are
12 in alignment with these components.

13 Q And now the antidiscrimination statutory language that we
14 spoke about, is that included in these quality standards rules
15 as well?

16 A It is.

17 Q And I want to direct your attention to page six, same
18 document, under 4.109.B.

19 A Okay.

20 Q And this is what you were referring to?

21 A Yes.

22 Q Are there any exceptions or exemptions from that
23 requirement, subsection B, which is also the statutory
24 requirement, where a provider does not need to follow this
25 requirement?

23-cv-2079-JLK DAWN ODEAN - Direct 01-03-2024

1 A There aren't.

2 Q And why is that?

3 A That is in statute, and so that's why it's repeated here.
4 It wouldn't be changed through rule, because it's in the law.
5 And so it is incumbent upon us at the department for the program
6 and for participating providers to follow that.

7 Q And so you heard some references yesterday to a temporary
8 waiver in statute, and I want to direct your attention to that
9 provision now. And I'm referring to subsection (1)(b), Roman
10 numeral II, of the statute. Are you familiar with this
11 provision?

12 A I am. This is the provision that aligns with what I was
13 referring to as far as the phased process of implementation of
14 the quality standards. So, we certainly recognize that the
15 practices and approaches may take time to develop, and we want
16 to support providers in that development.

17 Q And in looking at that provision, subsection (1)(b), Roman
18 numeral II, it says, if necessary to ensure the availability of
19 a mixed delivery system. What does that mean?

20 A So, that's really honoring the uniqueness that each
21 provider might bring. So, mixed delivery is in-home family
22 child care settings, is small centers, large centers, Head Start
23 programs, school-district-based programs, faith-based programs,
24 and so really being thoughtful that with that uniqueness and the
25 variety of settings that the approach to quality may have been

23-cv-2079-JLK DAWN ODEAN - Direct 01-03-2024

1 different than some of the frameworks that we've reviewed or the
2 work that we're doing to ensure quality across all settings.

3 Q So, under what circumstances would the department be
4 allowed to offer a temporary waiver of some of the quality
5 standards?

6 A An example might be where in-home family child care
7 provider may not have done formative assessment around
8 documenting child observations to inform their practices. It
9 might be an approach that they utilized, but it might look
10 different than it looked, for example, in a school district
11 setting. And so while we're working with educators and
12 providers to make informed decisions on whole child development,
13 we certainly would support that process and that growth for that
14 educator and that provider.

15 Q And within that same subsection of statute, what does a
16 limited time while working toward compliance with the quality
17 standards mean?

18 A It depends on what the work is, potentially. So, there
19 might be opportunities, for example, for us to provide a tiered
20 approach for different providers. For example, you might have
21 educators coming in who are new to the profession in what is
22 typically called an induction setting, where you're giving more
23 support early, and then over time -- you might have masterful
24 educators who have been working in the field for a very long
25 time who still continue to want to be the best that they can for

23-cv-2079-JLK DAWN ODEAN - Direct 01-03-2024

1 children and grow and change, and that differentiated support
2 might look a little different based on those different educator
3 types.

4 And so we are really working across our department with
5 our workforce team, with coaching, with our local coordinating
6 organizations to consider what resources might be available and
7 how we can leverage those in this effort.

8 Q And then also within that same section, it says that except
9 that a preschool provider must meet all quality standards
10 relating to health and safety. What quality standards would
11 relate to health and safety? What does that mean?

12 A So, those are the things that we've been talking about this
13 morning in regards to health and safety, where certainly only
14 licensed providers are participating in assurances of that
15 minimum safety, physical safety, but also that health and safety
16 as it refers to the learning environment as well. Those are
17 certainly a minimum bar, but very important as well.

18 Q Has the department allowed any preschool provider to
19 participate in the UPK program without following all the quality
20 standards at this point?

21 A At this point, we are in development of the quality
22 standards. So, we're really being thoughtful about providers'
23 work that they've done so far. We're engaging with providers on
24 what that work is and what that looks like so we can help
25 support the implementation of the quality standards as they're

23-cv-2079-JLK DAWN ODEAN - Direct 01-03-2024

1 implemented.

2 Q So, has the department allowed any preschool providers to
3 exercise this temporary waiver in the statute?

4 A We haven't had a waiver request at this point.

5 Q And under this provision, could a provider that wasn't
6 complying with the antidiscrimination quality standard
7 participate in UPK on a temporary basis?

8 A The waiver doesn't exempt a provider from what's in the
9 law, so that wouldn't be a waiver associated with this process.

10 Q And is the nondiscrimination language -- is the
11 nondiscrimination statute a health and safety requirement?

12 A It is.

13 Q I want to turn now to talking about some of the logistics
14 of Universal Preschool. How many children have been able to
15 take advantage of UPK in year one?

16 A We're at almost 40,000 children around the state.

17 Q And do you have any idea what percentage of four-year-olds
18 that would make up?

19 A That's about 60 percent of eligible four-year-olds.

20 Q And what was the department hoping in the first year of
21 implementation of UPK?

22 A We were anticipating 50 percent. Certainly what we've seen
23 around the United States is a much lower uptake in year one, but
24 because of the success of the Colorado Preschool Program
25 previously, and because of the quality providers around the

23-cv-2079-JLK DAWN ODEAN - Direct 01-03-2024

1 state, we anticipated that Colorado might have a higher uptake
2 than 50 percent, and have exceeded that.

3 Q And how many more children has UPK been able to serve
4 compared to the Colorado Preschool Program?

5 A So, the Colorado Preschool Program, I believe in its last
6 years, was at about 18,000.

7 Q And Ms. Cooke went through the basics of how a family signs
8 up and selects Universal Preschool providers, but I wanted to
9 back up on something we didn't talk with Ms. Cooke about. Can a
10 family meet with a provider before making their selections for
11 their top five preschool providers?

12 A They absolutely can. And we encourage that, and our local
13 coordinating organizations encourage that as well. The system,
14 the application system was never intended to replace the
15 interactions between the family and the provider, but to
16 facilitate that enrollment and to allow for families, especially
17 who were seeking formal care for the first time, or a change,
18 that they had a place, a one-stop shop, if you will, that they
19 could go to to find information in a way that they hadn't been
20 able to before. But certainly have -- providers even in their
21 profiles have listed opportunities for tours or for
22 introductions, phone calls, and so forth, and the system
23 absolutely doesn't replace that relationship.

24 Q And you heard testimony from the plaintiff preschools,
25 St. Mary's and St. Bernadette's Preschools yesterday about their

23-cv-2079-JLK DAWN ODEAN - Direct 01-03-2024

1 process of encouraging families to take tours of the preschool
2 and having conversations with the families. Is that permissible
3 within the UPK program?

4 A It is.

5 Q And you also heard Ms. Cooke talk about the deferred
6 acceptance algorithm, or the DAA. Are there any factors that
7 that algorithm can't account for?

8 A What we found was that it doesn't account for mixed
9 delivery. So, it's a standardized supported lottery algorithm,
10 if you will, in an information technology landscape. But it
11 wasn't built specifically for our unique program in Colorado.

12 Q And so how did the department address that?

13 A So, we heard from our LCOs, from providers, and from
14 families very early on as we began the development of this
15 system. We had different user experience -- user experience
16 testing scenarios. And then through our outreach with our LCOs,
17 really heard from families that there were some things that
18 weren't -- didn't feel like they were being contemplated, and
19 that were a priority, and that we know lead to positive child
20 outcomes, and that included continuity of care.

21 So, really wanted to recognize that these quality
22 providers around the state have been working with a family over
23 the years. If you think about an in-home child family care,
24 they might have had that child since they were an infant and
25 would have them until they go on to kindergarten.

23-cv-2079-JLK DAWN ODEAN - Direct 01-03-2024

1 And we know that continuity of care yields high
2 outcomes for children, and we wanted to honor that. We didn't
3 want this algorithm to not consider that. So, that was one of
4 the weights that we applied to the algorithm.

5 We also applied siblings at location and employee's
6 child. And so both of those are really being thoughtful about
7 that community, honoring that safe and healthy community, and
8 the continuation of that for the child and the family.

9 Q Why is continuity of care important?

10 A Continuity of care limits the transitions for a child. And
11 so there's certainly a lot of research around that opportunity
12 for continuity of care to provide positive outcomes for growth
13 for the child and supportive environment for that community and
14 the family.

15 Q And you also mentioned certain relationships that the
16 department would want to honor. Why are those relationships
17 important, or what examples of relationships can you give us?

18 A So, the sibling priority or weight was to ensure, again,
19 that continuity of the community for the family, but also to
20 support the family in thriving, if you will. So, we don't want
21 them to have to go to -- so, if you have a child who is
22 Universal Preschool age, and then you have an infant that you
23 might be able to go to the same location and not have to go to
24 multiple locations within a day, which we know has an impact
25 overall on the family.

23-cv-2079-JLK DAWN ODEAN - Direct 01-03-2024

1 The employee's child is a priority, because we
2 certainly know from our department's workforce team and from our
3 providers very clearly that many of our educators have young
4 children who are eligible to participate and may not be able to
5 work if their child can't participate at the program that
6 they're working in.

7 Q Would it be possible to have both a universal and a mixed
8 delivery preschool program if every provider had to accept every
9 child matched to that provider?

10 A It would be really hard to do that. It would be -- when we
11 look at what other states have done, where they've prioritized
12 school districts as the lead provider or as the sole provider,
13 that's where universal -- at each location might work. Mixed
14 delivery, because of the variety of programming that providers
15 offer and the variety of settings that they offer, completely
16 universal at every setting, it would be really difficult and
17 would be difficult to have providers be able to participate.

18 And so in the consideration of mixed delivery, the
19 department has worked very intentionally about being inclusive
20 of a variety of providers to ensure that they can participate,
21 and really with the aim that families have that choice.

22 Q And so it wouldn't be possible for a mixed delivery system
23 if every provider had to accept every child?

24 A I don't know how. That would be really hard.

25 Q Ms. Cooke talked yesterday about the faith-based working

23-cv-2079-JLK DAWN ODEAN - Direct 01-03-2024

1 group. Were there any other working groups that met to discuss
2 the different needs of different types of providers and
3 communities?

4 A Could you say that again?

5 Q Sure. Were there any other types of groups that met to
6 discuss the different types of needs of communities and
7 providers besides the faith-based work group?

8 A Yes. As I said earlier, we on the program team certainly
9 met with providers daily, a variety of providers who are
10 participating or those that were considering it. We had
11 different working groups specifically with school districts,
12 with Head Starts, with in-home family child care, with corporate
13 providers. We really wanted to hear from folks and continue
14 that collective voice as we developed. We were moving really
15 quickly to start up, and so it was important that we were
16 engaging regularly, and now that we are working toward year two
17 to really formalize stakeholder input and feedback as we
18 continue to move forward.

19 Q And when you say working toward formalizing, what do you
20 mean by that?

21 A When the bill was being written, the ECLC had very formal
22 working groups where they were established and scheduled on a
23 regular basis for stakeholders to engage and be involved in and
24 around the state. In our compressed timeline, following that
25 same calendar was a challenge, and so we offered town halls. We

23-cv-2079-JLK DAWN ODEAN - Direct 01-03-2024

1 offered small groups with our LCOs. We provided our LCOs with
2 support to do local information gathering and provide that to
3 us.

4 We certainly had, again, through the work, were having
5 a lot of conversations and being responsive to what we heard,
6 and then we began to create different working groups around
7 specific tasks, like enrollment, for example. So, certainly
8 recognized that at many providers, it wasn't one person who did
9 it all, although we do have providers where one person does it
10 all, and certainly wanted their input and feedback, but also
11 wanted to understand that there might be an early childhood
12 director. There might be an office manager. Those folks might
13 have very different impacts from the change of a new program,
14 and we wanted to be supportive of the roles that help uplift the
15 program.

16 Q And just -- I know that early childhood has a lot of
17 acronyms, so I just want to make sure, what does the ECLC stand
18 for?

19 A It's the Early Childhood Leadership Council.

20 Q And then the LCO?

21 A Local coordinating organization.

22 Q Great. And Ms. Cooke also yesterday talked about the
23 preferences which were implemented in year one prior to the
24 rule-making. Are those preferences now being incorporated into
25 the proposed rules we started talking about earlier?

23-cv-2079-JLK DAWN ODEAN - Direct 01-03-2024

1 A They are. Again, what we heard was the algorithm wasn't
2 developed to consider mixed delivery in a variety of settings
3 that might be provided through preschool. And we had to create
4 a way for that to be a part of the process. And so those
5 preferences were developed based on what we heard from providers
6 in that engagement that would be helpful, one, to inform the
7 family and support the family in making the best decision, but
8 also helping providers to be able to meet their programmatic
9 policies.

10 Q So, I want to go back to the proposed rules, which are now
11 Exhibit 71, and direct your attention to page seven, under
12 section 4.110. And is this what you were just referring to?

13 A It is.

14 Q And so under the top -- the bottom of page six, before we
15 get to page seven, the rules say that an eligible preschool
16 provider may utilize the following programmatic preferences
17 during the matching process. I want to start with the
18 preference number two. And can you please tell me what are
19 cooperative preschool providers, or co-ops, as I believe they
20 were referred to yesterday?

21 A They are preschool providers that have an expectation of
22 the family's involvement through volunteering in the preschool
23 setting.

24 Q Why were co-ops, or cooperative preschools, included as a
25 preference?

23-cv-2079-JLK DAWN ODEAN - Direct 01-03-2024

1 A Those providers had expressed that they wouldn't be able to
2 participate if they didn't have that commitment from families.
3 So, we really worked through these preferences to kind of be
4 expansive of mixed delivery and inclusive of the uniqueness of
5 what the providers and the communities they've established
6 bring.

7 Q And does this cooperative preference give cooperative
8 providers an exception from the antidiscrimination provision?

9 A No.

10 Q And I want to turn to the next preference, number three.
11 What are school districts maintaining enrollment consistent with
12 their established boundaries?

13 A So, each school district has geographic boundaries where
14 they're required to serve K-12, the children that live within
15 those boundaries. And this actually has a tie to continuity of
16 care as well. So, we heard from school districts that for the
17 preschool component, they wanted to honor those boundaries as
18 well, and many districts don't have the capacity to serve
19 children beyond their boundaries. And so this preference was
20 put in place so that they could honor both continuity of care
21 for their families and ensure that they could prioritize that
22 geographic expectation that they have for K-12.

23 Q Why was this preference included in the proposed rules?

24 A So, this was included so that school districts could
25 prioritize those families and ensure that continuity of care.

23-cv-2079-JLK DAWN ODEAN - Direct 01-03-2024

1 Q Does this preference allow school districts an exemption or
2 an exception from the antidiscrimination provision?

3 A No.

4 Q Turning to the next one, participating preschool providers
5 reserving placements for a student with an individualized
6 education program to ensure conformity with obligations incurred
7 pursuant to law. What does that preference mean?

8 A That preference ensures that school districts and their
9 contracted partners can meet their federal mandate under IDA.
10 And that might include ratios in the classroom, aligned
11 resources and services, the development -- evaluation and
12 development process for an IEP with the family and so forth.

13 Q And what is an IEP?

14 A It's an individualized education program.

15 Q And what does that mean?

16 A So, that supports specific aligned services for a child
17 with a disability.

18 Q Why was this preference included in the proposed rules?

19 A It was included because it was called out in statute as a
20 priority, and also in our work with our partner state agency
21 Colorado Department of Education and school district providers
22 we heard right away that it was critical for them to be able to
23 participate and be able to meet the mandate.

24 Q And this preference only applies to school districts?

25 A This specifically applies to school districts and their

23-cv-2079-JLK DAWN ODEAN - Direct 01-03-2024

1 contracted partners.

2 Q Does this preference allow school districts or their
3 contracted partners an exception from the antidiscrimination
4 provision?

5 A No.

6 Q Why doesn't the department interpret the antidiscrimination
7 provision from prohibiting providers from prioritizing kids with
8 disabilities?

9 A Children with disabilities were specifically called out as
10 a priority in the law that developed the department and the
11 program as a priority. I believe because historically, they
12 haven't had equitable access or aligned care that meets their
13 needs. And so programmatically, we wanted to ensure that those
14 children who participated previously, that we didn't miss a
15 beat, if you will, as we moved into the new program, but that we
16 had assurances that those children would continue to be served.

17 Q And when you say continue to be served or were being served
18 previously, you mean through the Colorado Preschool Program?

19 A Yes.

20 Q Turning to the next preference, number five, what are Head
21 Start programs?

22 A Head Start programs are federally funded programs that
23 prioritize comprehensive supports for young children and their
24 families who are living in poverty, are low-income, or have
25 children with disabilities.

23-cv-2079-JLK DAWN ODEAN - Direct 01-03-2024

1 Q And what is your understanding of Head Start eligibility
2 requirements?

3 A As a Head Start grantee, there are federal expectations of
4 who is enrolled and the priorities of the children that are
5 enrolled, in alignment with their expectations around
6 low-income, poverty, and children with disabilities.

7 Q And are there any other eligibility requirements for Head
8 Start besides just income level of a family?

9 A I believe that they also look at other assistance that
10 families might be receiving as an indicator of qualification,
11 but I haven't been a Head Start grantee, so I'm not an expert.

12 Q Why did Head Start providers receive a preference in the
13 proposed rules?

14 A They were also called out, again, because it's a program
15 that has shown positive outcomes for children and families over
16 the years. And certainly was intentionally written into the law
17 that they were prioritized as participants and that the children
18 they serve were prioritized as participants.

19 Q Are Head Start providers able to utilize any type of an
20 exception or an exemption from the nondiscrimination
21 requirements of statute in the proposed rules?

22 A No.

23 Q Why doesn't the department understand prioritizing
24 low-income children and families to violate the
25 antidiscrimination provision?

23-cv-2079-JLK DAWN ODEAN - Direct 01-03-2024

1 A The antidiscrimination provision prioritizes families who
2 have historically been discriminated against. And so the
3 department has been called out to ensure that they're protected
4 moving forward, and that they have assurances around everything
5 that the program can provide.

6 Q And were there any concerns that this population wouldn't
7 continue to benefit from preschool under the new system as it
8 did under the prior system?

9 A I believe that's why it was written into the law to have
10 assurances that even though the program moved to universal, that
11 there was still a priority for these specific children and their
12 families.

13 Q Turning to number six, why -- well, can you describe what
14 preference number six is?

15 A Preference number six gives priority or preference for
16 providers who have employees whose children may attend, again,
17 to ensure that we have a sustainable workforce. But there are
18 also providers who are employee-based, or employer-based
19 providers who give priority to their employees' children in the
20 programs that they provide.

21 Q And why did these types of providers receive a preference
22 in the proposed rules?

23 A It really was what we heard from them that was the only way
24 that they could participate. So, certainly workforce has been a
25 challenge through the pandemic and previous to the pandemic, and

23-cv-2079-JLK DAWN ODEAN - Direct 01-03-2024

1 so we know in early childhood that as we value early childhood
2 and we value early learning, we want to ensure that our
3 educators are able to continue to educate, but also have the
4 same services for their children, and that they may not be able
5 to if it isn't in the same setting.

6 And for employer-based providers, which I think
7 probably will become more and more popular, but we certainly see
8 growth in that around the state where employers understand that
9 their employees can participate in the workforce if they have
10 access to a quality environment for their children, and they
11 want to be able to provide that so that their employees can --

12 Q Is this a preference that can be utilized by any type of
13 preschool provider?

14 A It is.

15 Q Turning to number seven, can you describe what this
16 preference is.

17 A So, this is the preference for continuity of care. And
18 this is what we discussed earlier, where it's -- we understand
19 that through research, that continuity of care is a strong
20 indicator of child success, and we typically see children who
21 have fewer transitions are able to grow and develop in a healthy
22 manner.

23 Q And can any type of preschool provider take advantage of
24 this preference?

25 A Yes.

23-cv-2079-JLK DAWN ODEAN - Direct 01-03-2024

1 Q Turning to preference number eight, can you describe what
2 that preference is.

3 A That's the preference for providers to consider the
4 enrollee child for preschool if they have siblings attending the
5 same program. So, it gives a preference to children whose
6 siblings are already attending there.

7 Q Why did this -- why was this called out as a preference in
8 the proposed rules?

9 A This was something we heard very clearly from families was
10 important in their decision-making, and we also heard from
11 providers, again, to ensure that continuity of community with a
12 family, that the sibling priority was critical to participate.

13 Q And can any preschool provider utilize the sibling
14 preference?

15 A Yes.

16 Q Turning to number nine, can you describe what that
17 preference means.

18 A Number nine is a preference for providers who offer
19 preschool services in languages other than English. And we have
20 a variety of providers who do so. So, we have school district
21 providers who have specific programming for dual or multilingual
22 programs. Some of those have federal expectations around how
23 those children are served or the ratios that the children are
24 served. For example, if it's a bilingual classroom, there may
25 be a certain number of children expected that are native

23-cv-2079-JLK DAWN ODEAN - Direct 01-03-2024

1 English-speaking and a certain number of children who are native
2 Spanish-speaking.

3 We have community providers who offer in their
4 communities preschool services in a range of languages that meet
5 the needs of the families in that community.

6 Q And does this preference provide an exception for providers
7 that serve multilingual children, an exception or an exemption
8 from the antidiscrimination provisions?

9 A No.

10 Q I want to back all the way up to number one, which is the
11 faith-based provider preference. And can you please describe
12 what that preference means.

13 A That preference was put in place as we heard from
14 faith-based providers considering to participate and being
15 thoughtful about being inclusive of faith-based providers being
16 able to, again, be inclusive to their community, and be able to
17 participate and their families to be able to have access.

18 Q What is a faith-based provider?

19 A In Universal Preschool, when providers register, they can
20 define themselves as faith-based. So, that might be a
21 religious-based community that they're a part of. It might be a
22 specific faith that they build their program around.

23 Q Why did faith-based providers include a preference in the
24 proposed rules?

25 A We included the preference in the proposed rules to ensure,

23-cv-2079-JLK DAWN ODEAN - Direct 01-03-2024

1 again, that we could be expansive in mixed delivery and
2 inclusive of a variety of provider types, including faith-based
3 providers. And the preference, again, wasn't a part of the
4 standard algorithm. And so like the other preferences, was
5 included to ensure that they were able to align to their
6 program.

7 Q And in looking at this preference, it says, faith-based
8 providers granting preference to members of their congregation.
9 Is "congregation" defined in the proposed rules?

10 A It is.

11 Q And if I could direct your attention to page two on the
12 same document. Is this what you're referring to?

13 A Yes.

14 Q Why did the department decide to define "congregation" in
15 the proposed rules?

16 A In year one, with the word "congregation," there were a lot
17 of questions from providers about what that meant. And so we
18 certainly listened to stakeholder input to define that further
19 to help support, again, that expansive inclusion of provider
20 types.

21 Q How did the department develop this proposed definition?

22 A So, again, same as everything in the rule. Looked at what
23 other providers had done, what had worked, what hadn't, talked
24 to providers, and this is the current draft.

25 Q What types of providers did the department speak with?

23-cv-2079-JLK DAWN ODEAN - Direct 01-03-2024

1 A Through the standards process, all provider types. And
2 definitely had faith-based providers weigh in as well.

3 Q And when you say that the department believed that this
4 definition was a way to be inclusive of faith-based providers,
5 can you tell me more about that.

6 A Again, it's about that continuity of care for a community
7 and being intentional about honoring mixed delivery and those
8 different communities that families and providers engage in.

