

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

JULIE MCCUE,

Petitioner,

-vs-

CASE NO.:17-0423

PAM STEWART, AS COMMISSIONER OF  
EDUCATION,

Respondent.

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DIVISION OF ADMINISTRATIVE HEARINGS  
DAY 1, VOLUME II

Reported by Elaine Richbourg, a Court Reporter  
and Notary Public, State of Florida at Large, taken  
in the offices of the Judges of Compensation, 400  
West Robinson Street, Orlando, Florida, on Tuesday,  
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DIVISION OF  
ADMINISTRATIVE HEARINGS

FILED

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ADMINISTRATIVE LAW JUDGE MCARTHUR: Next witness?

MS. WILMOT: Phil Canto.

ADMINISTRATIVE LAW JUDGE MCARTHUR: Sir, would you raise your right hand? Do you swear or affirm firm that the testimony you're about to give will be the truth, the whole truth and nothing but the truth.

THE WITNESS: I do.

ADMINISTRATIVE LAW JUDGE MCARTHUR: Thank you.

WHEREUPON,

PHILIP CANTO

having been duly sworn to tell the truth, the whole truth and nothing but the truth, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. WILMOT:

Q Good afternoon, Mr. Canto. Thank you for being here. Could you please state your name and spell it for the court reporter?

A Sure. It's Philip Canto, with one L. P-H-I-L-I-P. Last name is Canto, C-A-N-T-O.

Q And do you work for the Department of

1 Education?

2 A I do.

3 Q What is your position there?

4 A My title is Bureau Chief of Postsecondary  
5 Assessment.

6 Q Okay. And just give us a description of  
7 what your job?

8 A Sure I oversee, essentially development  
9 and the administration and the scoring and reporting  
10 of the entire FTCE and FELE testing program.

11 Q So, we're talking you about the FELE now,  
12 that is the Florida Education Leadership Exam?

13 A Correct.

14 Q Has it become more difficult in recent  
15 years?

16 A Back in 2013, we engaged in an intensive  
17 revision process to align to new principal  
18 leadership standards as adopted by the State Board  
19 of Education. And those are called the Florida  
20 Principal Leadership Standards.

21 Q And why did we do that?

22 A Well, as the standards were changing for  
23 K-12 students, the expectation, or bar, if you will,  
24 is being raised for students. The Department  
25 engaged with the State Board of Education in an

1 initiative to align all of our tests to new  
2 standards. And this also included Ed Leadership.  
3 So, the notion was, if expectations for students are  
4 higher, the expectations for teachers are higher,  
5 therefore, those who lead teachers and students, the  
6 expectations are high, as well.

7 Q Okay. Now, the FELE exam, the essay exam,  
8 it was an ITN, was it back, in 2011?

9 A Yeah. We had an ITN released for the  
10 entire FTCE and FELE project, which included Ed  
11 Leadership, including the FELE.

12 ADMINISTRATIVE LAW JUDGE MCARTHUR:

13 Invitation to Negotiate?

14 THE WITNESS: Invitation to Negotiate.

15 It's an open competitive procurement process.

16 ADMINISTRATIVE LAW JUDGE MCARTHUR: Just  
17 defining our acronyms.

18 THE WITNESS: Yes.

19 Q (By Ms. Wilmot) Okay. So we had multiple,  
20 the Department had multiple bidders for the  
21 contract?

22 A Yes, we did.

23 Q Were they all National companies?

24 A Two were National and one was State.

25 Q Okay. And did we negotiate with anyone

1 besides Pearson?

2 A We did. We negotiated with ETS, which is  
3 Education Testing Services.

4 Q Okay. And did Pearson come up with the  
5 lowest bid?

6 A They came up with the highest points, if  
7 you will, because it's not necessarily the lowest  
8 bid that wins, it's those that would have the  
9 highest points and those incident to a successful  
10 negotiation.

11 Q Okay. If you will refer to the  
12 Respondent's Exhibits, it will be Exhibit 1, is this  
13 the Invitation to Negotiate whereby we -- the  
14 Department engaged in the contract with Pearson?

15 A Yes.

16 MS. WILMOT: We'd like to enter this as  
17 evidence, Your Honor.

18 MR. MCKEE: No objection.

19 ADMINISTRATIVE LAW JUDGE MCARTHUR:

20 Without objection, Respondent's 1 is admitted.

21 Q (By Ms. Wilmot) So, this is the ITN, not  
22 the entire contract?

23 A That's correct.

24 Q Does this ITN have precedence over the  
25 entire contract?

1           A     It does. It has a lot more details. The  
2 contract has more financials, deliverables. This  
3 has details as to how the program is actually run.

4           Q     So if there's something that conflicts in  
5 the rest of the contract, if something conflicts  
6 with the ITN, what is -- what supercedes?

7           A     The ITN.

8           Q     Okay. So we always go back to the ITN?

9           A     We always go back to the ITN.

10          Q     So that's pretty much all we need to know  
11 what the requirements are of the Pearson for the  
12 contract?

13          A     (Witness nods head).

14          Q     And this includes holistic scoring?

15          A     Yes, it does.

16          Q     And the details with regard to how it  
17 should be carried out?

18          A     Yes.

19          Q     How to train the raters?

20          A     Yes.

21          Q     And how to select them, the  
22 qualifications?

23          A     Yes.

24          Q     Okay. So, Pearson was contracted to  
25 administer the exam?



1 A Yes.

2 Q Did Florida actually create the exam?

3 A We have a unique situation in Florida in  
4 that we develop most of our testing materials  
5 internally, if you will. So our motto is Florida  
6 teacher tests and we test for --

7 COURT REPORTER: Florida teacher tests and  
8 what?

9 A (By The Witness) Florida teachers' test  
10 for Florida teachers by Florida teachers. It's kind  
11 of an internal. We do all the work internally,  
12 basically.

13 Q (By Ms. Wilmot) Okay.

14 A The Department of Education develops most  
15 of our testing materials in-house.

16 Q So are the tests created to standards?

17 A They are. Everyone of our examinations is  
18 aligned to State Board approved standards.

19 Q So, tell me where the standards came from,  
20 to begin with?

21 A That's a good question. So the  
22 stakeholders get together when there's a decision  
23 made that we need an update on standards. And so  
24 it's the practitioners in the field, it's  
25 academicians, it's District personnel, it's those

1 that are affiliated with K-12 and postsecondary  
2 education. They get together and they draft the  
3 standards. Those standard are then vetted Statewide  
4 and then they're presented to the State Board of  
5 Education, who make made a determination on whether  
6 or not they want to adopt those standards.

7 Q So, the standards are what we expect -- in  
8 this case -- what we expect of an educator who holds  
9 a certificate in education leadership?

10 A Correct.

11 Q So that's what the State is testing for?

12 A Exactly.

13 Q To see if the individual has at  
14 qualifications to meet the standards?

15 A Exactly.

16 Q Okay. So the substance of the test is  
17 fully from Florida, you send it to Pearson, they put  
18 the test technically together and they administer it  
19 to the educators?

20 A In summary, yes.

21 Q And the raters, the Department of  
22 Education determines the qualifications for the  
23 raters and reviews the raters before they're  
24 employed?

25 A Yes.

1 Q Okay. And can the Department of  
2 Education, at any time, say we want this rater  
3 removed, we don't approve of this rater?

4 A Yes. We're essentially the sole  
5 discretion, the hiring and retention are the sole  
6 discretion of the Department.

7 COURT REPORTER: Say that again. I'm  
8 sorry.

9 THE WITNESS: Hiring and retention of  
10 raters is at the sole discretion of the  
11 Department.

12 Q (By Ms. Wilmot) So, the initial raters are  
13 in Massachusetts?

14 A Yes.

15 Q Okay. So most of the tests are scored  
16 there?

17 A Yes. Virtually all the tests are scored  
18 in Massachusetts.

19 Q Okay. So they're all scored there. And  
20 what is a passing score on the FELE essay?

21 A Seven out of 12.

22 Q So, is that a composite score from two  
23 raters?

24 A Two independent raters, yes.

25 Q So you would you need a three and a four?

1 A Yes.

2 Q It couldn't be a 5 and a 2; right?

3 A It couldn't be a 5 and a 2 because then it  
4 goes to a referee process with the Chief Rater who  
5 then makes the determination.

6 Q Okay.

7 A So you cannot have a final score of a 5  
8 and a 2.

9 Q Okay. Now, the test was originally, the  
10 essay test was originally -- it was part of a whole  
11 exam?

12 A Yes. Prior to 2015, the Written  
13 Performance Assessment was a compositely scored  
14 test. What that meant was, is you've got a multiple  
15 choice section, as you do now. You have -- you had  
16 a Written Performance Assessment. Those two scores  
17 were combined for a single subtest 3 score, prior to  
18 2015.

19 Q And why did we do that?

20 A The field, when I mention the field, the  
21 field of educators, so we're talking about school  
22 building leaders, assistant principals, principals,  
23 district superintendents and college and university  
24 faculty felt that writing was so critical and so  
25 crucial to the job of a school building leader that

1 it needed to have its own score. Because basically  
2 what was happening in a composite model, you've got  
3 people that were either very good writers and not  
4 doing well on multiple choice section and passing or  
5 the inverse. You had people that are really good  
6 multiple choice test takers, that were not very good  
7 writers. And so they were overcompensating for  
8 their writing deficiency in the multiple choice  
9 section. So we decided to make that policy change.  
10 Actually, the State Board approved that policy  
11 change in 2015.

12 Q So, did that put the importance of the  
13 essay at a higher level because the stakeholders  
14 determined it was appropriate?

15 A Absolutely.

16 Q Okay. What are the prerequisites for an  
17 individual to take the FELE?

18 A There actually are no prerequisites for  
19 people to take the FELE. Anyone can sit for the  
20 test.

21 Q So I could walk in there and just --

22 A Absolutely.

23 Q -- register for it and take it?

24 A Yes.

25 Q And how many times can you take the FELE?

1           A     As many times as you want.

2           Q     Okay.

3           A     Until you pass.

4           Q     Okay. All right. On the FELE essay, do  
5 you know what the most recent passage rate is?

6           A     I don't have 2017 stats, but 2016, the  
7 first time pass rate was 50 percent on the Written  
8 Performance Assessment for subtest 3.

9           Q     Okay. So how do we get to that -- did we  
10 -- did the Department have a goal of a certain  
11 passage rate?

12          A     No. The way setting the cut scores work,  
13 we bring in a large committee of subject matter  
14 experts. So these, once again, are district  
15 leaders, school building principals, teachers,  
16 college, university faculty, they went through a  
17 series of rounds reviewing all the different prompts  
18 and looking at actual responses to the prompts.  
19 That committee made a recommendation indicating that  
20 based on what they seen in the prompts, based on  
21 what they seen from the responses, that an  
22 appropriate passing score is a seven. So they made  
23 that determination. And then we then bring that  
24 recommendation to the State Board for approval.

25          Q     So the Department gets all the information

1 from this committee, full of stakeholders and  
2 experienced individuals, including college  
3 professors?

4 A Yes. Yes. Absolutely. College  
5 professors are always included in our process.

6 Q Principals?

7 A School building principals, district  
8 leaders, HR directors, assistant principals, anyone  
9 who has anything to do with educational leaders.

10 Q And various backgrounds?

11 A We cover a lot of demographics, Hispanic,  
12 African-American, White. We cover various school  
13 districts sizes, so we have small, medium and large  
14 districts. We also include the various regions of  
15 Florida. So you wouldn't want a predominately south  
16 Florida representation to make sure the committees  
17 are representative of all educators.

18 Q So, the Department receives this  
19 information from the committee? Is it a report?

20 A We do the standard setting report, yes.

21 Q And then that is provided to the State  
22 Board of Education?

23 A It is, correct.

24 Q And does the Department of Education then  
25 support it before the State Board?

1           A     Yeah. We present information. We give  
2 them the recommendations based on the committee's  
3 advice and guidance. And the Board makes a  
4 determination of whether they want to go to the cut  
5 score or make some other change.

6           Q     And what happened in this case? The  
7 committee made a recommendation that the Department  
8 brought to the State Board, did the State Board  
9 uphold that recommendation?

