

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JULIE MCCUE,

Petitioner,

-vs-

CASE NO.:17-0423

PAM STEWART, AS COMMISSIONER OF
EDUCATION,

Respondent.

_____ /

DIVISION OF ADMINISTRATIVE HEARINGS
DAY 1, VOLUME I

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,
June 13th, 2017, commencing at approximately 9:00
EST.

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DIVISION OF HEARINGS
ADMINISTRATIVE HEARINGS

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PROCEEDINGS

1
2 ADMINISTRATIVE LAW JUDGE MCARTHUR: This
3 hearing will now be in order. Good morning.
4 It is June 13th, 2017, at around 9:25 in the
5 morning. We are here in Orlando, Florida, for
6 the hearing in Julie McCue vs. Pam Stewart as
7 Commissioner of Education, Division of
8 Administrative Hearings, case number 17-423,
9 0423.

10 My name is Elizabeth McArthur. I'm the
11 Administrative Law Judge assigned to conduct
12 this hearing. And we are here on Petitioner's
13 challenge to Respondent's determination that
14 the scoring of Petitioner's essay, which is the
15 written performance part of 8Subtest 3 of the
16 Florida Educational Leadership Examination
17 which is abbreviated all over the place as
18 FELE, whether that scoring was correct.

19 Procedurally, this proceeding is conducted
20 in accordance with Chapter 120 Florida Statutes
21 and, in particular, Section 125.69 and section
22 120.57(1), as well as the uniform rules of
23 procedure in Florida Administrative Code
24 Chapter 28-106, parts 1 and 2.

25 Substantively, the proceeding will be

1 determined in accordance with the laws
2 governing certification in Florida Statutes, as
3 well as implementing rules. And I have pulled
4 what I believe to be the relevant rules and I
5 find them in Chapter 6A-4 and 6A-5. I will let
6 counsel educate me further if I haven't found
7 all of the appropriate rules. And I do, just
8 for the record, as a matter of course, take
9 official recognition of the substantive and
10 procedural Statutes and rules to the extent
11 necessary. And if there are issues as to
12 different versions, again, I will allow counsel
13 to educate me. I've done enough research to
14 familiarize myself and look for that particular
15 issue of different versions. So I think I'm
16 prepared with the legal framework for this
17 proceeding.

18 At this point let me ask counsel to make
19 their appearances for the record, starting with
20 the Petitioner.

21 MR. MCKEE: I'm Robert McKee. I represent
22 the Petitioner, Julie McCue.

23 MS. WILMOT: Bonnie Wilmot representing
24 the Commissioner of Education.

25 ADMINISTRATIVE LAW JUDGE MCARTHUR: Thank

1 you. And the parties did prepare a joint
2 prehearing stipulation, which I have reviewed.
3 One matter pending at the time of that filing
4 that has now been addressed is the issuance of
5 a protective order, which will govern the
6 conduct of this hearing. Are there any
7 remaining issues to discuss or need for any
8 further issues to address regarding the
9 confidentiality in light of that order?

10 MR. MCKEE: No, ma'am.

11 MS. WILMOT: I think we're in agreement.

12 ADMINISTRATIVE LAW JUDGE MCARTHUR: All
13 right. I believe that everyone in the room,
14 with one exception, is party witness,
15 assistant, counsel, court reporter.

16 MS. MCKOWN: I'm an attorney for Pearson.
17 My name is Mia McKown and I'm with the law firm
18 Holland and Knight.

19 ADMINISTRATIVE LAW JUDGE MCARTHUR: Nice
20 to meet you.

21 COURT REPORTER: What's your last name?

22 MS. MCKOWN: McKown. We have another M-C.
23 M-C, capital K-O-W-N.

24 ADMINISTRATIVE LAW JUDGE MCARTHUR: And we
25 do have someone from the press in the room.

1 And I spoke with her briefly before we went on
2 the record. A couple of issues regarding the
3 protective order, and the extent to which
4 confidential information is part of the subject
5 matter that I will need to understand a lot
6 about for this proceeding. In large part, my
7 hope is that or maybe entirely, my hope is that
8 the terms of the protective order will protect
9 from confidentiality being an issue. I think
10 there were provisions that basically will have
11 witnesses talking in code referring to
12 documents instead of to the confidential
13 information in the documents. I will be
14 receiving joint exhibits in a minute that will
15 remain under seal as this record progresses.

16 I have two concerns -- well, one is a
17 situation contemplated by the protective order
18 where it becomes necessary for counsel, party,
19 witness to refer to information for reasons we
20 don't know about yet. In which event, I ask
21 counsel to alert me to that and we will close
22 the hearing room and ask Ms. LaGrone to vacate
23 her prime location there, stuck in the corner
24 of our little hearing room, until the
25 confidential information has been aired and we

1 can allow her to come back in.

2 The other one was not spelled out in the
3 protective order, but I do worry a little bit
4 about an inadvertent disclosure, a witness who
5 forgets to talk in code and reveals something.
6 And I have Ms. LaGrone's assurance to me that
7 she will allow me to unring that bell, and will
8 agree to abide by the confidentiality, as long
9 as we call it to her attention. So if a
10 witness slips, again, make sure that I'm aware
11 that that's a slip and we will very much
12 appreciate Ms. LaGrone's cooperation on that.
13 At this time, do the parties know if a
14 transcript is going to be ordered?

15 MS. WILMOT: It is.

16 ADMINISTRATIVE LAW JUDGE MCARTHUR: Thank
17 you. I like to ask that up front. It's not a
18 requirement that you commit one way or the
19 other, but it affects my note taking.

20 I mentioned the joint exhibits that have
21 been designated confidential testing materials.
22 Do the parties want me to receive and admit
23 those at this time?

24 MS. WILMOT: We do.

25 MR. MCKEE: Sure.

1 ADMINISTRATIVE LAW JUDGE MCARTHUR: And I
2 have just been given a notebook with joint
3 exhibits, 1 through 8. And without objection,
4 I will receive those, admit those at this time,
5 and they will be subject to the terms of the
6 protective order.

7 MR. MCKEE: Your Honor, you indicated 1
8 through 8, I have 1 through 12.

9 MS. WILMOT: Those are not the
10 confidential --

11 MR. MCKEE: Okay.

12 MS. WILMOT: We provided you with the
13 copies.

14 MR. MCKEE: Okay.

15 ADMINISTRATIVE LAW JUDGE MCARTHUR: So 1
16 through 8?

17 MS. WILMOT: That's correct.

18 ADMINISTRATIVE LAW JUDGE MCARTHUR: Are
19 there any other preliminary matters, anything
20 else we can do to expedite the proceeding?

21 MR. MCKEE: Yes, ma'am. I don't know who
22 is in the room and who the people would
23 identify themselves and I may invoke the rule,
24 depending on who's in here.

25 ADMINISTRATIVE LAW JUDGE MCARTHUR: All

1 right. I'm Elizabeth McArthur.

2 MR. MCKEE: Thank you, ma'am. You can
3 stay.

4 ADMINISTRATIVE LAW JUDGE MCARTHUR: Thank
5 you. I'm relieved.

6 MS. WILMOT: Let me introduce everyone.

7 ADMINISTRATIVE LAW JUDGE MCARTHUR: Yes.

8 MS. WILMOT: This is Dr. Michael Grogan,
9 our representative from Pearson. Attorney for
10 Pearson, Mia McKown. Mary Jane Tappen with the
11 Department of Education. Dr. Christopher
12 Small, Principal at Raa Middle School. Darby
13 Shaw will be assisting me, attorney for the
14 Department of Education. Phil Canto is our
15 Department Representative.

16 ADMINISTRATIVE LAW JUDGE MCARTHUR: So
17 Mr. Canto gets to stay in the room regardless,
18 as does Ms. McCue.

19 MR. MCKEE: I'd like to invoke the rule as
20 to whoever else is in here that plans to
21 testify, apart from the Agency Rep and
22 Ms. McCue.

23 MS. MCKOWN: I'm not testifying.

24 ADMINISTRATIVE LAW JUDGE MCARTHUR: You
25 get to stay.

1 MS. WILMOT: And Dr. Grogan is our first
2 witness, so he should be fine.

3 ADMINISTRATIVE LAW JUDGE MCARTHUR: So, he
4 doesn't need -- well --

5 MS. WILMOT: Are you okay with him staying
6 because he represents Pearson and is kind of
7 looking out for their interests to make sure
8 that we don't reveal any of their trade secrets
9 or information that would be confidential?
10 He's a little bit a more attuned to it than I
11 am. He does have the attorney who can make
12 that determination, also.

13 MS. MCKOWN: He's also testifying first, I
14 believe.

15 MS. WILMOT: So, he's not going to be
16 picking up on anyone else.

17 MR. MCKEE: All right. Since we are the
18 Petitioner, it was my understanding that we
19 would proceed.

20 ADMINISTRATIVE LAW JUDGE MCARTHUR: Oh,
21 that's right.

22 MS. WILMOT: Yeah. That's fine. I mean,
23 he can leave.

24 MR. MCKEE: While Ms. McCue is testifying,
25 I would prefer to have him out of the room.

1 ADMINISTRATIVE LAW JUDGE MCARTHUR: I
2 think that's fair.

3 MS. WILMOT: That's fine.

4 ADMINISTRATIVE LAW JUDGE MCARTHUR: I will
5 allow Ms. McKown to stay. And I wanted to
6 offer a comment that may or may not be
7 necessary, but just wanted to react to
8 Respondent's amended exhibit list that was
9 filed after the prehearing stipulation was
10 filed.

11 Since I've not had either counsel appear
12 before me before, I thought I would just give
13 you the outline of me. Normally, I'm very
14 strict about the requirements of the prehearing
15 instructions. And if an exhibit was viewed as
16 something substantive, new and exciting, I
17 might have a problem with it being added after
18 the joint prehearing stipulation. But I viewed
19 the additions to Respondent's list differently.
20 One item was the passing score requirements for
21 the FTCE and the FELE. I don't think the FTCE
22 is necessarily germane to today. I think
23 that's tomorrow.

24 MS. WILMOT: Correct.

25 ADMINISTRATIVE LAW JUDGE MCARTHUR: But

1 for the FELE, if it's an actual separate
2 exhibit, I would view it as a demonstrative aid
3 because the passing score requirements are
4 codified in the governing rule. So, as I
5 mentioned, I am familiar with the rule and, in
6 particular, 6A-4.00821(7)(e). So I view it
7 really as just a help to isolate something
8 significant in the many page rule.

9 So, regardless, we would be bound by the
10 codified rule regarding the passing score
11 requirement. And the only other items I saw
12 added to the exhibit list are resumes for the
13 witnesses. And with the understanding that I
14 would allow the same courtesy to Petitioner, my
15 view on resumes is the witness could slowly go
16 through all of the background in the testimony
17 and I --

18 MR. MCKEE: Your Honor, I don't have an
19 objection to the resumes being added.

20 ADMINISTRATIVE LAW JUDGE MCARTHUR: Right.

21 MR. MCKEE: It's a convenient shortcut.

22 ADMINISTRATIVE LAW JUDGE MCARTHUR: I
23 agree. Thank you for offering that. And
24 that's the end of my comment, but mostly I just
25 wanted to educate the two counsel -- three

1 counsel who have not appeared before me that
2 don't expect that leeway on anything more
3 substantive and not just demonstrative or for
4 convenience.

5 So with that, are the parties wishing to
6 give opening statements?

7 MR. MCKEE: Yes, ma'am.

8 ADMINISTRATIVE LAW JUDGE MCARTHUR: Yes.

9 MR. MCKEE: Good morning again, Your
10 Honor. I'm Robert McKee. I represent the
11 Petitioner, Julie McCue. As Your Honor
12 correctly stated a few moments ago, Ms. McCue
13 seeks to have the ALJ enter a Recommended Order
14 finding that the Written Performance
15 Assessment, or WPA portion of the -- and I'll
16 call it FELE so I don't have to continue to
17 refer to the to Florida Educational Leadership
18 Examination -- that she completed in 2006 was
19 not properly scored and that she earned a
20 passing grade.

21 ADMINISTRATIVE LAW JUDGE MCARTHUR: You
22 said 2006?

23 MR. MCKEE: 2016. If I said '6, I
24 misspoke. The evidence will show that
25 Ms. McCue has been a professional educator for

1 over 20 years. In 2015 she completed a
2 Master's Degree. And in that program, she
3 earned a 4.0 GPA. Upon receiving her Master's
4 Degree, she prepared for and completed the
5 FELE. In fact, she has prepared for and has
6 taken the FELE four times. And the evidence
7 will show that she has passed all of the
8 objectively scored portions of the FELE and the
9 only subjectively scored portion of the FELE,
10 which is the Written Performance Assessment,
11 she has come within one point of passing and
12 still hasn't been able to get over the goal
13 line with that.

14 The evidence will show that the FELE
15 consists of three subtests. Subtest 1 is a
16 multiple choice exam. And it purports to test
17 leadership for student learning. That being
18 student learning results, student learning as a
19 priority, instructional plan implementation and
20 learning environment. And as I stated earlier,
21 the evidence will show that that part of the
22 FELE has been passed.

23 Subtest 2 is also a multiple choice exam.
24 It tests organizational development, which
25 includes faculty development, leadership

1 development and professional and ethical
2 development. And, again, that portion of the
3 test is not in play here, as it has been
4 passed.

5 Subtest 3 originally was, also, a multiple
6 choice but has now been broken down in two
7 parts. There's a multiple choice portion and
8 the WPA, which is an essay portion, which is
9 actually graded by test graders. It tests
10 systems leadership, decision making, school
11 management and communication. And the WPA
12 tests proficiency in written communications and
13 data analysis.

14 Now, Ms. McCue will testify that she
15 prepared diligently for taking each of these
16 tests, the four times that she has sat for the
17 FELE. The evidence will show that there is no
18 DOE sanctioned prep course or prep materials
19 that an individual who plans to sit for the
20 test can avail himself or herself of to
21 adequately prepare to take the test. So
22 they're pretty much on their own, and Ms. McCue
23 will tell you how she went about trying to find
24 resources to help her prepare to take the test.
25 And there are a lot of resources out there,

1 some better than others, apparently, but you'll
2 get a full explanation of what she was able to
3 gather and what she was able to study for and
4 review in order to take the test.

5 She will tell you that she's taken
6 practice exams and that she became familiar
7 with the sample prompts provided on the FDOE
8 website, as well as the Supplemental Rating
9 Criteria for sample props, which are also made
10 available on the FDOE website.

11 Ms. McCue will tell you that all of her
12 pretest preparations indicated that she was
13 prepared to take and pass that portion of the
14 exam. And, as we know, since we are here
15 today, that didn't turn out to be the case.
16 She had no problems passing all of the
17 objectively assessed portions of the
18 examination, but always found a barrier in
19 terms of passing the WPA.

20 As I said earlier, she received a
21 non-passing score, a 3, where you'll hear that
22 a 4 is a passing score out of a 1 to 6 scale.
23 Ms. McCue will tell you that after she received
24 the confidential information, which included
25 her essay answer, which included the rubric or

1 the areas where the graders were supposed to
2 look at the essay to determine if these
3 particular areas had adequately been covered in
4 the essay that, frankly, her math just comes up
5 higher than the math that the graders applied
6 or the scores that the graders apply.

7 So it's our intention to have Ms. McCue
8 testify frankly about why she believes this
9 test was improperly graded given the criteria
10 that we've been provided that shows what the
11 graders were supposed to have been looking for.
12 That's all I've got for an opening.

13 ADMINISTRATIVE LAW JUDGE MCARTHUR: Thank
14 you. And, Ms. Wilmot, you may give your
15 opening now, you may waive your opening or you
16 may reserve until you start your case.

17 MS. WILMOT: I'll go ahead and give it
18 now, Your Honor, and it will be short.

19 I want to tell you that the process that
20 we have employed in order to score these exams
21 was competitively procured in a national
22 search. Very involved, very developed through
23 the Department and through Pearson, the
24 national company that was ultimately chosen to
25 administer and score the exams. The process,

1 as we'll show, employs qualified individuals as
2 raters to score these exams, who are eliminated
3 through a process of training. If they're
4 not -- if they cannot score properly,
5 consistently then they're eliminated. We get
6 down to a core of raters who are extremely
7 consistent. They're trained in a process that
8 is very involved and detailed, for every time
9 they score a new prompt. And I think that
10 you'll see that it's not a simple process of
11 math where you can just check off the boxes, I
12 did this, I did this, I did this. It's a
13 calibration of these individuals where they
14 have to read multiple, multiple essays and also
15 a rubric that gets them to the point where they
16 can score these consistently. Multiple raters
17 will take the same essay and score it
18 consistently, repeatedly and we'll show you the
19 record on that.

20 The standards are higher. It's a more
21 difficult test. The Florida standards for the
22 students have been raised and so necessarily we
23 raise the standards for the educators in order
24 to be certified. The two tests were broken
25 down, as counsel for Petitioner brought out.

1 They were broken down because it was discovered
2 or decided that the essay portion was so
3 important with regard, particularly to future
4 administrators to demonstrate that they had the
5 ability to communicate a trending and
6 interpretation to the parents, the other
7 educators, and the government and community.