9 Q And so were there some concerns in year one that the
10 congregation preference wasn't broad enough?

11 A Yes.

12 Q And how did the department believe that this definition
13 addressed those concerns?

14 A We believe this definition expands on what was maybe
15 initially understood as the word "congregation."

16 Q And are providers allowed to define what their
17 congregations are?

18 A They are.

19 Q Can faith-based providers continue to provide feedback on
20 this proposed definition and the preferences in general?

21 A Yes.

22 Q Does this preference give faith-based providers an
23 exception from any of the antidiscrimination requirements?

24 A No.

25 Q Why not?

23-cv-2079-JLK DAWN ODEAN - Direct 01-03-2024

1 A The preferences set forth by the program and in rule don't
2 change the law. So, the law still has the antidiscrimination
3 provision that we follow.

4 Q Why doesn't the department interpret this provision to
5 allow faith-based providers to discriminate on the basis of
6 religious affiliation or religion?

7 A Again, it's the law to ensure that these children and their
8 families who historically have been discriminated against aren't
9 so that we can ensure that they have access to a safe and
10 healthy environment.

11 Q And so is the department's understanding of a congregation
12 broader than religion?

13 A It is. And I'm not -- I'm not a religious expert, so I
14 can't speak to each religion or their specific beliefs, but
15 definitely as the program director wanted to be inclusive of
16 faith-based providers as they define themselves and as families
17 engage with them, and certainly in the services that children
18 receive.

19 Q You also heard Michael Cooke or Ms. Cooke yesterday talk
20 about where a provider could fill out a form if none of the
21 preferences that were part of the system applied to that
22 provider. Was that process put into the proposed rules as well?

23 A It was.

24 Q And if I could direct your attention back to page eight.
25 Sorry. Page seven, and preference number ten. Is this the

23-cv-2079-JLK DAWN ODEAN - Direct 01-03-2024

1 preference that you were referring to?

2 A It is.

3 Q What was the reason for this preference?

4 A We have almost 2,000 participating providers, and as a new
5 department and as a new director, don't know all of the
6 programmatic opportunities that each provider might have. And
7 so heard from providers as we developed the preferences
8 initially in our first year of enrollment that we may not have
9 caught all of the preferences that would be helpful to honor a
10 mixed delivery system.

11 And so wanted to have an opportunity to be responsive
12 again to providers, to our stakeholders, where a provider could
13 tell us, hey, you didn't consider us, but we have this
14 programmatic expectation. Could it fall within the preferences
15 that you provided, or is there a unique preference that might be
16 helpful for us to be able to participate?

17 Q And, again, was this an effort to be more inclusive of
18 different types of communities?

19 A Yes. Again, really to honor mixed delivery and family
20 choice and be inclusive of those communities.

21 Q And yesterday, Ms. Cooke was asked about a request from the
22 River Canyon School District. Do you remember that testimony?

23 A I do.

24 Q Are you familiar with River Canyon School District?

25 A I am.

23-cv-2079-JLK DAWN ODEAN - Direct 01-03-2024

1 Q I'm sorry. And it's River Canyon School, not school
2 district. Are you familiar with River Canyon School?

3 A I am.

4 Q What type of school is River Canyon?

5 A It's a Montessori program.

6 Q And what type of preference did that school request or what
7 type of community does River Canyon serve?

8 A They have as part of their policy or process similar to a
9 co-op, an expectation of volunteering in the program of families
10 that register their children.

11 Q And so is your understanding that the policies Mr. Reaves
12 asked about yesterday, they're similar to the policies of
13 cooperative preschool providers?

14 A Yes.

15 Q And what was the basis for the department granting River
16 Canyon a preference?

17 A Because it was aligned with the preference of a co-op, and
18 yeah. It met those expectations, and we certainly wanted them
19 to be able to participate.

20 Q And then scrolling down to page eight, I want to direct
21 your attention to subsection B at the top of page eight. What
22 does that provision mean?

23 A That provision means that the preferences don't allow for
24 discrimination as defined in our antidiscrimination provision.

25 Q Next I want to turn to Exhibit Number 13, which is the UPK

23-cv-2079-JLK DAWN ODEAN - Direct 01-03-2024

1 provider agreement that was talked about at length yesterday.
2 And Michael had -- or Ms. Cooke had talked about working with
3 you on the quality standards part of that agreement, but said
4 that the exhibits or the terms and contracts of that agreement
5 largely came out of a template. Would you agree with her
6 testimony on that?

7 A I do.

8 Q And can you tell me more about where those terms and
9 conditions, or Exhibit A of that contract came from?

10 A The terms and conditions came from a template written by
11 the Colorado Department of Human Services, where the office of
12 early childhood had previously been housed before the new
13 department. And they were a part of the transition support of
14 the new department.

15 Q And if I could direct your attention to page five of
16 Exhibit 13. Are those the exhibits that you and Ms. Cooke are
17 referring to as the ones that were drafted by the contracts and
18 procurements team?

19 A Yes.

20 Q Turning to page 27, which is contractual provision 18B, why
21 was this language included in the initial draft of the -- or the
22 inaugural year of the program contract?

23 A It was a part of the contract terms and conditions
24 template.

25 Q And did the department ever intend to analyze providers'

23-cv-2079-JLK DAWN ODEAN - Direct 01-03-2024

1 employment decisions based on this provision?

2 A No.

3 Q Why not?

4 A We were completely focused on support and expectations of
5 the program, the child, and their family. In recruiting
6 providers, it certainly wasn't part of our understanding that we
7 would have any authority on hiring practices beyond licensing
8 credentials, expectations for workforce.

9 Q And do you recall providing a disavowal in regard to this
10 litigation for faith-based providers?

11 A I do.

12 Q And what was the purpose -- what was the reason for
13 providing that disavowal?

14 A To give assurances that that wasn't action that would be
15 taken by the program or by the department.

16 Q This contractual provision 18B, is this going to be
17 included in year two of the provider agreement?

18 A It is not.

19 Q And why not?

20 A For that exact reason.

21 Q Will this provision apply to any providers?

22 A No.

23 Q We can close out of this exhibit. You heard the testimony
24 from St. Mary's and Wellspring's witnesses yesterday talk about
25 their religious curriculum. Does the department have any

23-cv-2079-JLK DAWN ODEAN - Direct 01-03-2024

1 intention of interfering with the curriculum of faith-based
2 providers?

3 A No.

4 Q Why not?

5 A Again, it's to honor mixed delivery and what each provider
6 uniquely brings to the preschool setting for children and for
7 families.

8 Q I want to direct your attention back to the same exhibit
9 we've just been talking about, Exhibit 71 of the proposed rules,
10 on page eight. And under subsection C, can you please read that
11 language.

12 A Nothing in these rules shall be construed to affect an
13 eligible preschool provider's right to engage in privately
14 funded, inherently-religious activity, or affect the
15 independence of eligible preschool providers, including any
16 rights protected by the Colorado and U.S. Constitutions and
17 applicable law.

18 Q Why is this language included in the proposed rules?

19 A Again, to give assurances that we will be inclusive in
20 mixed delivery.

21 Q Had the department heard any concerns from faith-based
22 providers about the prior version of the rules?

23 A There were questions and concerns around if the day would
24 have to be delegated, if you will, by what was Universal
25 Preschool and what was programmatically specific to that

23-cv-2079-JLK DAWN ODEAN - Direct 01-03-2024

1 provider. And so we wanted to give assurances that that wasn't
2 the case.

3 Q And this language applies to all types of faith-based
4 providers?

5 A It does.

6 Q Are there any faith-based providers that are participating
7 in the Universal Preschool Program currently?

8 A We have 40 faith-based providers participating currently.

9 Q And what type -- do you know what types of faith-based
10 providers are participating?

11 A It's a variety. Many types, I would say.

12 Nondenominational Christian, Catholic Charities, the Efshar
13 Jewish Early Childhood community group has participants.

14 Q And was the department hoping that as many different types
15 of faith-based providers would participate in the UPK program?

16 A Yes. We really worked for expansive of mixed delivery and
17 have an inclusive environment for providers to participate in.

18 Q And did the department work with other types of providers
19 that decided not to participate in the UPK program?

20 A Yes.

21 Q And did that include Catholic providers?

22 A It did.

23 Q How many children have been matched to faith-based
24 providers in year one?

25 A I think we're currently at just over 900.

23-cv-2079-JLK DAWN ODEAN - Direct 01-03-2024

1 Q And you had mentioned Catholic Charities as participating
2 in the UPK program. Do you understand Catholic Charities to be
3 associated with the Archdiocese of Denver?

4 A I do.

5 Q And was there any attempt on the department's behalf to
6 limit the participation of the Catholic Charities preschools
7 from participating in the preschool program?

8 A No.

9 Q Why not?

10 A To ensure that as many providers could be accessed for
11 families as possible, and certainly new families were interested
12 in attending their programs.

13 MS. CARRENO: And if I could just have one moment to
14 confer with my colleagues, Your Honor?

15 THE COURT: Yes.

16 (Pause in the proceedings.)

17 MS. CARRENO: No further questions at this time, Your
18 Honor.

19 THE COURT: Thank you. Let's take a ten-minute break,
20 and we will come back and have cross.

21 (Recess at 10:42 a.m., until 10:57 a.m.)

22 THE COURT: Before we go with the cross, I have one
23 minor scheduling matter. That's tomorrow at 10:30, I have to
24 recess this case for about 20 minutes, because I have a criminal
25 matter that will be here at 10:30. And for reasons of courtesy

23-cv-2079-JLK DAWN ODEAN - Cross 01-03-2024

1 to the counsel in that case, but also to protect your property,
2 I suggest you clean your desk before that. It is after all a
3 criminal case. The presumption of innocence no longer applies.
4 It's a revocation. Go ahead, please.

5 MR. DAVIS: Thank you, Your Honor.

6 **CROSS EXAMINATION**

7 BY MR. DAVIS

8 Q Good morning, Ms. Odean.

9 A Good morning.

10 Q Ms. Odean, is one of the goals of UPK to achieve a mixed
11 delivery system of preschool?

12 A It is.

13 Q And that means a mix of different types of providers; is
14 that right?

15 A Yes.

16 Q And that includes faith-based providers?

17 A Yes.

18 Q Is the point of that so that families can find the provider
19 that's just the right fit for them?

20 A It is.

21 Q Ms. Odean, I think you answered this earlier, but about how
22 many providers are currently participating in UPK?

23 A About 2,000.

24 Q And those providers generally have agreed to the UPK
25 provider agreement; right?

23-cv-2079-JLK DAWN ODEAN - Cross 01-03-2024

1 A Yes.

2 Q And new providers are still able to join right now; is that
3 right?

4 A Correct.

5 Q Is there a fixed number of providers that's able to
6 participate in UPK?

7 A There isn't.

8 Q Okay. So, when a new provider begins participating, it
9 doesn't take the place of a provider that's already in the
10 program, does it?

11 A Correct.

12 Q It would participate alongside the current providers?

13 A Yes.

14 Q Ms. Odean, Head Start providers can participate in UPK;
15 isn't that right?

16 A That is right.

17 Q And Head Start providers prioritize low-income families?

18 A They do.

19 Q In fact, you understand that Head Start programs might have
20 income qualifications for students to enroll; right?

21 A To define the qualifying factor? Is that what you're
22 referring to?

23 Q That's correct. Yes.

24 A Yes.

25 Q And so families that are above a certain income threshold,

23-cv-2079-JLK DAWN ODEAN - Cross 01-03-2024

1 they may not have the opportunity to enroll at a Head Start
2 provider; is that right?

3 A It depends on the Head Start provider.

4 Q But they might have to meet additional qualifications?

5 A Correct.

6 Q And some UPK providers reserve seats for children with
7 disabilities; isn't that right?

8 A Yes.

9 Q Okay. And in fact some UPK providers only serve children
10 with certain disabilities; isn't that right?

11 A Yes.

12 Q Faith-based providers are allowed to reserve seats for
13 members of their congregation; correct?

14 A Yes.

15 Q And we discussed earlier, or you were discussing with your
16 counsel earlier that the department has proposed a formal
17 definition of "congregation," hasn't it?

18 A It has.

19 Q If I could have you look at what's been marked as
20 Exhibit 71, which is the -- and it should be in your binder on
21 the third volume there. We could also put it on the screen, if
22 that would be easier. There we go. Great. It's on your screen
23 now, Ms. Odean.

24 A Yes.

25 Q And this is the newly -- the new draft regulations for UPK

23-cv-2079-JLK DAWN ODEAN - Cross 01-03-2024

1 that came out recently; right?

2 A It is.

3 Q Okay. So, if we could look at the middle of page two,
4 that's the formal definition of "congregation"; correct? Sorry.
5 This is paragraph L.

6 A Yes.

7 Q Would you mind reading that definition aloud?

8 A "Congregation" means a religious-based convocation or
9 multiple religious-based convocations of multiple individuals in
10 a geographic area who share a common set of beliefs and who
11 collectively engage in conduct with the direct nexus to the
12 shared common set of beliefs.

13 Q Thank you. So, under that definition, a congregation, that
14 could be all Catholics in a particular area?

15 A Yes.

16 Q Or all Lutherans?

17 A Yes.

18 Q And so the Catholic provider could reserve seats for
19 Catholics?

20 A Yes.

21 Q Lutheran provider for Lutherans?

22 A Yes.

23 Q And if the Catholic provider limited its seats to members
24 of its congregation, it wouldn't have to provide an opportunity
25 to enroll to Lutherans; right?

23-cv-2079-JLK DAWN ODEAN - Cross 01-03-2024

1 A Correct.

2 Q You testified earlier that this preference was broader than
3 religion. Do you remember that?

4 A I do.

5 Q Okay. But if you look at the definition, it begins by
6 saying, "congregation" means a religious-based convocation or
7 multiple religious-based convocations, and then there are some
8 other requirements; isn't that right?

9 A Yes.

10 Q Okay. So, the congregation does have to be
11 religious-based?

12 A When I said that earlier, I was referring to it didn't have
13 to be a specific religious organization or a church-based, but
14 that it had faith-based or is related to religion.

15 Q Okay. Thank you for that, Ms. Odean. So, it does have to
16 be religious-based; right?

17 A Yes.

18 Q Thank you. Just to back up a moment, we're looking at this
19 Exhibit 71. And I think you testified earlier that this was the
20 current draft version of the department's UPK rules; right?

21 A Yes.

22 Q When did this draft version come out?

23 A Monday.

24 Q Monday. Had it ever been put in front of the Court before
25 today?

23-cv-2079-JLK DAWN ODEAN - Cross 01-03-2024

1 A I believe, yes. Previous drafts were.

2 Q Right. Not this draft, though; right?

3 A Not this draft. Yeah.

4 Q Okay. So, it came out on Monday. That's New Year's Day;
5 right?

6 A That's when I received the last draft, yes.

7 Q Okay. And then it was put in front of the Court for the
8 first time today; right?

9 A Yeah. I don't remember if it was an exhibit yesterday, but
10 yeah.

11 Q Or, yeah. That's right. Excuse me. We put it into the
12 record yesterday. We're discussing it for the first time today?

13 A Yes. Correct.

14 Q Thank you. So, I mean, it's curious timing. It was
15 finalized on New Year's Day, put in front of the Court for the
16 first time in -- at the beginning of our trial in this case.
17 Why did the new draft come out on that timeframe?

18 A We're as a department in process of the draft and
19 incorporating stakeholder input. That's regular and ongoing for
20 our department team. We don't have an open period of time with
21 input where we wait, if you will. We're continuing to revise,
22 take in input and feedback, and adjust so that we can follow the
23 rule process and timeline.

24 Q Okay. You were aware that the trial was -- in this case
25 was this week; correct?

23-cv-2079-JLK DAWN ODEAN - Cross 01-03-2024

1 A Yes.

2 Q Okay. It was finalized on Monday, on New Year's Day. Was
3 it provided to plaintiffs that day? Are you aware of that?

4 A I'm not aware of that.

5 Q Okay. Are these new draft rules -- are they publicly
6 available anywhere? Can somebody look them up online?

7 A We typically post the drafts through revisions on our
8 website. I don't know if these are posted yet. I haven't
9 checked --

10 Q Okay.

11 A -- to ensure that, but that's typically the process that
12 occurs. As revisions are released, they're posted.

13 Q Okay. But if I told you that they weren't publicly
14 available, would that surprise you?

15 A I haven't checked.

16 Q Okay. Thank you for that, Ms. Odean. So, at least prior
17 to this draft coming out, there were nine different
18 preferences -- programmatic preferences that were recognized in
19 the rules; right?

20 A I believe that's correct, yes.

21 Q Okay. But then yesterday -- or, excuse me. When this new
22 draft came out, there was a tenth programmatic preference that
23 was added?

24 A Yes.

25 Q Okay. Did you approve this new preference?

23-cv-2079-JLK DAWN ODEAN - Cross 01-03-2024

1 A Yes.

2 Q Okay. If you turn to page seven, I think is where the
3 preferences are.

4 A Okay.

5 Q And I'm looking at paragraph ten. That's the new
6 preference, just for the record; right?

7 A Yes.

8 Q Okay. And it says, providers may grant preference to an
9 eligible child based on, and then there's a few different things
10 here, but one of them is the child and/or family being a part of
11 a specific community, having specific competencies or interests,
12 or participating in a specific activity; is that right?

13 A Yes.

14 Q Okay. But to claim this preference, it looks like under
15 subsection A there, that the provider has to impose the same
16 requirement on all participating children or families; is that
17 right?

18 A Yes.

19 Q Okay. So, a provider can require all of its children or
20 families to be part of a specific community or have specific
21 competencies or interests?

22 A They can.

23 Q Okay. I just want to understand what that means,
24 Ms. Odean, if I could. Could a preschool be just for children
25 in foster care, for example?

23-cv-2079-JLK DAWN ODEAN - Cross 01-03-2024

1 A Yes.

2 Q Because that would be part -- that would be part of a
3 specific community?

4 A Yes.

5 Q Okay. Could a provider under this preference say that all
6 of its children needed to be children of veterans or current
7 service members?

8 A Potentially, yes.

9 Q Yeah. Same reason; right? Part of a specific community?
10 Right?

11 A Sure.

12 Q Okay. Could it require all of its children or families to
13 be interested in music?

14 A Yes.

15 Q Okay. Could a school be just for gender-nonconforming
16 children?

17 A Any preference was put into place to allow for mixed
18 delivery and different provider types to be able to participate
19 and be inclusive of the communities that they serve. It is not
20 put in place to change the law of the nondiscrimination
21 provision.

22 Q Yeah. And my question is just if you have a provider that
23 wants to be for gender-nonconforming children, would this
24 preference allow them to do that?

25 A It would.

23-cv-2079-JLK DAWN ODEAN - Cross 01-03-2024

1 MS. CARRENO: Objection as to speculation.

2 THE COURT: Overruled.

3 THE WITNESS: So, again, the preferences as they are
4 now -- so, we had the exhibits of the form initially, which was
5 our department response to hearing from providers who had
6 different programmatic expectations that they felt they wouldn't
7 be able to participate unless they were honored. Those
8 preferences didn't negate the part of the law that ensures that
9 children aren't discriminated against who historically have
10 been.

11 Q. (By Mr. Davis) Right.

12 A Yeah.

13 Q Okay. Just to clarify, so the school could be just for
14 gender-nonconforming children, and that would not run afoul of
15 the part of the law prohibiting discrimination?

16 MS. CARRENO: Objection to the extent it
17 mischaracterizes her testimony.

18 THE COURT: You can bring that out on redirect.

19 THE WITNESS: As with any of these, it would be a
20 conversation to determine whether that was appropriate or not.
21 But, yeah. So, we would definitely look into it and follow
22 through. As long as there wasn't discrimination that was
23 aligned to the antidiscrimination provision, they would be
24 accepted.

25 Q. (By Mr. Davis) Okay. Could a school under this

23-cv-2079-JLK DAWN ODEAN - Cross 01-03-2024

1 preference prioritize children of color from historically
2 underserved areas?

3 A Yes.

4 Q And then, again, the preference says schools may grant
5 preference to an eligible child based on the child and/or family
6 being a part of a specific community. Does that include the
7 LGBTQ community?

8 A Yes.

9 Q Ms. Odean, shifting gears here. UPK's nondiscrimination
10 requirement, what you've been calling its nondiscrimination
11 requirement, that's one of the quality standards that's set out
12 in the UPK statute; right?

13 A Yes.

14 Q And the department is allowed -- is it true that the
15 department is allowed to permit providers who don't meet quality
16 standards to participate under some circumstances?

17 A Yes. But it doesn't allow them not to follow the law.

18 Q To clarify -- well, strike that. If a quality standard is
19 not health and safety related, I think you agreed with your
20 counsel earlier that the department had discretion to make
21 exceptions for those quality standards on a temporary basis;
22 right?

23 A Correct.

24 Q Does the statute specify which of the quality standards are
25 health and safety related?

23-cv-2079-JLK DAWN ODEAN - Cross 01-03-2024

1 A The statute defines health and safety as a priority in
2 alignment with licensing and in alignment with the expectations
3 of the law. I understand that as the director of the program to
4 ensure a safe and healthy environment of learning for children.

5 Q Thank you for that, Ms. Odean. My question was does the
6 statute tell the public or you which of the quality standards
7 are health and safety related, or is that something that you
8 just are understanding yourself?

9 A It doesn't specifically define that, except for in
10 consideration of national and local best practices, which that
11 would be a part of.

12 Q Okay. Has the department ever issued any guidance as to
13 which of the quality standards it understands are health and
14 safety related?

15 A That's what's in process through the development of the
16 standards. Then there will be guidance alongside that as well.

17 Q So, not yet; right?

18 A Correct.

19 Q Okay. I think you testified earlier that you view the
20 nondiscrimination requirement -- what you've been calling the
21 nondiscrimination requirement as health and safety related; is
22 that right?

23 A Yes.

24 Q Okay. When did the department first determine that the
25 nondiscrimination requirement was health and safety related?

23-cv-2079-JLK DAWN ODEAN - Cross 01-03-2024

1 A I don't know that there was a specific point in time where
2 that was a decision point. Having participated in, you know, as
3 a provider in the stakeholder -- in writing the bill, it was
4 always contemplated that that was a part of health and safety
5 from my engagement in that.

6 Q No specific point in time; right?

7 A Yeah.

8 Q Okay. Have you ever issued any guidance document to the
9 public saying the nondiscrimination requirement is a health and
10 safety related quality standard?

11 A No. Again, that's -- the quality standards are in process,
12 and certainly we'll continue to provide guidance as that
13 evolves.

14 Q Okay. The nondiscrimination requirement, it's not the only
15 minimum quality standard that's expressly set out in the
16 statute, is it?

17 A It isn't.

18 Q Yeah. There are others?

19 A Yes.

20 Q Okay. Has the department determined that any of the other
21 quality standards that are expressly set out in the statute are
22 health and safety related?

23 A We haven't written any specific guidance, but when you look
24 at other frameworks and have conversations with stakeholders,
25 certainly here the complexities of -- the overlap of health and

23-cv-2079-JLK DAWN ODEAN - Cross 01-03-2024

1 safety with positive learning environments, positive learning
2 engagements with children and their classmates, children and
3 their educators.

4 Q So, has it determined that any of the other quality
5 standards expressly set out in the statute are not health and
6 safety related?

7 A We haven't specifically defined them that way, but
8 certainly there are differences between cognitive and academic.
9 What we're really looking at with health and safety is the
10 overall environment. And they all contribute, but some
11 specifically to, again, access to the program, and then access
12 for the child in the learning environment.