10          A     Yes. They kept the recommendation  
11 absolutely intact. No changes to the 7.

12          Q     Okay. So the cut score is --

13                COURT REPORTER: No change to the what?

14                THE WITNESS: No changes to the 7, the  
15 score point 7 requirement.

16          Q     (By Ms. Wilmot) The cut score is if you  
17 make it on one side of that you pass, make it on the  
18 other, you do not pass?

19          A     Correct.

20          Q     And is it -- why is it set there? What is  
21 their motivation in setting the cut score? Does it  
22 have to do with the quality of the educator or --

23          A     It's the quality of the writing. And,  
24 really, what the field felt was appropriate. So  
25 what do you think in terms of this beginning school



1 administrator. So we're not looking for the fifty  
2 year principal, we're looking for the first year  
3 principal, or assistant principal, what type of  
4 writing do they need to have for that first day of  
5 work. And so that was the threshold that that  
6 committee looked at the entire time. So when you're  
7 looking at the sample responses that we had, they  
8 felt that a 7 gave them that comfort level that an  
9 individual who scores a 7 or higher is ready to be  
10 an assistant principal.

11 Q So, the authority to set the set scores  
12 for the State Board, is that statutory?

13 A Yes, it is. The Statute gives the Board  
14 the authority to set the passing scores.

15 Q So the State Board has total discretion?

16 A The State Board has absolute discretion.

17 Q Okay. And --

18 A Well, they have discretion to decide  
19 whether or not they want to take the committee's  
20 recommendation or not. Does that clarify it?

21 Q They have discretion as to whether or not  
22 to accept it?

23 A To accept the committee recommendation.

24 Q But could they change it?

25 A Yes.

1 Q They could go higher?

2 A They could higher or they could go lower.

3 Q Okay. Do you know, and you may or may not  
4 have this information, if the passage rate is higher  
5 for individuals who have taken preparation courses  
6 in Florida?

7 A Yes. We've done a very quick study  
8 looking at 2015 data. And, once again, I don't have  
9 the '16 data in. And individuals who were graduates  
10 of a Florida approved program, that is a Florida  
11 program aligned to the Florida standards, they have  
12 a higher pass rate as a population, than those who  
13 did not attend a DOE approved program.

14 Q So DOE approved program, are you aware of  
15 anyone -- the institutions that have a program  
16 approved by DOE, are they all in Florida?

17 A No, they're not.

18 Q Okay.

19 A There are several that are out but I don't  
20 have a full comprehensive list. I know of one in  
21 particular that is not.

22 Q Do you know if Concordia University of  
23 Chicago is approved by the Department?

24 A I don't believe they are.

25 Q Okay. But you can't say definitively?

1           A     I can't say yes. It's out of my program  
2 area, but I can't --

3           Q     Okay. That's fine. Let's look at the  
4 exhibits again. Before we do that, let's talk about  
5 the tools that the Department provides to the  
6 educators who, or the examinees who want to take the  
7 FELE, because you don't have to be an educator;  
8 right?

9           A     Sure. Anyone can take the test.

10          Q     So what tools do we provide?

11          A     A couple of things. We've talked a little  
12 bit about the test information guide. The test  
13 information guide is provided for free. What the  
14 test information guide has in it is the test  
15 blueprint, it has the State Board approved  
16 competency and skills. So those competencies and  
17 skills are the, essentially, the content of the  
18 test. We also provide a sample prompt in the test  
19 information guide and the rubric.

20                   In addition to that, and I know we're not  
21 talking as much about it, we also have multiple  
22 choice questions. But, in addition to multiple  
23 choice questions, we have an annotated bibliography.  
24 And that bibliography basically includes all the  
25 materials that we use to develop the examination,

1 including the written performance.

2 COURT REPORTER: Including the what?

3 A (By the Witness) Including the WPA and  
4 the Written Performance Assessment. So the test  
5 information guide contains all of that information.  
6 In addition to that, we went a little step further  
7 and we provide three additional prompts for the  
8 Written Performance Assessment. Each one of those  
9 prompts are also on the web for free. They also  
10 include the Supplemental Rating Criteria so  
11 candidates can use the test information guide that  
12 has the prompt and the rubric and they can also use  
13 the three free prompts that we provide and the three  
14 simple mode rating criteria worksheets.

15 Q (By Ms. Wilmot) Okay. So, the prompts,  
16 are they retired prompts?

17 A They are retried prompts or they are  
18 prompts that we develop specifically for the purpose  
19 of providing information to candidates.

20 Q So a retired prompt is one that has been  
21 used before in testing for the FELE essay?

22 A Yes. Both. Even the ones that we did on  
23 our own that we developed at our costs were ones  
24 that we collected data for. We wanted to make sure  
25 that we had sufficient score points for each of

1 those prompts so that essentially what's  
2 representative of what an examinee would see in the  
3 field.

4 Q So the ones that were developed by the  
5 Department, were developed for the purpose of giving  
6 them a realistic view of what they're going to face  
7 in the FELE?

8 A Absolutely. They are absolutely  
9 equivalent to the level of difficulty and complexity  
10 that an actual candidate would see. They are no  
11 easier or difficult than what a real examination  
12 would house.

13 Q Okay. So they are given a rubric that is  
14 kind of general?

15 A Right. Yeah. The rubric -- the overall  
16 rubric transcends all of the prompts.

17 Q Okay. So that's pretty basic and general  
18 and doesn't apply specifically to individual  
19 prompts?

20 A Exactly.

21 Q But then they are also given the  
22 Supplemental Rating Criteria?

23 A For 3 of the 4 that we have published, the  
24 Supplemental Rating Criteria or SRC is present.

25 Q Now, that SRC, is that what the raters use

1 in their rubric?

2 A They use both. They use the general  
3 rubric and they use the Supplemental Rating  
4 Criteria. They use both of those documents to score  
5 each of the reading responses.

6 Q Okay. And the Supplemental Rating  
7 Criteria, that has the specific, the specificity  
8 with regard to data points?

9 A Yes.

10 Q Okay. And is that available in the same  
11 place that the sample prompts are?

12 A Yep.

13 Q If you accessed one, would you necessarily  
14 access the other?

15 A I believe that the way they're listed on  
16 the website is sample prompt 1, sample prompt 2,  
17 sample prompt 3. And when you click on those, you  
18 get the prompt, the rubric and the SRC for each of  
19 those.

20 Q It all opens at one time?

21 A For each of the prompts.

22 Q Okay. So would that be an appropriate way  
23 to prepare?

24 A It's an appropriate way to provide lots of  
25 information.

1           Q     Okay.  So do you view it as the Department  
2 of Education's obligation or responsibility to  
3 prepare the individuals for the essay?

4           A     Well, the business rules, if you will,  
5 dictate that the testing agency should not be  
6 preparing candidates.  So, we're governed by three  
7 major bodies, the American Educational Research  
8 Association or AERA.  I'll slow them down a bit.  
9 Everyone knows the American Psychological  
10 Association or APA.  And, also, the National Council  
11 of Measurement Education, NCME.  That's kind of like  
12 the AMA or the bar or the, you know, name a large  
13 regulatory body, they basically tell us how we're  
14 supposed to develop these examinations.  It tells us  
15 about the scoring, the reporting.  Our standards  
16 tell us very clearly that, as a testing agency, we  
17 should not be in the business of preparing  
18 candidates to pass the test.  There is a conflict  
19 there.  And those three governing bodies, which are  
20 the -- they are the be all, end all for large scale  
21 assessment, tell us that we're not supposed to be  
22 engaging in that.

23           Q     And would you consider it  
24 counterproductive to the purpose of the test, which  
25 is to determine if an individual is prepared to

1 assume the responsibilities of leadership if you  
2 were to sit down with them and go over their exam  
3 with them?

4 A Yes. Essentially, you would be providing  
5 the key to the test. You would be giving them the  
6 answers to the test by doing that.

7 Q Okay. So is part of the test developing  
8 the key themselves?

9 A Absolutely. Absolutely.

10 Q Do you know how many essay exams were  
11 given last year?

12 A I'd have to refer the technical report. I  
13 can actually tell you, it's around 1,500. We had  
14 about 1,500 first time test takers. Now, if you  
15 include all takers, that number goes up, of course.  
16 But we had 1,500 and some change first time test  
17 takers for the WPA last year.

18 Q Fifteen hundred and you're talking about a  
19 50 percent passage rate for first time?

20 A First time.

21 Q So, of all the people that take it, 1,500,  
22 roughly, 750 pass it the first time, no problem?

23 A Yes. The first time.

24 Q Are you satisfied with that rate?

25 A Well, it's not really for me to provide



1 whether or not I'm satisfied personally. The field  
2 has set the cut score and the State Board has  
3 adopted the cuts score.

4 COURT REPORTER: The what?

5 THE WITNESS: The cut score, the passing  
6 score. I'll try to slow down a little bit and  
7 enunciate a little better.

8 Q (By Ms. Wilmot) Okay. Let's move on to  
9 the score verification sections. When does that  
10 come into play?

11 A Under Florida law, candidates are allowed  
12 due process rights, under our testing program, under  
13 all regulatory testing programs. And that score  
14 verification exists to allow candidates to go in and  
15 review test questions and their responses to essay  
16 prompts that they missed or that they do not feel  
17 comfortable with.

18 Q Okay. So does that requirement also say  
19 that they have to be able to challenge it?

20 A I don't know that I can fully answer that.  
21 We've interpreted it as that we should allow  
22 candidates to review their questions or the prompts  
23 and provide a rebuttal. That's been our agency  
24 interpretation and that's how we're going to apply  
25 that due process.

1           Q     And backing up a little bit, just a little  
2 bit, with regard to whether or not you provide  
3 additional information to individuals who have not  
4 passed. If the Department were to say, okay, if you  
5 didn't pass, call us, we'll sit down with you and  
6 we'll go over the test, item by item, and tell you  
7 what you did wrong. Would you have pretty good  
8 response on that?

9           A     I think it would be overwhelming. I mean,  
10 it would be virtually impossible from a personnel or  
11 cost effective standpoint. There would be virtually  
12 no return on -- to candidates or to teachers to  
13 engage in them.

14          Q     So you think it's beyond the capabilities,  
15 current capabilities of the Department?

16          A     Well beyond. And including, if you will,  
17 the \$75 that we collect for score verification  
18 simply could not cover that type of process.

19          Q     So it's \$75 for score verification?

20          A     It is.

21          Q     Does that cover the cost of the process?

22          A     It does not.

23          Q     Does it come close?

24          A     Not even close. I mean, if you take into  
25 consideration the input of the Chief Reviewers,

1 Pearson's time, the Department's time, this  
2 proceeding, there's no way the \$75 can cover the  
3 score verification. Now, from a budgetary  
4 standpoint, the overall program costs absorb the  
5 deficit that exist in score verifications. Score  
6 verification, on its own, it would be a losing  
7 business proposition.

8 Q Okay. Do you know how many score  
9 verification sessions there were last year?

10 A Eight hundred and sixty-one total with the  
11 FTCE and FELE. There were 160 FELE last year. That  
12 includes the multiple choice questions. Not just --  
13 not just WPA, but that's both multiple choice and  
14 Written Performance Assessments.

15 Q So, the score verification, that means  
16 that the Department reviews the score?

17 A The Department may not independently  
18 review the score, but candidates are allowed to go  
19 through Pearson Vue testing to review their  
20 questions.

21 Q And does that ever result in a change in  
22 the score?

23 A Occasionally, it does.

24 Q Has it resulted in a change of the score  
25 for the FELE?

1           A     In 2016 it did not. There were no Written  
2 Performance Assessments overturned incident to the  
3 score verification.

4           Q     So are the comments made by the educators  
5 with regard to their essays, are they considered in  
6 the score verification process?

7           A     Absolutely.

8           Q     You wouldn't be able to overturn without  
9 actually reading the scores?

10          A     Exactly. So the chief Reviewer, if the  
11 Chief Reviewer sees it and decides the score needs  
12 to be overturned, and we actually would review every  
13 aspect of that particular score verification  
14 session, and then give the final approval for an  
15 overturned or status change. Status change is from  
16 a failing score to a passing score. We approve  
17 every single one of those in the Department.

18          Q     So, let's talk a little bit about the cost  
19 of the test. Do you know how many tests were  
20 anticipated -- we're talking about essays, how many  
21 tests we anticipated or the Department anticipated  
22 Pearson, through the contract, would be  
23 administering over the course of a year?