8 We'll show that the scoring of these tests
9 is consistent and nationally -- I mean, not
10 nationally, but statewide, all the tests that
11 are given will show a consistency with regard
12 to the scoring. The raters individually are
13 also followed with regard to the consistency.
14 And if there is a problem, that we have a
15 method and a process for discovering that and
16 correcting it or removing the rater.

17 The consistency is bore out by the fact
18 that Ms. McCue has received three consistently
19 -- she's taken the test four times, every rater
20 has graded her test a 3. This last test was
21 scored by 12 -- I believe it's 12 individuals,
22 raters, Chief Reviewers every one them will,
23 well, actually the eight raters gave -- they
24 each gave her a 3. The Reviewer doesn't score
25 it unless it's going to change. But it was

1 reviewed by 12 individuals and they all came to
2 the same conclusion. So, the idea that there
3 could have been human error with eight
4 individuals who have a history of consistent
5 scoring, is just beyond -- it's beyond belief.

6 So we feel that we will be able to prove
7 and show you the process and that there will
8 not be an ability on the part of the Petitioner
9 to show that there was human error or that her
10 essay should have scored a passing score. And
11 I'll leave it at that.

12 ADMINISTRATIVE LAW JUDGE MCARTHUR: You
13 may call your first witness.

14 MR. MCKEE: Thank you, ma'am. May I make
15 a suggestion, if we could have Mr. Canto move
16 over here and we can put the witness here --

17 ADMINISTRATIVE LAW JUDGE MCARTHUR: Yes.

18 MR. MCKEE: Would that be all right with
19 the court reporter?

20 COURT REPORTER: That would be great.

21 ADMINISTRATIVE LAW JUDGE MCARTHUR: And
22 that would be less awkward.

23 MS. MCKOWN: This is Mia McKown, before we
24 get started, I know she's going to --

25 COURT REPORTER: Do you want this on the

1 record?

2 MS. MCKOWN: Yes. It's on the record.
3 This is Mia McKown, counsel for Pearson. I
4 know we're getting -- you're talking about
5 confidential documents. Is it your intention
6 to read portions of those documents into the
7 record, to refer to it? I'm just wanting to be
8 mindful of the protective order, which I have.

9 ADMINISTRATIVE LAW JUDGE MCARTHUR: Okay.

10 MS. MCKOWN: But it's one thing to refer
11 to them and point to them, but it's quite
12 another if we're starting to read excerpts from
13 them and I just want to be prepared?

14 ADMINISTRATIVE LAW JUDGE MCARTHUR: Ms.
15 McKown, if you already have one, I'll take mine
16 back.

17 MS. MCKOWN: Okay.

18 MR. MCKEE: And perhaps we can tackle this
19 up front. A big portion of the testimony is
20 going to involve referencing Joint Exhibit 3,
21 which is a confidential document. Joint
22 Exhibit 3 is the essay answer, as well as Joint
23 Exhibit 2, which is the rubric. So, in order
24 to testify about why Ms. McCue believes the
25 test was improperly scored, there's going to

1 have to be some reference to Joint Exhibit 3.
2 This is where I answered or responded to that
3 rubric or this is where I covered it.

4 So I don't know if it's going to be
5 effective to count lines on the essay and say,
6 well, if you'll look at page 1, starting at
7 line 3 and going through line 5, I believe,
8 that I earned it that point --

9 THE WITNESS: That's how I structured it,
10 just line by line without any verbatim -- any
11 verbatim stuff from the confidential documents.
12 I just refer to line 3 through 6, look at this
13 part of the rubric, and then line 3 through 6
14 on page 2.

15 ADMINISTRATIVE LAW JUDGE MCARTHUR: I will
16 be able to sort that out if you think you can
17 stick to that.

18 MR. MCKEE: All right. We'll try and
19 you're going to have a written record of it.

20 ADMINISTRATIVE LAW JUDGE MCARTHUR:
21 Exactly.

22 MR. MCKEE: And the documents are already
23 in evidence. So we'll do our best to say, you
24 know, look at this line on Exhibit 2 and tell
25 us in Exhibit 3 where you covered that. Does

1 that work?

2 MS. WILMOT: We'll try it.

3 ADMINISTRATIVE LAW JUDGE MCARTHUR: Yes.

4 And, again, we will ask that Ms. LaGrone be
5 mindful of our need to take something back if
6 there's a slip or if either Ms. McKee or
7 Ms. McCue are having difficulty expressing what
8 they need to for me, we'll ask Ms. LaGrone to
9 step out for a little bit.

10 MR. MCKEE: It's kind of Kabuki theatre.

11 ADMINISTRATIVE LAW JUDGE MCARTHUR:

12 Exactly. But count on me for going through the
13 transcript very carefully and absorbing the
14 substance that I may not be able to fully
15 absorb, flipping back and forth and counting
16 lines.

17 MR. MCKEE: And be assured that we've done
18 our absolute best to respect the
19 confidentiality of what we understand to be
20 sensitive, and documents and documents that are
21 costly in terms of the investment that's been
22 made in them. So we'll try not to stray over
23 the line. If I do, it's unintentional. Please
24 tell me, and I'll try to rephrase a question to
25 get that --

1 MS. MCKOWN: And this is Mia McKown. For
2 the record, thank you and I appreciate it. I
3 just didn't want us to get into the testimony.
4 I was maybe not aware of what the plan was and
5 I appreciate it.

6 MR. MCKEE: We're going to try our best.

7 MS. MCKOWN: Thank you.

8 MR. MCKEE: May I inquire?

9 ADMINISTRATIVE LAW JUDGE MCARTHUR: You
10 may. Let me ask have the -- no, I'll do it.
11 I'm here. I'm not used to being here. I'm
12 used to being on video. Will you raise your
13 right hand, please? Do you swear or affirm
14 that the testimony you're about to give today
15 will be the truth, the whole truth and nothing
16 but the truth?

17 MS. MCCUE: Yes.

18 ADMINISTRATIVE LAW JUDGE MCARTHUR: Thank
19 you.

20 MS. MCCUE: What else do I say, so help me
21 God? Yes?

22 MR. MCKEE: Yes. Yes is fine.

23 WHEREUPON,

24 JULIE MCCUE

25 having been duly sworn to tell the truth, the whole truth

1 and nothing but the truth, was examined and testified as
2 follows:

3 DIRECT EXAMINATION

4 BY MR. MCKEE:

5 Q Would you state your full name and spell
6 your last name, please?

7 A Julie McCue, M-C, capital C-U-E.

8 Q Ms. McCue, you are the Petitioner in this
9 matter, are you not?

10 A Yes, sir.

11 Q I'd like to start by having you describe
12 for the Judge your professional background, your
13 employment history?

14 A Okay. Right out of college I started my
15 first job at an inner city school in Charlotte,
16 North Carolina, Garinger High School, where I taught
17 World History, Psychology and Sociology. I also
18 coached, as many new teachers do, JV volleyball, JV
19 basketball, JV softball. While assisting varsity
20 coaches, I was a Step Club Advisor. And I was also
21 appointed as a teacher to work on a \$200,000-dollar
22 grant through the University of North Carolina at
23 Charlotte working on probably -- problem based
24 learning strategies for my Social Study curriculum.
25 I was there for three years. I had a

1 child. I moved back to Ohio, and I immediately
2 started working in Olentangy Public School.

3 COURT REPORTER: In where?

4 MS. MCCUE: Olentangy Public Schools.

5 Q (By Mr. Mckee) Can you spell that?

6 A O-L-E-N-T-A-N-G-Y. That's a suburb
7 outside of Columbus, Ohio. And I taught World
8 History, Psychology, Sociology. I designed the AP
9 course curriculum for Psychology. I designed the
10 Psychology and Sociology district curriculum maps
11 for the -- for our school board. I coached varsity
12 volleyball and JV volleyball, and I also was the
13 leader of the student transition committee. Our
14 district was opening up a second high school, and it
15 was very traumatic for some people to go from one
16 high school to two. So, I was in charge of taking
17 on the middle school students and my high school
18 students and working through that tradition for them
19 in celebration and to ease any kind of anxiety
20 people were having in transferring into a new
21 school.

22 I became a stay-at-home mom between 2003
23 and 2005, but I still taught because I loved it and
24 I just taught online through TRECA Digital Academy
25 and I taught Geography and intro, an intro course.

1 And then I was a stay-at-home mom. I went back to
2 school in Olentangy local schools. My principal,
3 every year that I was at home, called me and said,
4 are you ready to come back? And I did go back.

5 I taught AP Psychology. Psychology,
6 Sociology and World History. My students, AP Psych
7 students made -- 97 percent of my AP Psych students
8 managed to pass the college board exam with a 3 or
9 higher. I developed new college preparatory course
10 work for Psychology and Sociology at the high
11 school. I was a Project Hope Advisor and I was a
12 Diversity Club Co-Advisor.

13 In the meantime, I founded and established
14 an LLC called You Are Loved designs. And I owned
15 that company. It was a company that dealt in
16 selling affirmation products. So on a tee shirt, it
17 would say, You Are Loved -- You Are Loved, You Are
18 Strength, You Are Courage, and then right underneath
19 it, it was a mirror image. So you could project out
20 to people that you are loved, but you when you
21 looked in the reflective surface, that affirmation
22 came back to you. I did that for four years. I
23 oversaw all the day-to-day operation, including
24 purchasing, marketing, filling orders, production,
25 selling the products, research and design, customer

1 service and web store maintenance.

2 My husband got a job opportunity to come
3 down to Florida, and so we transferred down here. I
4 got a job right away. And I've been with Flanagan
5 High School in Pembroke Pines for the last three
6 years. I teach U.S. History and I work with the
7 lowest achieving students, all the way for U.S.
8 History, all the way up through AP Psychology. My
9 student -- my U.S. History students achieve some of
10 the highest test scores on their end of course exam.
11 As a matter of fact this year, our scores went up
12 3 percent. I teach AP Psychology. My AP Psychology
13 students score the highest compared to my other two
14 colleagues, have never gone below 88 percent passage
15 rate in AP Psych.

16 I serve on the District Discipline
17 Committee. I was also nominated for Teacher of the
18 Year, 2016/2017. I have also been promoted to
19 co-department chair for next year for my Social
20 Studies Department. I'm also a mentor teacher that
21 works one-on-one with at risk, identified at risk
22 students as my high school. And during this year, I
23 implemented professional development strategies
24 within my U.S. History PLC that, again, resulted in
25 a 3 percent jump in overall scores for our 2017

1 school year.

2 Q Could you describe your educational
3 background?

4 A Yes. Bowling Green State University.
5 Freshman/Sophomore year I did work study because I
6 had student loans. I immediately started volunteering
7 in the classroom and coaching. My Junior and Senior
8 year at Bowling Green State University, I had to
9 work full-time. I was the manager of BW-3 for \$5.75
10 an hour, I might add. So I had to work full-time
11 and go to school my Junior and Senior year.

12 Q For those in the room who are not familiar
13 with BW-3, you might want to give them a plug. What
14 is BW-3?

15 A Well, Ohio State Students came up Buffalo
16 Wild Wings and Weck, right. Well, that was what it
17 was in the '90s. Now, it's just Buffalo Wild Wings.
18 Weck were the Caraway seeds that they would sprinkle
19 on the buns that made them special. So, a brand new
20 BW-3 opened up on Bowling Green campus. I started
21 working there when I was 19. My Junior and Senior
22 year they promoted me to manage it. So I worked
23 5:00 p.m. to five a.m. three days a week, Fridays
24 and Saturdays. You know, whatever. So I did that
25 and then I finished my degree.

1 Q What was your major?

2 A My major was Secondary Education
3 Comprehensive Social Studies.

4 Q And when did you complete your degree?

5 A 1996.

6 Q And since we're here today, we understand
7 that you've also received a Master's Degree; is that
8 correct?

9 A Correct.

10 Q Tell us about your course of study towards
11 your Master's Degree?

12 A Okay. So, I -- when I was in my 20's
13 said, I'm going to get my Master's Degree by the
14 time I'm 40, because I ran out of money. But I had
15 three kids. So, I achieved my goal two weeks before
16 I turned 40. I received a 4.0 from Concordia
17 University, Chicago and I have my Master's degree in
18 Educational Leadership. It was one of the best
19 experiences I had. I loved going through all my
20 course work. That course work included, the whole
21 time, articulating in writing that I understood the
22 content of each of the course -- each of the
23 courses. So, all of it, I had to do discussions
24 weekly, I had to write papers weekly, I had to work
25 with other colleagues in my class on projects, but

1 all of it had to be done in written form. I had to
2 articulate in writing that I understood this work,
3 and I did it at the 4.0 level.

4 Q And when did you receive your Master's
5 Degree?

6 A So two weeks before I turned 40, what is
7 that, 2015? I mean, I have my transcript. I think
8 it was 2015.

9 Q So 2015?

10 A Right?

11 Q Close enough?

12 A Yeah.

13 Q Once you received your Master's Degree,
14 did you set upon taking and passing the FELE?

15 A Yes. The FELE. So, sure that was my next
16 step.

17 Q All right. Tell us why it's important, to
18 you, as an educator who has achieved a Master's
19 Degree, to take and pass the FELE? What's in it for
20 you?

21 A What's in it for me is that I recognition
22 for my Master's. Essentially, once I pass those
23 tests, those -- my Master's Degree credentials are
24 added to my teaching license. So, after those
25 credentials are added to my teaching license, I am

1 entitled to compensation. And, also, I believe,
2 that having the credential added to your teaching
3 license and passing the FELE helps you progress on
4 to lead programs and administrative opportunities,
5 if I choose to go that route.

6 Q When did you first sit for the FELE?

7 A Oh, gosh, one moment. Back in June of
8 2015.

9 Q And how many times have you taken it
10 altogether?

11 A The first time I took it, I passed Subtest
12 1, no problem. I did not pass 2 or 3, nor did I
13 pass the written performance section. After that, I
14 was like, okay. So I started doing my research on
15 gathering supplementals to help me pass. I did a
16 ton of legwork and sat -- and bought some
17 supplementals and wrote a bunch of practice essays
18 and I actually -- well, I can go through the list?

19 Q Let me slow you down a bit --

20 A Okay.

21 Q -- and get you to describe, in more
22 detail. When you're saying supplementals, what are
23 you referring to?

24 A There are supplementals on the market that
25 supposed FELE experts sell and offer services and

1 seminars in the name of FELE prep. The FDOE has
2 some very limited resources on the website. I
3 corresponded with some of the FELE experts,
4 especially the ones for the pieces that I bought as
5 supplementals to study for the test for the second
6 time.

7 After I -- so I practiced, I bought
8 supplementals, I studied, I wrote a bunch of
9 practice essays, I sat for the test the second time.

10 Q And what were the results of the second
11 test?

12 A I passed Subtest 2 and multiple choice and
13 Subtest 3 sitting there, no problem.

14 Q When you say Subtest 3, are you referring
15 just to the multiple choice portion of Subtest 3?

16 A Correct. Correct. Okay.

17 Q Do you have to take Subtest 1 over once
18 you pass it? In other words, in test number 2, do
19 you have to retakes Subtest 1?

20 A No. Oh, gosh, no.

21 Q Okay. I just want the record to reflect
22 that.

23 A And, as a part of Subtest 1, the score
24 that I got the first time was a 6 out of 7. Seven
25 is passing. So, I bought the stuff, studied,

1 practiced essays, sat the second time, felt really
2 confident, passed the two multiple choice. Knew for
3 sure that I earned a point, because I had the
4 supplementals and I wrote a bunch of practice
5 essays, but 30 days later I get my results from my
6 written performance and I got a 6 again. And I was
7 like, well, that doesn't make sense. I passed
8 Subtest 3, Subtest 2, Subtest 3's part, how -- and
9 the difference is that I practiced between test --
10 sitting for test 1 and 2, I know I earned a point.
11 So, again, I go back to the supplementals and I'm
12 like, well, I don't even know what the FDOE wants me
13 to write about.

14 Q And let me stop you there, Ms. McCue?

15 A Please. Yes.

16 Q You take the test for the second time?

17 A Uh-huh.

18 Q You take Subtest 2 and you passed;
19 correct?

20 A Yep.

21 Q You take Subtest 3, which at that point,
22 had two parts; is that correct?

23 A Correct.

24 Q The multiple choice --

25 A Correct.

1 Q -- and the WPA; correct?

2 A Correct.

3 Q Did you pass the multiple choice portion
4 of the Subtest 3?

5 A Yes. No problem.

6 Q All right. And you got a less than
7 passing grade on the WPA portion of Subtest --

8 A I got the same score I did the first time.

9 Q Which was?

10 A A 6. One point away from passing.

11 Q Okay.

12 A I, in addition to going back and studying
13 some more, wrote to Pam Stewart, the Commissioner of
14 Education, on two occasions, December 1st and
15 December 15th. And I actually outlined everything
16 that I had done and I sent a bunch of documents and
17 I said, listen, something is very wrong. I teach
18 data, I teach statistics, I teach research, I teach
19 validity reliability, can you please get back to me,
20 I don't know what's going on. I'm a full --
21 everything that you heard, I told her. I did not
22 get one response back.

23 Q What kind of feedback do you get, besides
24 the score that you achieved to instruct you as to
25 where you fell short --

1 A You get nothing until you do a score
2 verification session.

3 Q All right. Do you do a --

4 A The only feedback you get is you see
5 effective communication practices, your score of 6,
6 average scores of 7. That's the feedback you get.
7 That's all you get.