13 Q So, you haven't made a specific determination that any of
14 the other quality standards set out in the statute are or are
15 not health and safety related except the nondiscrimination
16 requirement?

17 A Correct.

18 Q How did the department arrive at its view that the
19 nondiscrimination requirement was health and safety related?

20 A Again, I think that was contemplated prior to the
21 department. I think that in my experience in engaging in the
22 bill writing, that was intentionally written in to ensure access
23 to programs, but also being really intentional and thoughtful
24 about children's access to learning once they're in that
25 classroom, and that they -- their social-emotional development

23-cv-2079-JLK DAWN ODEAN - Cross 01-03-2024

1 is dependent on their feeling safe and healthy and welcome in
2 the environment that they're in so that they can grow and
3 develop.

4 Q Yeah. It was contemplated?

5 A It was part of the conversation in the bill-writing
6 process.

7 Q Part of the conversation. Okay. Why didn't it get written
8 into the statute that the nondiscrimination requirement was
9 health and safety related?

10 A Yeah. I don't know that, because I wasn't a bill writer,
11 but I participated as a stakeholder.

12 Q Okay. Ms. Odean, even before the UPK statute, I think you
13 may have agreed with your counsel, but I will just ask the
14 question anyway. Colorado child care centers were subject to
15 health and safety requirements before UPK; right?

16 A Yes.

17 Q Okay. And but then you -- and that's the licensing
18 requirements? Is that generally where those appear?

19 A Licensing and Colorado Shines.

20 Q Okay. But I think you also testified earlier that safety
21 is more than licensing requirements; is that right?

22 A Yes.

23 Q And I think you testified something like in a really
24 thoughtful way, that was called out in the law. Do you remember
25 saying that?

23-cv-2079-JLK DAWN ODEAN - Cross 01-03-2024

1 A I do.

2 Q Where specifically in the law is it called out that safety
3 goes beyond licensing requirements?

4 A Again, I can't point to a specific citation. I can review
5 the 500 pages where that's my understanding, but what I'd say is
6 there's the requirements of licensing for safety, and there's
7 the requirements of health and safety for the environment. And
8 that's my understanding, having been a provider, and as we
9 develop these quality standard rules to support providers.

10 Q You testified a bit earlier with your counsel about what
11 the statute means when it says this or that, but you weren't
12 part of the general assembly when the statute was passed, were
13 you?

14 A No.

15 Q And you haven't talked to all the members of the general
16 assembly about what the statute means, have you?

17 A No.

18 Q Okay. So, when you were making those -- when you were
19 giving that testimony, you were testifying about your
20 understanding; right?

21 A Yes. And what is written.

22 Q Your understanding of what is written?

23 A Yeah.

24 Q But for providers, is it your understanding that's binding
25 on them, or is it what the statute says that is binding on

23-cv-2079-JLK DAWN ODEAN - Cross 01-03-2024

1 providers?

2 A The law is binding for all of us.

3 Q Yeah.

4 A Yeah.

5 Q The law, but not your understanding; right?

6 A Well, and how we operationalize and implement the program.

7 Q Okay. But not your testimony here today. That's not
8 what's binding on all providers; right?

9 A I'm not sure what you're asking.

10 Q I can move on. So, I want to circle back to the health and
11 safety regulations that predated UPK, some of them in the
12 licensing requirements like we were just discussing. Does the
13 department make those regulations available to providers?

14 A The licensing regulations?

15 Q Health and safety requirements that predated UPK.

16 A The department programs who operate Colorado Shines and who
17 operate licensing make those available to providers, yes.

18 Q Does the department itself have a part of its website
19 specifically about health and safety requirements?

20 A I'm not aware.

21 Q Not aware?

22 A One way or the other, yup.

23 Q Okay. All right. Just to be clear, we've been talking --
24 or you talked with your counsel a lot about the
25 nondiscrimination provision in the UPK statute. I'd like you to

23-cv-2079-JLK DAWN ODEAN - Cross 01-03-2024

1 take a look at Exhibit 13, if you could, and just let me know
2 when you're there. It will be in your binder, I think in the
3 first volume. Take your time.

4 A Exhibit 13?

5 Q Yes.

6 A Okay.

7 Q And if we could turn to the second page, fourth bullet
8 down. Is that what you and your counsel were referring to as
9 the nondiscrimination requirement?

10 A The fourth bullet says about a student withdrawing?

11 Q Excuse me. I'm sorry. If you look under the heading,
12 quality assurance, sort of midway down the page, and then the
13 fourth bullet down from that.

14 A Could you repeat the question? Sorry.

15 Q Yes. Is that the one beginning, requirement that each
16 preschool provider, is that what you and your counsel were
17 referring to as the nondiscrimination requirement?

18 A Yes.

19 Q Okay. Could you please read it out loud, Ms. Odean.

20 A Requirement that each preschool provider provide eligible
21 children an equal opportunity to enroll and receive preschool
22 services regardless of race, ethnicity, religious affiliation,
23 sexual orientation, gender identity, lack of housing, income
24 level, or disability, as such characteristics and circumstances
25 apply to the child or the child's family.

23-cv-2079-JLK DAWN ODEAN - Cross 01-03-2024

1 Q Does the word "discrimination" appear anywhere in that
2 provision?

3 A No.

4 Q Does it say instead that providers have to provide an equal
5 opportunity to enroll, regardless of, and then a list of
6 protected characteristics?

7 A It does say that.

8 Q So, similarly, I would like to take a look at the statute
9 again. If you could turn to Exhibit 67. This is in defendants'
10 exhibit binder. I'm sorry for all the binder flipping.

11 A I believe it's on the screen.

12 Q Great. Thank you. Is this 67? Give me one moment,
13 Ms. Odean. Scroll down a little further. There we go. Thank
14 you for your patience. If you look at subsection B there, is
15 that the part of the statute that you and your counsel were
16 referring to as the nondiscrimination requirement?

17 A Yes.

18 Q Okay. And do you see the term "discrimination" or
19 "nondiscrimination" or "antidiscrimination" in that provision?

20 A No.

21 Q You testified earlier that this provision was designed to
22 protect groups that have been historically discriminated
23 against. Do you remember that?

24 A Yes.

25 Q If you look at the provision now, does it say that?

23-cv-2079-JLK DAWN ODEAN - Cross 01-03-2024

1 A It doesn't.

2 Q Are you aware that Catholics have historically been
3 discriminated against?

4 A No.

5 Q You're not aware of it; right?

6 MS. CARRENO: Objection. Asked and answered.

7 THE COURT: Overruled.

8 THE WITNESS: Not specifically.

9 Q. (By Mr. Davis) Okay. Ms. Odean, you were discussing the
10 matching process earlier. And I think the general idea is that
11 providers are required to accept the matches unless one of the
12 programmatic preferences applies; is that right?

13 A Yes.

14 Q Okay. And then I just said the preferences, but the
15 department has several programmatic preferences that are
16 exceptions from that general matching requirement; right?

17 A We have preferences to the algorithm to ensure mixed
18 delivery, yes.

19 Q Okay. Thank you. Do you know how many providers have
20 claimed at least one of the preferences?

21 A I believe it's about a thousand.

22 Q About a thousand? If I told you that in your interrogatory
23 responses, you said the number was 1,091, at least at that time,
24 would that sound about right?

25 A Okay. Yes.

23-cv-2079-JLK DAWN ODEAN - Cross 01-03-2024

1 Q Okay. And the department has also allowed providers to
2 request other preferences besides the ones that were recognized
3 as programmatic preferences; right?

4 A Yes.

5 Q If we could look at Exhibit 31, and this will be back in
6 the plaintiffs' binder, or maybe on the screen momentarily. I
7 think it's on your screen now, Ms. Odean.

8 A Okay. Thank you.

9 Q Do you recognize this document?

10 A Yes.

11 Q Is this a document that allowed providers to request other
12 exceptions to the matching process besides the programmatic
13 preferences?

14 A Yes.

15 Q Okay. And if you look at the end of the document, we'll
16 scroll down, under exception requested, it gives examples of the
17 different kinds of preferences that someone might request using
18 this form?

19 A Yes.

20 Q Okay. And one of these is my location only serves teen
21 moms enrolled at a neighboring high school; is that right?

22 A Yes.

23 Q And one of them is my location only serves children with
24 specific disabilities; is that right?

25 A Yes.

23-cv-2079-JLK DAWN ODEAN - Cross 01-03-2024

1 Q Did the department in fact receive some requests for other
2 exceptions under this form?

3 A We did.

4 Q And it considered those requests on a case-by-case basis;
5 right?

6 A Yes.

7 Q And it granted some of them; right?

8 A Yes.

9 Q If we could look at Exhibit 36. Is that the wrong exhibit?
10 34. Do you recognize this document, Ms. Odean?

11 A Yes.

12 Q Is this a spreadsheet showing the department's responses to
13 exceptions that were requested by way of that form we were
14 looking at?

15 A Yes.

16 Q Did the department grant an exception requested under the
17 form allowing a provider to only accept fully-vaccinated
18 children?

19 A I don't recall specifically.

20 Q Okay. But if on this spreadsheet, in the approved column
21 it says yes, it would be your testimony that that exception was
22 granted?

23 A Yes.

24 Q Okay. All right. If we could flip to Exhibit 23.

25 Ms. Odean, the parties have stipulated that this is an authentic

23-cv-2079-JLK DAWN ODEAN - Cross 01-03-2024

1 copy of a news article that has some quotes from Governor Polis
2 in it. Do you see that that's what it is? And Mr. Reaves can
3 scroll through it.

4 A Yes.

5 Q And you see that the article appears to be about this
6 lawsuit; is that right?

7 A Yes.

8 Q Okay. Do you see where Governor Polis is quoted as
9 saying -- and it's right there on the first page, Nick. I think
10 our focus has always been kids first, of course no
11 discrimination, serve everybody if you want to take public
12 funds. Do you see that?

13 A I do.

14 Q Do you agree with that statement?

15 A Certainly it's great to see preschoolers going into
16 program, and I would say I agree that we want to serve as many
17 eligible children and have an inclusive mixed-delivery model.
18 But I can't -- I'm not -- obviously I'm not the governor and
19 can't speak to the intention or meaning of what he's saying.

20 Q Sure. I'm asking, here is what he's saying, and I'm asking
21 do you agree with it?

22 A Yeah. But I don't know beyond the context of a quote taken
23 out of context what the meaning is. So, I can say that I do
24 agree that we're excited about children. We're excited to get
25 as many participating. We're excited to get as many providers

23-cv-2079-JLK DAWN ODEAN - Cross 01-03-2024

1 participating as possible and get the funding out in service of
2 families, and certainly we will follow the law on the
3 antidiscrimination provision.

4 Q Thank you for that. Do you agree, serve everybody if you
5 want to take public funds? Do you agree with that idea?

6 A I would ask him what he meant by that specifically to
7 understand what he's referring to specifically there.

8 Q If he really meant everybody, you would disagree; right?

9 A I don't know that. I interpret it as this is a voluntary
10 program; right? So, Universal Preschool was set up as voluntary
11 for families and voluntary for providers. It's not mandated.
12 If we had chosen a mandated system in Colorado, it would likely
13 be similar to K-12, where you're required to attend first grade
14 through -- or have a documented way that you're achieving that
15 education.

16 This is voluntary. So, I believe that's what he's
17 referring to. Again, I don't know, but I would say I do agree
18 that it should be voluntary. Families can choose to participate
19 or not, and so can providers. And we want to provide as many
20 opportunities for both as possible.

21 Q Yeah. I see what you mean by "voluntary." He says, if you
22 want to take public funds, but I want to focus on that first
23 part. He says, serve everybody if you want to take public
24 funds. Do you agree with that?

25 A I believe if people choose to participate, they should have

23-cv-2079-JLK DAWN ODEAN - Cross 01-03-2024

1 access, yes.

2 Q And if providers choose to participate, they should serve
3 everybody?

4 A In alignment with the law. Mm-hmm.

5 Q Okay. Thank you. Ms. Odean, your lawyers in this case
6 have compared this lawsuit to cases involving academies in the
7 1970s that were segregated based on race. Are you aware of
8 that?

9 A Yes.

10 Q Do you agree with that comparison?

11 A Any specific --

12 Q Yeah. Do you think that --

13 MS. CARRENO: Objection, Your Honor, to the extent
14 that this calls for a legal conclusion from this witness.

15 MR. DAVIS: I'm not asking for comparison to
16 precedent. I'm asking about the facts.

17 THE COURT: It's a cloudy area, but he's not asking
18 her for that reason, and it wouldn't be accepted as evidence of
19 that reason, but it would be accepted as evidence concerning the
20 behavior of the administrators in administering the act, as to
21 what they do. So, the objection is overruled.

22 MR. DAVIS: Thank you, Your Honor.

23 THE WITNESS: In that regard, I haven't gone through
24 our attorneys' comparison and compared it to our program and
25 made programmatic decisions at this time. I recognize that they

23-cv-2079-JLK DAWN ODEAN - Cross 01-03-2024

1 utilized that as part of the planning for this trial, but not
2 specifically for the design of the program moving forward or how
3 we would integrate or consider those.

4 Q. (By Mr. Davis) Yeah. Yeah. Thank you for that. And my
5 question is really about the comparison between the schools.
6 So, you heard St. Mary's and Wellspring testify yesterday about
7 their enrollment practices; right?

8 A Yes.

9 Q With respect to sexual orientation and gender identity?

10 A Yes.

11 Q Do you think that those preschools, given those enrollment
12 practices, are similar to segregationist academies in the 1970s?

13 MS. CARRENO: Objection, Your Honor. To the extent
14 that there's not foundation that she understands exactly what
15 Mr. Davis is referring to.

16 THE COURT: It goes to the credibility of the witness.
17 Overruled.

18 MR. DAVIS: Thank you, Your Honor. You can answer the
19 question. I will reask, if you like.

20 THE WITNESS: That would be great.

21 Q. (By Mr. Davis) Sure. You heard the testimony yesterday
22 of St. Mary's and Wellspring about their enrollment practices;
23 right?

24 A I did.

25 Q Specifically with respect to sexual orientation and gender

23-cv-2079-JLK DAWN ODEAN - Cross 01-03-2024

1 identity?

2 A Yes.

3 Q Do you think that those preschools, given those enrollment
4 practices, are similar to segregationist academies in the 1970s?

5 A I don't believe I'm an expert on either. What I would say
6 from the testimony I heard yesterday is as a program, we need to
7 consider what we have in the law that we're implementing,
8 including the antidiscrimination provision, and ensure that if a
9 child is in a preschool setting of a participating provider,
10 that it's safe and healthy for them to be able to engage, and
11 that it isn't -- that safe and healthy isn't compromised by
12 discrimination.

13 Q So, the problem with St. Mary's and Wellspring is just the
14 law. It's the antidiscrimination provision that's your problem
15 with their practices?

16 A I don't fully know all of their practices. I certainly
17 learned a lot yesterday, as you pointed out. But since that's
18 our focus in this conversation, that would be obviously
19 something that we would have to consider.

20 Q Yeah. If there were no antidiscrimination provision in the
21 law, you would be okay with them participating in UPK?

22 MS. CARRENO: Objection. Speculation.

23 THE COURT: Overruled.

24 THE WITNESS: It is in the law, and I believe it's
25 intentionally in the law to ensure that children have a safe and

23-cv-2079-JLK DAWN ODEAN - Cross 01-03-2024

1 healthy environment, and I do agree with that.

2 Q. (By Mr. Davis) Yeah. So, the law is the obstacle to
3 their participating; right?

4 A Is that a question?

5 Q Yes.

6 A If they're choosing to discriminate, it is.

7 Q Okay. In defending you in this case, your lawyers have
8 also cited studies about the impacts of bullying and
9 stigmatization on LGBTQ children. Are you aware of that?

10 A I am.

11 Q Do you agree that the policies that you heard about from
12 the plaintiffs yesterday, that those are akin to bullying and
13 stigmatization?

14 A Potentially.

15 Q Okay. Thank you. Ms. Odean, if we could look at
16 Exhibit 20. Me and my colleagues can get that pulled up. Do
17 you recognize this document, Ms. Odean?

18 A I do.

19 Q Does it -- well, what is it?

20 A So, when a family is in our application system, and they
21 choose and rank providers before they submit an application, it
22 shows what preferences those providers might have.

23 Q Okay. Why does it show those preferences?

24 A So that families understand and are making an informed
25 choice about the provider that they've listed.

23-cv-2079-JLK DAWN ODEAN - Cross 01-03-2024

1 Q Okay. Thank you. Are licensed child care providers
2 subject to licensing requirements?

3 A Yes.

4 Q And does the State sometimes receive complaints about
5 licensed child care providers?

6 A Yes.

7 Q Does it keep records of those complaints?

8 A Yes.

9 Q Do schools associated with the Archdiocese of Denver hold
10 child care licenses?

11 A I can't speak to if they all do, but they certainly have
12 licensed providers.

13 Q Some do?

14 A Yes.

15 Q Has any of those schools ever been the subject of a
16 complaint from an LGBTQ-identifying family?

17 A Not that I'm aware of.

18 Q What about from any other person alleging LGBTQ
19 discrimination?

20 A Not that I'm aware of.

21 Q And you're saying not that I'm aware of, but to be clear,
22 you've looked through these complaint records for purposes of
23 this case; right?

24 A Yes.

25 Q And in those complaint records, there is no such complaint

23-cv-2079-JLK DAWN ODEAN - Cross 01-03-2024

1 of the kinds that I just described?

2 A Yes. I'm just not a licensing specialist or on the
3 licensing team.

4 Q Yeah. I understand. Thank you.

5 A Yeah.

6 Q And to be clear, the Archdiocese's license providers, you
7 said you weren't sure if they all had licenses, but St. Mary's
8 and Wellspring do; right?

9 A They do.

10 Q Do you recall how long Wellspring has had a child care
11 license?

12 A I don't.

13 Q St. Mary?

14 A I don't recall.

15 Q Okay. Ms. Odean, are you aware that there's a preschool in
16 Buena Vista called Darren Patterson Christian Academy?

17 A I am.

18 Q And that school is participating in UPK; right?

19 A They are.

20 Q So, the department is providing UPK funding on the same
21 basis as other providers?

22 A Yes.

23 Q Ms. Odean, you testified earlier that the provision of the
24 provider agreement that we've been calling paragraph or
25 provision 18B, that that was going to be removed from future

23-cv-2079-JLK DAWN ODEAN - Cross 01-03-2024

1 versions of the provider agreement; is that right?

2 A Yes.

3 Q And I think you said that's because the department has no
4 authority to regulate the hiring practices of faith-based
5 providers?

6 A It's not our intention to regulate the hiring practices,
7 because there's laws in place that do. And we have workforce
8 credentialing components that are a part of licensing, and
9 that's our priority to ensure.

10 Q I do think you said the word "authority." Are you walking
11 that back now, or --

12 A No, I'm not.

13 Q So, no authority to -- sorry. Excuse me. So, no authority
14 to regulate the hiring practices of faith-based providers.

15 A With the understanding that there are laws in place that do
16 regulate that, and that's not our agency or department's role.

17 Q Thank you. So, provision 18B is not only being removed
18 from next year's agreement, but you wouldn't expect it to ever
19 be put back in; right?

20 A Correct.

21 Q Can we flip back to Exhibit 71. I'm looking at subsection
22 C, and thank you for your patience, Ms. Odean.

23 A Yes.

24 Q The provision starting, nothing in these rules shall be
25 construed, and it goes on.

23-cv-2079-JLK DAWN ODEAN - Cross 01-03-2024

1 A Yes.

2 Q Would you mind reading that for the record.

3 A Nothing in these rules shall be construed to affect an
4 eligible preschool provider's right to engage in
5 privately-funded, inherently-religious activity or affect the
6 independence of eligible preschool providers, including any
7 rights protected by the Colorado and U.S. Constitutions and
8 applicable law.

9 Q Thank you. When was this provision added to the draft
10 regulations?

11 A I don't recall the specific point in time when it was
12 added.

13 Q Okay. But before this version that was just finalized on
14 New Year's Day, it wasn't in the prior draft that was released
15 to the public; right?

16 A I don't think so.

17 Q Okay. So, this is the first time it's been put in front of
18 the Court?

19 A Yes.

20 Q Were you involved in the decision to add this provision?

21 A I was.

22 Q Can you tell me where the language for this provision came
23 from?

24 A I can't remember where the specific language came from, but
25 I will tell you the intent was to ensure that providers -- let

23-cv-2079-JLK DAWN ODEAN - Cross 01-03-2024

1 me start over.

2 Q Sure.

3 A So, this was -- this was the intent to put this in with the
4 intent to ensure our providers knew that they could follow their
5 programmatic expectations and decisions, and with the assurances
6 that, regardless of the time of day, for example, they could be
7 following through with that particular program, and that we
8 wouldn't be separating out what was universal preschool. And
9 really to be thoughtful, again, about the uniqueness that
10 providers bring, and be inclusive of mixed delivery and specific
11 models that might be in place for quality.

12 Q Got it. So, the intent wasn't to give an exception to the
13 nondiscrimination requirement; right?

14 A Correct.

15 Q Okay. So, you heard St. Mary's and Wellspring's witnesses
16 testify yesterday about their enrollment practices with respect
17 to sexual orientation and gender identity; right? And so this
18 exception wouldn't change the requirements of them one way or
19 the other with respect to those enrollment practices; is that
20 right?

21 A The rule doesn't change that provision of
22 antidiscrimination, because that's in the law. So, the rule,
23 the department can't or a provider handbook can't change the
24 law.

25 Q So, this provision in subsection C doesn't change whether

23-cv-2079-JLK DAWN ODEAN - Cross 01-03-2024

1 St. Mary's and Wellspring's enrollment practices are allowed or
2 not allowed under the UPK program?

3 A Correct.

4 Q Thank you. Ms. Odean, you testified a lot about how the
5 department is subject to the law, can't change the law. You're
6 referring to the UPK statute; right?

7 A Yes.

8 Q Are you aware that the department is also subject to the
9 United States Constitution?

10 A Yes.

11 Q Okay. So, is it your understanding that if the UPK statute
12 requires one thing, the U.S. Constitution requires another, the
13 department would have to follow the United States Constitution;
14 right?

15 MS. CARRENO: Objection. Legal conclusion.

16 THE COURT: Sustained.

17 MR. DAVIS: So, you're not --

18 THE COURT: That's what we're here to decide, ultimate
19 question. Whether the practice of the State, according to its
20 statute and its public referendum, meets the requirements of the
21 First amendment.

22 MR. DAVIS: Absolutely, Your Honor.

23 THE COURT: It's not a question for a witness to
24 answer. It's for me to answer.

25 MR. DAVIS: Fully agree, Your Honor.

23-cv-2079-JLK DAWN ODEAN - Cross 01-03-2024

1 THE COURT: All right.

2 MR. DAVIS: Can I try rephrasing the question one more
3 time, and if you sustain an objection, that's okay?

4 Q. (By Mr. Davis) Ms. Odean, what I'm asking is not what the
5 U.S. Constitution requires. I'm just saying if there were a
6 difference in what the statute required and the Constitution
7 required, would the department have to follow the Constitution
8 or the statute?