24          A     We had a hundred thousand less than the  
25 original ITN, but that includes all tests. That's

1 not just the FELE. That's a hundred thousand  
2 teacher certification and ed leadership tests.

3 Q Okay.

4 A I don't remember actually forecasting, if  
5 you will, or trying to predict a FELE count, but the  
6 numbers -- the numbers to us do not seem completely  
7 outrageous.

8 Q Okay. In your opinion, did the Department  
9 administer more essay, FELE essays than anticipated?

10 A I think we're right in line with the FELE.  
11 Overall tests, you know, the numbers have gone up.  
12 And so, but for FELE, we really didn't anticipate  
13 it.

14 Q Okay. The fee that's charged --

15 A Right.

16 Q -- is that in the contract with Pearson?

17 A It's not in the contract, but it's in the  
18 State Board Rule.

19 Q Okay. And how was that set? Was it set  
20 to make the profit? Was it set to try to mirror the  
21 cost of the exam?

22 A Well, exactly. The design of the fee  
23 schedule was to ensure that we could maintain the  
24 integrity of the program. The program receives no  
25 general revenue funding from the legislature. It

1 has to be 100% self-sufficient. And so those fee  
2 projections and those fee amounts are based upon  
3 what it would cost to continue to administer the  
4 program, the FELE and the FTCE program.

5 Q And was there enough money collected?

6 A Currently --

7 Q To cover the costs? Yes.

8 A Currently, yes, we are collecting a  
9 sufficient amount of funds to cover our contract  
10 costs.

11 Q Do you know if there's an overage with  
12 regard to the collection?

13 A In the contract we've got an overage  
14 listed where we are assessed a certain fee per test,  
15 up to a hundred thousand, and then the number  
16 actually changes over a hundred thousand. So once  
17 we hit that one hundred thousand threshold, the  
18 contract calls to actually change a little bit. It  
19 actually goes down. So then we're essentially not  
20 stuck paying -- if, in the event we were under a  
21 hundred thousand in examinations, we're not paying X  
22 amount of dollars for a test that we don't  
23 administer. So the strategy there is to only pay  
24 for the tests that we administer.

25 Q So we administered more tests than a

1 hundred thousand?

2 A Yeah. We did a hundred and eighty-one  
3 thousand tests last year, but that was everything.  
4 That's teacher certification exams, FELE exam. We  
5 did about 15-200 per Subtests.

6 Q And so because of that, our cost per exam  
7 went down to administer but we can't really, the  
8 Department can't really convert that to a savings  
9 for the test taker?

10 A Exactly. Correct.

11 Q So what happens to those funds?

12 A So those funds are not just used to pay  
13 for Pearson's activities, although that's the bulk  
14 of it. Those funds are used for everything else.  
15 All of our internal development, given that we  
16 develop our tests internally. All the meetings that  
17 we have with our subject matter experts. The  
18 computers for DOE staff, staff travel, staff  
19 salaries. It also works with the Bureau of Educator  
20 Certification and funds, projects within that arena,  
21 as well. So, if there's extra money above and  
22 beyond the contract cost for Pearson, those funds  
23 are used by the Department internally to manage and  
24 run those two programs.

25 Q Is there a constraint on how you can --

1 how the Department can use those funds?

2 A Yeah. I believe -- I can't fully quote  
3 the Statute or the Statute number, it has to be  
4 related to teacher certification programs. In other  
5 words, we can't use these funds for a transportation  
6 project or school lunches or curriculum and  
7 development. It has to be used for educator  
8 certification.

9 Q Okay. Now, let's get into the specifics  
10 with regard to Ms. McCue's exam and if now we could  
11 turn to Respondent's Exhibits -- and maybe we can  
12 get a few of these entered into evidence.  
13 Respondent's Exhibit 2 is the test information guide  
14 for Florida Education Leadership Exam. Is this  
15 provided to the examinees on request?

16 A It is posted on the web --

17 Q Okay.

18 A -- from our website. And it's also listed  
19 on Pearson's website, as well. There's a test  
20 information guide tab. If you can click on it, you  
21 can get a test information guide for every single  
22 one of our tests, all 51.

23 Q And is this an accurate copy of it?

24 A Yes, it is.

25 MS. WILMOT: Your Honor, we'd like to



1 enter into in evidence. It's Exhibit number 2,  
2 Respondent.

3 MR. MCKEE: No objection.

4 ADMINISTRATIVE LAW JUDGE MCARTHUR:  
5 Without objection, Respondent's Exhibit 2 is  
6 admitted.

7 Q (By Ms. Wilmot) Exhibit number 3 is the  
8 maximum percentages to correct questions needed to  
9 achieve a minimum passing score. Was this generated  
10 which the Department?

11 A Yes.

12 Q And can you verify that this is an  
13 accurate copy of it?

14 A This is an accurate copy, as of the date  
15 listed at the top, March 1st of 2017. Occasionally,  
16 this is updated.

17 Q And this also includes a narrative. It's  
18 four pages, and the four pages are -- you are  
19 affirming that this is an accurate representation?

20 A Yes.

21 MS. WILMOT: We'd like to enter Exhibit 3  
22 into evidence, Your Honor.

23 MR. MCKEE: No objection.

24 ADMINISTRATIVE LAW JUDGE MCARTHUR:  
25 Respondent's Exhibit 3 is admitted.

1 Q (By Mr. Mckee) Exhibit 4, this is the  
2 percentages of passing rates for first time test  
3 takers. It looks like it's for all the exams?

4 A Yes.

5 Q Is this accurate?

6 A This is the -- yes, this is 2016, 2013 to  
7 2016, yes. This is accurate.

8 MS. WILMOT: We'd like to enter this into  
9 evidence, Your Honor.

10 MR. MCKEE: No objection.

11 ADMINISTRATIVE LAW JUDGE MCARTHUR: Respon  
12 dent's 4 is admitted.

13 Q (By Ms. Wilmot) All right. Now, we're  
14 getting to Exhibit 5. This is the examinee's  
15 registration history. Is this an accurate  
16 representation of that?

17 A Yes. It appears to be.

18 Q Was this generated by the Department?

19 A This is actually housed at Pearson but the  
20 Department has real time access to this.

21 Q Okay.

22 MS. WILMOT: We'd like to enter this into  
23 evidence, Your Honor.

24 MR. MCKEE: Which exhibit, I'm sorry?

25 MS. WILMOT: Five, the history,

1 registration history.

2 MR. MCKEE: No objection.

3 ADMINISTRATIVE LAW JUDGE MCARTHUR:

4 Without objection, Respondent's 5 is admitted.

5 Q (By Ms. Wilmot) So, by going by this, how  
6 many times did the Respondent take the essay test?

7 A Four times.

8 Q Four times. Most recent?

9 A That's actually on the next tab, tab 7,  
10 our sixth exhibit. The most recent time appears to  
11 be September 28th of '16.

12 Q All right. If we look at 6, this is the  
13 examinee's score history. Is this accurate?

14 A R-6, yes.

15 Q Yes.

16 MS. WILMOT: We'd like to enter this into  
17 evidence.

18 MR. MCKEE: No objection.

19 ADMINISTRATIVE LAW JUDGE MCARTHUR:

20 Respondent's 6 is admitted.

21 Q (By Ms. Wilmot) So Petitioner took the  
22 exam four times, and what was the result?

23 A Each time her score was a 6.

24 Q Every time?

25 A Yes.

1 Q So four times, four times came within one  
2 point?

3 A (Witness nods head).

4 Q So the score was a 6, that means it was  
5 scored each time by two raters?

6 A Correct.

7 Q If it was a 6, the two raters would have  
8 had to have given identical scores?

9 A Yes. It would have been a 3 and a 3.

10 Q And that happened four times?

11 A Yes.

12 Q So that's a total of eight raters?

13 A Eight raters.

14 Q That scored essays by Petitioner at 3?

15 A Yes.

16 Q All right. Did you rate -- raters are not  
17 usually -- we don't get comments from raters?

18 A That's correct.

19 Q And did you have occasion to request that  
20 justifications be provided for the last exam taken  
21 by Ms. McCue?

22 A Well, incident to the score verification  
23 process, the Chief Reviewer, those notations would  
24 be required.

25 Q You had notations from Chief Reviewer --

1 A The Chief Reviewer --

2 COURT REPORTER: What was your question,  
3 I'm sorry?

4 Q (By Ms. Wilmot) The Chief Reviewers, he  
5 had notations from the Chief Reviewers. But also,  
6 in the course of preparing for this litigation, did  
7 you ask or did your agency ask the original raters  
8 to provide justifications --

9 A Yes.

10 Q -- for their --

11 A Yes.

12 Q And were those consistent with the  
13 comments of the raters?

14 A They were.

15 Q I mean, the Chief Reviewers?

16 A They were.

17 Q Okay. Also, in preparation for this, or  
18 even in anticipation of the scorer challenge, did  
19 you have additional Chief Reviewers?

20 A We did. We did. So, the normal process  
21 would be score verification, challenge to the essay  
22 response, a single Chief Reviewer. But given our  
23 situation, you know, with potential administrative  
24 hearing, we sent it to another Chief Reviewer and  
25 had them take a look at it objectively, as well,

1 independent of all the other raters.

2 Q So, two Chief Reviewers have looked at it?

3 A Yes.

4 Q So, two raters --

5 A (Witness nods head).

6 Q Two Chief Reviewers, all scored the same?

7 A Yes.

8 Q The comments were consistent?

9 A Yes.

10 Q Does the Department of Education have a  
11 policy to try to increase the number of tests in  
12 order to increase the fees collected?

13 A Absolutely not.

14 Q What's being tested by the FELE essay? Is  
15 it primarily to see in the individual is a good  
16 writer, in the traditional sense?

17 A That's a part of it, but not the major  
18 part of it. The major part of this really is the  
19 ability to synthesize and then communicate data.

20 Q And how -- that's important for what  
21 reasons?

22 A Well, a lot of what principals and  
23 assistant principals are doing in today's classroom  
24 and today's schools, they're actually the  
25 instructional leader in the school. In order to be

1 an effective instructional leader in the field to  
2 determine that you've got to be really good at  
3 synthesizing data and writing to that data.

4 Q Okay. So when you say synthesizing data,  
5 do you mean more than just regurgitating what you  
6 find what's provided to you?

7 A Yeah. Using the data to make data driven  
8 decisions to improve teaching.

9 Q Okay. And that would be recognizing  
10 trends?

11 A Recognizing --

12 Q Trends?

13 A Oh, trends. Absolutely, recognizing  
14 trends.

15 Q Sorry.

16 A Absolutely.

17 Q And applying those?

18 A Applying those to fix and address problems  
19 in those trends that you see.

20 Q So when you're testing for an individual  
21 who wants an ed leadership certification, there are  
22 things you're testing for outside of what a good  
23 teacher would have been?

24 A It's a good teacher and then some. It's  
25 beyond that.

1 Q So being a good teacher, does that  
2 necessarily qualify someone to be a good principal?

3 A The field has said no.

4 COURT REPORTER: The what?

5 THE WITNESS: The field, the profession  
6 has said no.

7 Q (By Ms. Wilmot) So there are a whole new  
8 set of tools necessary --

9 A Yes.

10 Q -- for those individuals?

11 MS. WILMOT: I think that completes my  
12 questions.

13 Q (By Ms. Wilmot) I'm sorry. If you look at  
14 Exhibit 12. This is the Holistic Scoring Rater  
15 Agreement Summary?

16 A Uh-huh.

17 Q Was this generated at the request of the  
18 Department?

19 A Yes.

20 Q How did we get it? How did the Department  
21 get it?

22 A Requesting it of Pearson.

23 Q How does that happen?

24 A My understanding of the process is it's  
25 done at the holistic scoring session. And this



1 information is calculated and tabulated as part of  
2 their computer based scoring system.

3 Q So was it a question of just getting the  
4 computer to print out the correct report?

5 A This is actually done as a matter of best  
6 practices. We get this every month. We get this  
7 report every month and send it to the scoring  
8 sessions. It's something that we do as part of our  
9 regular monitoring.