8 Q Okay. So, at this point, you don't know
9 how your WPA, in test number 2 that you took, fell
10 short, other than it came one point short of what
11 you had to score?

12 A There's no feedback.

13 Q Now, you said that there was a -- that
14 there is a review process that you can request?

15 A Correct.

16 Q Did you do that for test number 2?

17 A No. Because I -- I felt -- this is the
18 thing, when you're a teacher, when you're a teacher,
19 you should pass tests. And you keep going back and
20 you find the supplementals and you keep studying.
21 And there's a lot of shame and embarrassment that
22 goes along with the fact that the teacher can't pass
23 their test. It's not my test; it's their test. So
24 I'm like, I must be doing something wrong, I'm going
25 to do it again.

1 Q All right.

2 A I'm going to try it again.

3 Q So, you sign up to take the test the third
4 time; correct?

5 A Correct.

6 Q And the only portion of the test that you
7 take on the third time, is the one portion that you
8 haven't yet passed; correct?

9 A Correct.

10 Q So you're back to taking the WPA portion
11 of --

12 A Correct.

13 Q -- the FELE?

14 A Not knowing what the FDOE wants from me.

15 Q All right. Well, tell us what you did
16 differently to try to prepare for test number 3 that
17 you didn't do for test number 1 and test number 2?

18 A Okay. So, on the Florida Educational
19 Leadership Examination Subtest Number 3, Systems
20 Leadership web page that the FDOE discloses, there
21 is a rubric for Effective Communication Practices.
22 So, I'm like, okay, well, what are Effective
23 Communication Practices? I thought -- I thought
24 that I knew what they were because I looked at the
25 supplementals, but whatever I put in didn't work.

1 Q And, again, the supplementals, you're
2 referring to these --

3 COURT REPORTER: I'm sorry, you have to
4 please let him finish the question before you
5 start answering.

6 MS. MCCUE: Oh, I'm sorry.

7 COURT REPORTER: It's okay.

8 Q (By Mr. Mckee) The supplementals that
9 you're talking about are the things that you
10 purchased from these outside experts, FELE experts;
11 correct?

12 A As well as looking at the FDOE's sample
13 prompt and sample rubric that they publish, yes.

14 Q Okay. Things that appear on the FDOE
15 website?

16 A Correct.

17 Q You look at those. You're also going out
18 to your outside sources to try to get additional
19 information to help you pass?

20 A Correct. And I found something else. On
21 this website, it's there now, there's a rubric for
22 Subtest 3, which the written performance is a part
23 of.

24 Q And, again, what you're referring to "the
25 website", you're referring to the --

1 A FDOE.

2 Q -- FDOE website?

3 A Right. And the rubric is Knowledge of
4 Effective Communication Practices that Accomplish
5 School and Systemwide Goals by Building and
6 Maintaining Collaborative Relationship with
7 Stakeholders. That's part of the test, okay. And
8 there's three parts of that rubric. Analyze data
9 and communicate, in writing, appropriate information
10 to stakeholders. Now, stakeholders are parents,
11 like you said in your opening remarks, parents,
12 teachers, principals, superintendents, outside
13 businesses and community members. The second part
14 is, analyze data and communicate, in writing,
15 strategies for creating opportunities within a
16 school that engage stakeholders: Parents, teachers
17 principals, superintendents. Rubric, the part of
18 this rubric, number 3, analyze data and communicate,
19 in writing, strategies that increase motivation and
20 improve morale while promoting collegial efforts.

21 Now, after getting this information and
22 looking at the rubric that was disclosed, none of
23 these things is part of the rubric that the raters
24 use to grade essays.

25 Q And you're talking about what's being

1 disclosed by the FDOE on its website in terms of how
2 you demonstrate effective communications; correct --

3 A Uh-huh.

4 Q -- as compared to what the test scorers
5 are told to look for --

6 A Correct.

7 Q -- in your essay?

8 A Correct. I can go line through line to
9 show you where every bit of this rubric is in my
10 essay.

11 Q All right. So you're preparing for the
12 test once again. You come across this
13 information --

14 A Uh-huh.

15 Q -- on the FDOE website. This is a eureka
16 moment for you?

17 A Uh-huh.

18 Q Okay. I know what they're looking for?

19 ADMINISTRATIVE LAW JUDGE MCARTHUR: Ma'am,
20 please --

21 MS. MCCUE: I'm not supposed to say
22 uh-huh --

23 ADMINISTRATIVE LAW JUDGE MCARTHUR: Your
24 uh-huh needs to be --

25 THE WITNESS: Nothing?

1 ADMINISTRATIVE LAW JUDGE MCARTHUR:

2 Nothing --

3 MR. MCKEE: Until I finish. Then you can
4 say yes. That's all.

5 ADMINISTRATIVE LAW JUDGE MCARTHUR:

6 Exactly. But wait until the very last word of
7 what he's asking you comes out and then you can
8 respond so -- because the court reporter can't
9 take down both of you speaking at same time.

10 THE WITNESS: Okay. I'm sorry.

11 ADMINISTRATIVE LAW JUDGE MCARTHUR: That's
12 okay.

13 Q (By Mr. Mckee) So did you use what you
14 found on the FDOE website to help you prepare to,
15 once again, take the WPA portion of the FELE?

16 A Yes, sir.

17 Q What else did you do besides focus on the
18 information that's being given to you by FDOE?

19 A I went back and study my supplementals. I
20 did more practices, and I really tried to figure out
21 what do they want. I don't know what they want.
22 So, one thing I focused on is maybe it's the top,
23 like who am I talking to, because sometimes the
24 prompt has me be one -- for the sake of
25 confidentiality, be one thing and then another

1 prompt has me be another thing. So, I'm like, maybe
2 I need to pay more attention to my voice in the
3 essay. So I took that into consideration, too.

4 Q And you've been given a book that has the
5 joint exhibits?

6 A Uh-huh.

7 Q Make sure you're looking at the right one.

8 A Okay. I'm just organizing.

9 Q Okay. I'll give you a second. You can
10 move that white booklet over in front of you and I
11 have some questions for you.

12 A Okay.

13 Q In the white booklet on your left, which
14 is a booklet containing all the joint exhibits, if
15 you would turn to number 3?

16 A Okay.

17 Q Do you recognize number 34?

18 A Yes.

19 Q What is number 3?

20 A My essay.

21 Q When you say your essay?

22 A From my fourth attempt.

23 Q Okay. And I don't know if I covered this.
24 You took it the third time, what was your score the
25 third time you took the WPA?

1 A Same. One point away from passing.

2 Q Okay. So you're back at it again, you're
3 preparing for the fourth time to take it --

4 A Uh-huh.

5 Q -- and you took that last year; is that
6 correct?

7 A Oh, geez --

8 Q It's all right.

9 A It's right here. I have one, two, three,
10 four, five, I have seven dates here.

11 ADMINISTRATIVE LAW JUDGE MCARTHUR: I
12 think we have it in the joint prehearing
13 stipulation.

14 Q (By Mr. Mckee) That's fine. I'll withdraw
15 the question.

16 A The first time I took it June, 2015. The
17 second time I took it July, 2015. Third time, April
18 of 2016. And then the fourth time, May of 2016.

19 ADMINISTRATIVE LAW JUDGE MCARTHUR: Okay.
20 I've got a stipulation that the fourth -- we're
21 here for the fourth one; right?

22 MR. MCKEE: Yes, ma'am.

23 ADMINISTRATIVE LAW JUDGE MCARTHUR:
24 September 28, 2016.

25 MS. MCCUE: Where is that? Oh, yeah. The

1 May was the third time I took it, and the
2 September 8th was the fourth time. See, I've
3 taken it so many damn times, I'm sorry.

4 ADMINISTRATIVE LAW JUDGE MCARTHUR:
5 Twenty-eighth.

6 MS. MCCUE: Thank you. Got it.

7 Q (By Mr. Mckee) You recognize Exhibit 3 as
8 being your WPA essay --

9 A This is it.

10 Q -- on the fourth attempt to pass this
11 portion of the FELE; correct?

12 A Yes, sir.

13 Q Could you describe for the Judge the
14 mechanics of taking this test? What do you do,
15 where are you, how do you go about making this test?

16 A Okay. So, you go into the room, go
17 through all the confidential stuff, sign off on
18 whatever. And then you go through like a little
19 video, training video. And then the timing starts.
20 Okay. So I think it's 60 minutes or 65 minutes.
21 Okay. So, the prompt comes up and then a text box
22 to type. Okay. That's the software.

23 Q Okay. For somebody who would read this
24 transcript and doesn't know what a prompt is. What
25 is a prompt when you say, "the prompts come up",

1 what's a prompt?

2 A So the prompt is the question with the
3 data and what I'm supposed to include in my written
4 performance.

5 Q So you're given a scenario with data and
6 you're asked to perform it?

7 A Yeah. Is it in here? Because I'd like
8 you to see it. It's the first page, Exhibit 1,
9 first page.

10 Q Okay.

11 A That's the prompt. So this is what I see
12 in the Pearson software. Below this would be a text
13 box and throughout the hour I have to expand the
14 text box, which covers up the prompt, and then make
15 the text box smaller if I see the prompt. So I
16 don't get to see the prompt and then have a document
17 that I could see. So I have to constantly shrink
18 the prompts and write, type, and go back and forth.

19 Q And was there a way for you to see your
20 entire essay response while still having the prompts
21 in front of you?

22 A No. You can only see portions of the
23 essay.

24 Q And this is a timed test; is that correct?

25 A Yes.

1 Q What grade did you receive on attempt
2 number four to pass the WPA portion of the FELE?

3 A A 6 out of 7, the same.

4 Q So you're, again, one point short of what
5 you need to pass; correct?

6 A Uh-huh.

7 ADMINISTRATIVE LAW JUDGE MCARTHUR: Just
8 to clarity, you said 6 out 7, isn't it 6 out of
9 12?

10 THE WITNESS: You have to have a 7 to
11 pass.

12 ADMINISTRATIVE LAW JUDGE MCARTHUR: Right.
13 But the total possible points, as I understand
14 it, are 12?

15 THE WITNESS: Uh-huh.

16 ADMINISTRATIVE LAW JUDGE MCARTHUR: Yes?

17 MR. MCKEE: Seven is the minimum passing
18 grade.

19 ADMINISTRATIVE LAW JUDGE MCARTHUR: Right.

20 MR. MCKEE: We all agree.

21 A (By the Witness) And the average score
22 for all four tests is a 7, which is interesting.

23 Q (By Mr. Mckee) Now, this is where we're
24 going to get into the tricky part of doing our best
25 to protect confidentiality while trying to explain

1 why it is you feel that this essay that you were
2 scored a 6 should have been scored a 7 or an 8,
3 okay.

4 A Uh-huh.

5 ADMINISTRATIVE LAW JUDGE MCARTHUR: Yes?

6 MR. MCKEE: Is that a yes?

7 ADMINISTRATIVE LAW JUDGE MCARTHUR: You
8 need to not say uh-huh.

9 MS. MCCUE: Yes.

10 ADMINISTRATIVE LAW JUDGE MCARTHUR: That's
11 okay. You're talking like normal people talk
12 and that's fine, but I have to be thinking of
13 the transcript and the record. So try to say
14 yes or no, instead of uh-huh or huh-uh.

15 THE WITNESS: Okay. I'm sorry.

16 ADMINISTRATIVE LAW JUDGE MCARTHUR: Or
17 okay. Okay is good.

18 MS. MCCUE: I'm so sorry.

19 Q (By Mr. Mckee) Would you turn to Exhibit 2
20 in the joint exhibit book that you have in front of
21 you?

22 A Uh-huh.

23 Q Is that a yes?

24 A Yes.

25 Q Do you recognize that document?

1 A Yes.

2 Q What is it?

3 A It is the general rubric that the FELE --
4 that the FDOE posts publicly for the written
5 performance exam.

6 Q And you mentioned a few moments ago that
7 you also had access to a document on the DOE's
8 website; correct?

9 A Correct.

10 Q And that gives you guidance as to what
11 should be included in your essay response?

12 A Correct. As well as a sample prompt and a
13 sample rubric.

14 Q Okay. Would you turn to page 2 of Exhibit
15 1 -- that's Joint Exhibit 1. Do you recognize page
16 2?

17 A Yes.

18 Q What is page 2?

19 A Page 2 is the rubric that raters are
20 given, Pearson raters are given, in order to come up
21 with their point spread or their grade.

22 Q And so the record is clear, you never saw
23 this document prior to taking the test?

24 A Oh, gosh, no.

25 Q Did you get access to this document as

1 part of this proceeding?

2 A Yes, sir.

3 Q And have you had an opportunity to go
4 through page 2 of the Exhibit 1 and compare what the
5 raters were instructed to look for to the essay that
6 you completed in test number 4?

7 A Yes, sir.

8 Q All right. And could you take a moment,
9 and this may be a bit time consuming because we have
10 to kind of talk in code here, and refer to page 2 of
11 Exhibit 1, the individual, data points that were to
12 be looked for and show us where they appear on
13 Exhibit 2, which is your essay?

14 A Yes. Okay. Can I take this out and have
15 it --

16 Q Sure.

17 A Can I have it like spread out, because I
18 need to see my essay and this guy?

19 ADMINISTRATIVE LAW JUDGE MCARTHUR: Whose
20 notebook is that?

21 MR. MCKEE: It's the witness notebook.
22 We'll put it back together.

23 ADMINISTRATIVE LAW JUDGE MCARTHUR: That's
24 fine. It's okay. I've got the official one,
25 so.

1 Q (By Mr. Mckee) If we could have thee
2 record reflect that the witness has both page 2 of
3 Exhibit -- Joint Exhibit 1 in front of her, as well
4 as Joint Exhibit 3, which is her essay.

5 A Okay. This is coming from Kelly's Chief
6 Reviewer, rater's, rater marks. So when I did a
7 score verification session, a Chief Reviewer, to my
8 understanding, reviewed my scores.

9 Q Well, perhaps we had better set that up in
10 your testimony. You had -- strike that.

11 Did you ask for a review once you received
12 your score for the fourth test?

13 A Yes.

14 Q All right. Tell us what the process is
15 and what you understand happened as a result of your
16 request for a review?

17 A There's something called a score
18 verification session. You pay \$75. There are four
19 places in the State of Florida that you have to show
20 up to to do this. You watch a 10 minute video. You
21 go into the Pearson testing site. You watch a 10
22 minute video. I won't disclose what's in the video.
23 And a lot of it has do with multiple choice and not
24 the written performance. After you're done watching
25 the video, this essay, my essay comes up on the

1 screen, no feedback, no data marks, nothing. I get
2 to look at the essay. And then in a little text box
3 that I cannot open and close, but in a little text
4 box, where you can see like five or six lines at a
5 time, you can write a written appeal as to why you
6 think that your essay should have passed. And then
7 that appeal is read by a Chief Reviewer and then the
8 Chief Reviewer looks at said document, essay, and
9 then they have 30 days to give their response.

10 Q And what form does the response come?

11 A It comes in the form of a boilerplate
12 letter that doesn't come from Pearson, but from the
13 FDOE. So all of my scores are disclosed by Pearson,
14 until the score verification session. And then the
15 results from the score verification session come
16 from FDOE letterhead, no longer Pearson.

17 Q Was this the first time that you went
18 through the verification process after test 4?

19 A Correct. So, after you get your results,
20 you have 14 days to find an attorney or someone to
21 represent you and ask for an administrative hearing.

22 Q But this is the first time, after test 4
23 is the first time you went through the process of
24 seeing your essay?

25 A Uh-huh.

1 Q And then writing an explanation as to why
2 you think the essay should have been graded
3 differently?

4 A Yes, sir.

5 Q Okay.

6 A In the score verification session.

7 Q Okay. And you get a letter, after that
8 score verification session, that tells you
9 basically, i.e., the rater agreed with the rating
10 that you received; correct? I mean, do you get
11 anything substantive from the DOE to tell you why
12 your grade hasn't been changed?

13 A No. I received about a three sentence
14 boilerplate response from the FDOE that says, our
15 Chief Reviewer has reviewed your essay and your
16 score stands. There wasn't any sort of quote from
17 the appeal that proved that they read my appeal.
18 There wasn't even my score embedded in the -- in the
19 letter. It wasn't even signed.

20 Q So getting back now to looking at page 2
21 of Exhibit 1, which is the criteria that's given to
22 the raters, and comparing that to the work product
23 that you produced, which is your essay, Joint
24 Exhibit 3, can you go through and tell the Judge
25 where and how you think the raters got this wrong?

1 A Yes, sir.

2 Q All right.

3 A This is going to come from Kelly P., who
4 is the Chief Reviewer, and it's part of the
5 documentation.

6 ADMINISTRATIVE LAW JUDGE MCARTHUR: Let me
7 make sure I understand. Are you telling me
8 what Kelly determined comparing the criteria
9 and your essay or are you telling me what you
10 think?

11 THE WITNESS: Both.

12 ADMINISTRATIVE LAW JUDGE MCARTHUR: Okay.

13 A (By the Witness) Okay. All right.
14 There's data points on the rubric.

15 Q (By Mr. Mckee) And when you say "the
16 rubric", just to make the record clear, if you could
17 refer to -- I'm looking at Exhibit 1 page 2, are
18 there data points Exhibit 1, page 2?