9 MS. CARRENO: Same objection.

10 THE COURT: That's the same question. Sustained.

11 MR. DAVIS: Okay. Thank you, Your Honor.

12 Q. (By Mr. Davis) Exhibit 71, these are the draft new rules.
13 We've discussed it several times; right, Ms. Odean?

14 A Yes.

15 Q These draft preferences, you view them as consistent with
16 the UPK statute; right?

17 A I do.

18 Q Okay. Also, the definition of "congregation" in the draft?

19 A Yes.

20 MR. DAVIS: If I could confer with my colleagues for a
21 moment, Your Honor?

22 THE COURT: Yes.

23 MR. DAVIS: Just a few more questions.

24 Q. (By Mr. Davis) Ms. Odean, I believe you were testifying
25 earlier about one of the reasons the department wanted to allow

23-cv-2079-JLK DAWN ODEAN - Cross 01-03-2024

1 for continuity of care preferences is because of the importance
2 of continuity of care for children; right?

3 A Yes.

4 Q And their families? Do you think that access to a
5 religious education is also important for religious children and
6 their families?

7 A I don't want to speak on behalf of families, but I would
8 say we have heard from providers and families that continuity of
9 care in that setting is important to them.

10 Q Okay. More important than access to religious education?

11 A I don't -- I haven't had that specific conversation about
12 priorities that a specific family might have in that regard.

13 Q Yeah. I'm asking for your view, Ms. Odean.

14 A Could you state it again, then?

15 Q Sure. Is continuity of care more important for families to
16 have access to than access to religious education?

17 A I would say continuity of care is more globally applied.
18 That's something that is important regardless of setting. So, I
19 would say that weighs pretty heavily, yeah.

20 Q Okay. More heavily than access to religious education?

21 A Yeah. I don't -- in our program, it isn't about that
22 priority. It's about access to mixed delivery, and continuity
23 of care is expected in all of those settings, where religious
24 education isn't. So, our focus has been on operationalizing
25 what we've been charged with, which isn't religious education in

23-cv-2079-JLK DAWN ODEAN - Cross 01-03-2024

1 the setting or the priority of that.

2 Q You testified earlier that some of these preferences arose
3 because the department learned from providers that they wouldn't
4 be able to participate unless they got a preference like that;
5 right?

6 A Correct.

7 Q Okay. But in this lawsuit and then yesterday, you heard
8 St. Mary's and Wellspring Catholic Academy saying that they are
9 not able to participate unless they get an exception like the
10 one they requested; right?

11 A I heard that, yes.

12 Q Okay. But the department granted some preferences when
13 told by providers that they wouldn't be able to participate, but
14 it has not granted Wellspring and St. Mary's request; right?

15 A That's correct.

16 MR. DAVIS: Nothing further, Your Honor.

17 THE COURT: Okay. Just a minute, please. I have to
18 look at something. One of the burdens of this office is having
19 to attend judges' meetings, the vitality of which is subject to
20 rational dispute, but attending is not subject to dispute. So,
21 I have to recess, and I don't want to say you have seven minutes
22 and then come back again for the rest of it. I think it makes
23 more sense that we recess until 12:15 [sic], and then you do the
24 cross examine -- or the redirect examination. Yes.

25 MR. WHITEHAIR: 1:15, Your Honor?

23-cv-2079-JLK DAWN ODEAN - Redirect 01-03-2024

1 THE COURT: 1:15. Can we do that? All right. We
2 will stand in recess until 1:15.

3 (Recess at 11:53 a.m., until 1:19 p.m.)

4 THE COURT: Ready to proceed?

5 MS. CARRENO: Yes. Thank you, Your Honor.

6 **REDIRECT EXAMINATION**

7 BY MS. CARRENO

8 Q And welcome back, Ms. Odean.

9 A Thank you.

10 Q During your cross examination earlier today, you were asked
11 a number of questions about the rule-making process and the
12 proposed rules in this case; is that correct?

13 A Yes.

14 Q Was the rule-making process for the quality standards
15 contemplated prior to this lawsuit?

16 A Yes.

17 Q And why was it contemplated prior to this lawsuit?

18 A Because it was the expectation of the program to set
19 quality standards in rule in statute.

20 Q And as a new department, is the rule-making for the quality
21 standards and other rules an ongoing process?

22 A Yes.

23 Q Does the department continue to refine and adjust its rules
24 after they're proposed?

25 A They can, yes.

23-cv-2079-JLK DAWN ODEAN - Redirect 01-03-2024

1 Q And is that also true after rules are adopted?

2 A Yes.

3 Q And are these rules following the same rule-making process
4 that all of the other Department of Early Childhood rules are
5 following and have been following?

6 A Yes.

7 Q And why is that?

8 A The rule process has been established. It's not a program
9 process. It's a department process to have the rules advisory
10 council and a rules promulgation process in place for the new
11 department.

12 Q You were also asked a number of questions about the
13 "congregation" definition and the faith-based provider
14 preference. So, talking about the congregation preference in
15 these rules, these are just proposed rules at this point;
16 correct?

17 A That's correct.

18 Q And is it possible that the definition of "congregation"
19 can change before it's adopted either later this month or
20 sometime next month?

21 A That's correct.

22 Q And can Catholic providers or any other faith-based
23 providers continue to make suggested changes to that definition?

24 A Yes, they can.

25 Q And is the department open to listening to that feedback

23-cv-2079-JLK DAWN ODEAN - Redirect 01-03-2024

1 and those suggestions?

2 A Yes.

3 Q Why is that?

4 A Again, it's a part of that authentic rule process and to
5 honor that with integrity. It's inclusive of stakeholder input
6 and feedback throughout the process. And then also I would say
7 as the director of the program, it has been a priority to ensure
8 that collective voice that developed the program continue
9 through, and as you've heard it been said, that it's our aim as
10 a new state department not to be top-down, but rather alongside
11 our stakeholders and providers in order to serve.

12 Q And those stakeholders include faith-based providers?

13 A Yes.

14 Q You were also asked about the purpose of the faith-based
15 provider preference. Is the purpose of that preference to allow
16 providers to discriminate on the basis of religion?

17 A No.

18 Q What is the purpose?

19 A The purpose is to be inclusive of providers in mixed
20 delivery and the programs that they bring for families in that
21 community, and continuity of care.

22 Q And you were also asked about whether faith-based providers
23 get to define their own congregations. Why do faith-based
24 providers get to define the members of their community?

25 A That's something we wouldn't know at the state level. And

23-cv-2079-JLK DAWN ODEAN - Redirect 01-03-2024

1 so faith-based providers are considered faith-based providers
2 because they attest to being so, and that preference for
3 faith-based providers -- the word "congregation," for example,
4 was used to be as expansive as possible so that faith-based
5 providers could define their community in the way that they
6 have.

7 Q Is any faith-based provider allowed to discriminate on the
8 basis of religion or religious affiliation?

9 A No.

10 Q Why does the department not consider the congregation
11 preference a workaround or a way to allow providers to
12 discriminate on the basis of religion?

13 A It is about an inclusive community, and being able to
14 ensure that providers can continue to serve the communities that
15 they have served, and families can continue to participate.

16 Q If the department learned that a provider was utilizing the
17 congregation preference in a discriminatory way, would the
18 department investigate the use of the preference in that way?

19 A Yes.

20 Q And why would the department do that?

21 A To ensure that we're all following the expectations set
22 forth for us in the law.

23 Q Would that be true for all of the preferences?

24 A Yes.

25 Q What was the purpose of not just the congregation

23-cv-2079-JLK DAWN ODEAN - Redirect 01-03-2024

1 preference, but all of the preferences?

2 A The purpose of the preferences came about because of the
3 system's use of the deferred acceptance algorithm, which was --
4 which is an algorithm for a lottery matching. That specific
5 algorithm didn't consider mixed delivery or early childhood
6 enrollment, for example, but is an accepted algorithm for a
7 lottery match.

8 And so the weights that are provided or the preferences
9 that are provided are to honor the unique program we have in
10 Colorado and the expectations around mixed delivery.

11 Q And can providers use any of the preferences in a way that
12 discriminates in violation of the statute?

13 A The preferences are an exception to the algorithm, not to
14 the law.

15 Q And so I also want to direct your attention to some of the
16 questions and hypotheticals you were asked about earlier on
17 cross examination. Do you remember getting some hypothetical
18 questions about scenarios earlier today?

19 A Yes.

20 Q And do you remember being asked about students of color,
21 gender-nonconforming students?

22 A Yes. I remember.

23 Q Have you ever received any of those types of requests for a
24 preference on those bases before?

25 A No.

23-cv-2079-JLK DAWN ODEAN - Redirect 01-03-2024

1 Q And you were asked a number of hypotheticals and expected
2 to answer those hypotheticals on the fly this morning. If you
3 did encounter a situation like that, how would the department
4 typically address those types of requests?

5 A As a new request, as a new program, we would have a
6 conversation as a department with our leadership team, and
7 likely with our attorneys to determine what the next steps would
8 be.

9 Q And why would you do that?

10 A Because it is tied to the law, and because it's new.

11 Q You were asked about the possibility of a request from a
12 preschool that serves only African-American children. Has the
13 department ever received a request from a provider to turn away
14 white children?

15 MR. DAVIS: Objection. Misstates the question, Your
16 Honor.

17 THE COURT: You may conduct a surcross on that point
18 if you wish.

19 MR. DAVIS: Thank you, Your Honor.

20 THE COURT: Go ahead.

21 Q. (By Ms. Carreno) Do you need me to repeat the question?

22 A Yes.

23 Q You were asked about the possibility of a request from a
24 preschool that might serve only African-American children. Has
25 the department ever received a request from a provider to turn

23-cv-2079-JLK DAWN ODEAN - Redirect 01-03-2024

1 away white children?

2 A No.

3 Q And you were asked about the possibility of a request from
4 a preschool that serves only gender-nonconforming children. Has
5 the department ever received a request from a provider to turn
6 away cisgender children?

7 A No.

8 Q You were asked about the possibility of a request from a
9 preschool that serves only LGBTQ children or LGBTQ families.
10 Has the department received a request from a provider to turn
11 away straight children or families?

12 A No.

13 Q And had you ever thought about those possibilities prior to
14 this morning?

15 A No.

16 Q And if you were asked any of those hypothetical scenarios
17 or questions, what would you do?

18 A Again, I would go to our senior leadership team and to our
19 attorneys to determine the appropriate process and next steps.

20 Q Is that how the department typically makes decisions around
21 the preferences?

22 A Yes.

23 Q Would you consult with any other people within the
24 department before making that type of determination?

25 A I would.

23-cv-2079-JLK DAWN ODEAN - Redirect 01-03-2024

1 Q And if during going through that process of analyzing one
2 of these requests the department learned that any of these
3 hypothetical situations were in violation of the law, would the
4 department allow a provider to utilize those?

5 A Not if they were in violation of the law.

6 Q And I want to turn back to questions around the preferences
7 allowing providers to prioritize low-income children or children
8 with disabilities. You had talked about on direct that the
9 statute specifically directs the department to prioritize those
10 children from low-income families or those children with
11 disabilities; is that correct?

12 A Yes.

13 Q And can you describe -- can you describe what that means?

14 A My understanding is that means we as a program and as a
15 department have to ensure those children have access to a
16 high-quality setting for Universal Preschool, and specifically
17 that we don't diminish the access that they had in the previous
18 state-run program, but that we continue to serve and are able to
19 meet those children's needs specifically.

20 Q And those children are specifically identified in statute?

21 A They are.

22 Q You were also asked about a school that only serves a
23 community of teen moms. Would the department investigate the
24 decision of a provider if it refused a teen dad access to that
25 preschool solely on the basis of his gender?

23-cv-2079-JLK DAWN ODEAN - Redirect 01-03-2024

1 A Would we investigate?

2 Q Yes. Would you investigate the decision to not serve a
3 person solely on the basis of his gender?

4 A If a father of a child in that program was denied access,
5 we would investigate.

6 MS. CARRENO: And, Your Honor, just one moment to
7 confer?

8 THE COURT: Yes.

9 MS. CARRENO: Those are all the questions I have on
10 redirect, Your Honor.

11 THE COURT: Thank you. Do you want to do a surcross
12 on that point?

13 MR. DAVIS: No, Your Honor. Thank you.

14 THE COURT: You may stand down and relax.

15 THE WITNESS: Thank you.

16 THE COURT: Next witness, please?

17 MS. RUST: Your Honor, our next witness is the witness
18 we asked to appear virtually. So, I don't know, we might need
19 about five minutes to make sure she is on.

20 THE COURTROOM DEPUTY: I can just dial her in now if
21 she's at the --

22 MS. RUST: She should be on standby, yes.

23 THE COURT: She's on the screen now. Can you turn
24 down the volume a bit for me?

25 THE COURTROOM DEPUTY: It's fine now. And, actually,

23-cv-2079-JLK ABBIE GOLDBERG - Direct 01-03-2024

1 if she could just say something, just so I know.

2 MS. RUST: Sure. Dr. Goldberg, can you say something
3 so we can see if we can hear you, please?

4 THE WITNESS: Sure. How's this? Good?

5 THE COURTROOM DEPUTY: One more time.

6 THE WITNESS: Can you hear me?

7 MS. RUST: That's great. Thank you.

8 (The Witness is Sworn)

9 THE COURTROOM DEPUTY: Please state your full name for
10 the record, and spell your last name.

11 THE WITNESS: Abbie E. Goldberg, G-O-L-D-B-E-R-G.

12 **DIRECT EXAMINATION**

13 BY MS. RUST

14 Q Thank you, Dr. Goldberg. Dr. Goldberg, could you please
15 tell the Court what degrees you hold.

16 A Sure. I have a bachelor's in psychology from Wesleyan
17 University. I hold a master's in clinical psychology from UMass
18 Amherst and a PhD in clinical psychology, UMass Amherst.

19 Q Do you practice clinical psychology?

20 A I am primarily a research psychologist, so I do not -- I am
21 not a licensed psychologist in the state of Massachusetts.

22 Q And what is your current employment?

23 A My current employment is professor of clinical psychology
24 at Clark University. I am also the past director of clinical
25 training and the director of women and gender studies at Clark

23-cv-2079-JLK ABBIE GOLDBERG - Direct 01-03-2024

1 University.

2 Q Do you teach any classes at Clark University?

3 A Yes. I teach ethics in clinical psychology to doctoral
4 students, which I've been doing for 15 years. I teach a course
5 in human sexuality. I teach courses in research methods,
6 psychology of sexual orientation, contemporary families, true
7 crime.

8 Q Dr. Goldberg, have you received grants for your research?

9 A I have. I've received several dozen grants, including to
10 MIH, International Institute of Health Grants, and a number of
11 grants from private foundations.

12 Q Do you have a current research project?

13 A I have several current research projects. One is a
14 longitudinal study of adoptive families, which has been ongoing
15 since 2005. I have some other projects right now looking at the
16 legal context for LGBT families and adoptive families.

17 Q Have you written any peer-reviewed articles -- oh. You're
18 back.

19 A Do you want me to repeat that?

20 Q Yes, please.

21 A I have over 150 peer-reviewed articles.

22 Q And have you written any books?

23 A I am the author of four books and the editor of five books.

24 Q If you remember, could you tell us what your books are
25 about, generally?

23-cv-2079-JLK ABBIE GOLDBERG - Direct 01-03-2024

1 A Yeah. Mostly adoption and LGBT parent families.

2 Q And, Dr. Goldberg, is your work nationally recognized?

3 A Yes.

4 Q Is it internationally recognized?

5 A It is.

6 Q Have you ever given lectures on your expertise in LGBTQ
7 parenting?

8 A I have given over 100 lectures, over 60 of which have been
9 invited, including in other countries.

10 Q Has your professional work ever been cited before in a
11 court case?

12 A Yes. Oh. I'm back; right?

13 Q Yup. You're back.

14 A Okay. Yeah. I don't know what's going on. Yes. It has
15 been cited in a number of different amicus briefs, including
16 *Obergefell*, *Fulton*, and several others.

17 Q And have you ever testified before as an expert?

18 A I've provided written testimony and affidavits for cases,
19 but all of those cases were resolved prior to trial, so I never
20 actually had to appear.

21 MS. RUST: Thank you. And, Your Honor, at this time I
22 would tender a copy of Dr. Goldberg's CV to the Court, which is
23 Exhibit 44, for review later. Do you want me to pull it up for
24 you to see, Your Honor, or are you okay?

25 THE COURT: You don't have to pull it up. It's not

23-cv-2079-JLK ABBIE GOLDBERG - Direct 01-03-2024

1 necessary. I am going to review it with all the other
2 documents.

3 MS. RUST: Thank you, Your Honor. I just wanted to
4 make sure my understanding was correct.

5 Q. (By Ms. Rust) Dr. Goldberg, were you contacted by the
6 Colorado Attorney General's Office to give expert testimony in
7 this case?

8 A Yes.

9 Q When?

10 A I think it was November 21st.

11 Q Are you being compensated for your testimony?

12 A Yes.

13 Q Were you asked to write an expert report?

14 A I was.

15 MS. RUST: And, Your Honor, at this point I would
16 tender Exhibit 45, which is Dr. Goldberg's expert report, to the
17 Court.

18 THE COURT: It's the same ruling that I gave
19 previously.

20 MS. RUST: Thank you, Your Honor.

21 Q. (By Ms. Rust) Dr. Goldberg, did you review any materials
22 in preparation of writing your expert report?

23 A Yes.

24 Q What were they?

25 A A number of peer-reviewed articles, including those of my

23-cv-2079-JLK ABBIE GOLDBERG - Direct 01-03-2024

1 own and other colleagues and scholars, as well as a number of
2 white papers, which are usually prepared for the public, which
3 summarize data, but are not in peer-reviewed journals.

4 Q Is that typical in your line of work to review such
5 materials?

6 A Yes.

7 Q And is it also typical in your line of work to cite to
8 other journal articles when writing a report?

9 A Yes.

10 Q Dr. Goldberg, you stated earlier that you've done research
11 studies on LGBTQ parenting and families; is that correct?

12 A Yes.

13 Q Can you tell us about your professional path that led to
14 this expertise?

15 A Sure. I started my graduate work at UMass Amherst in the
16 late '90s doing research on heterosexual married couples who
17 were low-income and experiencing the birth of their first child.
18 In the context of doing that work, I realized that there was no
19 research looking at the transition to parenthood for same-sex
20 couples. So, I did the first study, the first longitudinal
21 study of same-sex couples becoming parents, and so that formed
22 the basis of a lot of the work that has followed since.

23 Q In your work, have you found a -- let me rephrase that. In
24 your work, has your research found a common environment that
25 LGBTQ parents are found in?

23-cv-2079-JLK ABBIE GOLDBERG - Direct 01-03-2024

1 A They're actually found in all environments. You know,
2 they're all over the country in every -- they've established
3 every county, every zip code. They do -- you know, they're in
4 suburban, urban, rural environments. When you look within
5 same-sex couples in various geographic regions, there is a
6 disproportionate number of LGBTQ parents parenting in rural
7 areas, meaning when you look at same-sex couples in rural areas,
8 a greater percentage of them will be parents than, say, in urban
9 areas.

10 Q Okay. How about, has your research found that LGBTQ
11 parents compared to heterosexual parents in terms of
12 socioeconomic status?

13 A Yeah. So, it's not my specific research, but it's the
14 research of many, you know, well-known demographers in the
15 field. We're usually using national data to establish that LGBT
16 parents are about twice as likely to live in poverty as compared
17 to heterosexual cisgender parents. I think the number was
18 29 percent.

19 Q Do environments of poverty in rural environments constrain
20 LGBT families when they are looking for early childhood
21 education options?

22 A Yes. Parents who have less money have fewer options. They
23 can't afford private preschools, so they're often limited in
24 terms of what public or free options are available, which
25 obviously constrains their options.

23-cv-2079-JLK ABBIE GOLDBERG - Direct 01-03-2024

1 Q Has any of your research touched on this?

2 A Yes. So, I've looked at a pretty socioeconomically diverse
3 sample, and have found that those folks with less money do
4 report having fewer options, and also that they struggle with
5 finding accessible and affordable preschools.

6 Q Okay. And why was that finding important in your area of
7 expertise?

8 A I think basically just the fact that we know that children
9 benefit from, you know, good-quality early childhood education.
10 And if there is a group, for example, that is more likely to
11 live in poverty and more likely to have fewer options in terms
12 of preschools and accessible early childhood education, that
13 those families may be at risk for, you know, inadequate, you
14 know, outcomes in terms of children that have, you know,
15 ultimately no relationship to their own parenting, but their
16 lack of access to the kind of environment that will support the
17 children and family.

18 Q Was this study of yours published in a known academic
19 journal?

20 A Yes.

21 Q Was the study subject to scrutiny of your peers?

22 A Yes.

23 Q And, Jen, could you pull up Exhibit 55, please.

24 Dr. Goldberg --

25 THE COURTROOM DEPUTY: Give me just a minute.

23-cv-2079-JLK ABBIE GOLDBERG - Direct 01-03-2024

1 MS. RUST: Sorry. Ms. Bernique, it's okay. I can do
2 this an alternate way that doesn't have to be on the computer
3 screen.

4 THE COURTROOM DEPUTY: Do you want to put it on the
5 Elmo? Hold on just a second. Do you have it on?

6 THE WITNESS: I have the title of it, so as long as
7 you tell me the title, I don't know if that's acceptable.

8 MS. RUST: We can do it that way. That way we don't
9 mess up our technology too much.

10 Q. (By Ms. Rust) So, is the title of that journal article
11 Preschool Selection Considerations and Experiences of School
12 Mistreatment Among Lesbian, Gay, and Heterosexual Adoptive
13 Parents?

14 A Yes.

15 MS. RUST: Okay. Your Honor, I would tender this as
16 Exhibit 55 to Your Honor.

17 THE COURT: Yes.

18 Q. (By Ms. Rust) Dr. Goldberg, does living in a rural region
19 put any additional constraints on an LGBT parent in preschool
20 experiences?

21 A Well, folks who live in rural areas usually have far fewer
22 options in terms of preschools, so there's fewer that are
23 actually in their immediate geographic area.

24 Q Okay. How about if that family lives in a conservative
25 area?

23-cv-2079-JLK ABBIE GOLDBERG - Direct 01-03-2024

1 A Yes. They're likely going to find -- face barriers in
2 terms of both where they feel comfortable sending their children
3 to school, as well as whether that school will necessarily
4 accept them.

5 Q And, Dr. Goldberg, have you done a study on this?

6 A I've done several studies that have addressed the
7 sociopolitical context, and as well as the rurality or
8 urbanicity of the immediate environment and its effect on LGBT
9 families.

10 Q Well, you've done several studies, you said. So, could you
11 speak to us generally what your findings have been.

12 A So, some of the -- sort of collectively the research has
13 found that LGBT families who reside in areas that are more
14 sociopolitically conservative, which is usually -- categorized
15 that way based on recent voting history, for example, the county
16 that they're living in, laws and so on, that they tend to face
17 more stigma in the school environment, sort of trickle-down
18 effects from the community. They also report greater
19 victimization of their children in schools. So, those are sort
20 of two, I think, key findings. Both parents and children are
21 reporting often worse outcomes.

22 Q Was there -- sorry. One second. Did any of your studies
23 have findings regarding how LGBT parents' interaction with the
24 school influenced their child's school performance?

25 A Not specifically academically, unless I'm forgetting a

23-cv-2079-JLK ABBIE GOLDBERG - Direct 01-03-2024

1 paper of mine. Mainly the findings really are around the
2 children's mental health and well-being.

3 Q Can you elaborate on those findings, please.

4 A Yeah. So, parents who, again, report, you know, living in
5 areas that they deem less gay friendly or more conservative
6 sociopolitically, and also in more rural regions, do report more
7 challenges in terms of school climate. So, a less supporting or
8 affirming school climate, and then in turn more mental health
9 problems in their children.

