

STATE OF NEW JERSEY
OFFICE OF ADMINISTRATIVE LAW
OAL DOCKET NO. EDE 8458-12

NEW JERSEY STATE BOARD
OF EXAMINERS,

Petitioner,

-vs-

ANDREA GIUFFRIDA,

Respondent.

TRANSCRIPT
OF
RECORDED PROCEEDINGS

February 18, 2014

BEFORE:

THE HONORABLE JOHN SCHUSTER, III, A.L.J.

APPEARANCES:

OFFICE OF THE ATTORNEY GENERAL
By: Frederick H. Wu, DAG
Attorney(s) for Petitioner(s)

OXFELD COHEN, P.C.
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Attorney(s) for Respondent

CRT SUPPORT CORPORATION
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OFFICE OF ADMINISTRATIVE LAW

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
JAMES FOLEY				
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1 THE COURT: Okay. We are now on the record.
2 You'll notice the blue light is on. Any time you see
3 the blue light not on that we are supposed to be on the
4 record, please call it to my attention immediately.

5 Anyway, as you know, my name is Judge
6 Schuster, and I've been assigned by the Office of
7 Administrative Law, hereafter referred to as, "The OAL"
8 to conduct the hearing in the matter entitled, "In the
9 Matter of the Certificates of Andrea Giuffrida." This
10 matter bears OAL docket number EDE 08458-2012 and
11 agency reference number 1112-202.

12 Today is February 8th, 2014, and this is the
13 continuation of this hearing, which originally was held
14 on April 15th, 2013. This hearing is being held today
15 in the same location, which is the OAL offices at
16 Quakerbridge Plaza in Mercerville, commonly referred to
17 as the "Trenton office."

18 Counsel, may I have your appearances, please.
19 Mr. Wu.

20 MR. WU: Good morning, or perhaps good
21 afternoon, Your Honor. Frederick Wu, Deputy Attorney
22 General on behalf of the Petitioner, the State Board of
23 Examiners.

24 THE COURT: Good afternoon.

25 MS. OXFELD: Nancy I. Oxfeld of Oxfeld Cohen,

1 P.C., on behalf of Respondent, Andrea Giuffrida.

2 THE COURT: Okay. As I said, this is a
3 continuation of the hearing. We had two witnesses last
4 time. We had a gentleman named Patrick Brady, and we
5 had David Drew. I think those were the only two
6 witnesses as I recall, and we are going to continue
7 with Petitioner's case. Mr. Wu, do you have anything
8 before you call your first witness?

9 MR. WU: No, Your Honor.

10 THE COURT: Ms. Oxfeld, nothing?

11 MS. OXFELD: No.

12 THE COURT: Okay. Let's go.

13 MR. WU: Thank you. Petitioner calls James
14 Foley to the stand.

15 THE COURT: F-O-L-E-Y?

16 MR. FOLEY: Yes, Your Honor.

17 THE COURT: Good.

18 MR. WU: Oh, if you could remain standing.

19 THE COURT: That's all right. Sit down, Mr.
20 Foley. Relax. Relax. Fortunately it's not too warm
21 today. If it does get warm in here, sometimes this
22 hearing room gets warm, and if it does, feel free to
23 take off jackets or sweaters or whatever else. I want
24 everybody to be difficult. Mr. Foley, please raise
25 your right hand.

1 J A M E S F O L E Y, PETITIONER'S WITNESS, SWORN.

2 THE COURT: Thank you. Sir, have you ever
3 testified before?

4 THE WITNESS: Yes.

5 THE COURT: Okay. You're familiar. Do you
6 have any questions about the procedure in testifying?

7 THE WITNESS: No, sir.

8 THE COURT: Okay. Go ahead, Mr. Wu.

9 MR. WU: Thank you, Your Honor.

10 DIRECT EXAMINATION BY MR. WU:

11 Q Mr. Foley, what is your current position?

12 A Substance awareness coordinator.

13 Q And where are you a substance awareness
14 coordinator at?

15 A Point Pleasant Borough School District.

16 Q Is that for a particular school or for the
17 entire school district?

18 A For Point Pleasant High School specifically.

19 Q And how long have you been a substance
20 awareness coordinator at the high school for?

21 A Twenty seven years.

22 Q What do your duties involve as a substance
23 awareness coordinator?

24 A Counseling students, helping educate health
25 teachers regarding alcohol and drug curriculums, parent

1 outreach, pretty much everything outlined in the SAC
2 certification through the State Department of
3 Education.