19 A Okay. Data 1, page 2, rubric, there are
20 five data points for score point 6, and these are
21 the data points that are used, okay. And a 4 -- I'm
22 just going through the 4, okay, which is passing, if
23 both raters were to give me a 4. Three out of 5
24 data findings, okay. With some specific details in
25 there. Okay. Now, bottom of page 1 of -- what's

1 this, Exhibit 1.

2 Q Joint Exhibit 3, your essay?

3 A Am I allowed to write on this? Can I just
4 say on my essay, Your Honor?

5 ADMINISTRATIVE LAW JUDGE MCARTHUR: Yes.

6 But if you want to call me to particular parts
7 we talked about giving me the lines that you're
8 referring to.

9 THE WITNESS: Correct. Correct.

10 A (By the Witness) So, in my essay, bottom
11 of page 1, okay. Do you see on data point 1, the
12 last line, do you see where it says --

13 Q (By Mr. Mckee) Well, here's where we
14 get --

15 ADMINISTRATIVE LAW JUDGE MCARTHUR: Don't.

16 THE WITNESS: I'm not going to say
17 anything.

18 ADMINISTRATIVE LAW JUDGE MCARTHUR: So
19 you're saying the last line, bottom of the page
20 1 addresses data point 1?

21 THE WITNESS: Correct. I actually would
22 rather be able to speak about it out loud
23 unless you -- unless you're following me,
24 because it's really important that you follow
25 me.

1 ADMINISTRATIVE LAW JUDGE MCARTHUR: I
2 think -- yes. Thank you. Ms. LaGrone, is
3 vacating the room. It's just too difficult to
4 talk about without you telling me.

5 THE WITNESS: It's true and I proctor ACT
6 and I proctor exams all the time in high school
7 and this confidentiality stuff makes me very
8 nervous, this text stuff. So I don't want to
9 make a mistake.

10 ADMINISTRATIVE LAW JUDGE MCARTHUR: I
11 appreciate it.

12 THE WITNESS: Okay. So now I can say out
13 loud?

14 ADMINISTRATIVE LAW JUDGE MCARTHUR: Yeah.
15 And let me have the court reporter flag, from
16 this point, until we're done delving into
17 specifics of confidential material, that this
18 portion of the transcript will be separated
19 somehow and be under seal.

20 MR. MCKEE: Agreed.

21 MS. WILMOT: Agree.

22 ADMINISTRATIVE LAW JUDGE MCARTHUR: Okay.
23 So we are about to start confidential
24 testimony.

25 (At this time the public portion turned

1 into confidential material on the record and
2 put in a separate envelope under seal for Judge
3 McArthur and not available to the public or to
4 anyone else other than those who have signed
5 the confidentiality agreement)

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

4 ADMINISTRATIVE LAW JUDGE MCARTHUR: We're
5 back on the record. We are interrupting the
6 cross-examination and potential redirect of
7 Ms. McCue on non-confidential subjects to take
8 a witness for Respondent out of turn because he
9 needs to rush back to Tallahassee, a lovely
10 drive. I'm familiar with it well. And so
11 Ms. Wilmot, you may call your witness.

12 MS. WILMOT: I call Dr. Christopher Small.

13 ADMINISTRATIVE LAW JUDGE MCARTHUR: And,
14 Mr. Small, would you raise your right hand? Do
15 you swear or affirm that the testimony you're
16 about to give today will be the truth, the
17 whole truth and nothing but the truth?

18 THE WITNESS: Yes, ma'am.

19 ADMINISTRATIVE LAW JUDGE MCARTHUR: Thank
20 you. You may inquire.

21 MS. WILMOT: Thank you.

22 WHEREUPON,

23 CHRISTOPHER SMALL

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

1 follows:

2 DIRECT EXAMINATION

3 BY MS. WILMOT:

4 Q Could you state and spell your name for
5 the court reporter, please?

6 A Christopher Small. C-H-R-I-S-T-O-P-H-E-R,
7 last name Small, S-M-A-L-L.

8 Q And, Dr. Small, could you tell us, what is
9 your current position?

10 A I'm currently the new principal at Raa
11 Middle School in Tallahassee, Florida.

12 Q Very good. And what position did you hold
13 prior to that?

14 A The principal at Springwood Elementary in
15 Tallahassee, Florida.

16 Q And then how long have you been a
17 principal?

18 A A principal, five years.

19 Q Okay. Could you refer to exhibit --
20 Respondent's Exhibit 8. Exhibit 8. Is this your
21 resume, Dr. Small?

22 A Yes.

23 MS. WILMOT: Your Honor, I would like to
24 enter Exhibit 8 into evidence.

25 MR. MCKEE: Without objection.

1 ADMINISTRATIVE LAW JUDGE MCARTHUR:

2 Without objection, Respondent's Exhibit 8 is
3 admitted.

4 Q (By Ms. Wilmot) So tell us, we have it all
5 here in your resume, but tell us a little bit about
6 your educational background and your experience.

7 A I did my undergrad Bachelor's Degree of
8 Political Science at Baylor University and then came
9 to Florida State to do my Master's in Public
10 Administration in 2004. And then completed my Ph.D.
11 at Florida State, as well, in 2012. During that
12 time of my Ph.D. I was Assistant Principal at Nims
13 Middle School for three years, 2012 graduated with a
14 Ph.D. and then was subsequently appointed as the
15 principal at Springwood in 2012 and I've been the
16 principal there for the past five years.

17 Q Okay. And so you reached a very high
18 position and had considerable experience. What
19 about your experience as a trainer, as a trainer for
20 Pearson. Have you always worked for Pearson?

21 A I've done FELE item analysis, worked with
22 DOE, as well as am a Chief Reviewer for the FELE,
23 for the FELE writing. Two years ago, I was asked to
24 participate and applied to the program. Went to the
25 training in Massachusetts and have been working as a

1 Chief Reviewer since then.

2 Q Could you give us just a summary of what
3 the training in Massachusetts entailed?

4 A Very intense, but they took us through --
5 it was three of us that went. Took us through it, a
6 very rigorous process of not only giving us some
7 background on the FELE writing, but working with the
8 company to equip us to review contested prompts. So
9 we're professionals and are working administrators,
10 but giving us the training that we would need when
11 called upon to conduct review of prompts or writing
12 assignments that have been contested or that were in
13 question.

14 Q Was that specific to the Florida testing?

15 A Yes.

16 Q And were you calibrated there?

17 A Yes.

18 Q And can you tell us what that means?

19 A That process of calibration, in essence,
20 we're given tests that we take or review and score.
21 In that calibration process they paired each of us
22 with kind of a senior executive, so to speak, and
23 we'd have to make sure that our scoring of a writing
24 matched theirs. If there was a time where there was
25 a discrepancy or we were points off, we would have

1 to go to mediation, which was a side room and you
2 kind of walked through the writing prompts. They
3 kind of look at areas that you used to kind of, to
4 score, based upon the rubric, and then come up with
5 a calibrated final score. And we did that eight
6 hours a day, three days, back to back.

7 Q Was there a possibility that you would not
8 be qualified at the end of the process as a grader?

9 A Correct. You had to have a certain
10 percentage score that would qualify you, so to
11 speak, to be considered a Chief Reviewer. So we
12 knew at the beginning that if you didn't -- if your
13 scoring and your reviewing didn't align to the
14 calibration prompts, then you would not be asked to
15 be a Chief Reviewer.

16 Q Okay. Now, let's talk about process now.
17 Now you are -- what is your position with regard to
18 Pearson?

19 A It's called FELE Chief Reviewer.

20 Q Chief Reviewer. And how does that process
21 start? What's the first thing that happens when
22 you're called upon to review a FELE essay?

23 A We'll get an e-mail from Denise. She's
24 our contact at Pearson that says we have a
25 participant that's contesting a score, are you

1 available to do a review and give -- and she usually
2 gives us kind of a time frame, I would need it back
3 by subsequent date. It's usually about a two week
4 process or two week time frame that we have to do
5 those. And then you will respond, yes, I'm
6 available or, no, I'm not. My understanding is if
7 you're not, then they go on to another reviewer.

8 Q So once you indicate that you're
9 available, what happens next?

10 A They then send you the security agreement
11 that you would sign off on saying that you agree to
12 all the stipulations and the confidentiality and
13 agree to actually take on the assignment. Once you
14 submit that, you then get an e-mail back with the
15 secure log in information that has your user name
16 and password to log into the secure browser to
17 download the information. It's a large file folder
18 that would have the training documents, as well as
19 the writing sample that's being contested.

20 Q And how many writings samples would you be
21 given, at one time, to review? So if you got your
22 e-mail, be prepared, yes, I'm available, how many
23 would they send you?

24 A One.

25 Q One.

1 A It's usually more than enough. It's
2 usually one. If, by chance, there are two that are
3 contesting the same assessment or the same prompt,
4 they may send you two. Those are very rare, but
5 sometimes if it's the same writing prompt that the
6 two essays were written and they didn't score the
7 necessary points, they would send you two essays
8 that would need to be reviewed, but it's the same
9 information from the training.

10 Q Okay. So, you get your e-mail, you sign a
11 confidentiality agreement and then they give you the
12 log in?

13 A (Witness nods head)

14 Q Once you log in, what happens from that
15 point?

16 A It's kind of a step-by-step process. So
17 the first thing that opens up are the instructions.
18 So you kind of walk through that folder. The way --
19 I'm trying to visualize it here. The file folders
20 are set up from kind of step one. So step one, you
21 open folder 1 and it has instructions. Step 2, is
22 the scoring rubric. Step 3 is usually the
23 historical anchor papers that we have a chance to
24 review. And that kind of gives you a chance to
25 review. I'm not sure how much you guys have

1 discussed the process, but historic anchors are kind
2 of those historical guiding writings that have been
3 kind of graded already as kind of your benchmark for
4 scoring a paper. My understanding, from our
5 training, is that those historic anchors have been
6 around for years and those are kind of that Standard
7 of Excellence for each of the levels and samples of
8 each of the levels that a paper could be scored
9 upon.

10 Q Okay. So let me back up a little bit
11 because this is a complicated process and it took me
12 several times to get through it.

13 A Yeah. It's hard to explain.

14 Q You open up your program and you start
15 with step 1. Do you always go in order?

16 A Yes.

17 Q You always start with step 1 and go to
18 step 2, exactly as you your trained to do?

19 A Correct.

20 Q And this is a process of recalibration, is
21 it?

22 A Correct. Because you're not doing these
23 back to back, day in and day out. And so it gives
24 you that chance to kind of almost re-enter into that
25 training room again and walk yourself through that

1 process. So, it was explained to us that that would
2 be the expectation that as a Chief Reviewer, each
3 time you go through this understanding, what you're
4 signing up for and what you're issuing as your final
5 rating is depending on people's certifications and
6 those types of things. And so making sure that we
7 follow those steps. And they aren't difficult steps
8 to follow, but making sure that you take them in
9 order.

10 Q So then the first thing you do is you see
11 a prompt that is not the one you're going to review;
12 is that correct?

13 A Correct. That is correct. The historical
14 anchor is the first thing that you would, in terms
15 of a paper or writing.

16 Q And then you get a series of papers in
17 response to that prompt?

18 A Right. Six.

19 Q Six. And those are the different levels?

20 A Right. So there's -- because the rubric
21 is on a six point scale. So you would get a
22 historical anchor for each of those levels.

23 Q Okay. You have a pretty good idea what
24 constitutes a 6, a 5, a 3?

25 A (Witness nods head).

1 Q And then you move on to what?

2 A From there you go into your operational
3 assignment, which is the actual writing prompt that
4 the review is going to be conducted on.

5 Q Okay. And so you get that prompt. Is the
6 prompt what you see next?

7 A Correct. And the rubric that goes along
8 with that.

9 Q The rubric that goes along with it, which
10 does that rubric have another name?

11 A For the operational --

12 MS. MCCUE: Supplemental Rating Criteria.

13 Q (By Ms. Wilmot) Yeah. Is it the
14 Supplemental Rating Criteria?

15 ADMINISTRATIVE LAW JUDGE MCARTHUR: Don't
16 volunteer information. Question and answers
17 are from lawyer to witness only, please.

18 Q (By Ms. Wilmot) So you received that
19 rubric?

20 A Uh-huh.

21 Q And then what goes along with that?

22 A From there it goes into the rank. I want
23 to say it's called the ranking -- ranking rubric
24 that is another rubric written to the prompt that
25 has a sample for that particular operational

1 assignment that gives you sample of a 1, 2, 3, 4, 5
2 or 6.

3 Q So you're getting samples for the prompt
4 that you're going to review the answer on?

5 A Uh-huh.

6 Q You're getting samples of every level of
7 answer?

8 A Right. And on those you don't know --
9 well, you're not supposed to open up the next folder
10 that has the scores for those. So those are the
11 only things that you would actually view and start
12 that process of scoring, that you know that you're
13 going to have one sample from each of the levels.

14 Q So those are given to you randomly?

15 A Correct.

16 Q And then you determine which is -- you
17 score it yourself?

18 A Correct.

19 Q And then you compare your scores to the
20 scores that they provide you?

21 A To the next folder. Correct. The next
22 folder has the scoring or has like -- it's like a
23 grid that would have Respondent 1, 2, 3, 4, 5, 6.
24 And then Respondent 1 may have been a 3, Respondent
25 2 may have been a 4. So they're not in order, so

1 you don't know -- like the historical anchors you
2 know when you're reading them they're going to go
3 from a six to a one, the operational assignment or
4 the ranking assignment. You know you're getting one
5 from each level, but you don't know the order that
6 they're in.

7 ADMINISTRATIVE LAW JUDGE MCARTHUR: Okay.
8 Dr. Small, before you go on, you injected a
9 comment while Ms. Wilmot was asking a question,
10 talking like normal people having a
11 conversation --

12 THE WITNESS: Oh, I'm sorry.

13 ADMINISTRATIVE LAW JUDGE MCARTHUR: Just
14 try -- no, it's okay. It's very common. And
15 if you've been here with us here so far today,
16 you would know that but, just for our court
17 reporter's benefit, it's helpful if you try to
18 wait the last word out of Ms. Wilmot's mouth,
19 even though you know where she's going with her
20 question, until you start to answer.

21 THE WITNESS: Yes, ma'am.

22 ADMINISTRATIVE LAW JUDGE MCARTHUR: Thank
23 you.

24 Q (By Ms. Wilmot) Okay. So let me go back
25 to the random prompt. Did you read any papers? Did

1 you score any papers in reference to that prompt?

2 A That would be the one that you're scoring,
3 correct. The ranking anchor papers are ones that
4 you would score.

5 Q I'm going back -- let me be clear now.
6 I'm backing up in the process --

7 A Okay.

8 Q -- to where you have the random prompts,
9 historical?

10 A Historical anchors, okay.

11 Q And then you get the anchors for that. Do
12 you actually grade those anchors?

13 A Those are already pre-scored.

14 Q Are there any that you grade for that
15 prompt?

16 A Not for the historical anchor.

17 Q Okay. So now we're moving to the review
18 that you're going to do, the prompt that you're
19 going to review. Then you get the same papers --
20 you get the rubric?

21 A (Witness nods head).

22 Q And then you get the same papers -- I
23 mean, you get the ranked --

24 A The ranked papers?

25 Q The six papers?

1 A Correct.

2 Q And then they are not ranked and you rank
3 them?

4 A Correct.

5 Q And then you get the ranking?

6 A Correct. And then the next folder down
7 would be the actual scores for you to kind of self
8 check whether or not you were scoring them the way
9 that they were.

10 Q And what would happen if you were not
11 scoring them correctly?

12 A Our training is to go back through and
13 review those discrepancies, if you have them, to
14 kind of get an idea of where of your misalignment
15 was from the scores that they were given.

16 Q Would you start the process over again?

17 A No. You wouldn't go back up to -- I mean,
18 other than reviewing those operational -- those
19 ranking scores, your next folder down is a
20 calibration assignment so you're still going to be
21 reading another 10 papers. So you wouldn't go back
22 and rescore those because this is still -- you're
23 still going through the training and so that's just
24 one of the modules as part of the process.

25 Q So you're going -- once you have ranked

1 the ones that have already been scored the 6, then
2 you get 10 more --

3 A Correct.

4 Q -- that you have to score?

5 A Yes.

6 Q Okay. So, what happens then?

7 A And those are called calibration
8 assessments. So, you get a set of 10 respondents,
9 again, in random order. You go through and score
10 each one of those, as if it is the one that's being
11 contested. And once you've scored all 10, you then
12 open the next folder, which is the actual scores for
13 those specific papers to see where your scores align
14 to the scores that were issued.

15 Q Okay. So you've read 10 responses to the
16 prompt that you're going to review?

17 A (Witness nods head).

18 Q Scored them?

19 A (Witness nods head).

20 Q Made sure your score -- you opened up the
21 scores for those and made sure that your scores were
22 the same?

23 A Correct.

24 Q Exactly the same?

25 A Yes.

1 Q Is it okay if you're off by one?

2 A No.

3 Q No.

4 A That's in the big range --

5 Q Okay.

6 A -- from one level. I mean, a 3, differing
7 from a 4 to a 5, there are specific criteria that
8 would have to be met.