10 Q Okay. Dr. Goldberg, you mentioned victimization, that you
11 found more victimization of children of LGBT parents in one of
12 your studies. Are there any unique victimizations of children
13 of LGBT parents?

14 A Yeah. So, yes. They are. They're more likely to be
15 victimized in these less supportive environments, and
16 specifically more likely to be, for example, teased about their
17 own sexual orientation or gender identity or their parents'
18 sexual orientation and gender identity.

19 Q Okay. Does that in turn affect a child's mental health?

20 A Yes. It is fairly well established in the literature that
21 victimization is strongly correlated with in turn self-esteem,
22 depression, anxiety, and so on.

23 Q Can it also affect a child's behavior?

24 A Oh, yes. Certainly. And it has been linked to behavioral
25 challenges.

23-cv-2079-JLK ABBIE GOLDBERG - Direct 01-03-2024

1 Q You also mentioned your studies regarding LGBT parents
2 feeling alienated by a school environment. What are some
3 consequences of that?

4 A So, when parents feel alienated both by teachers, the
5 general school climate, other parents, they generally are less
6 satisfied with the school. They may be less likely to, for
7 example, engage with the school in ways that would benefit the
8 school. For example, volunteering in a child's classroom or
9 school events and activities. Generally we know that strong
10 parent-school collaborations and partnerships are good for kids.
11 So, when parents feel alienated, this can have an indirect
12 effect on children's development as well.

13 Q Was there any part of your study that touched on LGBT
14 parents and their interaction with their peers in the school
15 environment?

16 A Several studies look at parents' experiences and
17 perceptions of acceptance by other parents. And that research,
18 definitely when parents feel less accepted by other parents at
19 their children's school, they are less involved at their
20 children's school. They are less involved with their children's
21 school experience, and they have actually more negative
22 interactions with teachers.

23 Q In your study of LGBT parents, did you find any examples of
24 these parents feeling marginalized?

25 A Yes. Many examples, mostly categorized in terms of more

23-cv-2079-JLK ABBIE GOLDBERG - Direct 01-03-2024

1 explicit marginalization, having sort of explicitly negative
2 things said to them. And more implicit examples of
3 marginalization like curricular exclusion, paperwork not
4 encompassing their families, et cetera.

5 Q Did your study also look at what happens when an LGBT
6 parent feels accepted in a school environment?

7 A Yes.

8 Q What were those findings?

9 A So, when parents feel respected and appreciated as parents
10 in a school community, they tend to report more positive
11 relationships with the schools. They also tend to be more
12 engaged, volunteer, feel more connected to their children's
13 schools.

14 Q Okay. Did your research in this area include any findings
15 of how schools can include LGBTQ parents more effectively?

16 A Yes. Parents usually report really valuing, again, the
17 kind of efforts to explicitly include them. Expanding, for
18 example, Mothers Day to Parents Day, having room for them to
19 identify themselves on school paperwork, such as parent one,
20 parent two, parent three, having opportunities for their
21 children to complete assignments in a way that doesn't alienate
22 or marginalize them for not having a father, for example.

23 Q And do these things in turn create a safe school
24 environment for children?

25 A They do.

23-cv-2079-JLK ABBIE GOLDBERG - Direct 01-03-2024

1 Q How so?

2 A They allow children to feel that their family is respected,
3 included, appreciated, that they are a member of the school, a
4 complete member of the school community, and allows children to
5 have access to an equal education. It allows children to
6 participate fully in the life of the school, to not be
7 identified as different.

8 Q Dr. Goldberg, I did want to ask you, when we were answering
9 questions up to this point, do all of your opinions also cover
10 LGBTQ parents, or is it just LGBT parents?

11 A Which is -- what is the distinction? Which is the letter
12 that you are --

13 Q Yeah. That's a better question. I think just in our
14 conversation, I've been saying LGBT, and you've been saying
15 LGBTQ. Do you understand there to be a difference between those
16 two?

17 A Well, the Q is queer. And so for me, depending on
18 generational issues with the age of the parent, for example,
19 "queer" is an increasingly-used term, as is "pansexual," but
20 that's sort of encompassed in the queer. So, to me, it's a
21 generational issue, that older parents might not identify as
22 queer, but younger parents might.

23 Q Understood. Thank you. So, when you say LGBT, you're not
24 necessarily excluding the Q as we're talking?

25 A No.

23-cv-2079-JLK ABBIE GOLDBERG - Direct 01-03-2024

1 Q Okay. Thank you.

2 A I sort of have an implicit asterisk or plus sign when I use
3 different terms. So, I would be clear, though, if I was
4 excluding a group, saying this applies to lesbian parents but
5 not gay parents or lesbian parents but not trans parents, for
6 example.

7 Q Thank you for allowing me that point of clarification,
8 Dr. Goldberg. Okay. We were just discussing some of your
9 additional research. So, instead of pulling them up again, I am
10 going to ask if one of these additional papers is entitled
11 Lesbian, Gay, and Heterosexual Adoptive Parents' Experiences in
12 Preschool Environments.

13 A Yes.

14 MS. RUST: Okay. And then is the other one we were
15 discussing -- oh. I'm sorry, Your Honor. That's been
16 previously marked as Exhibit 57, and I will tender that one to
17 the Court at this time.

18 Q. (By Ms. Rust) And then, Dr. Goldberg, was the other study
19 of yours we were just discussing Predicting Parents' School
20 Engagement Among Lesbian, Gay, and Heterosexual Adoptive Parents
21 of Kindergarteners?

22 A Yes.

23 MS. RUST: Okay. And I believe -- sorry. That has
24 been previously marked as Exhibit 58, Your Honor.

25 THE COURT: All right.

23-cv-2079-JLK ABBIE GOLDBERG - Direct 01-03-2024

1 Q. (By Ms. Rust) Okay. Dr. Goldberg, does the context in
2 which a child with LGBTQ or LGBT parents is raised matter?

3 A Yes.

4 Q Why?

5 A Well, children are impacted by the environments that they
6 spend the most amount of time in, and that would include the
7 family, and usually includes school.

8 Q Have -- I believe we talked about, you studied this;
9 correct? The school environment?

10 A Yes.

11 Q Have you done any research on the internal environment of
12 schools and school communities and their effect on LGBTQ
13 parents?

14 A Yes.

15 Q Okay. And, again, I believe we touched on this, but why is
16 an affirming school environment important to children of LGBTQ
17 parents?

18 A I think, again, to reiterate, children receive messages
19 from schools about whether their families and in turn they are
20 valid and accepted. So, when a school curriculum, classroom,
21 the physical environment of schools, reflects and or at least
22 doesn't marginalize their family, that has an impact on their
23 sense of self.

24 Q Okay. Did your research find any of the impacts that has
25 on sense of self of a child?

23-cv-2079-JLK ABBIE GOLDBERG - Direct 01-03-2024

1 A Yeah. Mainly through parents' reports, but parents do
2 report that when -- when their children attend schools that are
3 explicitly validating and inclusive, that their children feel
4 more positively about their school environment.

5 Q And does feeling more positively about a school environment
6 have any consequences for the child?

7 A Yes.

8 Q What are they?

9 A Well, when a child feels, you know, accepted and included
10 at a school, they in turn have better self-regard for
11 themselves. If a child alternatively is being implicitly or
12 explicitly told that there is something wrong with them or their
13 family, this can create negative self-views.

14 Q And what about if a child has a same-sex attraction? How
15 does the internal environment of a school or a school -- school
16 community affect them?

17 A Similarly if a child is getting messages that their
18 identity or presentation is non-normative, not accepted, equated
19 with negative qualities or attributes, they will internalize
20 those qualities as applying to themselves.

21 Q And have you done research into that topic?

22 A Some research. My predominant focus and expertise is LGBT
23 parents, but some of my work has focused on LGBT youth, and we
24 find very similar things. I will say that I know that
25 literature, and it's very consistent in terms of the effects of

23-cv-2079-JLK ABBIE GOLDBERG - Direct 01-03-2024

1 school climate, for example.

2 Q Okay. And I believe that is Exhibit 66. And that one is
3 entitled When Parents Separate and One Parent Comes Out as
4 Lesbian, Gay, or Bisexual, Sons and Daughters Engage with the
5 Tension That Occurs When Their Family Unit Changes. And was
6 that article cited in your expert report?

7 A It was. That specific paper, I think has to do with
8 children of LGBT parents. I think it's the Wilkinson that's
9 regarding the youth that are LGBT.

10 Q Thank you. That one is School Culture and the well-being
11 of Same-Sex Attracted Youth; is that correct?

12 A Yes.

13 Q Okay. So, that's Exhibit 66. And I beg Your Honor's
14 pardon for the confusion of my exhibits. Okay. I believe you
15 mentioned that you have done studies about messaging regarding
16 lesbian, gay, or bisexual parents, how they can affect children.
17 Can you explain your 2007 study, how does that make a
18 difference?

19 A Sure. Yeah. Most of my work focusing on children of LGBT
20 parents, I've interviewed young adults about their experiences.
21 So, how specific do you want me to get with this particular
22 study?

23 Q Great question. Were there any significant findings of
24 that study?

25 A Yes. For the most part, this study, which, you know, I've

23-cv-2079-JLK ABBIE GOLDBERG - Direct 01-03-2024

1 essentially replicated with other studies, documents, the fact
2 that for youth who are raised by LGBT parents, the struggles
3 that they face in life don't stem from their parents' sexual
4 orientation or gender identity, but rather from the environment
5 that may or may not stigmatize their parents.

6 So, the pain that they might experience, the teasing
7 they might experience is due to other people's perceptions of
8 their family. So, they love their parents, but they struggle
9 with other people's perceptions or reactions to their families.

10 Q And was that study of yours published with those findings?

11 A Yes.

12 Q And then would you explain just a general overview of your
13 2023 study Cherished Families that was in the Journal of
14 Marriage and Family?

15 A Yeah. This paper kind of built on a couple decades of
16 work, and the purpose of it was actually to explore the
17 experiences of LGBT families who have encountered a lot of
18 difficulty. So, you know, this is not a representative sample
19 of specifically a group of folks whose parents had, for example,
20 struggled with mental health issues, or they had struggled with
21 mental health issues. And, again, the findings really were that
22 the challenges that they faced in life stemmed from societal
23 homophobia, not from their parents' sexual orientation.

24 Q Okay. And was that study of yours published?

25 A Yes.

23-cv-2079-JLK ABBIE GOLDBERG - Cross 01-03-2024

1 MS. RUST: Your Honor, I'm just going to take a break
2 and look at my outline of Dr. Goldberg and make sure I'm not
3 missing anything. One second.

4 (Pause in the proceedings.)

5 MS. RUST: All right. Dr. Goldberg, I am done for the
6 moment. Thank you.

7 THE WITNESS: Thank you.

8 **CROSS EXAMINATION**

9 BY MR. REAVES

10 Q Good afternoon, Dr. Goldberg. Can you hear me okay?

11 A Yes. Thank you.

12 Q Just to introduce myself, my name is Nick Reaves. I am one
13 of the counsel for the Catholic Schools in this case. During
14 your direct testimony with Nicky a few minutes ago, I didn't
15 hear you talk specifically about the effective enrollment
16 policies on LGBTQ families; is that correct?

17 A Correct.

18 Q Also during your testimony, I didn't hear you talk about
19 anything specific to preschool environments; is that correct?

20 A I believe that indirectly we did speak about some of my
21 research on parents' experiences in preschools as well as
22 choosing preschools, indirectly when we spoke about poverty and
23 rurality and the effects on choosing preschools.

24 Q Thank you. You mentioned in your expert report that you
25 had a very short time to consider this case; is that correct?

23-cv-2079-JLK ABBIE GOLDBERG - Cross 01-03-2024

1 A Yes.

2 Q Have you read or reviewed the religious curriculum used at
3 St. Mary's Preschool?

4 A I have.

5 Q Have you read or reviewed the religious curriculum used at
6 Wellspring Preschool?

7 A Yes.

8 Q Have you reviewed how the online portal works, where
9 families can sign up for UPK Colorado?

10 A I believe so.

11 Q Have you reviewed how the UPK program makes decisions
12 regarding matching families to particular UPK providers?

13 MS. RUST: Your Honor, I would just make an objection
14 that this is outside of this witness' expertise. We're now
15 veering into how UPK works, and never once did I offer her as an
16 expert in UPK.

17 THE COURT: Overruled.

18 Q. (By Mr. Reaves) Are you familiar with the programmatic
19 preferences permitted by the UPK program?

20 A Can you specify what you mean by "programmatic
21 preferences"?

22 Q Yes. There's essentially a list of exception criteria to a
23 matching process for the UPK program. Are you familiar with
24 those criteria?

25 A You'd have to refresh my memory. There's a lot of

23-cv-2079-JLK ABBIE GOLDBERG - Cross 01-03-2024

1 material. Yeah. If you could just tell me --

2 Q No. That's fine. I will move on. Have you ever published
3 research regarding the effects of including non-affirming
4 preschools in a government funding program?

5 A No.

6 Q Have you ever published research regarding LGBTQ enrollment
7 for Universal Preschool Programs?

8 A No.

9 Q Have you ever published research regarding the impacts of
10 including Catholic preschools in a pool of Universal Preschool
11 providers?

12 A No.

13 Q Have you ever published research regarding the
14 psychological impacts of denying a family enrollment at a
15 Catholic school?

16 A I have had families in my research who have been denied
17 enrollment at Catholic Schools.

18 Q And was your research study specifically looking at that
19 question and the impact of the enrollment decision?

20 A No. It was looking at parents' experiences seeking out and
21 then becoming enrolled in preschools.

22 Q Would you say that as a researcher, you approach the topics
23 you research with neutrality?

24 A Yes.

25 Q So, as a researcher, your goal isn't to try to support a

23-cv-2079-JLK ABBIE GOLDBERG - Cross 01-03-2024

1 particular narrative or point of view; is that right?

2 A My goal is to understand the experiences of largely
3 marginalized populations. So, people who have typically been
4 overlooked in research. That's probably -- whether that's a
5 neutral stance is, I think, a question, but when I am actually
6 interviewing people and writing out findings, I do try to to the
7 best of my ability encompass the full spectrum of their
8 experiences.

9 Q I'd like to talk a bit about your expert report. And do
10 you recall putting that together?

11 A Yes.

12 Q In your expert report, you start by focusing on LGBTQ+
13 parents who are, quote, living in more rural and/or politically
14 conservative regions. Do you recall that?

15 A Yes.

16 Q Are you aware that both St. Mary's and Wellspring
17 Preschools are in the Denver metropolitan area?

18 A Yes.

19 Q Would you describe Denver as either, quote, more rural, or
20 as a, quote, politically conservative region?

21 A Probably not.

22 Q So, in your report, when you talk about the importance of
23 preschools serving as affirming environments, quote,
24 particularly in rural or politically conservative communities,
25 that part of your report and your testimony isn't really about

23-cv-2079-JLK ABBIE GOLDBERG - Cross 01-03-2024

1 this case; is that right?

2 A Well, to back up, affirming environments are important
3 everywhere to children and families. They are more easily found
4 in urban areas. The point I was trying to make is that folks
5 who are in rural or impoverished areas or have less income are
6 disproportionately more likely to face a paucity of supportive
7 environments.

8 Q Another thing you talk about in this portion of your expert
9 report is the benefits to LGBTQ families of being able to find,
10 quote, accessible and cost-effective childhood education; is
11 that right?

12 A Yes.

13 Q And as you explained earlier, you're generally familiar
14 with how the UPK system works?

15 A Generally familiar.

16 Q So, you're aware that the UPK program offers 15 hours of
17 free preschool to all Colorado families; is that right?

18 A Yes.

19 Q And are you aware that over 2,000 preschools participate in
20 the preschool program and have agreed to Colorado's sexual
21 orientation and gender identity nondiscrimination requirements?

22 A Yes.

23 Q Are you aware of any research regarding how accessible
24 Colorado as a UPK program is specifically for LGBTQ families?

25 A No.

23-cv-2079-JLK ABBIE GOLDBERG - Cross 01-03-2024

1 Q Are you aware of any evidence showing that LGBTQ families
2 in Denver are unable to access cost-effective early childhood
3 education through the UPK program?

4 A No. I don't think there's any research on that.

5 Q So, you don't know whether UPK Colorado is already making
6 preschool services more accessible for LGBTQ families or not?

7 A No.

8 Q Have you ever conducted research that looked at how often
9 lesbian and gay parents encounter challenges related to their
10 sexual orientation in accessing early childhood education?

11 A Yes.

12 Q And from that research, do you recall how often lesbian and
13 gay parents in metro areas reported experiencing challenges
14 related to their sexual orientation in the early childhood
15 education context?

16 A Well, it is hard to say how often when that is not a very
17 specific question that I've asked, but I would say that those
18 experiences do exist. So, again, it's hard to put a percentage
19 on that in this moment, but challenges certainly do exist.

20 Q I'd like to pull up a document, if we can. Just give us
21 one second, Doctor. Great. Dr. Goldberg, do you recognize this
22 document?

23 A Yes.

24 Q And if you look about halfway through the abstract, one of
25 your top-level findings on this first page states that, quote,

23-cv-2079-JLK ABBIE GOLDBERG - Cross 01-03-2024

1 the majority of parents were open about their lesbian and gay
2 and adoptive family status, and had not encountered challenges
3 related to family diversity. Did I read that correctly?

4 A Yes.

5 Q Let's go to page 12 of this document. Great. Do you see
6 the second full paragraph there entitled challenges related to
7 LG parent status?

8 A I do. It's very small. So, I might have to pull up my own
9 copy.

10 Q That's okay. I will try to read out the relevant portions
11 for you as well. And just for the transcript, this document is
12 titled Lesbian, Gay, and Heterosexual Adoptive Parents'
13 Experiences in Preschool Environments. This is one of
14 defendants' exhibits.

15 So, I'd like to read out a sentence from that
16 paragraph, and it states, most lesbian and gay, or LG as it says
17 here, participants, namely 75 percent of lesbians and 89 percent
18 of gay men, stated that they had not encountered any challenges
19 related to their sexual orientation. Did I read that correctly?

20 A Yes, you did.

21 Q And on the next page, about halfway through the first full
22 paragraph, your research states that notably, all of the seven
23 participants who described teachers' apparent discomfort, and I
24 will add that that's talking about discomfort with their sexual
25 orientation, but you can correct me if I'm wrong, Dr. Goldberg,

23-cv-2079-JLK ABBIE GOLDBERG - Cross 01-03-2024

1 resided in nonmetro areas. Is that your understanding of what
2 this research found?

3 A Yes.

4 Q And this study was published in 2014; is that right?

5 A Yes.

6 Q And that was actually before same-sex marriage was
7 legalized; is that right?

8 A Yes.

9 Q So, in your opinion, since this study has been completed,
10 has the general population become more or less accepting of
11 same-sex couples?

12 A That is a very complicated question to answer, and it
13 depends on what question folks are asked in surveys. So,
14 large-scale acceptance for marriage has increased, but depending
15 on where you're actually surveying folks, their acceptance of
16 families is not necessarily greater.

17 Q And just to summarize before I move on, this research that
18 you did, you spoke to parents about their experiences enrolling
19 children in preschool environments; is that right?

20 A Yes.

21 Q And one of the findings of this research was that none of
22 the families in -- none of the LG or lesbian and gay families in
23 metro areas had encountered challenges or difficulties in the
24 school environment; is that right?

25 A Explicit challenges. So, you know, the most sort of

23-cv-2079-JLK ABBIE GOLDBERG - Cross 01-03-2024

1 extreme form of challenge.

2 Q Have you ever researched whether lesbian and gay couples
3 seek out schools that will be supportive and affirming of their
4 family structure?

5 A Yes.

6 Q And did your research find that lesbian and gay families do
7 seek out and prioritize finding schools that are supportive and
8 affirming of their families?

9 A I have found that they do when they can. So, the things
10 that might limit that are, for example, income or a child's
11 special needs, for example. Which might require them to sort of
12 decrease the value that they are able to place on the
13 affirmingness of the school.

14 Q But on the whole, generally speaking, your research has
15 found that a large percentage of lesbian and gay families do
16 seek out and try to find preschools that are affirming of their
17 sexual orientation?

18 A To the extent that they can, given, you know, all the other
19 considerations that they're also making.

20 Q Makes sense. Thank you. You also talked a little bit
21 earlier about the importance of messages related to family
22 diversity. That's something you testified about, and that's in
23 your report; is that right?

24 A Yes.

25 Q And you were talking earlier, and you cite in your report a

23-cv-2079-JLK ABBIE GOLDBERG - Cross 01-03-2024

1 study from Wilkinson and Pearson from 2009. Do you recall that
2 study?

3 A Yes.

4 Q And just for the record, I will note that this is
5 Exhibit 66 of defendants' exhibits. Actually, let's go ahead
6 and pull that one up, if you don't mind. Exhibit 66. Oh.
7 You've already got it. The screen changed.

8 Are you aware that this study looked at health effects
9 for same-sex attracted adolescents?

10 A Yes.

11 Q Did this study purport to or include any research or
12 findings on preschool students?

13 A No.

14 Q Thank you. I'd like to turn back to your expert report, if
15 that's okay. And that's Exhibit 45, for the record. You state
16 in your expert report -- and this is on page eight, but I will
17 just read it out for you, since I know it's small on the screen.
18 You state on page eight that some messages, quote, negatively
19 impact children; is that correct?

20 A Yes.

21 Q And I guess a little bit before that, actually, near the
22 end of the first paragraph on page seven, you say, specifically,
23 preschool-aged children, specifically, are impacted by the
24 messages they receive about their families at home and at
25 school, as well as potential disconnects between those messages.

23-cv-2079-JLK ABBIE GOLDBERG - Cross 01-03-2024

1 Did I read that correctly?

2 A You did.

3 Q You don't cite any studies or research to support this
4 point in your report; is that right?

5 A So, some of the citations are -- let me -- what page is
6 this?

7 Q This is on page seven. End of the first paragraph. I just
8 read out the sentence, and at the end of the sentence, there's
9 no kind of citation for that assertion.

10 A I'm just searching for it. There are papers cited
11 elsewhere to support that point. I'm just having a hard time
12 finding that.

13 Q That's okay. That's okay.

14 A Maybe it's the copy, but --

15 Q Yeah. I have a couple more questions about kind of the
16 messages -- the messages that you talked about there. So, is it
17 your expert opinion that children in a preschool environment can
18 actually pick up on the types of messages that are being sent
19 by, for example, school policies or teacher conduct or something
20 like that?

21 A Yes.

22 Q Do you think asking a preschool student to dress according
23 to their biological sex is sending a message to that student?

24 A I do.

25 Q And do you think the message that these schools are sending

23-cv-2079-JLK ABBIE GOLDBERG - Cross 01-03-2024

1 by having policies like those at issue in this case -- do you
2 think those messages are important?

3 A They are consequential. Yeah.

4 Q So, in your opinion, would you say that the Archdiocese's
5 policies and the policies of the two plaintiff schools in this
6 case, that they're sending the wrong message to students and
7 their families?

8 A I am not saying -- they are sending a message. They are
9 sending a message that -- about what is valued. They're sending
10 a message about who is accepted and who is not accepted.
11 They're sending a message about gender and sex. You're asking
12 whether I personally think it's bad or --

13 Q Yeah. Just to reframe --

14 A I think it has consequences, yeah.

15 Q I'm sorry, Dr. Goldberg. I didn't mean to speak over you.
16 Just to reframe, I guess I would say it's your opinion that
17 those messages we are discussing are harmful or can be harmful
18 to LGBTQ students and families; is that right?