10 Q So did you request this one specific for  
11 this litigation because it covered the time period?

12 A I can't say for sure, but it's something  
13 that we do as a matter of best practices.

14 Q So is this document accurate?

15 A It appears to be, yes.

16 MS. WILMOT: We would like, again, to  
17 offer this into evidence.

18 MR. MCKEE: I have no objection.

19 ADMINISTRATIVE LAW JUDGE MCARTHUR:

20 Without objection, Respondent's 12 is admitted.

21 MS. WILMOT: Now, I'm complete.

22 ADMINISTRATIVE LAW JUDGE MCARTHUR: Do we  
23 need a brief break?

24 MR. MCKEE: I do.

25 ADMINISTRATIVE LAW JUDGE MCARTHUR: We'll

1 try for five.

2 (WHEREUPON, a brief recess was  
3 taken, after which the hearing  
4 continued.)

5 ADMINISTRATIVE LAW JUDGE MCARTHUR: Back  
6 on the record. All right. Where are we?

7 MR. MCKEE: Cross.

8 ADMINISTRATIVE LAW JUDGE MCARTHUR: Thank  
9 you.

10 MR. MCKEE: Thank you, Your Honor.

11 **CROSS-EXAMINATION**

12 BY MR. MCKEE:

13 Q Good afternoon, Mr. Canto.

14 A Good afternoon.

15 Q When did the essay portion or the WPA  
16 become a part of the FELE?

17 A It goes back a long time. I on boarded  
18 the program in 2007. There was a writing exercise  
19 of some type that I know, prior to that. So, at  
20 least from 2007, my arrival on the project until  
21 now, there's been a writing component.

22 Q And did there come a time when the WPA was  
23 graded separately from the multiple choice portion  
24 of subpart 3 of the FELE?

25 A Yes.

1 Q When did that occur?

2 A January 21st 2015 was the effective date.

3 Q And prior to that, there was a combining  
4 or average of the two scores?

5 A Yeah. It was a composite so it was  
6 weighted. So the multiple choice section was  
7 weighted a certain amount and the written  
8 performance piece was weighted another amount.

9 Q You testified about the due process that's  
10 available by Statute to individuals who question the  
11 scoring of their test; correct?

12 A Yes.

13 Q And it's been referred to as contesting or  
14 rebutting?

15 A Challenging, I think, is the -- is the  
16 term a lot of us have used today to challenge.

17 Q And could you walk us through the  
18 challenge process?

19 A So --

20 Q What input specifically does the  
21 challenger or the test taker have into that process?

22 A So, once their score is officially  
23 released, they have the opportunity, within 30 days,  
24 to schedule a score verification session. So they  
25 register online. They get an appointment. They

1 show up at the test center, and they're provided, I  
2 believe, it's an hour. There's a five minute  
3 tutorial, a total of 65 minutes, or thereabouts and  
4 they're able to actually see their response to the  
5 prompt and they're provided an opportunity to write  
6 a challenge or rebuttal.

7 Q So they have as much time to do that  
8 rebuttal within that one hour window as they care to  
9 use to do their rebuttal?

10 A Yes.

11 Q And what's the purpose of doing the  
12 rebuttal or having the test taker do the rebuttal?

13 A It just provides an opportunity. I think  
14 the policy thought process has been that it provides  
15 opportunity for candidates to raise issues, if they  
16 will, as it relates to the scoring or the content of  
17 the test.

18 Q And what happens with the test taker's  
19 input or rebuttal data that's entered during that  
20 process?

21 A So, Pearson, it's obviously through the  
22 Pearson system, they store it and then they  
23 essentially evaluate the merits of the response.  
24 And in the case of FELE, they have a Chief Reviewer  
25 they assign to review that rebuttal, if you will.

1           Q     Okay.  So the Chief Reviewer, who is  
2 assigned to look at at the prompt and look at the  
3 rubric and look the essay, also, has the test  
4 taker's explanation for why he or she thinks they  
5 were graded incorrectly?

6           A     I don't know the answer to that.

7           Q     Is that your understanding of what should  
8 happen?

9           A     I don't know.

10          Q     Do you know of any other reason why a test  
11 taker would be prompted to do a rebuttal if that  
12 rebuttal wasn't going to be examined by someone?

13          A     Well, the Department would examine that  
14 rebuttal, of course.  But the Chief Reviewer  
15 wouldn't necessarily see that rebuttal.  The  
16 Department absolutely, and the Pearson team would  
17 absolutely see that rebuttal or that challenge, if  
18 you will.

19          Q     All right.

20          A     The reviewer wouldn't necessarily see  
21 that.

22          Q     When you say the Department will look at  
23 the rebuttal, who within the Department looks at the  
24 rebuttal?

25          A     Traditionally our scoring and reporting

1 team.

2 Q And who's on the scoring and reporting  
3 team?

4 A There's several individuals. Do we want  
5 to name those individuals?

6 Q How many people are on the team?

7 A The best person I think on that would our  
8 scoring and reporting director, and I'll have to  
9 spell his name for you. But he would be the one  
10 that would actually be the lead person in evaluating  
11 or looking at any of those written challenges, if  
12 needed. We don't review every single one of those  
13 challenges.

14 Q Okay. How do you decide which ones you're  
15 going to look at and which ones you're not?

16 A Well, something like this, a proceeding  
17 like this. An examinee files for an administrative  
18 hearing. If we're noticing any trends, for example,  
19 and we want to take a closer look at how a  
20 particular rater was -- that's hypothetical. You  
21 want to see how a particular rater was performing,  
22 we might want to look at how individuals have  
23 challenged those.

24 Q And a request for an administrative  
25 hearing would occur after the Chief Reviewer has

1 done his or her thing; correct?

2 A Correct.

3 Q Do you know what the term "field testing"  
4 means?

5 A I do.

6 Q What is it "field testing"?

7 A So field testing is basically spiraling or  
8 including test questions or prompts on active test  
9 forms so that we have the ability to collect real  
10 time accurate data on examinee performance. That's  
11 kind of a summary. That's kind of a field  
12 definition.

13 Q And is this done in the area of  
14 standardized testing?

15 A It is.

16 Q And was the FELE and, in particular, the  
17 WPA portion of the FELE field tested?

18 A The FELE was pilot tested.

19 Q All right. Tell me the difference between  
20 pilot testing and field testing?

21 A Great question. I'm glad I'm having a  
22 chance to clarify. Field testing is when you put  
23 test questions on active test forms. Pilot testing  
24 is when you solicit, in a public forum or format,  
25 people to come in and actually take the pilot test.

1 And so often times we'll offer a small stipend.  
2 Sometimes we'll actually go in person to a college  
3 of education and sit down and administer the prompt.  
4 Matter of fact, with FELE we did a lot of that.  
5 Actually sat down with grad students and let them  
6 take the prompts so we could gather some accurate  
7 response.

8 Q So, the FELE was pilot tested, but not  
9 field tested?

10 A But not field tested.

11 Q And the FELE was put together, for lack of  
12 a better term, by the DOE?

13 A It was developed by the DOE.

14 Q Developed. That's the word I'm looking  
15 for. Thank you. Is there data that's accessible  
16 with regard to the pilot testing of the FELE?

17 A What -- could you be more specific?

18 Q Yeah. How many times was it pilot tested,  
19 who were the pilot test takers, the focus groups?

20 A I don't have that off the top of my head,  
21 and I didn't bring that.

22 Q I understand, but it's out there  
23 somewhere?

24 A We could research that.

25 Q And how long ago did that occur, the pilot



1 testing?

2 A That would have been '13, '14. So it  
3 would have been a number of years ago.

4 Q And you say 2013 to 2014?

5 A To develop a test right, to do it the  
6 right way, in a standard based environment, as we  
7 do, it takes about 2 and a half to three years to  
8 build a really good test. And so the FELE  
9 development actually started, in earnest, at '13 or  
10 '14. So I don't know if it was full year of '13 and  
11 all of '14, but it definitely overlapped years.

12 Q When an individual takes the FELE and, in  
13 particular, the WPA portion of the FELE, they get a  
14 written notification with respect to how they  
15 scored; correct?

16 A The not passing candidates receive their  
17 score.

18 Q Okay. And included in that notification  
19 is the average score?

20 A That came up earlier as part of the  
21 testimony, and I'm not sure exactly what you're  
22 referencing or what others have referenced, as far  
23 as that goes. I'd have to actually see a version of  
24 the score report.

25 COURT REPORTER: Of the score what?

1 THE WITNESS: Score report that's being  
2 referenced.

3 Q (By Mr. Mckee) I didn't plan to introduce  
4 this, but I'd like to show it to the witness to  
5 refresh his recollection.

6 ADMINISTRATIVE LAW JUDGE MCARTHUR: That's  
7 fine.

8 MS. WILMOT: Where did this come from?

9 MR. MCKEE: It came from you folks.

10 MS. WILMOT: It's got somebody's social  
11 security number on it.

12 MR. MCKEE: Well, I'm not going to put it  
13 in evidence. I just want to show him.

14 A (By the Witness) Okay. What's your  
15 question?

16 Q (By Mr. Mckee) Does that refresh your  
17 recollection as to what the test takers --

18 A This looks like an official --

19 ADMINISTRATIVE LAW JUDGE MCARTHUR: Hold  
20 up. Let him finish his question.

21 THE WITNESS: Sorry.

22 Q (By Mr. Mckee) What the test taker  
23 receives if he or she should fail a portion of the  
24 FELE?

25 A This appears to be a score report from the

1 Petitioner.

2 Q Okay. And that score report includes the  
3 average test score and the test taker's score?

4 A It shows an average, yeah.

5 Q And do you know what the average score on  
6 the WPA was for the last testing round?

7 A I'd have to figure out and learn how that  
8 calculation is done, whether that's just for a  
9 particular scoring session or that's an annual or  
10 that's a quarterly. I'm not sure how that statistic  
11 is -- I would not be able to testify truthfully as  
12 to how that statistic is generated.

13 Q Fair enough. The Department publishes the  
14 Florida Education Leadership Exam or FELE scores for  
15 first time test takers; correct?

16 A Uh-huh.

17 Q And you testified that for the last group  
18 it was 50 percent passed?

19 A In 2016.

20 Q 2016. You don't know about the 2017 data  
21 yet?

22 A I haven't looked at 2017 cumulative yet.

23 Q And this is part of one of the exhibits  
24 that's already been placed into evidence.

25 ADMINISTRATIVE LAW JUDGE MCARTHUR:

1 Respondent's 4?

2 MR. MCKEE: This is number 4, page 2.

3 MS. WILMOT: Of our exhibits?

4 MR. MCKEE: Yes. That's Respondent's  
5 Exhibit 4.

6 Q (By Mr. Mckee) And if you'll see the  
7 reference on the bottom, very near the bottom, it  
8 says FELE and then sub -- new FELE, subtest 3 for  
9 system leadership written performance section?

10 A Yes, I see it.

11 Q All right. And you see that for the 2015  
12 reporting group. That was 54 percent of first time  
13 test takers passed that portion of the exam;  
14 correct?

15 A That's what the table indicates.

16 Q And for the 2016 group, it dropped to  
17 50 percent; correct?

18 A That's what it indicates, yep.

19 Q Was there no data available for 2013 and  
20 2014 because that space is blacked out?

21 A So that's back when the test was  
22 compositive. So it wouldn't have been appropriate  
23 to report a pass rate during those composite --  
24 during the composite era because, essentially, there  
25 was no cut score for the written portion.

1 Q And this is a matter of public record;  
2 correct?

3 A Absolutely.

4 Q This isn't a confidential document?

5 A This is public record.

6 Q Why doesn't the Department report the  
7 passing percentages for second or third or fourth  
8 time takers?

9 A Just as a matter of policy we haven't.

10 Q No rationale for it?

11 A The most accurate measure, if you will,  
12 from a policy perspective of pass rate is your first  
13 time. Your first time pass rate gives you your best  
14 estimate of how candidates are performing on any  
15 test. Not your best attempt, not your fifth  
16 attempt. If you were to put all of those in there,  
17 your past rates would change even more. That first  
18 time attempt is your most accurate attempt and your  
19 most accurate portrayal of a candidate performance.

20 Q Let's talk about the data that's available  
21 or information that's available to a potential test  
22 taker on the FDOE website. I'm talking about FELE  
23 and, particularly, the WPA portion of the FELE. And  
24 is there a page on the website that provides a  
25 sample prompt for high school, sample prompt for

1 middle school, sample prompt for weekly test scores?