9 Q So if you were off by one, you would go
10 back and figure out what you were missing?

11 A Definitely.

12 Q Okay. So you get through all of that,
13 find all your scores are correct and then what?

14 A And then you go to the actual one that's
15 being contested.

16 Q Okay. And how do you approach that one?

17 A By then you're pretty well kind of vetted
18 into what the prompt is, what classifies and what to
19 kind of look for, for that particular prompt and
20 then you read the respondents to determine what you
21 would score that particular paper. There is also a
22 separate document that has the previous ratings that
23 were on there, and that's the form that you complete
24 at the end. And so if your score is the same as
25 what was previously scored, you don't have to mark a

1 change of score, but you have to give an explanation
2 of why you're going to say this score stands. And
3 so you -- have been asked to issue bullet points or
4 a summary of what were the things that led to you
5 upholding the score and/or if you're going to change
6 the score, I believe that same box is used for
7 either option.

8 Q Okay. So, do you actually score it on
9 paper or do you just indicate whether or not the
10 score stands?

11 A The document that you use to send back is
12 your new score, but it's -- I think you issue an X
13 if the score stands or there's an open box for you
14 to input a new score. So if it's going to stay, for
15 example, a level 3, you wouldn't have to write in a
16 3, you would just put X, score stands. If you're
17 going to give it different score, a 4 or 5, you
18 would then have to write in 4 or 5 and then justify
19 and explain why your score is different.

20 Q And how do you -- how do you make your
21 comments or are they just like off the cuff or do
22 you go specifically to the prompt or the response?

23 A I use the rubric. And so the way the
24 rubric is broken down, you have your data piece,
25 your communication and your training piece that's

1 usually attached. So I usually take each of those
2 that's kind of a separate field. So if there's a
3 data issue with data being very general and not
4 having specific points, then I would outline which
5 points may or may not have been included in the
6 respondent's essay. If there is an issue with the
7 professional development that was offered, maybe not
8 being specific, I would put in a line or two about
9 that. And then if there's a monitoring issue, I
10 will say most of the ones that I've had to review
11 monitoring has not come up, so usually it's a PD
12 issue or a data piece that I've traditionally seen
13 as being kind of the two major areas that
14 respondents tend to struggle with.

15 Q Have you ever overturned a score?

16 A I have not.

17 Q Okay. When you get the packet or you open
18 up the document, do you have any idea with regard to
19 the identification of the examinee? Like, do you
20 have the gender, the name, where they come from in
21 Florida, socioeconomic group?

22 A No. Each respondents piece, if I remember
23 correctly, it just has, like a unique identifier
24 with letters and symbols that are on there. I'm
25 assuming, just to keep confidentiality of the prompt

1 or the respondents that's being contested.

2 Q So you would have no way of knowing who
3 wrote the essay?

4 A No, ma'am.

5 Q Do you know what a passing score is --

6 A Yes.

7 Q -- for the essay?

8 A They have to have a total of 7 points.

9 They're scored twice, so hopefully they can
10 potentially score a 6 and a 6. They have to have,
11 in essence, a 3 and a 4. One person has to give it
12 a 3 and one person has to give it a 4 or a
13 combination of 7.

14 Q So if an essay is scored as a 3, does that
15 mean it's just totally wrong?

16 A No. The way that we were trained to look
17 at a 3 is that it's general, meaning they have
18 general data and general approaches to professional
19 development, but aren't specific to the data set
20 that's being issued as their writing prompt.

21 Q With regard -- are you familiar with the
22 essay that we're reviewing, that we're talking about
23 today?

24 A No, ma'am.

25 Q Because I know you do many.

1 A Well, even after our training, we're not
2 allowed to take documents out. I mean, everything
3 is secure and so we've been instructed to -- well,
4 one, you have to log into the system to get the
5 files again. But once that's done, files are
6 destroyed and/or, I mean, they're online and so we
7 then don't have access to go back in. The only
8 piece that we do keep is traditionally your,
9 whatever your response is, in terms of submitting,
10 it has to be submitted via PDF file and most likely,
11 with any technology, sometimes the system goes down
12 and so that's something that you will retain until
13 they've given you word that your response has been
14 received.

15 Q Okay. So could you pick up that essay
16 today and grade it, if I asked to you right now?

17 A I wouldn't be confident in just picking up
18 one without going through -- I mean, I think that's
19 a part of the process being authentic of going
20 through a calibration. It's not, in my opinion,
21 it's not something like an essay that a student
22 would write about a research project. There's
23 specific criteria that you want to make sure that
24 you're familiar with. Again, you don't do them all
25 the time and so making sure that you go through that

1 calibration process and going through that
2 historical anchor before you just sit down and read
3 a prompt. And just kind of based upon our training,
4 that's not the --

5 Q So could someone --

6 COURT REPORTER: That's not what?

7 THE WITNESS: Not the approach that you
8 would take or the best way to score an essay
9 without having gone through that training
10 process.

11 Q (By Ms. Wilmot) So could someone take the
12 rubric that you're provided to score and the essay
13 and just sit down and check off whether they've got
14 this point, they've got that point, they've got
15 another point, they should have a 5?

16 A No.

17 Q So is there more that goes into it -- into
18 your analysis of it than just the rubric in checking
19 off data points?

20 A Yes. As an administrator and going
21 through like the FCAT writes and those types of
22 things, this is different. And the fidelity of
23 going through, reviewing a FELE essay requires, in
24 my opinion, for one to go through each of those
25 steps in order to make sure, I guess, I'm thinking

1 back to when we went to the training and as
2 administrators, all of us were principals were
3 coming in and thinking, it's going to be this, and
4 it was the complete opposite in terms of how that
5 process is to make sure the scores are -- are
6 accurate.

7 Q So you are a principal, and you've been a
8 principal for some time?

9 A (Witness nods head).

10 Q In reviewing the responses and preparing
11 and being calibrated, are you looking for someone to
12 just shoot back the information that's given to them
13 or are you looking for a certain amount of analysis
14 of the information? And when I say analysis, I
15 mean, actually applying the response and the
16 communication in the setting of a principal's
17 responsibilities?

18 A Yes. That is a part of the outlook that
19 you have, bringing into reviewing but also keeping
20 in mind that those things can be done generally, but
21 still not meet the requirements of FELE writing, if
22 that makes sense.

23 Q It does. So, you're confident that that
24 essay, even though you can't see it today, was
25 scored correctly?

1 A Yes.

2 Q And do you believe that if we gave it to
3 anyone cold, along with the rubric and even the
4 sample questions responses, could anyone else just
5 score it that way?

6 A Not without the training, no, ma'am.

7 Q Okay.

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

9 ADMINISTRATIVE LAW JUDGE MCARTHUR: Cross.

10 MR. MCKEE: Thank you, ma'am.

11 **CROSS-EXAMINATION**

12 BY MR. MCKEE:

13 Q Dr. Small, good afternoon. I'm Bob McKee
14 and I represent Ms. McCue in this matter. I
15 appreciate you coming in this afternoon. You're
16 presently, in addition to being a school principal,
17 you're a trainer for Pearson; correct?

18 A Not -- I don't train others, but I work as
19 a Chief Reviewer.

20 Q Okay.

21 A So I don't have the --

22 Q I had written trainer down. I don't know
23 where I got that.

24 A Speaking into my future, maybe.

25 Q I'll cross that off. You're a Chief

1 Reviewer for Pearson relating to the WPA portion of
2 the FELE exam; is that correct?

3 A Yes, sir.

4 Q That's all that you do in terms of your
5 role as a Chief Reviewer?

6 A Yes, sir.

7 Q Have you been a rater --

8 A No.

9 Q -- for Pearson. So you haven't gone
10 through the training that raters go through, the
11 people who initially score the WPA; correct?

12 A My understanding, it's the same training.
13 The difference is, the Chief Reviewer is reviewing
14 scores or respondents that have already been scored
15 once before, was my understanding.

16 Q And you said that your training to become
17 a Chief Reviewer lasted for three days, three 8 hour
18 days?

19 A Correct.

20 Q And it's your belief that the raters also
21 go through a three day, 8 hours a day training?

22 A Yes, sir.

23 Q And could you tell us briefly what you're
24 trained on? What happens during these three days?

25 A Very similar to the reviewing process.

1 And so we're given writing after writing after
2 writing of historical anchor. So we went through
3 several -- I want to say each day had at least one,
4 if not two, historical anchors. So you're looking
5 at a historical anchor that has been around, that is
6 kind of the sample, so to speak for each of the
7 ratings. And then you're walked through the
8 rankings papers and the calibration, in essence,
9 that same process I just outlined, over and over
10 again. And my thinking is to increase your inner
11 rater reliability of --

12 COURT REPORTER: Your what?

13 A (By the Witness) Inner rater reliability
14 of you scoring the same as the person that you're --
15 alumnus person that you're partnered with during
16 that training period.

17 Q So you should all arrive at the same
18 score, is what you're looking for; is that fair?

19 A Yes.

20 Q And the three days that you spend is
21 basically going through a process a number of times
22 to familiarize you with the process, and to get you
23 to the point where you can review an essay and
24 basically come up with a score that's identical to
25 what other chief raters would score?

1 A Yes, sir.

2 Q Or Chief Reviewers. I'm sorry. Was there
3 a way that you could complete this training in less
4 than three days? Could you show a proficiency in
5 day one that would relieve you of having to come
6 back for day two or day three?

7 A We didn't ask that, but we were wondering
8 the same thing but, no, sir. I think even after we
9 left, there was more -- they had, on the schedule,
10 so to speak, or just had additional things, just
11 kind of depending on long it took you to score. And
12 so the materials that they had were well over the
13 three days that we had, but we spent that entire
14 time, up until the time to get on the plane.

15 Q And you mentioned how much time it took
16 you to score. Are you given some perimeters when
17 you're acting as a Chief Reviewer that it should
18 take you X amount of time to score an essay?

19 A Not that I recall.

20 Q And when you're engaged by Pearson to do a
21 contest or a review of an essay that's been
22 contested, you stated that you generally do these
23 one at a time; correct?

24 A Yes.

25 Q And that the process is basically computer

1 driven, everything that you do is shown to you on a
2 computer screen and all your interactions with the
3 data is on a computer screen?

4 A Correct.

5 Q As opposed to hard copy and paging through
6 things?

7 A Correct.

8 Q So you log in, you get instructions, and
9 then you're given a historic rubric; is that fair?

10 A Historic anchor.

11 Q Okay. And then you are given the historic
12 anchor papers?

13 A Correct. You have the historic anchor
14 papers and the historic anchor answers on the
15 rubric.

16 Q So you have the historic rubric, so you
17 can see what it is that is supposed to have been
18 produced in this historic scenario?

19 A Yes.

20 Q Correct. And then you're given six
21 different samples that have been graded. Here's an
22 example of the best paper, the best essay as it
23 relates to that historic rubric; correct?

24 A Uh-huh.

25 Q And so on down the line. Here's what

1 should be -- here's what a 5 should look like,
2 here's what a 4 should look like, et cetera; is that
3 fair?

4 A Yes, sir.

5 Q Then you have a process where you go
6 through more historic rubrics and papers that aren't
7 scored?

8 A The process of going through other
9 samples. So these, I guess you could call --

10 Q But they are historic?

11 A I guess you can call them historic papers.
12 They are other sample writing prompts of essays that
13 you would then score.

14 Q All right. And all of these historic
15 prompts and all of these historic essays that you're
16 shown, do they all relate to the Florida FELE
17 essays?

18 A Yes, sir.

19 Q Okay. So we're not looking at other
20 states and other examples of what people might have
21 done elsewhere, other than in Florida?

22 A Correct. We're not.

23 Q And the second batch that you get, it
24 spits out a bunch of different essays that relate to
25 this prompt, but it doesn't tell you how they were

1 scored; correct?

2 A Correct.

3 Q And then you go through the process of
4 scoring these?

5 A Uh-huh.

6 Q And then you get to look at how they were
7 actually scored?

8 A Correct.

9 Q And the object is to make sure that your
10 scores lineup with how these historic papers were,
11 in fact, scored?

12 A Yes, sir.

13 Q And that's the calibration assessment?

14 A No. That's the last piece, the middle
15 section is the ranking order.

16 Q Okay. Then you get 10 more random rubrics
17 and essays?

18 A Ten is the calibration, yes.

19 Q Okay. And you go through the same
20 process. You don't know how they were scored?

21 A Correct.

22 Q You score them?

23 A Yes, sir.

24 Q Then it's revealed to you how they were
25 scored originally?

1 A Yes, sir.

2 Q And the goal is for your score to match up
3 with these 10?

4 A Yes, sir.

5 Q You're calibrated?

6 A (Witness nods head).

7 Q Then you go to the actual essay that is
8 being contested, the score is being contested;
9 correct?

10 A Yes, sir.

11 Q That's brought up on the screen. The
12 first thing that's brought up is the prompt?

13 A Yes.

14 Q And the prompt is basically what the test
15 taker is being told, the scenario?

16 A Yes.

17 Q And whatever data is being given?

18 A Yes.

19 Q And you're given the rubric?

20 A Yes. Yes.

21 Q So the prompt and the rubric --

22 A In the same file.

23 Q And then you're asked to score the
24 paper --

25 A Yes.

1 Q -- or the essay. You don't know what
2 score has been given to it already, you just know
3 that the test taker is not happy with that score for
4 some reason?

5 A Right.

6 Q You score it?

7 A (Witness nods head).

8 Q You compare it to the score that the
9 original raters gave the paper?

10 A Yes, sir.

11 Q How many original raters are there?

12 A Two.

13 Q If the scores match the score that you
14 gave as a Chief Reviewer and the scores that were
15 given by the original raters, then you just complete
16 a summary?

17 A Yes, sir.

18 Q I found the same thing, for whatever
19 reasons?

20 A Right.

21 Q And you say that having gone through this
22 process, you've never overturned a score, you've
23 never come up with a different conclusion than the
24 raters, the original two raters came up with?

25 A Correct.

1 Q How many of these have you done?

2 A Maybe 20, 20 to 25, over two years.

3 Q So a dozen or so a year?

4 A (Witness nods head).

5 Q Is that a yes?

6 A Yes, sir.

7 Q When you get to the part where you're
8 doing a review of the actual essay that's being
9 contested --

10 A Yes, sir.

11 Q -- do you have access to the test takers'
12 comments that are made?

13 A No, sir. The only thing you have is their
14 final score. So you would see a 3 and a 3, but you
15 don't have the rationale.

16 Q All right. So you're aware that when a
17 test taker initiates a contest, the test taker is
18 given an opportunity to say this is why I think my
19 essay was improperly scored?

20 A I was not aware of that.

21 Q Okay. So you have no idea what input in
22 the contest process the test taker has?

23 A Correct.

24 Q How long, generally, does it take you to
25 go through this process that you've just described?

1 A I usually try to carve out three hours, if
2 not four, depending on the time I start and the time
3 I end. If it's early morning, I usually do a three,
4 three hour stint. If it's afternoon, I may take
5 four.

6 Q And are you familiar with the time
7 constraints, if any, that are placed on the original
8 two raters to do their review of the essay?

9 A No, sir.

10 Q That's not something that you were taught
11 in your training as a Chief Reviewer?

12 A No, sir.

13 Q And you stated that it's not enough, in
14 your view, to get a passing score, simply to hit the
15 points that are on the rubric that you need to
16 amplify?

17 A It's not -- I believe I stated it was not
18 enough to be general.

19 Q It'd have to be specific?

20 A Correct.

21 Q And does the rubric tell you how specific
22 you need or should be?

23 A Yes.

24 MR. MCKEE: I have no further questions.

25 Thank you, sir.

1 MS. WILMOT: Short redirect, Your Honor.

2 **REDIRECT EXAMINATION**

3 BY MS. WILMOT:

4 Q I just want to make something clear that I
5 think might not have been quite clear. The 10
6 essays that you read that are not ranking, those are
7 to the prompt that you're going to review?

8 A Yes.

9 Q They're not just random?

10 A Correct.

11 Q So you've read 10 on that prompt before
12 you address the one for -- that you're going to
13 review?

14 A Yes.

15 Q Do you get any comments from the raters?

16 A No.

17 Q So the comments that you make are strictly
18 what you've drawn from it?

19 A Correct.

20 Q And you're job as a Chief Reviewer -- does
21 it have anything to do with a challenge to the
22 essay? I mean, I know you're giving it another
23 look, but if the Department of Education, or Pearson
24 asked you to do a review, do you have knowledge of
25 why they're asking you necessarily?

1 certification by the State?

2 A I would like it added to my license, yes.

3 Q Okay. So what have you done to that --
4 with regard to the requirements of the Department,
5 what have you submitted? I assume of have an
6 application for that?

7 A I submit the application in right away.
8 And you have my transcript, my 4.0 transcript. And
9 I was told I just have to pass these four tests and
10 my credentials would be added to my teaching
11 license.