19 A Yes.

20 Q What about messages that other parents could be sending at
21 the school? Have you ever researched that, and can that be
22 harmful as well?

23 A Yes.

24 Q What kinds of messages could other parents be sending in
25 the school environment?

23-cv-2079-JLK ABBIE GOLDBERG - Cross 01-03-2024

1 A Other parents communicate messages both to parents, but
2 also to children through their own children, around, for
3 example, the legitimacy of two women being married. So, a
4 parent could suggest to a child or to another parent that two
5 women being married, you know, that's not a real marriage. It's
6 not a real family. That's just one example.

7 Q Thank you. You also state in the conclusion of your
8 report, and this is on page ten, that LGBTQ+ parents
9 appreciate -- I will say, quote, appreciate inclusive language
10 in the classroom and on school forms, e.g., parent one and
11 parent two; is that correct?

12 A Yes.

13 Q Speaking about parent one and parent two, you also
14 mentioned earlier in your testimony parent three. Could you
15 just describe kind of what -- how this language would be more
16 inclusive, and what you mean by that.

17 A Sure. So, parent one, parent two, that would assume, for
18 example, a two-parent family, but there are families where there
19 is a stepparent, for example. Or in some cases -- in the case
20 of a two-mom family, it might be an active sperm donor father.
21 Or, again, in the case of a divorced family, it could be a new
22 partner. So, the idea is that this more expansive language
23 actually allows for a lot of different kinds of families to more
24 accurately represent themselves.

25 Q Your report also talks specifically about harms caused by

23-cv-2079-JLK ABBIE GOLDBERG - Cross 01-03-2024

1 messages like, quote, equating homosexuality with mental illness
2 and other messages, quote, perpetuating stigmatizing ideas
3 against LGBTQ+ people; is that right?

4 A Yes.

5 Q And it talks about the importance of LGBTQ-friendly
6 curriculum too; is that right?

7 A Yes.

8 Q And you also talk about the importance of anti-bullying
9 policies that include sexual orientation and gender identity
10 language; is that right?

11 A Yes.

12 Q Have you reviewed the anti-bullying policy at St. Mary's
13 and St. Bernadette's to see if it forbids bullying on sexual
14 orientation and gender identity?

15 A I recall reviewing it, and I didn't -- I don't recall
16 seeing anything about sexual orientation or gender identity
17 within the spectrum of what kind of bullying is discouraged.

18 Q Do you know if St. Mary and St. Bernadette or Wellspring
19 teach that homosexuality is a mental illness in their
20 preschools?

21 A I did not see the mental illness language, but I did see
22 messages around homosexuality.

23 Q Okay. So, that language about mental illness from your
24 expert report isn't necessarily specific to the plaintiffs in
25 this case?

23-cv-2079-JLK ABBIE GOLDBERG - Cross 01-03-2024

1 A No.

2 Q Are you aware that Ms. Odean and the new UPK regulations
3 specifically said that they would not interfere with the
4 religious preschool curriculums that are used by faith-based
5 providers?

6 A No.

7 Q Do you know how often St. Mary and Wellspring have had to
8 tell a student or family that they are not a good fit for their
9 preschool?

10 A No.

11 Q Do you know how often they've had to deny enrollment more
12 generally?

13 A No.

14 Q Also on page eight of your expert report, you talk about
15 research that has, quote, established links between school
16 culture and family outcomes in LGBTQ+ parent families; is that
17 correct?

18 A Yes.

19 Q And you talk specifically about harms to LGBTQ+ families
20 from, quote, less positive school climates, e.g. less LGBTQ+
21 friendly; is that right?

22 A Yes.

23 Q So, these harms that you talk about in your report come
24 from attending a school that has a less positive school climate;
25 is that right?

23-cv-2079-JLK ABBIE GOLDBERG - Cross 01-03-2024

1 A Yes.

2 Q If a child of LGBTQ parents was in a school with an
3 unfriendly climate, would you advise them to switch to a more
4 LGBTQ-friendly school?

5 A Some families do not have the ability to switch schools,
6 and it's my professional opinion that it should not be on the
7 parents to have to switch their school if the school environment
8 is unaffirming.

9 Q But presumably, you would encourage LGBTQ families looking
10 for preschools to try to find ones that would be
11 LGBTQ-affirming?

12 A Depending on the number and type of constraints on their
13 decision-making.

14 Q I'd like to pull up a document entitled For LGBTQ Parents,
15 and we will get that up on the screen momentarily. Are you
16 familiar with this document?

17 A Yes.

18 Q And I guess, did you create this document?

19 A I did.

20 Q And do you see the heading there that says finding an
21 LGBTQ-friendly daycare or preschool? Correct?

22 A Yup.

23 Q Okay. So, right below that, I'm just going to read out a
24 couple sentences, and then I will ask you if I read that
25 correctly. It says, quote, if you are an LGBTQ+ parent seeking

23-cv-2079-JLK ABBIE GOLDBERG - Cross 01-03-2024

1 a daycare or early childhood educational environment for your
2 children, you should evaluate programs with the following
3 questions in mind. Of note is that some of this information can
4 be gleaned from online materials, whereas in some cases, it can
5 be obtained through speaking with the school or program
6 administrator or visiting the site itself.

7 Did I read that correctly?

8 A Yes.

9 Q And could you just describe the various things you suggest
10 families should look for in this document.

11 A Sure. Images of families that look like theirs, whether,
12 you know, curriculum and activities are explicitly inclusive of
13 their families, what kind of physical environment are they
14 walking into, is the paperwork inclusive of them.

15 Q Okay. I'd like to talk about the last section of your
16 report, which is really talking about the interaction between
17 parents and schools. Your report states that, quote, children
18 do better when their teachers and parents are partners in their
19 educational experience; is that right?

20 A Yes.

21 Q So, in your expert opinion, what happens if a school
22 teaches something that's different from what the parent teaches
23 at home?

24 A That can create friction in the relationship, or at least a
25 sense of disconnect for the family.

23-cv-2079-JLK ABBIE GOLDBERG - Cross 01-03-2024

1 Q So, presumably, in your opinion, it's important for LGBTQ
2 parents to be able to send their children to a school that is on
3 the same page when it comes to teaching about LGBTQ issues; is
4 that right?

5 A If they are teaching about them, yes.

6 Q Could you just explain that last point? Are you saying in
7 some cases, a school just wouldn't have -- wouldn't say anything
8 about the issues?

9 A It depends on what you mean, because there is, again, kind
10 of environmental, climate-related considerations, and then
11 there's also curricular considerations. So, at a preschool
12 level, for example, there's not going to be a lot of curriculum
13 devoted to sexual orientation and gender identity, but there are
14 kind of more implicit messages that children and families
15 receive.

16 Q And is the importance of being on the same page and finding
17 a school that I guess passes on the implicit messages that are
18 consistent with what the parent is sharing in the home, is that
19 only important for LGBTQ parents, or is that important for all
20 parents when they're picking a preschool?

21 A I would say it's important to most parents that, you know,
22 whether you're a member of an LGBTQ family or a multiracial
23 family or an adoptive family, you want to feel like the school
24 respects you and your family and the people in it.

25 Q So, yesterday, we heard testimony from one of the

23-cv-2079-JLK ABBIE GOLDBERG - Cross 01-03-2024

1 plaintiffs in this case, Ms. Lisa Sheley, and she talked about
2 how she and her husband, Dan, specifically chose St. Mary's
3 Catholic Preschool because they share the Catholic faith and
4 wanted an affirming school environment for their child. Do you
5 think that's a good thing for them?

6 A I don't know if I understand the question. You're asking
7 what, exactly?

8 Q Yeah. Let me rephrase that, maybe in a more general way.
9 You were talking about how it's important for LGBTQ families,
10 adoptive families, and other families to be able to find a
11 school environment that is supportive and affirming. Is it also
12 important for religious parents to be able to choose a school
13 that is a good fit for them and for their family?

14 A Yeah.

15 Q If a family believes that their young child, maybe a
16 preschooler, is struggling with gender dysphoria but sincerely
17 believes it would be in the child's best interest not to affirm
18 the child's beliefs about their gender, should they be allowed
19 to make that choice as parents?

20 A "Allowed" is an interesting word. Parents have a lot of
21 power to make the choices that they want to make, but the
22 clinical and research evidence suggests that parents not
23 affirming their children's gender creative or gender atypical
24 preferences or behavior has negative consequences for that
25 child.

23-cv-2079-JLK ABBIE GOLDBERG - Cross 01-03-2024

1 Q Did you know that some Catholic Schools in Denver currently
2 receive funding from other government programs?

3 A I would believe it. Yeah. It makes sense. I did not know
4 that, but I would believe it.

5 Q Obviously this case is about whether Catholic Schools can
6 participate in the UPK government funding program; is that
7 right?

8 A Yes.

9 Q And the State of Colorado has taken the position that they
10 should not be able to participate; is that right?

11 A Yes.

12 Q So, do you think Catholic Schools that participate in these
13 other government funding programs shouldn't be allowed to
14 receive government funds from those programs?

15 MS. RUST: Your Honor, I'm going to object again. I
16 don't know how this goes to her expertise and relevance of her
17 expertise at this point.

18 THE COURT: The objection goes to weight, not
19 relevance. The objection is overruled. Go ahead.

20 MR. REAVES: Thank you, Your Honor. And I am almost
21 done. I just have a few more questions.

22 THE COURT: Okay.

23 Q. (By Mr. Reaves) Similarly -- well, I guess, sorry. We
24 had an objection. Do you want me to restate that question, or
25 do you recall what I was asking?

23-cv-2079-JLK ABBIE GOLDBERG - Cross 01-03-2024

1 A I think you're asking do I think that they should also be
2 denied funding from these other entities?

3 Q That's right.

4 A Is that correct? I really would need to know more, I
5 think, to answer that question about those different entities
6 and be able to research more about them. It's a hard question
7 for me to answer. I'm sorry.

8 Q No. That's totally fair. It is complicated. Are you
9 aware that both St. Mary's and St. Bernadette's Preschools are
10 licensed preschools, and they're licensed by the State of
11 Colorado?

12 A Yes.

13 Q Do you think that the State should revoke their licenses
14 based on the fact that they're not providing these affirming
15 environments that you think are critical?

16 A I think that the question that this case seems to concern
17 is about receiving state funding for preschools. So, I don't
18 think I can answer a question about licensure, as I'm not really
19 familiar with Colorado's licensure of different kinds of
20 preschools. It's a hard question for me to answer.

21 Q So, your expert opinion and testimony today is focused on
22 specifically the receipt of government funding by these
23 preschools; is that right?

24 A I think so, yeah.

25 Q And --

23-cv-2079-JLK ABBIE GOLDBERG - Cross 01-03-2024

1 A If I -- honestly, if there's any specific questions that
2 you want me to answer about licensing, I just would need to know
3 more to be able to answer that question.

4 Q Thank you. No. That was it I had on licensing. So, I
5 guess my question, then, is if your testimony and your expert
6 opinion is focused on specifically the receipt of government
7 funding and, you know, why that is problematic, what is the --
8 what is the harm specifically that arises when St. Mary's or --
9 or Wellspring Catholic Academy receives funding, and that harm
10 is not present when they're just a licensed preschool provider
11 not receiving funding?

12 A To me there's an inconsistency between the expectations of
13 nondiscrimination, which enables full access in order to obtain
14 those funds, and then the religious schools who receive those
15 funds but are engaging in practices that ultimately result in
16 some people being denied acceptance.

17 Q So, the schools are operating the same way. That was the
18 testimony yesterday, that the schools for religious reasons
19 can't change their enrollment practices. So, assuming they
20 operate the same way whether or not they receive this UPK
21 funding, what is the additional harm that you think accrues to
22 LGBTQ families or parents from receiving this government
23 funding?

24 A Well, I think that a family who is looking for affordable
25 schooling for their children are more likely to potentially

23-cv-2079-JLK ABBIE GOLDBERG - Redirect 01-03-2024

1 choose or access or consider this schooling environment, which
2 ultimately may not be the most affirming.

3 Q Just a few more questions. I'm almost done. You mentioned
4 at the beginning of your testimony that your work was cited in
5 an amicus brief filed in the *Fulton* case at the Supreme Court.
6 Do you recall that?

7 A I was ultimately one of the co-signors of the Williams
8 Institute at UCLA's brief, which was, I believe, entered.

9 Q So, you signed on to the brief yourself?

10 A Yeah.

11 Q Do you recall whether your brief was filed on the side that
12 prevailed at the Supreme Court or the side that lost?

13 A I think it's pretty clear where my -- where I was actually
14 aligned, but I'm not sure of the question.

15 MR. REAVES: No further questions, Your Honor.

16 THE COURT: Thank you. Redirect?

17 **REDIRECT EXAMINATION**

18 BY MS. RUST

19 Q Hi, Dr. Goldberg. You ended that cross being asked a lot
20 of questions about government funding. Are you an expert in
21 government funding?

22 A No.

23 Q Were you requested to give your expert opinion regarding
24 government funding by the Colorado Attorney General's Office?

25 A No.

23-cv-2079-JLK ABBIE GOLDBERG - Redirect 01-03-2024

1 Q Were you ever given documents to review regarding funding
2 of any of the Colorado programs at issue here today?

3 A No.

4 Q You also were asked questions on direct regarding an online
5 guide you had authored for LG parents looking for a school. Do
6 you recall that?

7 A I do.

8 Q Is that guide meant for a parent with all school options
9 available to them?

10 A It is a nonspecific guide, really supposed to be the first
11 kind of -- first stop for a parent who is just starting to think
12 about preschool.

13 Q In your research, do LGBTQ parents always have all the
14 options available to them as their cisgender peers?

15 A No.

16 Q What kind of constraints are usually on LGBTQ parents'
17 search for schools?

18 A Well, as I noted, they're often more constrained by things
19 like income. They are also constrained by the fact that some
20 schools will deny them. Whether or not they're clear that
21 that's related to their sexual orientation or gender identity,
22 you know, they may say that they don't have room for them for
23 other reasons, but we know from other research that that's not
24 always the full story.

25 Q Okay. And in your research regarding LGBTQ parents who are

23-cv-2079-JLK ABBIE GOLDBERG - Redirect 01-03-2024

1 living in poverty, does that mean they might have restricted
2 access to transportation?

3 A Yes.

4 Q Does it mean they might have -- that their transportation
5 might be unreliable?

6 A Yes.

7 Q Does that mean that they may have to utilize public
8 transportation?

9 A Yes.

10 Q Does it also mean that those parents might have a work
11 location that also must utilize public transportation?

12 A Yes.

13 Q So, did you find in your research that LGBTQ parents who
14 are living in poverty and when they are looking for an early
15 childhood program often have to consider how to get their child
16 to that school?

17 A Yes.

18 Q How did that weigh in in their factoring of a school
19 environment?

20 A Well, I had to consider, for example, where they worked
21 compared to where the school was located, the hours that the
22 school operated, whether it was even possible for them to get
23 their kid to their school and to get to their own place of work.
24 They had to consider cost, both gas or public transportation.

25 Q Okay. And did that in your research limit the amount of

23-cv-2079-JLK ABBIE GOLDBERG - Redirect 01-03-2024

1 early childhood options available to those parents?

2 A Yes. Significantly.

3 Q All right. How does living in a rural area limit the
4 options of early childhood education available to LGBTQ parents?

5 A Well, there are fewer early childhood education
6 environments in rural areas. They're much more spread out, and
7 there's just fewer options, and folks have to drive a lot
8 farther to actually access those options.

9 Q In your research of LGBTQ parents in rural environments,
10 did you find that sometimes the only option available to them
11 was a religious early childhood provider?

12 A Yes. There were instances of parents who had, you know,
13 one, maybe two options, and one or both of them were religiously
14 affiliated.

15 Q Okay. So, in that situation, if a parent had to choose a
16 less-affirming environment, would that be understandable?

17 A Yes.

18 Q And I know, Dr. Goldberg, you note the basics about
19 Colorado's UPK program. And you were asked by counsel various
20 questions about LGBTQ families' experiences in a metro area and
21 Denver, but is it your understanding that the Colorado's
22 Universal Preschool only applies to Denver?

23 A My understanding is it does not just apply to Denver.

24 Q Is it your understanding that it just applies to
25 metropolitan areas?

23-cv-2079-JLK ABBIE GOLDBERG - Redirect 01-03-2024

1 A My understanding is it does not just apply to metro areas.

2 Q And did your findings in your research regarding how often
3 lesbian and gay parents face challenges accessing preschool and
4 early childhood that Mr. Reaves talked to you about that said
5 they didn't have as many challenges accessing those services in
6 the metro area -- is that correct?

7 A Yes.

8 Q Okay. Does that mean they don't have any challenges at
9 all, ever?

10 A Absolutely not.

11 Q Okay. Does that mean LG parents never face discomfort in
12 metro areas?

13 A No.

14 Q Okay. And how is acceptance of LG families different than
15 acceptance of LG people? I believe you mentioned that in one of
16 your answers.

17 A Yes. There are some folks that are relatively accepting
18 of, for example, the idea that a man could marry a man, but
19 would not be accepting of two men adopting a child.

20 Q I believe also in your answer to Mr. Reaves' line of
21 questioning regarding that article that you stated the findings
22 he talked to you about were not regarding explicit challenges.
23 So, were there findings in your study regarding other challenges
24 of LG parents?

25 A Yes. So, he pointed out that 75 percent of them did not

23-cv-2079-JLK ABBIE GOLDBERG - Redirect 01-03-2024

1 experience significant challenges. I will point out that
2 obviously that means a quarter of them did, which is not an
3 insignificant number. The kind of challenges may not have been,
4 you know, people calling them names, but they were things like,
5 you know, lack of experience of teachers with LGBT parents, a
6 lack of books, inclusion, pictures that were encompassing of
7 their families, other parents' negative attitudes towards them.
8 Things like that.

9 Q And is that type of -- or those types of challenges any
10 less damaging than the explicit challenges?

11 A They are challenging in different ways. They're harder to
12 confront, because they don't seem as explicit, and they don't
13 seem as directly harmful. Which can actually make it harder to
14 resolve, because it's easier for schools, for example, to
15 dismiss those kinds of concerns. They're also more likely to
16 just simply go unacknowledged, because they are sort of less
17 overt.

18 Q Okay. Mr. Reaves asked you a bunch of questions about
19 whether, you know, an LGBTQ family should try and find an
20 affirming early childhood environment. Do you remember those
21 questions?

22 A Yes.

23 Q As a clinical psychologist, why should parents do their
24 best to find a supportive or affirming school environment for
25 their child?

23-cv-2079-JLK ABBIE GOLDBERG - Redirect 01-03-2024

1 A To enhance their child's self-esteem, positive self-regard.

2 Q So, is that -- is it a bad thing to try and find such an
3 environment for your child?

4 A No. It's a very good thing for both parents and children.

5 Q Okay. And I think in that same line of questioning,
6 Dr. Reaves [sic] spoke to you about what should an LGBTQ parent
7 do should they find themselves in a situation where their child is
8 not in an affirming school environment. Do you remember that
9 question?

10 A Yes.

11 Q And I think you -- your answer was that is not on the
12 parent to fix that school environment. Can you explain that
13 answer more, please.

14 A Yes. Putting the onus on parents to choose a new school
15 when they may not even have that choice if their child is
16 confronting bullying, harassment, a generally inhospitable
17 environment, is inappropriate, because all things being equal,
18 many parents don't have that choice, and schools are supposed to
19 provide safe environments for children.

20 Q Okay. Mr. Reaves also asked you a lot about school
21 messaging. Do you remember that line of questioning,
22 Dr. Goldberg?

23 A Yes.

24 Q If a school engages in discriminatory conduct against an
25 LGBTQ student, does that discriminatory conduct send any message

23-cv-2079-JLK ABBIE GOLDBERG - Redirect 01-03-2024

1 to that student?

2 A Yes.

3 Q What kind of message does it send?

4 A I think depending on the type of conduct, it certainly
5 sends the message that that child is not valued as a full human
6 being, is not seen as equal -- deserving of equal treatment
7 compared to other children and other families. It also sends
8 the message to other children and staff and teachers that that
9 kind of behavior or attitude is permitted, even encouraged.

10 Q Does that discriminatory conduct inflict harm apart from
11 the message sent?

12 A Yes. It helps to cultivate an environment of intolerance.

13 Q How about if a school engages in discriminatory conduct
14 against LGBTQ parents? Does that conduct send any message?

15 A Yes.

16 Q And does that conduct inflict harm apart from that message?

17 A Yes.

18 MS. RUST: Thank you. Nothing further.

19 THE COURT: Thank you. Thank you very much, Doctor.

20 May I see the --

21 THE WITNESS: Thank you.

22 THE COURT: Pardon me?

23 MS. RUST: The doctor just said thank you.

24 Dr. Goldberg just said thank you, Judge.

25 THE COURT: All right. May I see the counsel from

23-cv-2079-JLK ABBIE GOLDBERG - Redirect 01-03-2024

1 each side that's going to conduct the next examination at
2 sidebar for a moment.

3 (Proceedings held at the bench:)

4 THE COURT: I don't want to interrupt the testimony of
5 this witness, and we're close to a break time, but I want to
6 know who you're calling.

7 MS. RUST: We're going to call Dr. Tishelman next.

8 THE COURT: Okay. And how long do you project her
9 testimony?

10 MS. RUST: She should be about the same as what
11 Dr. Goldberg just did. So, that was like, what? An hour?

12 THE COURT: We've got an hour? Okay. I think what we
13 should do, then, is take the afternoon break now, and then come
14 back at 3:15. And if she is finished by 4:15, 4:30, we will
15 just recess for the day.

16 MS. RUST: Okay. Sounds good.

17 THE COURT: Is that all right?

18 MS. RUST: That's fine. And, Your Honor, I will have
19 to make a correction on the record. All my exhibit numbers were
20 wrong because of what happened yesterday.

21 THE COURT: You can do that.

22 MS. RUST: I just wanted to let you know.

23 THE COURT: I have a personal question to ask you.
24 Your middle name is Siobhan?

25 MS. RUST: It is.

23-cv-2079-JLK ABBIE GOLDBERG - Redirect 01-03-2024

1 THE COURT: And you've got red hair. So, you've been
2 kissed by a shamrock?

3 MS. RUST: I have indeed, and my last name is Rust,
4 like my hair color.

5 THE COURT: The reason I mention this is because I had
6 a cousin named Siobhan in Ireland, and her husband was Irish,
7 but he was born in the United States, and he's the only one I
8 know who immigrated back to Ireland. Siobhan is an Irish name
9 that you just don't hear a lot. It's a lovely name.

10 MS. RUST: Thank you. I like it too. Thank you.

11 THE COURT: Thanks.

12 (Proceedings held in open court:)

13 THE COURT: We'll take a recess now for approximately
14 15 minutes.

15 (Recess at 3:01 p.m., until 3:18 p.m.)

16 THE COURT: And your next witness is also by video?

17 MS. RUST: No, Your Honor. She is here. We have
18 Dr. Tishelman.

19 THE COURT: Okay. Please call her.

20 (The Witness is Sworn)

21 THE COURTROOM DEPUTY: Please be seated. State your
22 full name for the record, and spell your last name.

23 THE WITNESS: Amy Tishelman, T-I-S-H-E-L-M-A-N.
24
25

23-cv-2079-JLK AMY TISHELMAN - Direct 01-03-2024

DIRECT EXAMINATION

1
2 BY MS. RUST

3 Q Thank you, Dr. Tishelman. Could you please tell us what
4 degrees you currently hold.

5 A I have a BA from Clark University, where Dr. Goldberg
6 teaches, and a PhD in child clinical psychology from West
7 Virginia University.