2 A I know that there are three prompts posted  
3 on the website.

4 Q And there's also a posting of SRC,  
5 Supplemental Rating Criteria?

6 A There would be one for each of those.

7 Q And the SRC, is that the same as the  
8 rubric?

9 A No, it is not.

10 Q All right. How is that different than the  
11 rubric?

12 A So, essentially what you have, you have a  
13 general rubric, which is kind of an overall rubric  
14 that really addresses things like grammar, syntax,  
15 sentence structure, et cetera. And then you have  
16 the Supplemental Rating Criteria that then overlays  
17 what's required of the FELE examinees. And that  
18 includes all your data interpretation and various  
19 critical data points, the performance matrixes, the  
20 monitoring tools, all the various aspects that go  
21 into respond to that prompt. That's what the SCR  
22 delineates.

23 Q And does that all relate to prior tests  
24 that have been administered and scored?

25 A I'm not sure I understand.

1 Q Are you just giving an example of what  
2 might be or are you giving access to tests that were  
3 administered and reviewed in the past?

4 A So the four prompts that we've publically  
5 released, including the three that you reference,  
6 those were either prompts that were active and  
7 retired, or ones that we developed. So what you're  
8 seeing, for lack of a better term, is the real deal.  
9 That's -- those SRC's are the SRC's that were  
10 actually used to rate responses that correspond to  
11 those three prompts.

12 Q And is there information on the website,  
13 the FDOE website, concerning knowledge of effective  
14 communication practices?

15 A I heard that during one of the prior  
16 testimonies. Without seeing it, that sounds to me  
17 like it's the State Board of approved competency  
18 that covers the written performance assessment.

19 Q Fair enough. And what is the difference  
20 between the State approved competencies and what  
21 you're looking for in the FELE?

22 A Great question. Glad you're allowing me  
23 to clarify that. The competencies, if you can  
24 imagine, are 30,000-foot level information that the  
25 Board wants candidates to know. The rubric, the SRC

1 and the skills required to answer the questions  
2 correctly, those are much more discrete. Those are  
3 much more fine tuned. So the Board comes out and  
4 says, we want educational leaders to be effective  
5 communicators. It's then our job to distill that  
6 down into a test, if you will. And so I've heard  
7 that a lot during testimony. I believe what you're  
8 referencing are the State Board approved  
9 competencies for the communication section.

10 Q For the communication section of --

11 A FELE, WPA Subtest 3.

12 Q Very good. Thank you. You talked about  
13 synthesizing data. What does that mean to  
14 synthesize data?

15 A Well, I think in the context of the WPA,  
16 essentially taking the data set, breaking it down  
17 and providing clarity and meaning.

18 Q So you're manipulating the data in some  
19 fashion?

20 A No.

21 Q You're not just taking the data as it  
22 exists in the prompt and putting it on the essay  
23 response?

24 A You're using the data to effectively  
25 communicate. That's the goal.



1 ADMINISTRATIVE LAW JUDGE MCARTHUR: We are  
2 resuming the public testimony after  
3 confidential testimony segment number 3.

4 MS. WILMOT: Just a little bit of  
5 redirect, Your Honor.

6 ADMINISTRATIVE LAW JUDGE MCARTHUR: Yes.

7 **REDIRECT EXAMINATION**

8 BY MS. WILMOT:

9 Q Mr. Canto, we had talked about the due  
10 process and the score verification being a part of  
11 that?

12 A Uh-huh.

13 Q And there were 30 days to request a score  
14 verification. Is that based on anything, statutory  
15 or anything?

16 A The rule says, the State Board of  
17 Education rules says that you cannot engage in a  
18 testing event fewer than 30 days apart. So if you  
19 take a test, you cannot get a score verification or  
20 you cannot retest until 30 days have elapsed.

21 Q Okay. So in order -- the score  
22 verification process, is it required to go through  
23 that process prior to requesting an administrative  
24 hearing?

25 A That's been the policy.

1 Q So that's part of the due process?

2 A Yes.

3 Q Okay. We had some discussion about  
4 average score and we don't have this in evidence, we  
5 don't have any record of it, but if the average  
6 score were 7 and 7 is passing, that means that 6 is  
7 below average?

8 A It would be clear to say that 6 is not  
9 passing.

10 Q You know, you have a lot of experience  
11 with assessments?

12 A (Witness nods head).

13 Q And the test taking practices of people.  
14 So, the first time an individual takes a test, in  
15 your experience, and you've already testified that  
16 that's the best measure but, in your experience,  
17 that same individual taking the test again, do their  
18 probability of passing, does it increase or  
19 decrease?

20 A It decreases.

21 Q Does it decrease every time they repeat?

22 A It depends on the test. Ad so if you look  
23 at the different tests, it depends on the level of  
24 complexity of the examination. Everyone has a bad  
25 day.

1 Q Okay.

2 A You come in, you're not feeling well, you  
3 got a car accident, you couldn't find the test  
4 center, you don't do well. That happens.

5 Q Okay.

6 A But on your third, fourth, fifth, sixth,  
7 seventh attempts, some -- it becomes kind of a law  
8 of diminishing returns, if you will. We see those  
9 pass rates actually drop.

10 Q Okay. So one last thing, I just want to  
11 make it clear, I think we're calling rubric a couple  
12 of different things here, and probably the lay  
13 people are the most guilty of it. I think that you  
14 are referring to the rubric is the basic, very  
15 general document that I think the educators get  
16 automatically when they apply to take the exam?

17 A I don't know that they actually get it as  
18 part of their registration ticket, but it certainly  
19 is available on the web and it's available in the  
20 test information guide.

21 Q And that's general, but what specific is  
22 the Supplemental Rating Criteria? And that has also  
23 been referred to as a rubric during this litigation,  
24 and that is the document used as a rubric by the  
25 reviewers, the raters, is that true?

1           A     Both are used by the raters.

2           Q     Okay.

3           A     The general rubric. And if you want, I  
4 can point it out in the exhibits. And the SRC are  
5 used to score each and every prompt.

6           Q     And both of those are available to the  
7 examinees or anyone that accesses the prompts that  
8 are put on the public for the educators?

9           A     The one in the test information guide does  
10 not include the Supplemental Rating Criteria. The  
11 other three that we provide on the web for free,  
12 those do include the SRC's.

13          Q     Okay. So, I'm sorry, explain to me again  
14 the one that does not?

15          A     The one, the test information guide does  
16 not include the Supplemental Rating Criteria.

17          Q     Okay. So it's just a part of that whole  
18 thing, but what's provided online by the Department,  
19 those sample essay questions, they do provide the  
20 Supplemental Rating Criteria?

21          A     Yes.

22          Q     And I believe that the exhibit, or at  
23 least the paper that opposing counsel showed to you,  
24 it said on there, Supplemental Rating Criteria and  
25 that was a part of -- it seemed to me to be a print

1 out from the web page?

2 A I didn't see it.

3 Q All right.

4 A Yes.

5 MS. WILMOT: That's all that I have.

6 ADMINISTRATIVE LAW JUDGE MCARTHUR: You  
7 are excused, Mr. Canto. You can return to your  
8 representative seat. You may call your next  
9 witness.

10 MS. WILMOT: We call Kelly Pelletier, Dr.  
11 Kelly Pelletier.

12 ADMINISTRATIVE LAW JUDGE MCARTHUR:  
13 Pelletier?

14 THE WITNESS: Pelletier is the French  
15 pronunciation. Pelletier down here.

16 ADMINISTRATIVE LAW JUDGE MCARTHUR: Do you  
17 prefer the French pronunciation?

18 THE WITNESS: Pelletier is fine.

19 ADMINISTRATIVE LAW JUDGE MCARTHUR: I kind  
20 of prefer the French.

21 THE WITNESS: The French is nice.

22 ADMINISTRATIVE LAW JUDGE MCARTHUR: Would  
23 you raise your right hand. Do you swear or  
24 affirm that the testimony you're about to give  
25 today will be the truth, the whole truth and

1 nothing but the truth?

2 THE WITNESS: Yes.

3 ADMINISTRATIVE LAW JUDGE MCARTHUR: Thank  
4 you.

5 WHEREUPON,

6 KELLY PELLETIER

7 having been duly sworn to tell the truth, the whole truth  
8 and nothing but the truth, was examined and testified as  
9 follows:

10 DIRECT EXAMINATION

11 BY MS. WILMOT:

12 Q Dr. Pelletier, would you please state your  
13 name and spell it for the court reporter?

14 A Sure. Kelly Pelletier. K-E-L-L-Y,  
15 P-E-L-L-E-T-I-E-R.

16 Q And if you would turn to Exhibit 7 on the  
17 Respondent's Exhibits?

18 A That one.

19 Q Is this an accurate copy of your resume?

20 A Yes.

21 MS. WILMOT: We'd like it enter this into  
22 evidence, Your Honor.

23 MR. MCKEE: No objection.

24 ADMINISTRATIVE LAW JUDGE MCARTHUR:

25 Without objection, Respondent's 7 is admitted.

1           Q     (By Ms. Wilmot) So we established your  
2     qualifications and your history and background by  
3     your resume, but tell us a little bit. And we've  
4     had testimony already of your occupation. How are  
5     you employed by Pearson?

6           A     How am I employed by Pearson?

7           Q     Yes.

8           A     Okay. All right. I do a couple of  
9     different things for Pearson. I am a Chief  
10    Reviewer, so I review essay responses when they've  
11    been contested. I also have done some item writing  
12    for some of the tests. And I have done item reviews  
13    for multiple choice tests, as well.

14          Q     Okay. So, we have had a Chief Reviewer,  
15    and that's the capacity that we're interested in  
16    today, testify. So we're going to try to keep your  
17    testimony short given the late hour and cover things  
18    quite not as in detail?

19          A     Okay.

20          Q     But if you could talk a little bit about  
21    your educational history, both in practice and in  
22    what schooling you've had?

23          A     Okay. My undergrad degrees are in  
24    Mathematics Education from the University of Central  
25    Florida. I went on to get a Master's Degree in

1 Educational Leadership, also, from the University of  
2 Central Florida. And then completed my Doctorate,  
3 along with my dissertation at the University of  
4 Central Florida in Educational Leadership. In  
5 addition to that, I'm trained in a variety of other  
6 kinds of staff development type trainings that have  
7 to do in the field, different fields of education.

8 Background and education, let's see, my  
9 first teaching job was here in Orange County public  
10 schools, 26 years ago. I taught high school  
11 mathematics for six years. I moved from the  
12 classroom to a resource teacher position and did  
13 staff development and teacher development. Did that  
14 for about two years. Then I moved to the District  
15 level and did staff development at the District  
16 level working with principals and assistant  
17 principals, visiting schools and all kinds of  
18 different staff development before becoming an  
19 assistant principal.

20 I was an assistant principal for three  
21 years before I got my first principal job. And then  
22 I was a principal at two different elementary  
23 schools, eight years together, and I have currently  
24 been at the middle school level for, this will be my  
25 sixth year at the middle school.



1 Q As a principal?

2 A As a principal, yes, ma'am.

3 Q Okay. So you have extensive experience,  
4 both as a principal and as a rater, it sounds like?

5 A I've been rating the essays for about two  
6 years. Almost two years now.

7 Q So that's the review?

8 A The Chief Reviewer job.

9 Q Chief Reviewer?

10 A Uh-huh.

11 Q Did you do anything with review prior to  
12 that? Were you ever a rater or a Chief Rater?

13 A Not for essays. I've done multiple choice  
14 questions for test items.

15 Q Okay. Did you go through the training in  
16 Hadley, Massachusetts?

17 A Yes.

18 Q And how long was that?

19 A Two days.

20 Q Two days. Was it intense?

21 A Yes.

22 Q And what did you do there?

23 A We were trained, pretty much eight -- we  
24 worked about 8 to 5, 4 or 5:00 in the afternoon. We  
25 worked with other reviewers who were reviewing

1 essays like in a committee format. So we were  
2 trained in how -- how they were trained, how to look  
3 at rubrics, how to pull the information from the  
4 rubrics, what kinds of things are they looking for  
5 in essay responses. We spent a lot of time working  
6 on the rubric itself before we even ever looked at  
7 an essay response. Then we practiced looking at  
8 essay response samples.