12 Q Okay. So let's look at Respondent's
13 Exhibit 11. And this is the Concordia University in
14 Chicago transcript?

15 A Uh-huh.

16 Q This is what the Department of Education
17 has, which we'll establish later. Is this what you
18 submitted?

19 A I don't think this is the one, huh-uh.

20 Q This is not complete. It doesn't show an
21 award of a Master's Degree?

22 A Yeah.

23 Q Have you submitted your completed
24 transcript to the Department of Education?

25 A Uh-huh.

1 Q Not that you have it here --

2 A No, yes.

3 Q Have you submitted it to the Department of
4 Education?

5 A And when she --

6 ADMINISTRATIVE LAW JUDGE MCARTHUR: One at
7 a time, please.

8 MS. MCCUE: Sorry.

9 ADMINISTRATIVE LAW JUDGE MCARTHUR:
10 Apologize to our court reporter.

11 MS. MCCUE: I'm sorry.

12 ADMINISTRATIVE LAW JUDGE MCARTHUR: She's
13 the one going crazy.

14 Q (By Ms. Wilmot) That's just the question.
15 You say you have --

16 A Say it again.

17 Q Have you submitted the certificate showing
18 that you have received your Master's Degree to the
19 Department of Education?

20 A Correct. When I went down to the Fort
21 Lauderdale administrative office, the Talent and
22 Acquisition woman took the application and my
23 complete transcript and said, you are good to go,
24 all you need to do is -- I'll put this in your file,
25 all you need to do is sit for the exams.

1 Q So, the Talent and Acquisition office, is
2 that a District office?

3 A It's downtown Fort Lauderdale.

4 Q All right. Let's go to Exhibit 10,
5 Respondent's Exhibit 10.

6 A Okay.

7 Q And this is your Bowling Green State
8 University transcript; is this correct?

9 A Yes.

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

12 MR. MCKEE: No objection.

13 ADMINISTRATIVE LAW JUDGE MCARTHUR:
14 Without objection, Respondent's Exhibit 10 is
15 admitted.

16 Q (By Ms. Wilmot) So it's not 4.0 here?

17 A Oh, no.

18 Q And --

19 A What is it, a 2.88?

20 Q Some of the things that you might be
21 missing in are, I see, Algebra and Trigonometry,
22 the --

23 A Oh, yes. That's why I'm a history
24 teacher.

25 Q Which requires a certain amount of

1 analysis, statistical analysis?

2 A It's not statistics.

3 Q It is not statistics?

4 A Huh-uh. No.

5 Q Okay. We'll leave that. So you said that
6 you went online to get as much information as you
7 could to prepare for the test, and you got the
8 sample essay. You saw a sample essay that you could
9 look at?

10 A A prompt.

11 Q Not a sample essay, a prompt?

12 A Not a sample essay.

13 Q The rubric, was it titled, and I think
14 we've used this Supplemental Rating Criteria?

15 A No. It is part of the FELE -- what does
16 the FELE -- what are you going to see in the FELE,
17 and it has a high school prompt, middle school
18 prompt and a sample elementary school prompt, and
19 then it has a sample high school rubric for that
20 prompt, middle school rubric for that prompt and
21 elementary school rubric for that prompt.

22 Q Okay. But you testified that you saw the
23 Supplemental Rating Criteria in preparing?

24 A No. I misspoke. I saw the rubric, which
25 is what you guys call Supplemental Criteria Rating.

1 I may have just messed that up.

2 ADMINISTRATIVE LAW JUDGE MCARTHUR: Are
3 you talking you about general criteria
4 specifying in general terms what the contents
5 of an essay would be that would achieve a 6, a
6 5, 4, 3, 2, 1?

7 THE WITNESS: It's an actual rubric that
8 the FDOE publishes that would be used.

9 ADMINISTRATIVE LAW JUDGE MCARTHUR: Define
10 your terms, okay. Prompt, I'm gleaning is the
11 question?

12 THE WITNESS: Correct.

13 ADMINISTRATIVE LAW JUDGE MCARTHUR: Rubric
14 is what?

15 THE WITNESS: The Supplemental Rating
16 Criteria, a/k/a. It's very similar to what we
17 were looking at. It's an example.

18 ADMINISTRATIVE LAW JUDGE MCARTHUR: Geared
19 to what -- geared to what is being looked for
20 in the specific essay answering the specific
21 prompt?

22 THE WITNESS: Correct.

23 ADMINISTRATIVE LAW JUDGE MCARTHUR: Okay.

24 Q (By Ms. Wilmot) You're certified as an
25 educator. How did you originally become certified?

1 A Certified --

2 Q What process did you go through, was
3 it --

4 A For the State of Florida?

5 Q Yes.

6 A Well, actually, I have 21 years in, so I
7 had to go through the FDOE process, and they
8 actually made me take another Pearson test, the FTCE
9 General Knowledge Social Studies test. So while I
10 am in the middle of taking these grad level tests, I
11 had to sit for the FTCE General Knowledge Social
12 Studies over content that I'm not even certified to
13 teach, and I passed it.

14 Q Did you not testify that you're teaching
15 social studies?

16 A Pardon?

17 Q Are you teaching social studies?

18 A Uh-huh. History.

19 Q And are you teaching that based on your
20 certification that you took the test for?

21 A Oh, yes.

22 Q Okay. But did you take any of the other
23 general knowledge, the just general knowledge exam,
24 were you exempt from that?

25 A Oh, yeah, because of my experience.

1 Q Just your experience or were you certified
2 in another State?

3 A I was certified in another State, as well.

4 Q Okay. So was it reciprocity?

5 A I imagine.

6 Q Okay.

7 A I came from Ohio.

8 Q And do you -- is it your understanding
9 that it's the Department of Education's
10 responsibility to prepare you to take the FELE test?

11 A Well, when I looked into -- when I called
12 the Department of Education, they said we do have
13 supplemental materials online that will help you
14 prepare for the test. Yes, I was told that.

15 Q So they told you they had supplemental
16 materials, but it's your responsibility to make use
17 of them for yourself?

18 A Oh, a hundred percent.

19 Q Okay. So if you were -- supposed you had
20 taken an electrician's test or let's say you're
21 taking a test to be a nurse and you failed it.
22 Would you expect the nursing organization, whatever
23 that happens to be, to come back and say, well, this
24 is what you did wrong and we're going -- we're going
25 to help you become a nurse, even though you weren't

1 qualified when you came to us to be one?

2 A Actually, you do do that on the multiple
3 choice sections on your test. Every Subtest, when
4 you get your answers back, breaks it down and it
5 shows you where you were weak. You just don't do
6 that for the essay.

7 Q You're correct, and that's apples to
8 oranges. So we're talking about the essay now and,
9 certainly, we could do something about multiple
10 choice, but that's not here today before this Judge.

11 A Okay.

12 Q So we're talking about the essay?

13 A Uh-huh.

14 ADMINISTRATIVE LAW JUDGE MCARTHUR: If you
15 could answer the question that she originally
16 asked. She asked about in the context of
17 nursing.

18 MS. MCCUE: In nursing, okay.

19 ADMINISTRATIVE LAW JUDGE MCARTHUR: And
20 you turned it around to multiple choice on this
21 test.

22 Q (By Ms. Wilmot) If you were taking a test
23 to become a nurse, and you were expected to have
24 certain knowledge, and you didn't pass the test,
25 would you expect the organization that created the

1 test, the nursing organization, to then bring you in
2 and say, well, this is what you did wrong? You
3 weren't qualified to be a nurse right now, but here,
4 we're going to tell you the way to answer these
5 problems so that you can become certified as a
6 nurse?

7 A Yes. There are -- yes, there are
8 supplementals that nurses have --

9 Q Yes is sufficient. A yes is sufficient.

10 A -- to study for the test.

11 Q And since we don't have your complete
12 transcript for your grad school, did you take any
13 statistic courses in the course of grad school?

14 A (Witness nods head).

15 Q What did you take?

16 ADMINISTRATIVE LAW JUDGE MCARTHUR: Can
17 you just say yes or no?

18 MS. MCCUE: Yes.

19 ADMINISTRATIVE LAW JUDGE MCARTHUR: I
20 think you said yes.

21 A (By the Witness) May I look at my
22 transcript?

23 Q (By Ms. Wilmot) Yes.

24 A I need my folder. I don't think I brought
25 it. This copy that you have is incomplete. I

1 submitted all of my course work on it with this
2 piece. I don't know where the other part is.

3 Q So my question is: What statistics course
4 did you take in grad school? Since we don't have
5 all of that information, do you remember any
6 statistic courses in grad school?

7 A Oh, sure.

8 Q What were they?

9 A Ma'am, literally, if I had the other piece
10 to this transcript, I could tell you. It's all
11 itemized. I can't remember, but that certainly is
12 part of our --

13 Q How do you know that you took a statistics
14 course if you can't remember the statistics course?

15 A Because I just looked at my transcript
16 before I came here. I don't know what the title of
17 the course was.

18 Q Okay. Can you give us a summary of it, an
19 idea of what it was about?

20 A We take a whole course on the
21 desegregation of data and the application of
22 professional development to the desegregated data.

23 Q Okay. One course?

24 A No. There's multiple courses.

25 Q That were statistics?

1 A That had statistics in the desegregation
2 of data, absolutely.

3 Q Okay. Let me be clear. I don't mean a
4 course that had statistics in it. I don't mean a
5 course where you're dealing with charts and tables
6 and so forth. I mean a specific statistics course
7 that requires knowing what a median is and a mean
8 and things like that, those terms, like it's more of
9 a math course than an education course. Did you
10 take a course like that?

11 A I took a course like that, being grad
12 level. You have to know mean, median, mode. You
13 have to know causation, correlation does not equal
14 causation.

15 Q Let me stop --

16 A We take courses where you have to know
17 mean, median, mode, et cetera, and apply that to
18 data that is then applied to professional
19 responsibilities and educational leadership.

20 Q Okay.

21 A Yes, many courses.

22 ADMINISTRATIVE LAW JUDGE MCARTHUR: Ms.
23 Wilmot, let her finish before you start talking
24 again. She is now but you interrupted her a
25 couple of times.

1 MS. WILMOT: Yes, ma'am. I'm sorry.

2 Q (By Ms. Wilmot) I need to know if you took
3 a -- not a course that had statistics in it. I know
4 I've asked this. I don't think I've gotten an
5 answer, but I just want a yes or no answer, that we
6 can check back on when we actually do get the
7 transcript?

8 MR. MCKEE: I think she's answered yes, a
9 couple of times.

10 MS. WILMOT: Okay. Then we'll take yes.

11 Q (By Ms. Wilmot) And that's under oath?

12 A It's my understanding that I had
13 statistics and mean, median, and mode and the
14 desegregation of data courses in my grad school
15 work, yes. I don't have it in front of me.

16 Q That's not clear to me. Are you saying,
17 yes, you had had a statistics course?

18 A I believe I had courses where --

19 Q Wait --

20 ADMINISTRATIVE LAW JUDGE MCARTHUR: Yes or
21 no? Just say yes or no. Don't give an
22 elaborate answer because --

23 MS. MCCUE: Here's my concern is that if I
24 say, yes, am I going to be lying when I don't
25 have the transcript in front of me?

1 ADMINISTRATIVE LAW JUDGE MCARTHUR: You
2 can say I don't know.

3 MS. MCCUE: Oh, I don't know.

4 ADMINISTRATIVE LAW JUDGE MCARTHUR: That's
5 an option. It's always an option. Sometimes
6 the best option.

7 MS. MCCUE: Okay. I wish I had the other
8 half of my transcript here.

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

10 ADMINISTRATIVE LAW JUDGE MCARTHUR: Okay.

11 MR. MCKEE: That's all that you have?

12 MS. WILMOT: Uh-huh.

13 **REDIRECT EXAMINATION**

14 BY MR. MCKEE:

15 Q Did you have your transcript in another
16 folder that you left in your car?

17 A Yes.

18 ADMINISTRATIVE LAW JUDGE MCARTHUR: We're
19 not bringing new documents in.

20 MR. MCKEE: Okay. I have no cross on this

21 --

22 ADMINISTRATIVE LAW JUDGE MCARTHUR:
23 Redirect.

24 MR. MCKEE: Is it redirect?

25 ADMINISTRATIVE LAW JUDGE MCARTHUR: Yes.

1 I think so. Who's on first?

2 MS. MCCUE: May I ask a question?

3 ADMINISTRATIVE LAW JUDGE MCARTHUR: No.

4 MS. MCCUE: Okay.

5 ADMINISTRATIVE LAW JUDGE MCARTHUR: You
6 may step down from the hot seat though.

7 MS. MCCUE: Okay.

8 ADMINISTRATIVE LAW JUDGE MCARTHUR: Jump
9 while you can.

10 MS. MCCUE: Thank you.

11 ADMINISTRATIVE LAW JUDGE MCARTHUR: Okay.

12 What next?

13 MR. MCKEE: I want to offer a couple of
14 exhibits. And I think on the pretrial stip we
15 identified them as Exhibits 1 and 2 and, I
16 believe, these are confidential exhibits.

17 MS. WILMOT: Did you want to include them
18 in your documents?

19 MR. MCKEE: Let me show you before I even
20 talk about what they are. We can treat it as
21 confidential. I have no problem.

22 MS. WILMOT: What about this?

23 MR. CANTO: Is confidential, without a
24 doubt. This would appear to be confidential
25 for us.

1 MR. MCKEE: And we have no objection to
2 designating it as such.

3 ADMINISTRATIVE LAW JUDGE MCARTHUR:
4 Confidential testing material. Which exhibit
5 are we talking about?

6 MR. MCKEE: This will be Petitioner's 1.

7 ADMINISTRATIVE LAW JUDGE MCARTHUR: Is it
8 the same one on your list?

9 MR. MCKEE: Yes.

10 ADMINISTRATIVE LAW JUDGE MCARTHUR: Okay.

11 MR. MCKEE: And we would also offer
12 Petitioner's 2, which, again, was provided in
13 discovery and, I believe, will be treated as
14 confidential.

15 MR. CANTO: This is a public version of
16 the Department produced document.

17 MR. MCKEE: So nothing confidential?

18 MR. CANTO: As long as you have the public
19 version. That's the one that was retrieved
20 from the web?

21 MR. MCKEE: Just making sure.

22 MS. WILMOT: Did you obtain it from the
23 website or did you obtain it through --

24 MR. MCKEE: I think this was through
25 discovery.

1 MS. SHAW: That might be the confidential
2 version.

3 MR. CANTO: It says public on the front
4 though. If I could look at it, I could tell
5 you.

6 MR. MCKEE: Let's just treat it as
7 confidential, to be on the safe side. Can we
8 do that?

9 MS. WILMOT: That's fine.

10 MR. MCKEE: So I'm offering 1 and 2.

11 ADMINISTRATIVE LAW JUDGE MCARTHUR: Are
12 those for me?

13 MS. WILMOT: We have no objection.

14 ADMINISTRATIVE LAW JUDGE MCARTHUR: The
15 two page document is Petitioner's Exhibit 1?

16 MR. MCKEE: Correct.

17 ADMINISTRATIVE LAW JUDGE MCARTHUR: And it
18 is confidential testing material?

19 MR. MCKEE: Correct.

20 ADMINISTRATIVE LAW JUDGE MCARTHUR: And no
21 objection?

22 MS. WILMOT: None.

23 ADMINISTRATIVE LAW JUDGE MCARTHUR: It is
24 admitted. And same for Petitioner's Exhibit 2?

25 MS. WILMOT: No objection.

1 ADMINISTRATIVE LAW JUDGE MCARTHUR: And
2 we'll treat it as confidential because there is
3 a --

4 MR. MCKEE: To be on the safe side.

5 ADMINISTRATIVE LAW JUDGE MCARTHUR: --
6 confidential version and you obtained it
7 through discovery, so we cannot verify it is a
8 public version.

9 MS. WILMOT: What is the title of that
10 one?

11 ADMINISTRATIVE LAW JUDGE MCARTHUR: The
12 second one?

13 MS. WILMOT: Yes.

14 MR. MCKEE: It's called FTCE/FELE, 2015
15 Annual Administration and Technical Report.

16 And if both of those are admitted, the
17 Petitioner rests.

18 ADMINISTRATIVE LAW JUDGE MCARTHUR: All
19 right. Since our telephonic hearing was not
20 recorded/reported, I would like you to state,
21 on the record, that you had an expert witness
22 and explain, to the extent you are comfortable
23 doing so, why you are not offering your expert
24 witness to testify.

25 MR. MCKEE: We engaged the services of an

1 expert witness. We received a report from the
2 expert witness that did not satisfy our needs
3 for this hearing and, therefore, have chosen
4 not to call that expert witness.

5 ADMINISTRATIVE LAW JUDGE MCARTHUR: All
6 right. And when did you receive that report,
7 please?

8 MR. MCKEE: We received a verbal report on
9 last Wednesday, whatever that date was, and we
10 received a written report on Thursday.

11 ADMINISTRATIVE LAW JUDGE MCARTHUR: Okay.
12 Thank you for that. And how are we doing
13 timewise? It's 2:10. Roll right into the
14 continuation of Respondent's case?

15 MS. WILMOT: I believe so.

16 ADMINISTRATIVE LAW JUDGE MCARTHUR: Is
17 everybody doing okay, court reporter?

18 COURT REPORTER: I'm okay. Who's the next
19 witness?

20 MS. WILMOT: Michael Grogan.

21 MR. MCKEE: How long is Michael going to
22 be?

23 MS. WILMOT: He'll be longer rather than
24 shorter.

25 MR. MCKEE: Okay. Well, we better take a

1 comfort break.