8 Q Thank you. And do you have any professional licensures?

9 A I'm licensed as a clinical psychologist in the state of
10 Massachusetts.

11 Q Okay. And, Dr. Goldberg [sic], have you participated in
12 any fellowships?

13 A You mean Dr. Tishelman.

14 Q I'm sorry. Dr. Tishelman. Yes.

15 A Yes, I have.

16 Q And have you ever trained and supervised students?

17 A Yes, I have.

18 Q Have you taught any college courses?

19 A Many.

20 Q And where are you currently employed?

21 A I'm employed at Boston College in Chestnut Hill,
22 Massachusetts.

23 Q Are you currently teaching any courses?

24 A Yes. Well, I'm in between semesters, but yes.

25 Q What will you have taught this year?

23-cv-2079-JLK AMY TISHELMAN - Direct 01-03-2024

1 A Interpersonal violence, which I taught in the fall
2 semester, and developmental psychopathology, and is starting in
3 a couple weeks.

4 Q Okay. With your clinical license, have you ever treated
5 any patients?

6 A Yes.

7 Q Have you ever worked in the -- in a hospital?

8 A Yes.

9 Q Okay. Would you please describe your regional work related
10 to your area of expertise.

11 A Yes. Well, would that include my work at Boston Children's
12 Hospital, as well as in the region outside? So, I worked in the
13 child protection program for 20 years at Boston Children's
14 Hospital, where I was for a time director of child protection
15 clinical services. I was also director of research and training
16 in the child protection program there.

17 And I did -- I filled in in pediatric psychology in
18 various areas in the hospital, including as director of
19 psychology in the urology department. And I worked in
20 developmental medicine doing diagnostic evaluations for autism,
21 and the obesity program.

22 I was more recently director of clinical research in
23 the gender multi-specialty service, and it was called the
24 Differences of Sex Development program, but the name changed to
25 the Being You program, which is a program that serves youth and

23-cv-2079-JLK AMY TISHELMAN - Direct 01-03-2024

1 their families when there are variations in sex traits.

2 In the region -- would you like me to continue?

3 Q Yes, please.

4 A I served on many boards, and in some leadership capacities.
5 I was on the governor's commission of sex and domestic violence,
6 and I co-chaired a probate and family court subcommittee. I
7 co-chaired or chaired a guardians ad litem committee to do
8 training around the area. I worked with the board of education
9 on a safe and supportive education initiative to help
10 traumatized children learn, among other activities.

11 I worked with the Suffolk County, which is Boston, area
12 child advocacy center for ten years also, observing forensic
13 interviews of children and as a mental health consultant.

14 Q Okay. And I think I forgot to ask you, would you please
15 describe your area of expertise.

16 A Yeah. I have a number of areas of expertise, in general
17 child and family mental health, pediatric psychology, which is
18 the intersection of illness and well-being in children, and
19 interpersonal violence, child maltreatment, and trauma, as well
20 as gender diversity and development, and variations in sex
21 characteristics in children.

22 Q Thank you, Dr. Tishelman. Could you also briefly describe
23 your national work related to your areas of expertise.

24 A Yes. I've been on some national -- I presented nationally
25 in my areas of expertise many, many times at national

23-cv-2079-JLK AMY TISHELMAN - Direct 01-03-2024

1 conferences, and given many workshops. I've also participated
2 on task force, and I currently co-lead a national task force for
3 the American Psychological Association on variations in sex
4 traits, were some examples.

5 Q Okay. And then how about internationally? Have you done
6 any work internationally?

7 A Yes. Again, I presented quite often internationally, and I
8 recently completed taking the lead in developing standards of
9 care for gender-diverse or transgender children for the World
10 Association of Transgender Health -- World Professional
11 Association of Transgender Health, WPATH.

12 Q Okay. What age children were those standards for?

13 A Excuse me?

14 Q What age of children were those standards for?

15 A They were for children up to the time of puberty. So,
16 before puberty.

17 Q So, Dr. Tishelman, can you tell us a little bit about your
18 professional journey that led you to have an expertise in
19 gender-diverse and transgender children.

20 A Yes. Well, I was -- I was recruited, actually, at Boston
21 Children's Hospital to work with the programs that I work with,
22 with the transgender program, as well as the program for youth
23 with variations in sex traits. So, my journey started then, and
24 I have developed a significant expertise since that time.

25 Q Okay. You've mentioned a few times variations of sex

23-cv-2079-JLK AMY TISHELMAN - Direct 01-03-2024

1 traits. Can you explain that a little bit to us laypeople,
2 please.

3 A Yes. Variations of sex traits are known by various
4 different terminologies. There's not one terminology people
5 prefer. It's sometimes called differences of sex development,
6 other times disorders of sex development, or variations in sex
7 characteristics. Sometimes they're known as intersex or
8 intersex variations. And many people prefer to just have their
9 own diagnosis used, and none of those broader classifications.

10 Q Okay. What does it -- what does it mean to have those
11 things?

12 A A variation in sex characteristic or sex trait are
13 congenital biological conditions whereby there's an atypicality
14 in reproductive or sex anatomical or hormonal expressions,
15 and --

16 Q Okay. And I would assume if there's a clinic at a hospital
17 for this, do these things happen often?

18 A They -- the estimates of how often it happens varies quite
19 a bit, from as low as one in 200 or 300 individuals, to about
20 one in 4,400.

21 Q Okay. And how about, can you describe a little bit to us
22 what "gender diverse" or "transgender" means.

23 A "Gender diverse" and "transgender" may be different terms,
24 but "transgender" is an umbrella term to refer to somebody whose
25 gender identity differs from what their gender identity was

23-cv-2079-JLK AMY TISHELMAN - Direct 01-03-2024

1 assumed to be at birth. And "gender diversity" is a broader
2 term than that. That can refer to diverse gender expressions
3 that maybe aren't expected in a particular community, and not
4 necessarily gender identity differences.

5 Q Do you also happen to know how often gender-diverse and
6 transgendered children are in our population?

7 A Well, the statistics are varying so greatly that it's
8 really hard to say right now. It can be considered to be
9 relatively rare to as many as one in five or ten people,
10 depending on the study that you look at, currently.

11 Q And why are the statistics so rare?

12 A Why are the statistics so rare, did you say?

13 Q Yes.

14 A Well, the statistics just vary by the time point at which
15 they were collected, what questions were asked, where they're
16 being asked, et cetera. So, the statistics of numbers of youth
17 who are identifying as gender diverse or transgender have
18 increased more currently from what they were in the past in the
19 United States and across the world, actually.

20 Q Okay. How come -- how come they're increasing? Are more
21 studies being done?

22 A Actually, that's a complicated question that I probably
23 can't answer specifically, because people have different
24 hypotheses about that. And I don't think we know.

25 Q Okay. Thank you, Doctor. Dr. Tishelman, you mentioned in

23-cv-2079-JLK AMY TISHELMAN - Direct 01-03-2024

1 your introduction that you are a child psychologist. As a child
2 psychologist, are you trained in child development?

3 A Yes.

4 Q Okay. Can you tell me a little bit about -- well, strike
5 that. Let me go back a step. Are you trained in early
6 childhood development?

7 A Yes.

8 Q Okay. What is important about early childhood development
9 versus just childhood development?

10 A Early childhood is a time of very rapid change for
11 children. It's a time when basic academic and relationship
12 skills and understandings occur. When children are born, they
13 don't have language. By the time they're two, they have a
14 tremendous amount of language. So, you can think of young
15 children as almost sponges.

16 It's also a time when first relationships develop, and
17 a schema or understanding of the world develops as a safe place,
18 whether they can have strong attachments and trust the adults
19 around them, particularly primary caregivers, and that kind of
20 trust and secure attachment often leads to safety and ability to
21 function in a more regulated way in environments over time.

22 Q So, all these foundational skills, are they built in this
23 early childhood developmental stage?

24 A Yes. That doesn't mean that change is impossible over
25 time, but it is a time of great learning and a time when a sense

23-cv-2079-JLK AMY TISHELMAN - Direct 01-03-2024

1 of self really starts to develop.

2 Q Okay. And why is sense of self important in child
3 development?

4 A A sense of self gives a child confidence to explore the
5 environment and to learn, and a sense of safety and security in
6 their relationships and trust of others.

7 Q Okay. You've mentioned trust of others a few times
8 regarding early childhood development. Why is that important?

9 A Without trust in others, it's very hard for children to be
10 safe, comfortable, and secure in environments outside of their
11 families. Sometimes it's very hard for children to do that
12 within their families, depending on whether their families are
13 nurturing and accepting. That kind of stress and chronic stress
14 can interfere with positive development over time for children
15 and cause harm for them.

16 Q Okay. So, you just mentioned stress interrupting positive
17 development and causing harm. What type of stress can happen in
18 early childhood development?

19 A Well, there's quite a huge robust literature right now on
20 early life adversities, also sometimes referred to as adverse
21 childhood experiences, and the relationship between those
22 adversities and subsequent development for youth. And so these
23 kinds of early experiences have been demonstrated to be
24 extremely important in terms of development.

25 Q Okay. Why have they been shown to be extremely important?

23-cv-2079-JLK AMY TISHELMAN - Direct 01-03-2024

1 A So, would you mind if I take a step back and describe what
2 an adversity is, or what an early adversity is?

3 Q Yes. Let's take a step back. And, Dr. Tishelman, can you
4 tell us what an early life adversity is.

5 A Early life adversities can be child maltreatment in the
6 forms of extreme neglect, which can take many forms; child
7 physical abuse; emotional abuse and emotional neglect; or sexual
8 abuse. It can also constitute other kinds of stressors, like
9 death and loss of a parent, homelessness, et cetera. Maybe even
10 chronic illness for a child. They basically are experiences
11 that have the potential to cause trauma for a child, and they
12 can be single incidents or chronic stress, chronic extreme
13 stress.

14 Q Have any of these early life adversities been found in a
15 school environment?

16 A Yes. A child can be abused in a school environment,
17 neglected, or significantly bullied in a school environment,
18 which can cause harm.

19 Q So, you've mentioned a few times causing harm. I'd like to
20 talk a little bit about that now. So, what kind of physical
21 harm can an early childhood experience have on a child?

22 A Physical harm?

23 Q Mm-hmm.

24 A Physical harm can have many different impacts on a child
25 depending on the physical harm. The early -- actually, the

23-cv-2079-JLK AMY TISHELMAN - Direct 01-03-2024

1 earliest time in life is when a child is most vulnerable to
2 severe physical harm. For instance, most fatalities that occur
3 to children who are being abused in the first year of life, and
4 up to the age of three, where if they're in an abusive home
5 environment and vulnerable without recourse, they're more likely
6 to be severely harmed.

7 So, physical harm can cause injury that's irreversible,
8 as well as death, and can -- if it doesn't cause irreversible
9 injury or death, can carry with it a sense of a lack of trust
10 and safety in others, fears, and an idea of the world as an
11 unsafe place where they're likely to be harmed. And we can talk
12 a little bit more about how that might impact a child when
13 they're older in the way they interact with others, if you would
14 like.

15 Q Okay. Yeah. Let's -- how does physical harm during early
16 childhood experiences then, as you say, affect a child when
17 they're older?

18 A So, aside from physical harm, it can create emotional harm.
19 And research shows that children who have been abused when
20 they're younger may be more likely to see the world as hostile
21 even when it's neutral, and expect others to hurt them even if
22 they're not going to hurt them, and will sometimes react with
23 defensive hostility. That means they will try to protect
24 themselves even when they're not in danger, and will interpret
25 neutral stimuli as negative sometimes.

23-cv-2079-JLK AMY TISHELMAN - Direct 01-03-2024

1 Q And these adverse childhood experiences, can they also
2 negatively affect an individual's mental health?

3 A Yes. So, adverse childhood experiences in general, not
4 just physical abuse, but all of them, have been linked to poor
5 outcomes with relation to mental health, propensity for
6 addictions, propensity for employment disruption, and propensity
7 for injury, as well as early morbidity and mortality in terms of
8 poor physical health for adults.

9 Q Has there been a why discovered yet, Dr. Tishelman?

10 A Yes. Well, there's an understanding now that the question
11 isn't really is nature important or is nurture important, but
12 actually the interaction of a person's biology with their
13 environmental experiences, which is sometimes considered an
14 ecological, biological, developmental kind of framework for
15 understanding development. And so when a child experiences
16 adversity or extreme stress, and often chronic stress, which is
17 sometimes labeled toxic stress, it can affect their
18 neurodevelopment and ability to learn and interact with others
19 over time.

20 Q Okay. So, are you saying that this type of stress could
21 actually affect the way a child's brain develops?

22 A Yes.

23 Q And has that been shown in studies?

24 A Yes.

25 Q Okay. What are some of the effects that this can have on a

23-cv-2079-JLK AMY TISHELMAN - Direct 01-03-2024

1 child's brain?

2 A Well, a lot of research has examined the HPA axis within
3 the brain, the hypothalamic, pituitary, adrenal axis, and the
4 way that stress is processed in the brain. And it's often very
5 different in kids who have been exposed to chronic stress and
6 adversity.

7 So, we can find hormonal differences as well as
8 structural differences in the developing brain of a child who
9 has been exposed to chronic stress. So, this is often referred
10 to as a developmental cascade, or the fact that early adjustment
11 informs later adjustment and adaptation.

12 Q Okay. Yeah. That was going to be my next question. Not
13 to be dense, but could, you know, changes in hormones and your
14 brain structure have lifelong effects?

15 A Yes.

16 Q Do you have any examples of those?

17 A Yes. Youth who are exposed to early adversities have a
18 higher likelihood of diseases as adults, for instance heart
19 diseases and cancers. And actually exposure to early
20 adversities has been redefined as not just a risk for mental
21 health disorders in adulthood, but as a pediatric problem as
22 well because of the links with physical health of exposure to
23 adversities. So, there can be higher addiction, higher trauma,
24 and PTSD in adulthood, higher suicidality, but also higher
25 disease ramifications because of the effects of stress on the

23-cv-2079-JLK AMY TISHELMAN - Direct 01-03-2024

1 body.

2 Q Okay. You've mentioned a few times the phrases "chronic
3 stress" and "toxic stress." Are those related to these adverse
4 childhood experiences?

5 A Yes. And in the early years of studying trauma, often
6 research examined Vietnam -- veterans who came back from war or
7 adults who were exposed to a rape -- a rape and a one-time
8 experience. But research has now focused on people whose
9 children develop in a situation where they're in a chronic
10 stress condition as opposed to a one-time trauma experience, and
11 have been able to understand the effects of chronic stress,
12 sometimes called toxic stress, when it's extreme stress on child
13 development.

14 Q Okay. How does a child -- what is a situation in which a
15 child experiences this toxic stress? Can you give an example?

16 A When a -- I will give you an extreme example, because I
17 worked in child abuse for so many years. Children who are
18 living in homes where they're physically abused or observing
19 their parent being exposed to domestic violence on a routine
20 basis is a child who is living with chronic stress. Other
21 children who are attending a school where they're being bullied
22 and they're not safe are also children who experience chronic
23 stress. I can give you a clinical example, if you would like.

24 Q Sure, Dr. Tishelman. If you would give us a clinical
25 example from your experience, of course not revealing any

23-cv-2079-JLK AMY TISHELMAN - Direct 01-03-2024

1 private information.

2 A For instance, I had a patient that comes to mind who I saw
3 in the urology department, because if you remember I was the
4 director of psychology and urology. And he was attending school
5 but encountering difficulties because he was afraid to use the
6 bathrooms at school. And so he was developing medical sequelae
7 from not using the bathrooms. And when I talked to him, it
8 turned out that when he was growing up, he didn't express
9 himself as a typical male was assumed to express themselves, and
10 in fact his family thought he was transgender.

11 And he was bullied so badly in bathrooms that he no
12 longer even, 15 years or so later, felt comfortable using
13 bathrooms in public places. Which was inhibiting his ability to
14 be educated, because he was trying to go to college, and he
15 needed to be able to use public bathrooms in order to function.
16 So, that's one example. And he had posttraumatic -- he had
17 trauma from this experience of going. I can give you other
18 clinical examples.

19 Q I think that one is good. I want to move on to you brought
20 up this example of how chronic stress can affect a person. Are
21 transgendered individuals -- or, excuse me. Strike that. Are
22 transgendered children affected by chronic stress?

23 A Often.

24 Q Okay. How does that -- how have you observed that in your
25 work?

23-cv-2079-JLK AMY TISHELMAN - Direct 01-03-2024

1 A I've seen many children who have been very adversely
2 affected by their experiences in school when they've been gender
3 diverse or transgender. By gender diverse, I mean expressing
4 their gender differently than was accepted in the school
5 environment.

6 Q Okay. Dr. Tishelman, we also spoke about how ACEs might --
7 or an example of ACEs or adverse childhood experiences might be
8 significant bullying. Does that also -- have you observed that
9 happening with the gender-diverse and transgendered youth you
10 work with?

11 A I missed a word that -- in the first sentence. So, I'm
12 sorry. I'm a little hard of hearing myself.

13 Q No problem. I will speak up. You spoke about how an
14 example of early childhood experiences -- or, excuse me --
15 adverse childhood experiences or ACEs can be bullying in school.
16 Have you observed that happening with gender-diverse or
17 transgendered youth in your work?

18 A Yes.

19 Q Okay. What have you observed as a result of that bullying?

20 A Many times children I work with have had to be homeschooled
21 or removed from a school environment because they didn't feel
22 safe. Other children, I've seen really sort of fall apart
23 because of bullying, including younger children. So, that
24 it's -- if a child is in an unaccepting environment, it can be
25 very profoundly difficult for them.

23-cv-2079-JLK AMY TISHELMAN - Direct 01-03-2024

1 Q How about suicidality in gender-diverse and transgendered
2 youth?

3 A Yes. I have had patients who have been suicidal because of
4 nonacceptance, whether at school or because of their families.
5 I had one child I could give you an example of that comes to
6 mind who was very young, maybe in kindergarten, where he was
7 being bullied. I actually don't remember the correct pronouns.
8 And went to the principal's office, and just completely fell
9 apart, and threw things all over the principal's office, and
10 threw everything off the desk, and was taken to Boston
11 Children's Hospital in an ambulance. That's one example.

12 Q Okay.

13 A It's very much like anybody who is in an unsafe
14 environment. It's very hard to function.

15 Q Yeah. That example of that young child having those
16 behaviors in the principal's office, can these adverse childhood
17 experiences affect a child's behaviors in that way?

18 A Yes.

19 Q Is it common for that to happen?

20 A Yes. Children have different ways of expressing stress,
21 and they can express stress through behavioral outbursts and
22 emotional dysregulation, or through what we call internalizing
23 problems, such as deep depression, apathy, and anxieties,
24 withdrawal, and not necessarily acting out. Children express
25 stress in different ways.

23-cv-2079-JLK AMY TISHELMAN - Direct 01-03-2024

1 Q Okay. Going back to adverse childhood experiences, you
2 gave some examples earlier on. Is discrimination a form of an
3 adverse childhood experience?

4 A Yes.

5 Q Have you observed that yourself?

6 A Yes. And frankly, I've observed discrimination in
7 different forms over my career. So, it's not just gender
8 discrimination that's hard for children. If a child is
9 autistic, for example, and bullied or not accepted, it's hard
10 for those children. There's a lot of different kinds of ways
11 for children to be different, and if they're treated poorly
12 because of that difference, it can create a lot of anxiety and
13 low self-esteem.

14 And the way that it works for other children is the way
15 that it works for gender-diverse and transgender children in the
16 sense that if they're rejected for something they can't change
17 about themselves, that can be very hard, because they didn't
18 have a way to be different.

19 Q Okay. And thank you earlier for giving us examples of
20 gender diverse. I think I neglected to ask you while we were
21 talking about variation in sex traits. If you could give an
22 example of -- for us laypeople of what that might physically
23 manifest as, or medically manifest as.

24 A So, they're very, very variable conditions. For instance,
25 a child with CAH, congenital adrenal hyperplasia, might have XX

23-cv-2079-JLK AMY TISHELMAN - Direct 01-03-2024

1 chromosomes but be born with attributes that are often
2 associated with males, such as -- such as an enlarged phallus,
3 for example. So, sometimes visual anatomy doesn't match with
4 chromosomes.

5 Other people, for example, with AIS may develop and
6 look externally like a typical girl, and not be diagnosed until
7 later on as when puberty doesn't go as expected, as having XY
8 chromosomes, for example. Those are some -- those are a couple
9 of examples. But actually variations in sex traits really
10 encompass a broad array of diagnoses up to about 40 or more
11 diagnoses. So, there's a lot of different ways there can be
12 differences.

13 Q Okay. And this sex trait variance and diagnoses, they're
14 not new, are they?

15 A No.

16 Q How old has this been around? How long?

17 A I am not an expert on that, but I imagine, because they're
18 biological conditions, that they've been around as long as
19 people have been around.

20 Q Okay. Dr. Tishelman, I'm going to turn us back to we were
21 talking about school environments. Have you done any
22 professional work with children, clinical psychology in school
23 environments?

24 A Yes.

25 Q Okay. Would you tell us what that work is.

23-cv-2079-JLK AMY TISHELMAN - Direct 01-03-2024

1 A Well, very long ago, at the beginning of my career, I was
2 actually a professor at Binghamton University in Binghamton, New
3 York, and there I participated in a home-school partnership
4 study, where I was a liaison between home and school to try to
5 get home and school to collaborate more effectively. We
6 published a paper on that in 1993.

7 And I did do research in school on children who are
8 rejected, and that was part of my dissertation to try to
9 understand what caused children to be disliked by other children
10 or liked by other children. But while I was in the last 30
11 years, I did work with a safe and supportive school environment
12 initiative to try to create schools that were safer and more
13 supportive for children, and I did a lot of training around the
14 state of Massachusetts on helping traumatized children learn,
15 for instance, and how children behave in a school setting when
16 they're experiencing extreme stress or trauma.

17 Q Okay. I want to go back to your discussion of the 1993
18 paper you wrote. What were the reasons you found that those
19 children were rejected in school?

20 A Actually, that study didn't -- that study wasn't about kids
21 who were rejected. That was a different study.

22 Q Okay. My misunderstanding.

23 A That study was about kids who had emotional and behavioral
24 dysregulation, and demonstrated that bringing homes and schools
25 together in a partnership in coordination helped to decrease the

23-cv-2079-JLK AMY TISHELMAN - Direct 01-03-2024

1 emotional-behavioral dysregulation of the children.

2 Q Okay. And why does bringing a home and school together
3 decrease emotional dysregulation in a child?

4 A Well, it's kind of like that idea that you probably heard
5 of that if children have two parents at home, and they use
6 different disciplinary strategies, the child can sort of get
7 away with more by working with one or working with the other.

8 Getting the parents and school on board together in a
9 coordinating -- a coordinated approach to helping the children
10 is helpful. It also helps school to understand cultural and
11 other important aspects of a family so they can be respectful of
12 that child and respectful of the family and develop a consistent
13 understanding of that child's needs.

14 Q What if a school does not want to follow how a family
15 treats their child at home?

16 A Well, that's when it's helpful to develop an intervention
17 like -- sometimes published to help coordinate home and school.
18 And that doesn't always happen. Sometimes there are differences
19 between homes and schools, but generally we find that developing
20 partnerships has positive effects for children. And that's why
21 there is initiatives to try to do that.