9           We started with what are called historic  
10 anchor papers what were written to a prompt to show  
11 what a 1 looks like, what a 2 looks like, what a 3  
12 looks like, and we practiced with those first. Then  
13 we actually looked at actual student responses and  
14 practiced with those. Then we actually got on the  
15 computer and rated some essay responses, along with  
16 the people who have been rating them for many years,  
17 so that we could calibrate ourselves to them. And  
18 we did the calibrations, probably spent almost the  
19 whole second day working on calibrations, making  
20 sure that we were calibrated to scoring where they  
21 score.

22           Q     Okay. And that all happened in  
23 Massachusetts --

24           A     Uh-huh.

25           Q     -- under Pearson?

1 A Yes.

2 Q Okay. So, I'm going to go through this  
3 process a little bit more quickly and maybe just  
4 have you verify what happens?

5 A Okay.

6 Q Some of it I'll have you testify to, but  
7 my understanding is, first you receive -- when a  
8 review is ordered of an essay, you first receive an  
9 e-mail?

10 A Yes.

11 Q And that e-mail asks your availability?

12 A Yes. We get an e-mail from the person who  
13 coordinates it all and asks if we are able to review  
14 an essay and gives us the due date. So in case  
15 there's something going on that we wouldn't be able  
16 to get it back by the due date we know when it is.

17 Q So then if there was something going on,  
18 you could say, no, I'm not available?

19 A Yes.

20 Q Okay. So how many essays would they send  
21 you at a time?

22 A Usually one at time.

23 Q And how much time did you get to review  
24 it?

25 A Normally, about two weeks, sometimes three

1 weeks to review an essay and get it back.

2 Q Okay. So once you agree, get the e-mail,  
3 you agree, say I'm available, what happens then?

4 A We are sent a password to a secured  
5 website and an invoice to turn in after we're done  
6 with the work. We go to the secured website with  
7 the password and the log in. All the materials stay  
8 on the secured website, and we start our work from  
9 there.

10 Q Okay. Do you have to sign a  
11 confidentiality agreement?

12 A We did before we started working.

13 Q Before you started working?

14 A In Massachusetts.

15 Q I see. So then you log in and you get the  
16 packet --

17 A Yes.

18 Q -- or a series of documents?

19 A There's a series of documents logged in on  
20 the secure website. About -- there's about 10  
21 different things that -- 10 different steps that we  
22 go through each time.

23 Q And are they in order? Are they in an  
24 order?

25 A Yes. You start at number 1 and work your

1 way through.

2 Q And you always go this order?

3 A Yes.

4 Q You never skip around?

5 A I always start at the first one.

6 Q Okay. And when you get that packet, when  
7 you open it and all through the whole process, do  
8 you have any idea who the individual is, who wrote  
9 the essay, whether they're male, female, whether  
10 they come from south Florida, north Florida, any  
11 identification with regard to the individual?

12 A No. There's no identification on any of  
13 the materials in the secure server.

14 Q Okay. So, when you go through the process  
15 in order, what's the first step?

16 A The first -- you open up the first  
17 document and it's directions as to what we are  
18 supposed do.

19 Q Okay.

20 A Directions for us. After that, the next  
21 document, so that would be number 1. We would go to  
22 number 2 and open that. It's usually the directions  
23 that the person who's taking the test got.

24 Q Okay.

25 A Directions for the test. Then we open the

1 historic anchor rubric, and look at the historic  
2 anchor question and rubric. Then we open a packet  
3 that has the historic anchors.

4 Q Let's back up to the last packet --

5 A Okay.

6 Q -- the historic rubric, is that the  
7 supplemental rating criteria?

8 A For the historic prompt.

9 Q For the historic prompt.

10 A Not for the one that we're going to be  
11 looking at.

12 Q Right.

13 A It's a different prompt.

14 Q But it would have that type of information  
15 in it?

16 A Yes.

17 Q So you have the prompt, and you have the  
18 rating criteria?

19 A For the historic prompt, yes.

20 Q For the historic prompt, which we're  
21 calling a rubric?

22 A Yes.

23 Q Okay. That's the -- that's that packet;  
24 right?

25 A Yes.

1 Q Then you move on.

2 A The next packet has the already scored  
3 sample historic anchors. So they start -- they've  
4 already been rated, and we read through those. So  
5 there's a 1, a 2, a 3, a 4, a 5, and it goes all the  
6 way from 1 to 6. We read through all of those.  
7 Then we actually open up --

8 Q I'm sorry, back up. When you read through  
9 all of those, do you score them?

10 A Not the -- the first packet you read  
11 through, they're already scored.

12 Q Okay.

13 A There's another packet after that one that  
14 we open up and practice scoring.

15 Q Okay.

16 A I don't have the documents in front of me.

17 Q Sure.

18 A So I may have them out of order. And then  
19 we move to the rubric and the question, the prompt,  
20 for the -- the one that we'll be reviewing.

21 Q Okay.

22 A Open that one and read through that one.  
23 So it has the question that they were presented,  
24 along with the Supplemental Rating Criteria, which  
25 is the rubric. And we read through the rubric that

1 we'll have the ratings for, number 6 through 1, for  
2 the rubric. After we -- the next one you open is  
3 practice, and it is practice -- it will have 6, only  
4 6 and they are each scored one of the numbers 1  
5 through 6.

6 Q Okay.

7 A So it basically gives us a basis for that  
8 particular prompt, what a 1 looks like, what a 2  
9 looks like, what a 3. So we go through those 6 and  
10 we practice scoring them. Then the next one you  
11 open would be the answers for the essays we just  
12 practiced scoring, so that we can then check our  
13 answers and see if we were correct. Was the first  
14 essay I read a number 6, if that's what I gave it.

15 Q Okay.

16 A Then we open the next packet and there are  
17 10 essays in that one for us to practice scoring.  
18 And those are so they will be the numbers 1 through  
19 6, more than just once.

20 Q And this is still the prompt that you're  
21 going to be reviewing --

22 A Yes.

23 Q -- the answer to?

24 A All of this is practice on the prompt that  
25 we will be reviewing. So I've done 6 already but I



1 knew that there was only one 1, one 2, one 3 in the  
2 first 6.

3 Q Right.

4 A But the second grouping is 10, and there  
5 can be multiple -- there could be multiple 2's or  
6 multiple 3's in there, we don't know. So we go  
7 through the 10 and we practice scoring those. Then  
8 open the answers and go back and check our answers  
9 to see if what we scored it was what the raters  
10 scored it.

11 Q Right. And if it does -- if it doesn't --  
12 if you don't line up with the rater's scores, what  
13 happens then?

14 A If doesn't line up, we try to hit it  
15 within one point of what the raters score. So if I  
16 scored it a 3 and they scored it a 4, that's  
17 considered within the range. But if it's too far  
18 off --

19 Q Right.

20 A -- then we go back and redo them.

21 Q Okay.

22 A So I go back and start the whole packet  
23 over again.

24 Q Okay.

25 A And we'll read through them again and

1 rescore them, especially for ones that I missed the  
2 first time to see that how they line up and what I  
3 may not have seen the first time through.

4 Q Okay.

5 A After all of that, then we open the  
6 response. Actually, the next piece that you open is  
7 a blank, like where I will write my response.

8 Q Okay.

9 A It's a blank paper.

10 Q Okay.

11 A And then we open the actual response from  
12 the person, the essay.

13 Q Okay.

14 A And we read the essay from the person that  
15 has written it. So there's nothing identifying  
16 anything on it. And then I would score it,  
17 according to the rubric. At the bottom of the  
18 essay, the very last page, shows us what it was  
19 scored when it was scored originally.

20 Q Okay.

21 A So when I read it through, I have no idea  
22 what anyone else scored it. The scores are no where  
23 on it, except on the very last page at the very  
24 bottom. Then I go back and write my response for  
25 what I would rate it and why. And in our responses

1 we pull from the rubric, or the Supplemental Rating  
2 Criteria, we pull things straight from that to  
3 verify and justify the scores that we're giving the  
4 essay.

5 Q Okay. Now, when you say you score it, do  
6 you actually write a number down?

7 A For what I would score it?

8 Q Yes.

9 A Yeah, I usually do.

10 Q Okay. And what about -- how do you  
11 determine -- what do you use to determine your  
12 decision on the review?

13 A The rubric. The Supplemental Rating  
14 Criteria gives us specific things we're looking for.  
15 It is normally in two parts. So the first part is  
16 the data that you're looking for and there's certain  
17 things that you have to find in the data analysis.  
18 So there could be anywhere from three bullet points  
19 to 6 or 7 pieces of data, specific pieces of data  
20 that you're looking for the person to have written  
21 about.

22 Q Right.

23 A So we've been trained that, say, a 4 on  
24 the rubric would be 5 out of the six pieces of data  
25 were present, and that's all in the rating criteria.

1 So when we read through, I look for the data that's  
2 mentioned, and see if it matches up to the data  
3 points. So you're looking to see how many pieces of  
4 data will match up to the data points.

5 Then the second piece is a communication  
6 of the analysis. And in the communication piece,  
7 there are also specific things we're looking for.  
8 So it may be that they have to mention two -- two  
9 ways that they're going to offer professional  
10 development. And there has to be a plan that  
11 included input from the teacher. There may be --  
12 what are some of the things, monitoring. Two  
13 different ways they're going to monitor whether or  
14 not the professional development is being  
15 implemented in the classroom and how are they going  
16 to monitor that. So we're looking for mention of  
17 the specifics that are mentioned for the rubric.

18 So if it's two things, if it's one thing,  
19 if there's nothing, it depends when we read. So the  
20 specifics are all given to us in the rubric and then  
21 we read through looking for those specific things  
22 and then whatever we find in the essay, we find the  
23 level of the rubric that that matches up to.

24 So if there were two data points, I look  
25 for two data points that makes it a this, and it

1 can't be any higher.

2 Q Okay. So when you've done all of that, do  
3 you score it as the score stands or the score is  
4 overturned?

5 A We will look at what the others have rated  
6 it and say that the score stands or that we've given  
7 it a different score, yes.

8 Q And then you write comments to justify --

9 A Uh-huh.

10 Q -- your score or whether or not you  
11 allowed it to stand?

12 A Yes.

13 Q Okay. Do you see any comments from the  
14 raters? Do you see just the scores?

15 A Prior raters?

16 Q Yes.

17 A No, there are no comments on there. The  
18 only thing we get is the essay and the scores that  
19 the prior raters had given it.

20 Q Okay.

21 MS. WILMOT: That's all that I need.

22 Thank you. And, also, thank you so much for  
23 waiting all day long to testify.

24 MR. MCKEE: I'll get you out of here  
25 quickly.

CROSS-EXAMINATION

1

2 BY MR. MCKEE:

3 Q I'm Bob McKee. I'm the attorney and I  
4 represent Ms. McCue in this matter. Just a couple  
5 of points.

6 A Sure.

7 Q You never -- you were never a rater;  
8 correct?

9 A No.

10 Q You've only been a Chief Reviewer?

11 A Correct.

12 Q And you were trained to be Chief Reviewer  
13 up in Massachusetts by Pearson?

14 A Yes.

15 Q The two day course that you told us about?

16 A Yes.

17 Q Your job as a Chief Reviewer is to go  
18 through that process that you've described after a  
19 test taker has made a contest or disputed, in some  
20 way, the grade that he or she got; correct?

21 A Yes.

22 Q Are you familiar with the process that the  
23 test taker goes through before it gets to you to  
24 review as a Chief Reviewer?

25 A No. Other than taking -- going somewhere

1 and taking the test, no, I don't know what happens  
2 between that.

3 Q So you're not aware that the tester taker  
4 who's challenging the grading of the test is given  
5 an opportunity to explain why he or she thinks the  
6 test was improperly graded?

7 A No.

8 Q You never see that data --

9 A No.

10 Q -- or that explanation?

11 A No.

12 MS. WILMOT: That's all that I have.

13 Thank you, ma'am.

14 THE WITNESS: Okay.

15 MS. WILMOT: No redirect.

16 ADMINISTRATIVE LAW JUDGE MCARTHUR: You're  
17 excused. We have one more witness?

18 MS. WILMOT: One more.

19 ADMINISTRATIVE LAW JUDGE MCARTHUR: Don't  
20 discuss your testimony with the one more  
21 witness yet. You may call your next witness.  
22 And no more hallway chat about your testimony.