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

5 ADMINISTRATIVE LAW JUDGE MCARTHUR: Back
6 on the record. Ms. Wilmot, you may call your
7 next witness.

8 MS. WILMOT: Okay. I call Dr. Michael
9 Grogan.

10 ADMINISTRATIVE LAW JUDGE MCARTHUR: Mr.
11 Grogan, Dr. Grogan, Dr. Grogan.

12 THE WITNESS: It is Doctor.

13 ADMINISTRATIVE LAW JUDGE MCARTHUR: Would
14 you raise your right hand? Do you swear or
15 affirm that the testimony you're about to give
16 today will be the truth, the whole truth and
17 nothing but the truth?

18 THE WITNESS: I do.

19 ADMINISTRATIVE LAW JUDGE MCARTHUR: Thank
20 you.

21 WHEREUPON,

22 MICHAEL GROGAN

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

DIRECT EXAMINATION

1

2 BY MS. WILMOT:

3 Q Good afternoon, Dr. Grogan. Thank you so
4 much for being here. The first thing I'd like to do
5 is refer you to the Respondent's exhibits.

6 A Okay.

7 Q And we'll go to Respondent's Exhibit 9.
8 Is this your resume?

9 A Yes.

10 MS. WILMOT: I'd like to have this entered
11 as an exhibit, Your Honor.

12 MR. MCKEE: No objection.

13 ADMINISTRATIVE LAW JUDGE MCARTHUR:

14 Without objection, Respondent's 9 is admitted.

15 Q (By Ms. Wilmot) So we can review this and
16 see all the details of your education and your
17 qualifications and so forth, but tell us a little
18 bit about your history and how you started out in
19 education and your educational background?

20 A How I started out in education, I got my
21 Master of Teaching at University of Chapel Hill in
22 North Carolina. I taught high school for five
23 years. I went on to do graduate work and my Ph.D.,
24 University of Massachusetts Amherst. And then began
25 to work with Pearson.

1 Q Okay. So did you start working with
2 Pearson right after you got your Ph.D.?

3 A I did two years of teaching postdoc at the
4 University and then began working with --

5 Q What did you teach?

6 A Literature courses.

7 Q Okay. And when you started working for
8 Pearson, what was your position, to begin with?

9 A I was hired as a Chief Reader.

10 Q Okay. Chief Reader. That's the very --

11 A So the Chief Rater and Chief Reader are
12 interchangeable terms.

13 Q Okay.

14 A It's just a matter of terminology.

15 Q Okay. And we'll talk about that
16 terminology, too, in just a minute so that we can
17 all try to be on the same page. And what is your
18 experience with holistic scoring?

19 A Well, I've been either leading sessions in
20 holistic scoring or and training others since 2003.

21 Q Okay.

22 A So I oversee Pearson's Hadley office,
23 Hadley, Massachusetts office.

24 Q Is that where most -- most or all of the
25 initial training takes place in Hadley?

1 A That's correct.

2 Q Okay. So, right now there's a -- let's go
3 back to holistic scoring a little bit. Can you
4 explain to us what holistic scoring is?

5 A So, holistic scoring is essentially the
6 method of evaluating the overall effect of a
7 response based on certain criteria that are found in
8 the tools we use, rubrics, exemplars and applying
9 that standard to a response for -- to come out with
10 one score for an individual rater. It's essentially
11 weighing strengths and weaknesses, looking at
12 preponderance of evidence based on that criteria.

13 Q Okay. And how -- how prevalent is the use
14 of holistic scoring in essay scoring?

15 A It is pretty ubiquitous. It's used across
16 the industry and we certainly use it in all of our
17 work with all of our clients.

18 Q And you have -- you work for Pearson?

19 A Correct.

20 Q A National company?

21 A An International company, yes.

22 Q Do you have contracts in multiple States?

23 A We do. I mean, in the Hadley office we
24 oversee the scoring of about 20 States and we have
25 two satellite offices that oversee additional State

1 scoring.

2 Q So any time that you do essay scoring, it
3 is it holistic?

4 A Yes. It's always holistic.

5 Q Okay. Now, you have a relationship with
6 the Department of Education?

7 A We do.

8 Q That is controlled by a contract?

9 A Yes, it is.

10 Q And did you bid on that contract, Pearson?

11 A Pearson did bid on the contract, yes.

12 Q And did other companies also bid on the
13 contract?

14 A That is my understanding.

15 Q So it was a competitively procured
16 contract?

17 A Yes.

18 Q Okay. I do want to clear up the terms
19 that we're using today. The terms I've got are
20 rater, Chief Rater and Chief Reviewer. Can you
21 explain to us what each of those terms are?

22 A Sure. A rater is someone who qualifies in
23 a field to do the initial first round scoring,
24 independent scoring of the response. The Chief
25 Rater is the person who oversees that holistic

1 scoring session, who's been trained to train others
2 in holistic scoring, holistic scoring method, and
3 does all the monitoring of the session and of the
4 scores. The Chief Reviewer, and all of that happens
5 for us in Hadley. So the raters and the Chief
6 Raters are in Hadley. The Chief Reviewers are
7 Florida based educators, experts in the field, who
8 have been trained to process challenges.

9 Q Okay. So let's start with the raters.
10 What are the qualifications to be a rater?

11 A So that's field specific. So, generally,
12 it's a certain number of years in the classroom or,
13 in the case of administrator, a number of years for
14 the administrator. You need to be certified. And
15 we -- all the raters are approved by the Department.

16 Q So the raters that would a scored a FELE
17 exam, they all have administrative experience?

18 A Oh, yes.

19 Q And so once you get a pool of raters, then
20 you send them and their names and their
21 qualifications to the Department of Education for
22 review?

23 A That's right.

24 Q And they have -- they can say, no, we
25 don't want this one or your standards are not high

1 enough?

2 A That's right.

3 Q Okay. The calibration process for the
4 raters and the Chief Raters, how does that -- is the
5 process the same? We heard about there's a three
6 day process in Hadley. Is it the same for raters,
7 Chief Raters and reviewers?

8 A To become calibrated?

9 Q Well, their initial training?

10 A The initial training is all the same. The
11 Chief Rater, of course, to fill that position has
12 further training and working with people like me who
13 are already trainers. But in terms of that initial
14 training, yes, they are trained similarly because
15 it's all to the same standard that we're trying to
16 apply.

17 Q Okay. And a Chief Rater, I assume, would
18 have experience before they become a Chief Rater, as
19 a rater?

20 A Oh, yes. That's right.

21 Q What about a Chief Reviewer, do they have
22 experience as a rater before they become a Chief
23 Reviewer?

24 A That's part of their training. So they
25 join us for holistic scoring session and get that

1 experience.

2 Q So they actually score?

3 A Oh, yes.

4 Q Okay. So then we come to the calibration.

5 Well, let me back up just a little bit. You don't
6 have access to the score -- the essay and the prompt
7 that we're talking about today that's up for
8 challenge; is that correct?

9 A I don't have it in front of me, no.

10 Q Okay. Are you familiar with it?

11 A I have reviewed the materials.

12 Q Okay. So, do you know that the essay was
13 scored 3 by both raters?

14 A Yes.

15 Q So does that mean it would not go to a
16 Chief Rater?

17 A That's right.

18 Q So in no case, if all scores throughout
19 the history of testing for the individual with 3's,
20 it would never go to a Chief Rater?

21 A That's correct. There's nothing -- yes,
22 that's right.

23 Q So explain to us when it would go to a
24 Chief Rater?

25 A The only time it's going to automatically

1 go to a Chief Rater is if the scores from the
2 original two raters disagreed by more than one
3 point.

4 Q Okay. So that was not the case here?

5 A Correct.

6 Q Okay. So, let's talk about the
7 calibration process for the raters. If they're
8 getting ready to score a particular prompt, do they
9 do only one prompt at a time?

10 A They do one prompt at a time.

11 Q So are you going to calibrate them for
12 that prompt?

13 A That's correct.

14 Q And how does that occur?

15 A Well, it's a fairly lengthy process of
16 sort of initial review of the materials. I'm trying
17 to make sure of how much I really can say. So
18 essentially, we're reviewing background, we're
19 talking about things like bias and those kinds of
20 issues prior to looking at any of the training
21 material. But then we move into reviews of the
22 rubric, the score scale, the exemplars, the historic
23 anchor, and then the operational prompt that they'll
24 be scoring, all the material associated with that.
25 So there are lots of examples that the raters are

1 looking at, comparing to the exemplars and to the
2 rubric language before they take a calibration,
3 which is a kind of test, to see if they do qualify
4 to score.

5 Q So the calibration is scoring essays that
6 have been prescored?

7 A That's correct.

8 Q And how many -- how many would they do?

9 A Prior, how many --

10 Q In the course of their -- preparing to
11 score?

12 A They're going to score between 25 and 30
13 total.

14 Q Okay. And do you oversee all of that,
15 their scoring and their review?

16 A Oh, yes.

17 Q So you have knowledge right away if the
18 scoring is not consistent?

19 A Correct.

20 Q And do you take action if you find it's
21 not?

22 A If you're -- are we talking about
23 pre-calibration as they're training to calibrate, or
24 post when they're actually scoring? Sorry to ask
25 for the clarification.

1 Q Well, why don't you tell us what
2 intervention could take place in either one of those
3 situations?

4 A Well, prior, as they're calibrating and
5 proving if they're ready to score, of course,
6 they're scoring independently and then we're having
7 discussions -- the group is having a discussion
8 about what the true scores should be. So we're
9 monitoring in that way. The calibration is
10 independently scored and input into our system and
11 the Chief Rater sees right away how each rater has
12 performed on that calibration. And so there are
13 steps in place if someone is not doing well and
14 doesn't qualify.

15 And then post calibration, the Chief Rater
16 has access to monitoring and reports that are
17 happening instantaneously. As soon as someone
18 enters a score the Chief Rater knows what that score
19 is and can compare it to the person, the other
20 person who scored it. So, if we see a trend in
21 someone's scoring that seems to be, you know, going
22 higher or lower, perhaps, in a pattern, we can stop
23 that person and do some counseling and sort of the
24 back read and review those responses and make sure
25 the right scores are on them.

1 Q Okay. So you would -- if you thought
2 there was an error, you would make sure it got
3 corrected or rescored or evaluated?

4 A That's correct. I mean, yeah.

5 Q And what materials do the raters have when
6 they're scoring? Do they have everything available
7 to them when they're scoring the actual essays?

8 A They have everything that I described in
9 the calibration process from the rubric. It's all,
10 much of it is in a rater manual but, also, all of
11 the other sets of examples for reference.

12 Q And can you explain to us what a ghost
13 paper is?

14 A A ghost paper is a prescored response that
15 gets fed into their scoring cue, basically, and the
16 raters are unaware that it's any different than
17 their operational scoring that they're doing. And
18 it's a -- so we get a report on how they scored that
19 ghost paper.

20 Q Okay. So, that would -- would that give
21 you an immediate -- immediate information with
22 regard to if there's an issue with that rater?

23 A That's right. Yep.

24 Q Okay. When the raters get the essays to
25 review, do they know who the essay -- who wrote the

1 essay, what their gender is, where they came from,
2 how many times they've taken the test?

3 A No. No. None of that information.

4 Q Any personal information at all?

5 A None at all.

6 Q Okay. Do the raters put comments when
7 they finish their review and they score it, do they
8 put any comments -- do they make comments?

9 A No. There's no place for them to input.

10 Q Simply get a score?

11 A Right.

12 Q And so the Chief Raters pretty much have a
13 view of the room and they can see what's going on
14 and monitor continuously?

15 A Correct.

16 Q And then pinpoint, if they need to?

17 A That's right.

18 Q All right. When it goes to a Chief Rater,
19 I think we've covered that, these would not go to a
20 Chief Rater if they had --

21 A If the scores are 3 and 3, it's not going
22 to a Chief Rater.

23 Q And that would only happen -- would the
24 Chief Rater have comments?

25 A If the Chief Rater is resolving a

1 discrepancy, is that what you're thinking?

2 Q Yes.

3 A In the case that one went to them?

4 There's no requirement that they necessarily write
5 down comments, no.

6 Q Is there any way that one rater would know
7 who the other rater is that's scoring the same
8 essay?

9 A No. They randomly distributed and they
10 don't know. They're scoring independently.

11 Q Are they all in one room or all in one
12 facility when they're scoring, the raters?

13 A Yes. They are all in one room.

14 Q They're all in Massachusetts?

15 A Correct.

16 Q As are the Chief Raters?

17 A Correct.

18 Q Okay. Let's talk a little bit about the
19 prompt itself and how it's developed. Does Pearson
20 develop the prompt?

21 A We do not.

22 Q It comes to you from Florida?

23 A That's correct.

24 Q Department of Education. And so does the
25 Department of Education also develop the rubric that

1 goes along with it?

2 A Yes.

3 Q So, Department of Education pretty much
4 gives you the testing materials?

5 A That's right.

6 Q And is it your understanding they're set
7 on Florida standards?

8 A Yes. That's our understanding.

9 Q Okay. What about the Chief Reviewers,
10 what are their qualifications?

11 A Well, they're qualifications are the same
12 as the raters. They do the scoring so they have to
13 have the experience and be approved by the
14 Department, just like our raters do.

15 Q The Chief Reviewers are in Florida though?

16 A That is correct.

17 Q So they have experience as principals?

18 A Yes.

19 Q Would the Chief Reviewers, would that
20 experience always be in Florida?

21 A Yes, for the Chief Reviewers, yes.

22 Q So they would have knowledge of the
23 standard -- the Florida standards because they're
24 using them everyday?

25 A Yes.

1 Q Are they all acting principals or just
2 some of them just have principal experience?

3 A The Chief Reviewers are, to my knowledge,
4 all active.

5 Q Okay. Now, the process for the Chief
6 Reviewers. Now, let me back up just a minute. The
7 raters, when they are scoring, do they have a quota?
8 Are they supposed to score a certain number of
9 essays in an hour or day or --

10 A No.

11 Q Okay. Do they -- is there any penalty for
12 not scoring enough?

13 A No.

14 Q Would it raise red flags maybe, possibly?

15 A Yes.

16 Q They're struggling maybe?

17 A Potentially, yes.

18 Q What if they go to too fast?

19 A Potentially a problem.

20 Q So do you keep track of all of that?

21 A Yes. We're monitoring all of that.

22 Q And do you feel that the time they're
23 allotted is sufficient to allow them to do a fair
24 review of the essays?

25 A I do.

1 Q Have you had complaints that they haven't
2 had enough time?

3 A From the raters?

4 Q Yes.

5 A No.

6 Q And if you did have a complaint, would you
7 give them more time?

8 A Yeah, absolutely.

9 Q Okay. So, sorry, we had to back up and
10 catch that.

11 A No. That's fine.

12 Q Now, we're on the Chief Reviewers.

13 A Okay.

14 Q They're all in Florida. So do they get
15 their assignments from you or do they get them from
16 the Department of Education, from Pearson or the
17 Department of Education?

18 A Pearson routes the challenge and does the
19 communication with the Chief Reviewers.

20 Q Okay.

21 A We're responsible for that.

22 Q So Florida tells you this individual, we
23 want -- we want a Chief Reviewer to score their
24 essay?

25 A Right. Someone is interested in scorer

1 verification process and if they're challenging
2 their essay, then we're alerted to that.

3 Q Okay. When they review, do they have any
4 knowledge of whose essay it is, even the area that
5 they come from, whether it's male or female,
6 anything at all?

7 A No.

8 Q Okay. And they receive a packet, more or
9 less, electronically?

10 A Correct.

11 Q Are they instructed to go through that in
12 order?

13 A Yes.

14 Q And it has an order to it?

15 A It does.

16 Q What's the purpose of the order?

17 A It's to calibrate them.

18 Q Okay. So, what -- can you just tell us
19 briefly how that works? The first step is, they
20 open up the package and the first thing they see,
21 would it be the random prompt?

22 A Well, they're going to have the files and
23 those files are going to contain all of the material
24 that I described, we used in the scoring session to
25 train the raters. And so they are going to make

1 their way through all of that material, including
2 the rubric, reviewing that, the historic anchor, all
3 of the set work, exemplars, et cetera. So that
4 packet is made up of all those materials.

5 Q Okay. And then they go through those
6 materials in a set way, by number one, number two,
7 number three?

8 A That's right.

9 Q And the first part is that rate -- is that
10 rating or being calibrated to rate a random prompt
11 or historic prompt?

12 A Yeah, well, to rate it. They review the
13 standard. The historic anchor, essentially,
14 contains the standard that we are setting that we're
15 applying.

16 Q I see.

17 A And so they have to review the historic
18 anchor in conjunction with the rubric, that
19 language, to then apply it to a different
20 operational prompt.

21 Q So, the purpose of that, does that get
22 them in the right mindset, get them set again to be
23 calibrated for the prompt they're going to review?

24 A That's right.

25 Q Okay. So is the next step a review of, or

1 calibration to review the prompt that they have to
2 review?

3 A So then, from there, they would go on to
4 review the prompt in question being responded to.
5 And all the training material that's associated with
6 any prompt.

7 Q So, when you say "to review", you mean the
8 whole process, but they have to start out by looking
9 at the rubric, the anchors?