22 Q What about an example of a family using she/her pronouns
23 for their child, and a school refusing to use those pronouns,
24 and only use he/her [sic] pronouns for that child?

25 A That can be very confusing for a child if they prefer -- if

23-cv-2079-JLK AMY TISHELMAN - Direct 01-03-2024

1 they identify as one gender and they're being treated as a
2 different gender at school. It develops a discordance for the
3 child and also a sense of rejection for their identity that they
4 are asserting.

5 Q So, Dr. Tishelman, I want to go back to your safe and
6 supported schools that you talked about. I believe you stated
7 you came up with a framework; is that correct?

8 A We did. This was an interdisciplinary group of people who
9 work together to come up with this framework. The safe and
10 supportive school initiative was led by lawyers and had head
11 psychologists and other educators on it, and the psychologists
12 published a paper together on our framework for school-based
13 evaluation from a gender lens. Do you want me to describe the
14 framework?

15 Q Yes. If you could give us an overview, and then maybe we
16 can dive into each one.

17 A Okay. The domains that trauma affect -- the summary of
18 domains that are affected for children across all important --
19 or across all important areas of function, including
20 self-regulation, sense of self, and relationships, academic and
21 nonacademic performance at school, and physical and somatic
22 well-being.

23 Q Okay. Let's start with physical and somatic well-being.
24 What were your recommendations or findings?

25 A Well, children who are traumatized sometimes can incur

23-cv-2079-JLK AMY TISHELMAN - Direct 01-03-2024

1 injuries that have physical ramifications from being bullied or
2 abused in a setting. But there are also others, sometimes other
3 physical ramifications from stress. Very commonly with
4 children, headaches and stomachaches or gastrointestinal issues
5 can occur. And then I don't know how relevant it is, but for
6 children who have been abused physically or sexually, they may
7 have boundaries which makes it difficult if anybody comes near
8 them or touches them, because of their fears of the recurrence
9 of abuse.

10 It can happen in the other way as well. Sometimes
11 children who have been sexually abused can have poor boundaries
12 with others and actually get attention or not understand what
13 are important sexual boundaries, and can touch others in ways
14 that are inappropriate as well.

15 Q Okay. Have you in your work identified what, in this
16 domain, might affect gender-diverse or transgender children?

17 A Yeah. Sometimes with transgender children who -- they're
18 very uncomfortable about their bodies. Sometimes especially
19 older children or sometimes younger children who feel like their
20 anatomy doesn't match their gender, and so that can make it
21 embarrassing for them to change clothes in a locker room or
22 to -- for instance, I have had patients who had anatomy that's
23 typical to a boy, but did really enjoy gymnastics, and would
24 have to try to develop means to participate in gymnastics
25 without, for instance, some parts of their body parts being

23-cv-2079-JLK AMY TISHELMAN - Direct 01-03-2024

1 visible for their own comfort, as an example.

2 Q I believe there was a domain relating to being emotionally
3 safe; is that correct?

4 A Well, I don't -- I said the self-regulation.

5 Q Okay.

6 A Relationships and self confidence.

7 Q Can we talk about that domain next?

8 A Self-regulation domain is ability to be able to -- be able
9 to understand your own emotions and express them appropriately.
10 So, sometimes children who are exposed to chronic trauma and
11 unsafe environments will have -- will develop extreme emotional
12 responses and fear responses to stress, and it can be harder for
13 them to calm down once the stress is -- has subsided, or once
14 their exposure to a feared situation has gone away, they may
15 have a very hard time going back to baseline.

16 So, they may have a really hard time monitoring their
17 emotion and expressing it in appropriate ways. They may also
18 have trouble sometimes being able to label their own emotions
19 and understand what they're feeling and why they're feeling the
20 way they are feeling. And many times kids who are traumatized
21 or have been exposed to unsafe situations are hypervigilant, we
22 call it. So, they're scanning the environment all the time for
23 things that might be dangerous for them in order to try to
24 prevent something from harming them if they've been exposed to
25 harm before.

23-cv-2079-JLK AMY TISHELMAN - Direct 01-03-2024

1 For instance, a child who has been hurt at school, who
2 has been humiliated or teased, may have trouble relaxing in
3 certain situations in school, because they may be scanning the
4 environment to make sure nobody is going to attack or hurt them
5 at school.

6 Q Okay. And have you observed that in your gender-diverse
7 and transgendered clients?

8 A Yes.

9 Q And, Dr. Tishelman, what were the other two domains?

10 A Relationships and sense of self. I believe --

11 Q Okay. Can you touch on those briefly, please.

12 A A sense of self is understanding of one's self in relation
13 to others. Children pick up when they are rejected or when
14 they're not supported in who they are, and can develop --
15 internalize a sense of low self-worth and low self-esteem
16 because of that.

17 It sometimes happens in families, and it can happen
18 from other children. And so their ability to form trusting
19 relationships and adaptive peer relationships can be impaired
20 because of that. And their own confidence in developing those
21 relationships can be impaired.

22 I also talked before about how children may be taught
23 not to trust the adults in the environment if they're treated
24 harshly or disciplined harshly, and therefore they may not even
25 feel comfortable going to adults, including teachers, to ask for

23-cv-2079-JLK AMY TISHELMAN - Direct 01-03-2024

1 help or ask for intervention when they are being harmed if they
2 feel rejected or disliked by adults in an environment.

3 Q Okay.

4 A And the last domain was academic and nonacademic success.
5 Both because of a lack of safety and possibly because of
6 neurological changes, it can be very hard for children to pay
7 attention and learn in school when they're not safe in a school
8 environment, or when they're anxious about not -- about being
9 hurt in other environments.

10 It's as if I were talking here to you today, but you
11 knew on the way home you were going to be attacked and hurt, you
12 would probably have trouble paying attention to me now, because
13 you would be distracted. And many of the children I have worked
14 with who had trauma were first diagnosed with attention deficit
15 disorder, because they weren't paying attention in school. It
16 was likely because their trauma was being misinterpreted as
17 primarily an attention deficit disorder, and not as trauma.

18 Trauma can also lead to dissociation, which is sort of
19 a child's emotional removal from where they are in a setting to
20 emotionally distancing themselves and not being able to learn as
21 well.

22 And finally, anxiety and depression are associated with
23 toxic stress, and depression emotionally affects children in the
24 sense of not being invested in learning, not being -- not having
25 the motivation or the energy to engage in school. And in that

23-cv-2079-JLK AMY TISHELMAN - Direct 01-03-2024

1 way, that can affect school adjustment and ability to learn and
2 perform that potential.

3 Q Okay. And have you seen those last two domains affect your
4 gender-diverse and transgendered clients in the school setting?

5 A Yes.

6 Q Okay. Dr. Tishelman, do -- in your observations and
7 experiences, do gender-diverse and transgendered children face
8 more or less adversity than their cisgender peers?

9 A More adversity.

10 Q Is there any adversity unique to a gender-diverse or
11 transgendered child?

12 A Gender-related stressors that are encountered are sometimes
13 called gender minority stressors that are more likely to be
14 encountered by gender-diverse children than other children.

15 Q Can you give us an example of those stressors.

16 A If people in -- if people intentionally use pronouns that a
17 child doesn't identify with or a name that a child doesn't
18 identify with, for example, or tease a child because of their
19 atypical gender expressions, for example, that would be gender
20 minority stress.

21 Q Okay. Would a child be impacted from being disenrolled in
22 a school due to their gender diversity or transgender identity?

23 A They can be.

24 Q Have you observed that?

25 A I've observed children honestly who left the school setting

23-cv-2079-JLK AMY TISHELMAN - Direct 01-03-2024

1 because it was an adverse setting for them more than children
2 who were -- who were expelled from a school based on gender.

3 Q Okay. Would a child who is denied enrollment to a school
4 feel rejected?

5 A If they knew about it. That's something that parents don't
6 necessarily tell a child.

7 Q Okay. When a child does know about the rejection, how can
8 that affect them?

9 A And this is speculatively, because I encounter more
10 children who had negative experiences at school than children
11 who were actually not admitted to school. But speculatively,
12 any child, including a transgender child, who's rejected from a
13 school setting based upon an unmodifiable aspect of who they are
14 would feel -- would feel badly.

15 For instance, I am short, and if I weren't allowed in
16 school settings because I was short, even though I can't change
17 it, that would be a negative adversity that would make me feel
18 badly about being short.

19 Q And speaking about these stressors, do chronic stressors
20 affect children in the early childhood range of ages differently
21 than other children?

22 A Well, children's brains are in a rapid developmental phase
23 in early childhood. And so early developmental stressors may
24 shape the brain in more profound ways than for older children.
25 And there is more brain neural flexibility during those times,

23-cv-2079-JLK AMY TISHELMAN - Direct 01-03-2024

1 and there's critical and sensitive periods for learning and for
2 neurological development.

3 Q Okay. And have you observed that in your own professional
4 work?

5 A Well, I really would have to say I don't observe the
6 child's brains.

7 Q Sure.

8 A So, I have observed more the phenotype, the expression and
9 differences than I have directly observed the neurodevelopmental
10 differences.

11 Q And how does that manifest itself that you've observed?

12 A So, in the ways that I was discussing previously in terms
13 of significant emotional dysregulation and mental health
14 consequences, social consequences, relationship consequences,
15 and ability to learn and acquire foundational academic skills.

16 Q Okay. Dr. Tishelman, can discrimination cause trauma to a
17 child?

18 A Yes.

19 Q Okay. Dr. Tishelman, can you explain to us your definition
20 of gender dysphoria?

21 A Well, gender dysphoria is an emotional response to a
22 difference between a child's identified gender and their
23 biological anatomy.

24 Q Okay. And have you worked with clients who were
25 experiencing that?

23-cv-2079-JLK AMY TISHELMAN - Direct 01-03-2024

1 A Yes.

2 Q Okay. Have you worked with children in preschool who were
3 experiencing that?

4 A Yes.

5 Q When you're working with children in preschool experiencing
6 gender dysphoria, do you work with their parents also?

7 A Yes.

8 Q What happens -- or have you had an experience where a
9 parent did not want to recognize that their child is
10 experiencing gender dysphoria and may be transgendered?

11 A Yes.

12 Q Can you tell us a little bit about how you handled that
13 situation.

14 A Well, it varies by situation. In the clinical settings in
15 which I was working, parents brought their children in
16 voluntarily to be seen. So, usually when parents came in, it
17 was to try to understand their child's gender diversity, and
18 sometimes if there was a conflict between two parents related to
19 their child's gender diversity or they wanted some advocacy.
20 So, I have seen children particularly when there's a conflict
21 between parents about their child's gender diversity and how to
22 best parent that child given that diversity.

23 Q Okay. And how did you navigate that family's choice?

24 A Well, it so varies by the family and by the situation. I
25 think gender diversity in early childhood is serious and

23-cv-2079-JLK AMY TISHELMAN - Direct 01-03-2024

1 important, and it's good to do a thorough evaluation if possible
2 and if the family is requesting it to try to understand what's
3 best in that particular family, and in their situation. So,
4 it's really hard to give a -- an answer that would be applicable
5 to everybody.

6 Q Is that what one of your international standards of care
7 for transgendered prepubescent children states?

8 A So, we should have an individualized approach to gender
9 care that every child who is gender diverse in childhood before
10 puberty doesn't necessarily need to see a mental health
11 practitioner, but that it can often be very helpful if they have
12 their requisite skills.

13 Q Okay. How come they don't always have to see a mental
14 health professional at that age?

15 A Sometimes children are well adjusted and doing well, and
16 they don't necessarily need any intervention, or they have
17 enough support, and they don't need more supports.

18 Q Is it also typical at the early childhood developmental age
19 for a child to still be figuring out their identity?

20 A Can you repeat that question?

21 Q Sure. Is it also typical at the early childhood
22 developmental stage for a child to still be figuring out their
23 identity?

24 A Yeah. And developmental literature suggests that children
25 start to understand their gender very early on at ages three,

23-cv-2079-JLK AMY TISHELMAN - Direct 01-03-2024

1 four, and five, but with gender-diverse children, they may
2 assert a gender that's different from what their parents thought
3 their child's gender was going to be at an early age, and I saw
4 quite a few preschool children. But a child's gender can also
5 evolve over time, and their understanding of their gender
6 identity can evolve.

7 Q Okay. Dr. Tishelman, going back to the international
8 standards of care that you helped write, for prepubescent
9 children, is it ever recommended to do hormone therapy?

10 A No.

11 Q How about any of the -- I don't know the correct term, so
12 please correct me if I'm wrong, the gender reassignment
13 surgeries?

14 A No.

15 Q Okay.

16 A Not at this point in time.

17 Q Yeah. What is the appropriate work that you're doing with
18 a prepubescent child?

19 A You know, when I would see patients, basically I would tell
20 them that my priority is for this child to be well adjusted, to
21 feel confident in themselves, to have good family relationships
22 and good peer relationships, and to be able to function in all
23 the settings in which they need to function.

24 Sometimes that would involve taking certain steps to
25 help that child to be more comfortable in their home or their

23-cv-2079-JLK AMY TISHELMAN - Direct 01-03-2024

1 school or sports or other environments. So, every situation is
2 different. Every family's goals is different. But there
3 aren't -- the interventions are often family interventions,
4 school interventions, to make sure every setting is safe for
5 that child, and sometimes there can be a consideration or an
6 actual social transition for a child.

7 Q Okay. Dr. Tishelman, how does discrimination negatively
8 impact a child?

9 A Well, again, children express their own happiness and their
10 stress in all sorts of ways, so that a child who is being
11 discriminated against can express their discomfort and distress
12 differently. It's called in psychology with the word
13 "multifinality," meaning that you can have a child who's
14 experiencing bullying, physical and psychological bullying in
15 childhood, and one child will act out and express themselves by
16 being disruptive at school, and another might be withdrawn and
17 anxious and depressed and not socialize and stop doing their
18 schoolwork.

19 So, we really -- just by knowing a child is being
20 exposed to adversities, we really can't say how their distress
21 will be expressed.

22 Q Okay. Dr. Tishelman, how would you foster a safe
23 environment at school?

24 A There are different ways to do that. In fact, in
25 Massachusetts, we had a person who was hired by the Board of

23-cv-2079-JLK AMY TISHELMAN - Direct 01-03-2024

1 Education who would go to schools to try to develop a safe
2 environment for schools. And when I was working in the safe and
3 supportive school environment project, we had -- the legislature
4 gave some money for that, and we had different schools develop
5 grants for how they were going to change their atmosphere to be
6 more trauma-informed.

7 Other schools would try to be more inclusive. There
8 are schools that try to be more inclusive so that all students
9 can be educated in the same classroom, and that would mean
10 children with developmental disabilities in the same class
11 environment as children without developmental disabilities, or
12 children with physical disabilities such as cerebral palsy being
13 able to learn in the same setting as others so that there can be
14 adaptations in an educational setting to make it more supportive
15 for children, and people can learn to live with all the
16 different diversities that children can present.

17 Q Okay. Dr. Tishelman, in your opinion, how would a school
18 environment be safe for a gender-diverse or a transgender child?

19 A It would be a school in which bullying was not accepted,
20 and a school with a no-bullying policy. A school in which
21 people can accept that there are differences between children
22 and respect that, but not reject others because they're
23 different from them. Children are different from one another in
24 all different ways. Being transgender is one of them, but not
25 all of them.

23-cv-2079-JLK AMY TISHELMAN - Direct 01-03-2024

1 Q Should a school's bullying policy specifically identify
2 being gender diverse or transgendered for it to be effective in
3 this situation?

4 A Yeah. It can do that, and also some of the areas of most
5 controversy with transgender children have to do with which
6 bathrooms they go to, which locker rooms they might use, and to
7 develop policies that don't stigmatize children or make them
8 feel uncomfortable because of their gender.

9 Q Dr. Tishelman, what is a social transition?

10 A A social transition is when a child chooses to express
11 themselves in one or more ways that's consistent with their
12 gender identity as it's known to them.

13 Q Can that be clothing?

14 A That can have to do with clothing, did you say?

15 Q Can that be clothing?

16 A Yes. That can be clothing.

17 Q Can that be a haircut?

18 A That can be a haircut.

19 Q How about how they want to be addressed by others?

20 A It can have to do with how they want to be addressed in
21 terms of pronouns as well as their names.

22 Q Okay. Why is social transitioning important for a
23 transgender child?

24 A So, all transgender children -- and we also call it gender
25 diversity, because children may evolve in their gender over

23-cv-2079-JLK AMY TISHELMAN - Direct 01-03-2024

1 time. It's important for children to be free to express
2 themselves in the way that's comfortable for them, as long as
3 they're not destructive to others in every setting in which they
4 wish to do so. All children who are gender diverse don't wish
5 to do that.

6 And things like clothing and haircuts, what's typical
7 in one setting and subculture may not be typical in another.
8 So, it may be typical for all girls and boys to wear jeans and
9 T-shirts to school, and not be a lot of diversity in what's a
10 typical clothing for kids, so that it's hard sometimes to know
11 what's gender typical versus not gender typical clothing, or
12 haircuts sometimes, depending on the time in history, where a
13 child lives, and their culture.

14 Q Okay. Are there ever times that a social transition is not
15 helpful to the child?

16 A There can be times when a child doesn't feel ready to do
17 that. I've had children who said to me, my gender is still a
18 secret at school. I'm scared to tell people at school what my
19 gender is. And so sometimes children will choose to socially
20 transition in one environment and not another, or tell some
21 people and not others. There are kids who are uncomfortable
22 telling their parents and will want to tell schools, which is
23 sometimes an area of controversy. But not usually in young
24 children of the ages we're discussing.

25 Q Okay. Do those situations sometimes cause stress in the

23-cv-2079-JLK AMY TISHELMAN - Direct 01-03-2024

1 child?

2 A Yes.

3 Q Does that stress ever rise to the level in your observation
4 of chronic or toxic stress, as we talked about?

5 A Can you specify which situation you're talking about?

6 Q Sure. Situation where maybe their gender is still a
7 secret.

8 A It can. But it can be an outgrowth of a child not feeling
9 comfortable about being open in certain settings, and that
10 discomfort or expectation of rejection can be -- can have a
11 negative effect on a child.

12 Q Dr. Tishelman, should a parent be allowed to decide what is
13 best for their child in this realm we're talking about of gender
14 diversity and transgendered children?

15 A Yes. Usually parents make important decisions on behalf of
16 their children under the law, except in extreme circumstances
17 when a child may be subject to unacceptable behaviors on the
18 part of a parent, such as sexual abuse or other extreme and
19 illegal behaviors.

20 Q Okay. You don't understand this case to have anything to
21 do with sexual abuse, though; correct?

22 A Yes. I was just giving an example.

23 Q Yes. Thank you. Have you in your professional capacity
24 observed what happens when an environment, whether it be a
25 social environment, a school environment, when that environment

23-cv-2079-JLK AMY TISHELMAN - Direct 01-03-2024

1 undermines the family's acceptance of a transgendered or
2 gender-diverse child?

3 A Yes. It's well documented in a robust collection of
4 literature that transgender youth who have been exposed to
5 stressors have a higher likelihood of anxiety, depression, and
6 suicidality. And on the other hand, acceptance and support is
7 associated with well-being in transgender youth.

8 Q Okay. Can conflict over a child's identity between family
9 and school be harmful?

10 A Yes. Conflict in general between families and school can
11 be harmful to children. That's why there are initiatives to try
12 to draw schools and families together in support of children in
13 general and for transgender children as well. And there is
14 research to show that bullying for transgender children is
15 related to higher rates of suicidality. For instance, The
16 Trevor Report has published the data, and in general, bullying
17 for all children, not just transgender children, is demonstrated
18 to be correlated with higher rates of suicidality. Those data
19 are usually with older children, but can be presumed to be
20 relevant to younger children as well.

21 Q Is there -- can conduct in the school environment
22 negatively impact a transgendered child or harm them?

23 A Yes. I think bullying refers to that.

24 Q Okay. Any other examples you've observed of conduct in a
25 school environment?

23-cv-2079-JLK AMY TISHELMAN - Direct 01-03-2024

1 A Aside from bullying, being treated discordantly from other
2 children, not being able to join activities that a child would
3 find gratifying or actually being ejected from activities that a
4 child wants to belong to, being excluded at school, even if it's
5 not active bullying, but being isolated and excluded can be very
6 hard for children as well.

7 Q Okay. One second, Dr. Tishelman. Okay. Dr. Tishelman,
8 you've referred a lot to bullying in the school context. Can
9 bullying just be done by peers?

10 A No. Bullying can also emanate from the behavior of adults.

11 Q Okay. And in the school context, has that ever happened
12 with teachers?

13 A Yes.

14 Q Administrators?

15 A It can.

16 Q And any other ways that bullying can manifest in a school
17 situation outside of peers interaction?

18 A Adults can have a lot of power in school settings. I'm
19 thinking back to even when I worked on the home-school
20 partnership projects, where teachers sometimes had implicit
21 biases, so they expected and sometimes inaccurately understood
22 certain children to have less academic or social ability than
23 others.

24 There can be ways to have unconscious biases that can
25 affect children badly in terms of school placement, in terms of

23-cv-2079-JLK AMY TISHELMAN - Direct 01-03-2024

1 academic expectations, and just social interactions are very
2 subtle. So, there can be even things that are hard to put your
3 finger on, like tone of voice, how often a person is called on,
4 whether they're treated with condescension or not, et cetera.
5 Those kinds of subtle behaviors are often referred to as
6 microaggressions, but they may single out a child.

7 Q Thank you, Dr. Tishelman. Dr. Tishelman, I neglected to
8 ask you at the very beginning of your testimony, but were you
9 hired to write an expert report for the Colorado Attorney
10 General's Office?

11 A Yes, I was.

12 Q Okay. And were you paid for your time to write that
13 report?

14 A Yes. Not yet.

15 Q We are the State. It takes a little bit.

16 THE COURT: There's a delay because their building is
17 shut down.

18 MS. RUST: Your Honor, I'm going to give you a couple
19 exhibit numbers that I would like to tender to the Court now
20 that I am done with Dr. Tishelman's direct. Exhibit Number 46
21 is her resumé, Your Honor. Exhibit 47 is the expert report she
22 wrote for us.

23 And then these following exhibit numbers are journal
24 articles that Dr. Tishelman referred to their points in her
25 testimony today, and they're also cited in her report. That's

23-cv-2079-JLK AMY TISHELMAN - Direct 01-03-2024

1 number 59, High-Conflict Divorce, a Form of Child Neglect; 60,
2 Developmental Cascades; 61, The Lifelong Effects of Early
3 Childhood Adversity and Toxic Stress; 63, Disparities in
4 Childhood Abuse Between Transgender and Cisgender Adolescents;
5 64, Suicidality Disparities Between Transgender and Cisgender
6 Adolescents; and 65, Assessment of Gender-Diverse Children
7 Incorporating the Standards of Care, Eighth Edition. And those
8 are the world standards of care that Dr. Tishelman referred to
9 her help in authoring this past year, Your Honor.

10 THE COURT: Thank you. Are you going to require more
11 than a half an hour?

12 MR. REAVES: Yes, Your Honor.

13 THE COURT: I thought you might. We have to stop for
14 safety reasons by 5 o'clock, but I don't like to interrupt the
15 examination by one attorney. So, we're going to recess now
16 until 9:00 a.m. tomorrow morning.

17 THE WITNESS: Thank you.

18 (Proceedings concluded at 4:31 p.m.)
19
20
21
22
23
24
25

372

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Dated this 9th day of January, 2024.

K.P.C.
Kevin P. Carlin, RMR, CRR
Official Court Reporter

4.App.0948