23 THE WITNESS: Okay.

24 MS. WILMOT: I call mary Jane Tappen.

25 ADMINISTRATIVE LAW JUDGE MCARTHUR: And

1 would you spell your name? You have the  
2 spelling of the name. Nevermind. Would you  
3 raise your right hand. Do you swear or affirm  
4 that the testimony you're about to give today  
5 will be the truth, the whole truth and nothing  
6 but the truth?

7 THE WITNESS: I do.

8 ADMINISTRATIVE LAW JUDGE MCARTHUR: Thank  
9 you.

10 WHEREUPON,

11 MARY JANE TAPPEN

12 having been duly sworn to tell the truth, the whole truth  
13 and nothing but the truth, was examined and testified as  
14 follows:

15 DIRECT EXAMINATION

16 BY MS. WILMOT:

17 Q And would you state your name, for the  
18 record?

19 A I am Mary Jane Tappen, T-A-P-P-E-N.

20 Q And can you review -- well, what is your  
21 -- you work with the Department; is that correct?

22 A I do.

23 Q And what is your position with the  
24 Department?

25 A I am the Vice Chancellor for K-12 Student



1 Achievement and Student Services.

2 Q And what does that cover, just broadly?

3 A Some of my responsibilities are all the  
4 services for our K-12 students, the standards for  
5 our K-12 students, exceptional education, English  
6 language learners, counseling, and student promotion  
7 and course requirements.

8 Q Okay. And could you talk about your -- a  
9 little bit about your educational background and  
10 your employment history?

11 A Okay. I started out as a school teacher  
12 and, actually, as teacher's aid at a Sunland Center  
13 and I've been a school teacher in Wakulla County  
14 middle grades. I have certification in physical  
15 education, mathematics, and a Master's in  
16 mathematic's education. And I went to the  
17 Department after teaching in Wakulla and then  
18 Jacksonville and Duval County. Worked at the  
19 District level in Duval County and then came to the  
20 Department and have been in the Department for over  
21 20 years.

22 I've served in different capacities. The  
23 Director of Florida Statewide Systemic Initiative in  
24 Mathematics. A Director of the School Improvement  
25 Policy Center, Bureau Chief for Curriculum

1 Instruction and Student Services, Deputy Chancellor  
2 for K-12 for School Improvement for Curriculum  
3 Instruction and Federal programs. I was the  
4 Director of Florida's office of math and science.  
5 Then I was a Deputy Chancellor of curriculum  
6 instruction and student services. And I am now the  
7 Vice Chancellor of Standards and Instructional  
8 Support for Student Services.

9 Q So you're testifying today not so much to  
10 the process, but as to the policies of the  
11 Department?

12 A (Witness nods head).

13 Q When and why did the teacher exams become  
14 more rigorous, and did they?

15 A Yes, they did. Throughout the years we've  
16 had, first the Sunshine State Standards for  
17 students. Then the Next Generation, Sunshine State  
18 Standards for Students, a short period of time the  
19 Common Core and now the Florida Standards and Next  
20 Generation Standards for Students. So, we, through  
21 my career, have increased the requirements for  
22 students and the rigor of the content standards of  
23 students. And that timeline has been parallel to  
24 increasing student requirements, particularly for  
25 high school graduation and middle grades promotion.

1 And the assessment system that our students are  
2 required to participate in and our high school  
3 assessment requirements of students.

4           So with all of our systems, as we progress  
5 and increase those requirements for students, I have  
6 worked with the office that is in charge of  
7 developing the teacher certification requirements to  
8 ensure that the teacher certification exams are  
9 minimally as rigorous as what our expectations for  
10 students are. So, for example, when we increased  
11 the promotion and requirements for student reading  
12 in English Language Arts, we took a look at the  
13 teacher preparation programs and the exams to ensure  
14 that they met minimally the requirements of our  
15 students in high school.

16           Q     And the current standards that are in  
17 place now, when did they -- when were they  
18 developed?

19           A     The development began before 2010. In  
20 2010 our -- well, actually our Next Generation  
21 Sunshine State Standards and all content, with the  
22 exception of English Language Arts and mathematics,  
23 that development was 2008 through 2010. In English  
24 Language Arts and mathematics, we adopted the common  
25 core standards of 2010. The development took a

1 couple of years. And then the Florida Standards in  
2 February, 2014, in English Language Arts and  
3 mathematics.

4 Q And corresponding with those enhanced and  
5 improved standards for students, did we also require  
6 that the educators who were becoming certified meet  
7 similar standards that are compliant with those?

8 A Yes. We reviewed the teacher preparation  
9 programs and the teacher exams to ensure that the  
10 content matched the requirements of the instruction.  
11 So what teachers needed to know and be able to do in  
12 order to teach the content that is required in the  
13 standards.

14 Q And when you say "we", do you mean within  
15 the Department or did you reach out to college  
16 professors and educators?

17 A There are content experts at the post  
18 secondary and local level particularly, for example,  
19 when we were adopting the social studies standards,  
20 we would include experts at the postsecondary level  
21 both in the content level and educators. So if  
22 you're talking about U.S. History, professors of  
23 U.S. History and, also, education instructors in  
24 that area. So we had content experts, as well as  
25 educational experts, as well as teachers at the

1 table. And folks, we included stakeholders,  
2 business partners. We always have done our best to  
3 bring as many professionals to the table as we could  
4 in the development of the Standards, and then the  
5 development of the assessments to match assessing  
6 student knowledge of those standards.

7 Q So the standards for leadership --

8 A Uh-huh.

9 Q -- certification, would it include  
10 principals?

11 A Yes.

12 Q Would it also include college level  
13 instructors who are teaching ed leadership?

14 A Correct. Yes.

15 Q And any other number of stakeholders  
16 directly related?

17 A Yes.

18 Q So, I want to talk about the cut scores.

19 Are you familiar with that process and how it

20 happens? How do we decide -- how does the

21 Department decide where do we draw the line?

22 A The benchmarking process for any

23 assessment that we use is where you take the

24 questions from the assessment and stakeholders

25 external to the Department, rank those questions and

1 they benchmark what they believe different  
2 stakeholders, whether it's a stakeholder group of  
3 educators, whether it's a stakeholder group of  
4 experts, they rank where they feel the passing mark  
5 should be. And those different groups of  
6 stakeholders who are associated with that content  
7 are brought together to rank it, and they are  
8 external to the Department. The Department  
9 facilitates a process that they're external.

10 In a majority of the cases, the external  
11 educator stakeholders typically set it higher -- a  
12 higher bar than other stakeholders. They're  
13 pretty -- pretty serious about their job and what  
14 they feel the expectations of educators should be.  
15 And then those recommendations are brought forward  
16 to the State Board of Education and to the  
17 Commissioner. And then they pass State Board rules  
18 that include those benchmark scores.

19 Q And they have statutory authority to  
20 promulgate those rules?

21 A Correct.

22 Q Okay. What is the FELE, the Florida  
23 Education Leadership Exam, testing for? Like is it  
24 testing to see if you're a good writer or is it  
25 testing for standards of principals and how do they

1 do that?

2           A     Similar to any other profession, the exam  
3 should match the skills and abilities of the person  
4 that will need do that job. So, in education, we  
5 have moved to a data driven system that focuses on  
6 quality instruction. So, a school leader needs to  
7 show evidence of being able to drive improvements  
8 and instruction based on the data of student  
9 performance. And, also, to be able to identify a  
10 quality instruction and identify classroom  
11 environment where quality instruction is not present  
12 and what strategies and supports need to be provided  
13 to those educators to improve instruction.

14                     So that the whole purpose of a student  
15 assessment system is to measure the quality of  
16 instruction, ensure that all students have access to  
17 quality instruction and that data should be used in  
18 the school improvement process and the teacher  
19 evaluation process and observation of instruction.  
20 The data should be revisited regularly. We have  
21 interim assessments, we have end of year  
22 assessments. But that should be driving support for  
23 educators, communication to parents. It is what --  
24 instruction has changed from just what folks thought  
25 felt good to being data driven to ensure that all

1 kids have equitable access to improved instruction  
2 quality.

3 Q Okay. So the purpose of a FELE essay is  
4 not just -- does it read well and does it sound  
5 really good and maybe that's part of it but, also,  
6 to take the data and analyze it and use it in a way  
7 that it will be used in real life?

8 A I would say there's two purposes but, yes,  
9 to analyze information that comes in from student  
10 performance. There's more than just the Statewide  
11 assessments. There's interim assessments, but  
12 there's behavior data. There's all kinds of sources  
13 of data. And a school administrator's job is to be  
14 able to analyze that data and then turn it around  
15 into actions to close any gaps or improve, again,  
16 the quality of instruction in the classroom.  
17 Additionally, to be able to communicate that  
18 information to a school advisory council whose role  
19 is to write a school improvement plan. To  
20 communicate to the teachers in the classroom the  
21 performance of subgroups and how to kind of drive  
22 different instructional strategies or differentiate  
23 instruction based on that.

24 So they need to be able to analyze data  
25 and then turn that around into professional



1 communications to all stakeholders, parents, school  
2 improvement teams, educators, so that decisions  
3 about what students need can be made.

4 Q Do you think there is an advantage to an  
5 individual who prepares for the FELE essay through  
6 an institution or a program that utilizes Florida  
7 standards?

8 A Oh, absolutely. Our whole system works  
9 together. Our colleges teacher preparation programs  
10 have requirements to align their programs to our  
11 State student standards. They need to be familiar  
12 with both evaluation --

13 (WHEREUPON, an off-the-record  
14 discussion was held, after which  
15 the hearing continued.)

16 Q (By Ms. Wilmot) Sorry. Go ahead.

17 A Can you repeat the question?

18 (Court reporter reads last answer)

19 A (By the Witness) Our evaluation system of  
20 both our children, our students, and evaluation of  
21 our teachers and our -- we've aligned all our  
22 teacher preparation programs. They have to submit  
23 their programs of study to our offices and they're  
24 monitored to ensure that the teacher candidates  
25 coming out of their programs are familiar with our

1 State standards and our student requirements, and  
2 have been prepared to teach those standards. And  
3 our administrators are familiar with the policies in  
4 our State system, and are prepared to implement  
5 those.

6 Q (By Ms. Wilmot) Can you tell us what you  
7 know about the District leadership programs?

8 A Many of the larger Districts have a  
9 leadership program that's in addition to a  
10 certification and a degree. And, for example, Miami  
11 Dade has a huge system, a leadership program. So,  
12 in addition to your primary credentials to be a  
13 school administrator. Then you go through their  
14 whole process of entering their school  
15 administration, administrative program. And they  
16 typically begin with assistant principals of the  
17 elementary and they build. So you become part of a  
18 cadre in their system and you participate in  
19 professional development and activities to be  
20 promoted within their administrative system.

21 Q So, with regard to getting additional pay,  
22 once you are certified as an ed leadership, you have  
23 an ed leadership certification, does that rest  
24 mainly, the conditions for that rest mainly with the  
25 Districts?

1           A     Yes. The Districts have different pay  
2 systems. And whether they use a step system or a  
3 pure performance evaluation system. And, also,  
4 whether they have, like Miami Dade does, their own  
5 administrative leadership system. But the State  
6 does not determine when a candidate would get or  
7 what credential would be required to get a pay  
8 raise. Those are all local decisions.

9           Q     Okay. And they each have their own  
10 Collective Bargaining Agreement, the Districts?

11          A     To my knowledge, yes.

12          Q     Okay. Student progress in Florida since  
13 standards were in place in 2014, do you have any  
14 statistical idea about how that's going?

15          A     Well, our data just came out last Thursday  
16 and it's excellent. We've historically raise the  
17 bar, raise the bar, raise the bar, and the evidence  
18 is, for example, our 12th grade class, a higher  
19 percent than ever are graduating and graduating on  
20 time. While our student population is becoming more  
21 diverse, our poverty level is increasing, yet our  
22 senior class now has a higher percent of minorities  
23 than they've ever had before and a higher percent of  
24 all student subgroups graduating on time. That's  
25 pretty -- something I think we can all be very proud

1 of.