10 A Yes.

11 Q Do they have a set of anchor papers --

12 A Correct.

13 Q -- that score 1, 2, 3, 4, 5, 6?

14 A Right.

15 Q And then they score a series of papers
16 that are maybe random, that go to that prompt
17 though?

18 A So to that prompt they're going to score
19 an anchor set that is not in order, group of six
20 responses for that prompt, and check themselves
21 against the scores. And then they are going to
22 calibrate to the 10 responses that we use during the
23 session. And then they are ready --

24 Q Okay.

25 A -- to review it.

1 Q So they've reviewed six that are in an
2 order, they're out of order, but they will be
3 ranking?

4 A Right.

5 Q And then they review 10 more?

6 A Correct.

7 Q But they don't know what the score is
8 going to be, it could be anything?

9 A That's right.

10 Q And then they score the -- they read the
11 essay?

12 A Correct.

13 Q And score -- do they score it?

14 A They review it.

15 Q Okay.

16 A So what they're doing is, essentially
17 saying, are the original scores reasonable, given
18 what the standard is. Because every response has
19 two scores. There's one Chief Reviewer. The Chief
20 Reviewer can give two scores. So, the idea is to
21 look at the two scores. They may be the same, they
22 may be adjacent and say, are those scores
23 reasonable, is it reasonable that one score is
24 thought this way and another score is thought this
25 way or not.

1 Q Okay.

2 A That's the essential question.

3 Q And then write a justification?

4 A They do.

5 Q And what does that consist of? What do
6 they put in there?

7 A So when they're writing that rationale,
8 they are really explaining how they're thinking
9 about the standard applies to this response. So
10 they are comparing it to, perhaps, an anchor
11 response that is like it or shows this aspect of it
12 that is similar to this one and, therefore, it is
13 more like this score.

14 Q Okay. Now, the raters, do they write -- I
15 think I might have asked you this, but bear with me,
16 do the raters write comments when they do their
17 review? We're going back now to the original review
18 of the essay?

19 A When they score it initially?

20 Q Yes.

21 A They do not write a rationale.

22 Q But in this case, did the Department of
23 Education ask you to have the raters provide a
24 justification?

25 A Yes, they did.

1 Q Okay. So if we go to our confidential or
2 our joint exhibits, yes, Joint Exhibit 5?

3 ADMINISTRATIVE LAW JUDGE MCARTHUR: Are
4 you going to speak in code or do we need to
5 clear the room?

6 MS. WILMOT: No, we are going to speak in
7 code.

8 ADMINISTRATIVE LAW JUDGE MCARTHUR: Very
9 good. Let me know if that becomes a problem.

10 Q (By Ms. Wilmot) If you will look at these,
11 are these the responses provided by Pearson to the
12 Department of comments from the original raters?

13 A Yes.

14 Q Okay. So, I was thinking I had to enter
15 it into evidence but we've already entered these in
16 because it is part of the joint --

17 A Okay.

18 Q -- but I did want to establish that those
19 were provided outside the normal process?

20 A Yes.

21 ADMINISTRATIVE LAW JUDGE MCARTHUR: That
22 was a yes?

23 THE WITNESS: Yes.

24 Q (By Ms. Wilmot) What is the probability of
25 error here on the FELE test, of the raters, the

1 original raters? What is the possibility that they
2 made an error? Do you know? Let me refer you to an
3 exhibit. This would be Respondent's Exhibit 12, and
4 that's the industry standards and quality control
5 tables, and maybe you could -- did you provide these
6 tables to the Department?

7 MR. MCKEE: What exhibit are we looking
8 at?

9 MS. WILMOT: R12.

10 ADMINISTRATIVE LAW JUDGE MCARTHUR:
11 Respondent's 12.

12 A (By the Witness) I believe we did. I'm
13 not -- I personally did not.

14 Q (By Ms. Wilmot) Okay.

15 MS. WILMOT: We'd like to have this
16 entered as an exhibit but we can wait to get
17 authentication from the Department if there's
18 an objection or requirement for that.

19 MR. MCKEE: I'd like to delay and see
20 who's going to testify about it.

21 MS. WILMOT: Okay. We'll do that.

22 Q (By Ms. Wilmot) So could you interpret
23 this for us, Dr. Grogan?

24 A So we're looking at the first table?

25 Q Yes. Reliability estimates. And this is

1 during the period of time in which the Petitioner
2 took the test?

3 A So this is an agreement percent, so we
4 have four scorers, and the number that they scored,
5 the agreement between the two scorers percentage,
6 and the coefficient alpha, the overall agreement
7 rate. Agreement can mean two different things.

8 Q Okay.

9 A It can mean exact agreement and adjacent
10 agreement, not discrepant. And so that overall
11 agreement rate is very high there.

12 Q So, what we're looking at is a comparison
13 or statistics with regard to if you have two
14 reviewers, raters, whether their scores that they
15 award are consistent. And what we can consider
16 consistent is exactly the same or adjacent to one
17 another. So if you have, one has a four, the other
18 would have to be either a 3 or a 5; is that correct?

19 A That's correct.

20 Q So is this 98 percent of the time that
21 happens?

22 A Well, the coefficient alpha actually also
23 reflects rater performance of being balanced on
24 either side of the score if they are not in exact
25 agreement. So if they are not in exact agreement,

1 we track are they -- if you're always high, for
2 example, when you're not in agreement, that's not
3 very good. You should be having a more balanced
4 sort of assessment across -- over the score scale.
5 So, the alpha is tracking that, also, in relation to
6 the agreement.

7 Q Okay. That went a little bit over my
8 head.

9 A Okay.

10 ADMINISTRATIVE LAW JUDGE MCARTHUR: Let me
11 just try to summarize to see if I'm getting it.
12 I think I do. The 98 percent of the time there
13 was either exact agreement or balanced
14 agreement, one lower or one higher, but in all
15 cases within one?

16 THE WITNESS: Right.

17 ADMINISTRATIVE LAW JUDGE MCARTHUR: Got
18 it.

19 Q (By Ms. Wilmot) Okay. So it is 98 percent
20 of the time a consistent?

21 A Yes.

22 Q Okay. Where did the -- do you know where
23 these figures came from? Did they come from
24 computer generated through Pearson?

25 A That is my -- I can't say a hundred

1 percent, but this is what we -- the kinds of data
2 that we produce.

3 Q Is that possibly not your part of the
4 Pearson puzzle?

5 A That is correct.

6 Q Okay. And the second page, is the FELE
7 Holistic Scoring Rater Agreement Summary. And this
8 is over time. Is this the same thing over time?

9 A Yes. This is broken out by -- yeah, it
10 looks like the first table is an aggregate and the
11 other is breaking it down by month.

12 Q The first table, I think, refers
13 specifically to the test time when Petitioner was
14 tested?

15 A (Witness nods head).

16 Q Is there an industry standard that we
17 would be -- we compare to?

18 A I wouldn't be able to say specifically,
19 but the standard is much lower than in the 90's.

20 Q Okay. So looking at all of that, would
21 you say the probability of human error by two raters
22 on the same essay is very high?

23 A Can you ask me that again?

24 Q We're trying to talk about the probability
25 of human error.

1 A Right.

2 Q You have two raters and we know that
3 they're consistent to 98 percent?

4 A Right.

5 Q So, does that mean that the probability
6 for one rater of -- of human error --

7 A Right.

8 Q -- is 2 percent?

9 A Very low, yes.

10 Q And then if you combine, probably you're
11 not a mathematician as I am not, but if you added
12 another rater who's also 98 percent, you get another
13 2 percent?

14 A Well, that 98 percent comes from always
15 two -- it's always in comparison to another rater.
16 So, you're not agreeing just by yourself. You know,
17 you have to be paired.

18 Q Right.

19 A So, as a group, that chance of error is
20 very low, 2 percent. And that's -- those are
21 discrepancies that were resolved.

22 Q And as a group it's 98 percent. So if I
23 were a rater all by myself in that group, the
24 chances of me making an error are 2 percent?

25 A Are small.

1 Q So you take that, and let's stay that
2 happened, you take that rater. And then we're going
3 to take another rater, also, at 98 percent, and
4 we're going to say they also made an error, doesn't
5 that really exponentially reduce the probability of
6 an error?

7 A I may have to get you to ask that question
8 again.

9 Q Okay. Let me put it this way.

10 ADMINISTRATIVE LAW JUDGE MCARTHUR: I'm
11 thinking your question may have the same flaw
12 as the last time around, in that the 98 percent
13 relates to the comparison of the two raters
14 working in tandem and doesn't -- your question
15 keeps asking about one -- yeah, one rater being
16 the 2 percent, and I don't think you can
17 extrapolate from this anything other than what
18 it says about the two raters working in tandem.

19 MS. WILMOT: Well, let me just try and
20 clear it up a little bit.

21 Q (By Ms. Wilmot) We have two raters that
22 have scored 3. The probability, not that those two
23 raters wouldn't score together or compatible with
24 one another, that they made an error in their
25 scoring, it's like light to me, like lightning

1 striking twice.

2 A I see. So, is it -- how likely is it that
3 they both made an error on the same response --

4 Q That's correct.

5 A -- given a two percent. Very low.

6 MS. WILMOT: Okay. I'm done.

7 ADMINISTRATIVE LAW JUDGE MCARTHUR: Cross?

8 MR. MCKEE: Yes, please.

9 **CROSS-EXAMINATION**

10 BY MR. MCKEE:

11 Q Good afternoon, Dr. Grogan. My name is
12 Bob McKee. I'm an attorney and I represent
13 Ms. McCue in this Administration proceeding. I
14 appreciate you coming in this afternoon. I
15 understand you came down from Massachusetts --

16 A I did.

17 Q -- to testify here this afternoon. Are
18 you being compensated for your testimony this
19 afternoon?

20 A No.

21 Q All right. You're on the payroll of
22 Pearson?

23 A Yes. I mean --

24 Q You're on the clock?

25 A It's part of my job. Yes.

1 Q You talked about holistic scoring?

2 A (Witness nods head).

3 Q And it's my understanding that the FELE
4 essay portion, the WPA, is scored holistically; is
5 that fair?

6 A Yes.

7 Q And it's a process of evaluating the
8 overall effect of a response, comparing it to a
9 rubric that's been developed. So you're looking at
10 what the tester, in this case, the Florida
11 Department of Education, who made up the test, is
12 looking for when the essay is produced; is that
13 fair?

14 A Yes. That's just not the only comparison
15 made, just to be clear.

16 Q All right. Well, I'll let you expand upon
17 your answer. What else, in terms of holistic
18 scoring, is being looked at, in addition to the
19 rubric that's prepared by the Department of
20 Education and the essay response that's produced by
21 the test taker?

22 A The sets of exemplars that we call anchors
23 that are the actual kind of concrete examples that
24 are the standard that we're applying. So, if you
25 don't have those, the raters may interpret the

1 language of the rubric, its language. So there are
2 a lot of different interpretations available, so you
3 need a concrete example. And so they are also
4 comparing to those.

5 Q Who provides those anchors or examples?

6 A The historic anchor is developed by
7 educators in Florida. And so it's a Florida
8 provided set of examples.

9 Q And are these actual prompts, rubrics and
10 essays that have been given in the past, or are
11 these just hypotheticals?

12 A No they're actual responses.

13 Q And how long has the WPA portion, the
14 essay portion, of the FELE exam been given?

15 A Well, I should probably know that. It's
16 been a long time.

17 Q Was there a time when the FELE did not
18 include an essay portion or a WPA portion?

19 A I don't believe so. I believe it's always
20 been part of the test.

21 Q So it's your understanding that as long as
22 the FELE has been around, there's been a component
23 of that or a subpart of that that involved the test
24 taker writing an essay?

25 A I can't -- I can't say.

1 Q Florida FDOE provides the test, for lack
2 of a better term; correct?

3 A Correct.

4 Q This is the prompt we want given, this is
5 the rubric we want to use to assess the essay;
6 correct?

7 A Correct.

8 Q And what Pearson does is grade the test?

9 A We -- we apply the standard. We score it.

10 Q And in going through that process, you use
11 Pearson trained raters; correct?

12 A Yes.

13 Q And are these raters specifically employed
14 for the purpose of going through the essay or the
15 WPA portion of the FELE?

16 A Correct.

17 Q How are the multiple choice parts of the
18 FELE scored?

19 A I can't speak to that.

20 Q Does Pearson get involved in that?

21 A Yes.

22 Q But you don't know the process that's gone
23 through to score the multiple choice?

24 A I can't speak to that, no.

25 Q And do you know if anyone is trained in --

1 strike that.

2 In order to be a rater, an individual has
3 to have certain qualifications; correct?

4 A Correct.

5 Q So you're not going to train them unless
6 they meet these minimum qualifications?

7 A Correct.

8 Q Who sets the qualifications?

9 A The Department of Education.

10 Q All right. So Florida tells you we need
11 some raters and we want them to have at least this
12 background?

13 A Correct.

14 Q And if you are rating or grading a
15 graduate level test, would that require that
16 somebody has at least a graduate level education?

17 A We follow whatever the -- in this case the
18 Department tells us what the qualifications are.

19 Q And do you know, for example, whether
20 somebody with just a Bachelor's degree would qualify
21 to go through Pearson training to score a WPA?

22 A For any field?

23 Q Yes.

24 A At least a Bachelor's degree is a minimum
25 requirement, one of several, for certain fields,

1 yes.

2 Q And do you know if that requirement
3 pertained to the test that Ms. McCue took?

4 A That's not the case.

5 Q All right. What is required to be a rater
6 to score the essay that Ms. McCue took?

7 A Well, you have to be -- you have to have
8 three years of administrative experience, at least
9 three years. You have to be a certified educational
10 leader in the State. I mean, not -- not in Florida
11 but --

12 Q In a State?

13 A In a state. And you have to be approved
14 by the Department.

15 Q All right. So when Pearson recruits
16 raters, they go to the Florida DOE and say we
17 propose to train these folks to score these WPA's
18 and Florida DOE says yeah or nay?

19 A Yeah.

20 Q All right. Once you get the approval from
21 the Florida DOE, these potential raters go through a
22 training process; correct?

23 A Correct.

24 Q Who conducts the training?

25 A The Chief Rater.

1 Q And is there a specific Chief Rater that
2 does all of the training or do you have a number of
3 Chief Raters?

4 A For FELE?

5 Q Yes.

6 A Yes. We have a Chief Rater.

7 Q And who is that?

8 A I'm not going to say names, I don't think,
9 at this --

10 MS. MCKOWN: That is an issue for Pearson
11 of confidentiality are the names of the raters.

12 MR. MCKEE: Can we get initials?

13 MS. MCKOWN: Why?

14 ADMINISTRATIVE LAW JUDGE MCARTHUR: What's
15 it relevant to?

16 MR. MCKEE: Well, I want to keep track of
17 who's who?

18 ADMINISTRATIVE LAW JUDGE MCARTHUR: Chief
19 Rater.

20 THE WITNESS: There's only one.

21 ADMINISTRATIVE LAW JUDGE MCARTHUR: C.R.

22 Q (By Mr. Mckee) All right. Has this Chief
23 Rater been the Chief Rater since the WPA portion of
24 FELE came into effect?

25 A This Chief Rater was trained by Florida

1 Chief Raters when the scoring was moved to the
2 Hadley offices.

3 Q When was that?

4 A 2000 -- the transition was 2012 to 2013.

5 Q And did this Chief Rater who does the
6 training of the raters also go through the rater
7 training?

8 A The Chief Rater -- does the Chief Rater go
9 through the rater training?

10 Q Yes. Before the Chief Rater starts
11 training people, does the Chief Rater go through
12 that same training?

13 A Well, that Chief Rater has been a rater
14 and then trained to be a Chief Rater so, yes.

15 Q All right. And all of that training would
16 have taken place through Pearson; correct?

17 A Correct.

18 Q And walk us through the training. People
19 are in Massachusetts and they're going to train to
20 be a rater of the FELE essay portion. How could you
21 folks train them up?

22 A Well, I -- as I sort of have explained,
23 they review background material, have discussions
24 about bias, they reviews rubrics and the other
25 training material that I've described and,

1 eventually, calibrate through the calibration
2 process.

3 Q And how long does the training take place;
4 how long does it last?

5 A For the initial prompt, it is probably 30
6 -- probably calibrating by lunch or after lunch.
7 So, three to four hours.

8 Q And is that the entire amount of training
9 that a rater gets, three or four hours?

10 A For the first prompt.

11 Q Okay. Maybe we can do it this way. I'm
12 going to hand the witness Joint Exhibit 7, which is
13 the Rater Manual, and that is a confidential
14 document. So, I will ask the witness about this
15 document. So to be on the safe side, we may want to
16 clear the room. Anybody who doesn't have top secret
17 security clearance needs to go.

18 ADMINISTRATIVE LAW JUDGE MCARTHUR: Let's
19 mark the transcript as beginning section 2 of
20 confidential testimony.

21 (At this time the public portion turned
22 into confidential material on the record and
23 put in a separate envelope under seal for Judge
24 McArthur and not available to the public or to
25 anyone else other than those who have signed

1 the confidentiality agreement)
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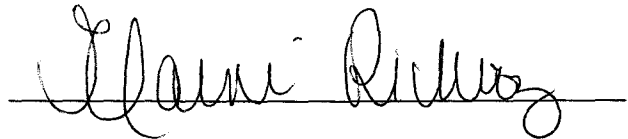
REPORTER'S CERTIFICATE

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I, ELAINE RICHBOURG, 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 29th day of June, 2017.



ELAINE RICHBOURG, COURT REPORTER



ELAINE RICHBOURG
MY COMMISSION # FF 941177
EXPIRES: March 6, 2020
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