2           And academically that means those students  
3 have met the more rigorous standards, have passed  
4 the more rigorous exams. Thinking about writing,  
5 for example, we started with Florida Writes in 1998  
6 and it's a holistic scoring process on a rubric.  
7 We've raised the bar, we've raised the bar, 2012  
8 increased, not only was it a new assessment where  
9 kids couldn't just memorize a way to write, they  
10 actually had to write for a purpose and grammar and  
11 spelling were included. And then this last writing  
12 assessment students are required to show evidence  
13 from text and cite evidence and write error free.  
14 And that's happened 1998 to today. So we've not  
15 only increased the rigor of the standards, and by  
16 the way students have to do -- write with those --  
17 meet those writing requirements beginning in sixth  
18 grade. And it's kids grades now 3 through 10 have a  
19 writing portion of the ALA exam. But you can see  
20 the growth. So we're increasing the requirements  
21 for kids and increasing the complexity of those  
22 requirements, and we have more kids graduating on  
23 time than ever before.

24           Q     So would you say that raising the  
25 standards in Florida has had a positive effect on

1 the student population?

2 A Absolutely.

3 Q Okay. In your opinion, should we lower  
4 the cut scores to allow more individuals to become  
5 ed leadership, put them in those positions?

6 A As you know, my expertise is what we do  
7 with children, but we have never lowered the bar for  
8 our kids. They have to meet the bar, whether they  
9 miss a score by one point or 100, the bar is not  
10 lowered and there are no waivers for a child who  
11 almost makes it. They have to -- they have  
12 opportunities to retake tests and -- there's no  
13 loophole for our kids. There's no revisiting a  
14 final decision to change it because of some  
15 extenuating circumstances. So if we have those  
16 expectations for our children, I think our citizens  
17 would be irate if we had a different set of  
18 expectations for our adults.

19 Q Okay. Just one more question: When we  
20 give the FELE essay exam and people ask for a score  
21 of verification session, why don't we just tell  
22 them, this is what did you wrong and this is how you  
23 can correct it?

24 A That would be the place for their  
25 instructors but not the place for the assessment

1 system. We would hope everyone has access to  
2 tutoring or a support program or we have study  
3 materials that are available to everybody and we  
4 have folks out there who are making a living off  
5 helping prepare folks for these types of  
6 assessments. It would not be the job of the  
7 assessment team to review and then instruct.  
8 They're not instructors. But with that, we  
9 definitely would be supportive of people getting  
10 additional help or tutoring. And those programs are  
11 available to everyone.

12 MS. WILMOT: Thank you. That's all that I  
13 have, Your Honor.

14 MR. MCKEE: May I?

15 ADMINISTRATIVE LAW JUDGE MCARTHUR: Yes.

16 **CROSS-EXAMINATION**

17 BY MR. MCKEE:

18 Q Good evening, Ms. Tappen.

19 A Hi.

20 Q I would say good afternoon but I think  
21 it's getting kind of late. I'm Bob McKee. I  
22 represent Julie McCue. It's good to meet you.

23 A Nice to meet you.

24 Q Ms. Tappen, how many things go into, how  
25 many factors go into increasing the student

1 performance?

2           A     Many factors. We start with the content  
3 all kids are required to learn, to be able to do.  
4 And one of the first things we had to do was make  
5 sure that we have course descriptions that are  
6 required to be taught by law, so that a teacher in  
7 one town can't only teach this part of U.S. History  
8 because they love the Civil War, and then a child in  
9 this town, they have a social studies teacher that  
10 loves something else in U.S. History and that's what  
11 they -- the first thing is making sure the content  
12 is available to all the children. And then ensure  
13 that legislatively teachers have a responsibility to  
14 teach that content and not something else because  
15 that's what they want to do.

16                 Once you have that in place, then the  
17 support systems at the local level to support the  
18 teachers to implement that instruction. And the  
19 local folks determine what materials to use in the  
20 classroom. And then take all that data that you get  
21 from our student assessment system and identify  
22 where we have weaknesses, where we have districts or  
23 schools or classrooms where children, based on data,  
24 don't appear to be learning that content. And then  
25 make that very publically available so at the local

1 level they can provide those classrooms or those  
2 teachers of those schools additional support. And  
3 when we have schools and the student data indicates  
4 that they continue to struggle, then at the State  
5 level, we provide assistance to the School District  
6 and the School District is required to put some  
7 things in place to help with that school.

8 Q So these things, in your view, are  
9 happening, as a whole, in order to raise student  
10 achievement?

11 A They're all components.

12 Q And it's multifaceted?

13 A Correct.

14 Q We're here to talk about the FELE and, in  
15 particular, the systems leadership test or component  
16 of the FELE. Do you expect that that test will be a  
17 valid indicator of the future success of the test  
18 taker?

19 A I can't speak to a test taker. I can  
20 speak to the instrument and, yes.

21 Q And so the instrument, as you folks have  
22 designed it, you hope, will tell you, based upon how  
23 the test taker performs on that instrument, whether  
24 that test taker is more or less likely to be  
25 successful?



1           A     It's a bar that's been set by experts.  
2     It's been tested.  It's been reviewed.  And that is  
3     an indicator similar to our student tests, that that  
4     person is ready to move forward or not.

5           Q     So it's your understanding that the FELE  
6     has been validated to that degree where it, in your  
7     view, is an indicator of the test taker's ability or  
8     lack of ability to perform?

9           A     Based on the standards that that  
10    instrument was built to assess, yes.

11           MR. MCKEE:  I have no further questions.

12           Thank you, ma'am.

13           THE WITNESS:  Thank you.

14           MS. WILMOT:  Just one redirect.

15                           **REDIRECT EXAMINATION**

16    BY MS. WILMOT:

17           Q     In your experience, does an excellent  
18     teacher result necessarily in an excellent  
19     administrator?

20           A     No.  I think they're very -- no.  I'll  
21     give an example myself.  I'm a kid person.  I do  
22     much better with children than I do with adults.  So  
23     not every teacher who does well with children is  
24     going to automatically make a good administrator  
25     that knows how to coach adults and manage

1 instruction on a much larger level. Also, there can  
2 be a teacher who has in depth expertise in physics,  
3 for example, but not in depth expertise in managing  
4 middle grade students who are amazing creatures, who  
5 are just different. And so it -- it's an advantage  
6 for a school administrator to have a teaching  
7 background because they might better understand the  
8 practical nature of -- of school, but I would not  
9 say the characteristics of a good teacher are the  
10 exact same characteristics of a good administrator  
11 candidate.

12 MS. WILMOT: Thank you.

13 ADMINISTRATIVE LAW JUDGE MCARTHUR: We are  
14 concluded and you're free to go or not go, your  
15 choice. You might be waiting for your ride.  
16 Let's talk about wrapping up.

17 MR. MCKEE: I assume the Respondent rests?

18 ADMINISTRATIVE LAW JUDGE MCARTHUR: Well,  
19 I assumed that was the last witness?

20 MS. WILMOT: Yes.

21 ADMINISTRATIVE LAW JUDGE MCARTHUR: Is  
22 there anything further from the Respondent?

23 MS. WILMOT: There is not.

24 ADMINISTRATIVE LAW JUDGE MCARTHUR: Just,  
25 for the record, I've reviewed my notes. I've

1 got Joint Exhibits 1 through 8 admitted,  
2 Petitioner's Exhibits 1 and 2 and Respondents  
3 Exhibits 1 through 10 and 12. Eleven was not  
4 offered. I assume that was intentional, but  
5 I'll give you -- that was the Concordia  
6 University.

7 MS. WILMOT: Right. That was intentional.

8 ADMINISTRATIVE LAW JUDGE MCARTHUR: That's  
9 what I thought. Then, those are all the  
10 exhibits admitted. We have three segments of  
11 designated confidential testimony in the  
12 transcript. I assume each lawyer would like to  
13 give me an hour or so closing argument?

14 MR. MCKEE: That's not true.

15 ADMINISTRATIVE LAW JUDGE MCARTHUR: More?

16 MR. MCKEE: No. We'd like to do PRO's in  
17 lieu of closing argument.

18 ADMINISTRATIVE LAW JUDGE MCARTHUR: It is  
19 my personal preference to receive written  
20 material contemporaneous with the transcript or  
21 close in time to the transcript. But I do  
22 always offer the opportunity for closing  
23 arguments.

24 MR. MCKEE: Petitioner will waive.

25 MS. WILMOT: And also Respondent will

1 waive.

2 ADMINISTRATIVE LAW JUDGE MCARTHUR: Very  
3 good. Let's talk about timing for the PRO's.  
4 Step one is preparation and filing of the  
5 original transcript at DOAH. The standard  
6 deadline is 10 days from the filing of the  
7 transcript. I see at least one grimace. It's  
8 a negotiable deadline. I'm willing to -- that  
9 applies to all kinds of DOAH cases. And so I  
10 will hear from counsel as to if you mutually  
11 have a time frame in mind for filing the PRO's  
12 after the transcript is filed. What's your  
13 druthers?

14 MR. MCKEE: How flexible are you if we say  
15 21 days and we need more time and both parties  
16 agree?

17 ADMINISTRATIVE LAW JUDGE MCARTHUR: My  
18 policy, it's an extendable deadline. I prefer  
19 to set something that seems realistic, but I  
20 recognize we don't know, even with our best  
21 estimate from our court reporter, what date the  
22 transcript will actually be filed on. I am  
23 always amenable to a motion for extension. My  
24 standard is for good cause. So put something  
25 in a motion -- a couple of things. On a motion

1 for an extension, first requirement is that you  
2 file it before whatever deadline we set has  
3 passed. Two, that you consult with opposing  
4 counsel and state in the motion whether they  
5 oppose. If it's a joint motion, I'm more  
6 likely to agree with whatever good cause you  
7 provide me, but do put something in the motion  
8 regardless and try to be kind to each other on  
9 not opposing extensions if the other side  
10 requires one. But I am generally very flexible  
11 on recognizing that this is probably not your  
12 only case and you're only professional  
13 responsibility.

14 MR. MCKEE: Could I propose that PRO's be,  
15 and they're filed simultaneously?

16 ADMINISTRATIVE LAW JUDGE MCARTHUR:  
17 Simultaneously and no responses to each  
18 other's.

19 MR. MCKEE: Correct. And could I propose  
20 that we be given 30 days to submit PRO's from  
21 the date that the transcript is filed with  
22 DOAH?

23 ADMINISTRATIVE LAW JUDGE MCARTHUR: In 30  
24 days.

25 MS. WILMOT: Are you okay with it?

1 MR. CANTO: We don't know yet when the  
2 transcript will be --

3 MS. WILMOT: We're fine.

4 ADMINISTRATIVE LAW JUDGE MCARTHUR: Thirty  
5 days it is from the transcript filing deadline.

6 MR. MCKEE: And if we can just ask the  
7 court reporter.

8 ADMINISTRATIVE LAW JUDGE MCARTHUR: Not  
9 transcript filing deadline. There is no  
10 transcript filing deadline. From when it is  
11 filed.

12 MR. MCKEE: When it's filed and I guess  
13 we'll just have to check with DOAH because it's  
14 not going to be electronically filed, it's  
15 going to be mailed.

16 ADMINISTRATIVE LAW JUDGE MCARTHUR: That's  
17 correct. The original will be mailed to DOAH.

18 COURT REPORTER: I will mail them all at  
19 the same time.

20 MR. MCKEE: Okay. If you could give us a  
21 heads up that it was mailed, then we can check  
22 with DOAH to find out when they receive it and  
23 that will be when the clock starts to tick.

24 ADMINISTRATIVE LAW JUDGE MCARTHUR: It  
25 will show on the docket the date that it is

1 filed. It will show transcript not available  
2 for viewing.

3 MR. MCKEE: Okay.

4 ADMINISTRATIVE LAW JUDGE MCARTHUR: And  
5 that applies no matter whether there's  
6 confidentiality or not. We just don't load up  
7 the transcripts.

8 MR. MCKEE: It works for me, Judge.

9 ADMINISTRATIVE LAW JUDGE MCARTHUR: All  
10 right. Is there anything further? If not, we  
11 are concluded with this hearing and can go off  
12 the record.

13 (WHEREUPON: The hearing was concluded.)

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REPORTER'S CERTIFICATE

I, ELAINE RICHBURG, Court Reporter, certify that I was authorized to and did stenographically report the foregoing hearing; and that a review of the transcript was not requested; and that the transcript is a true and complete record of my stenographic notes.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, attorney or counsel connected with the action, nor am I financially interested in the action.

Dated this 21st day of June, 2017.

Elaine Richbourg

ELAINE RICHBURG, COURT REPORTER