4 Q Do you have a physical office that you work
5 in?

6 A Yes, I do.

7 Q And where is that located?

8 A It's in the high school itself in the Child Study
9 Team/athletic office.

10 Q Okay. Are you familiar with an Andrea
11 Giuffrida?

12 A Yes, I am.

13 Q How do you know her?

14 A She used to work at Point Pleasant High School.

15 Q Do you recall when that was?

16 A It was a few years ago, I think like two, two and
17 a half years ago.

18 Q So the 2011-2012 school year, is that
19 accurate?

20 A That sounds about right, yes.

21 Q And what position did Ms. Giuffrida hold?

22 A I think it's the like LDTC for the Child Study
23 Team.

24 Q Is it LDTC?

25 A Something like that.

1 Q All right.

2 A It is the learning consultant for the Child Study
3 Team.

4 Q All right. Okay. Do you have any
5 interaction with Ms. Giuffrida in her capacity as an
6 LDTC?

7 A Yes, I do.

8 Q And what sort of interactions were those?

9 A Frequently we would have mutual clients, students
10 who were classified by the Child Study Team also
11 suffering from substance abuse issues. So we would
12 have to regularly meet to discuss those students.

13 Q You said that you would meet regularly. How
14 regularly would these meetings be?

15 A Usually our goal was to meet every Wednesday.
16 There would be a joint meeting Wednesday mornings
17 between the Child Study Team office and my office and
18 the administrative office and the guidance counselor's
19 office.

20 Q And you said that's every Wednesday?

21 A Yes, sir.

22 Q What is a Child Study Team meeting?

23 A Well, it's, you know, representatives from the
24 Child Study Team from the high school and the middle
25 school would meet, the learning consultant, the school

1 psychologist, the school social worker, the SAC, the
2 guidance counselor, the vice principal for any
3 particular student, and then we would just review each
4 student. Sometimes if students were in residential
5 treatment for drug problems or alcohol problems and
6 they're classified by the Child Study Team, we would
7 want to just make sure that we were in compliance with
8 getting them the best care, making sure they are
9 properly educated and meeting their IEP's.

10 Q So at these meetings, what roles did yourself
11 and Ms. Giuffrida have?

12 A I would present information relative to any
13 students that I was working with, and she would either
14 ask questions or present information from her
15 perspective.

16 Q What time would these Wednesday meetings
17 occur?

18 A We always tried to start at 8:30, 9 o'clock,
19 depending upon, you know, sometimes it would alternate
20 between the high school and the middle school, so and
21 then it would also sometimes alternate as to, you know,
22 when the particular vice principal would come. If
23 there were three or four students all with the same
24 vice principal, that vice principal may come from 9 to
25 9:30, another vice principal come from 9:30 to 10 or

1 8:30 to 9, whatever it is.

2 Q And when you say sometimes these meetings
3 would alternate between the high school and the middle
4 school, would you switch locations in the middle of a
5 meeting?

6 A No. It's a one week --

7 Q Is that what you --

8 A -- you would be at the high school, one week it
9 would be at the middle school and then, you know,
10 sometimes it would be two separate meetings, one at the
11 middle school and then one at the high school.

12 Q Okay. Did you have any interactions with Ms.
13 Giuffrida that you consider unusual?

14 A Yeah. There was one incident during a meeting
15 that was unusual.

16 Q Can you describe what happened at that
17 meeting?

18 THE COURT: Let's describe when it happened
19 first.

20 MR. WU: Thank you, Your Honor.

21 BY MR. WU:

22 Q When was this meeting where this unusual
23 incident occurred?

24 A I don't know the, I don't recall the exact date.
25 I know it was on a Wednesday, and I know it was in the

1 morning. On this particular Wednesday, we had a guest
2 speaker come in from the High Focus Treatment Program
3 in Freehold, and I'm assuming that they came at 8
4 o'clock or 8:30, and they did their presentation about
5 the services offered through the High Focus program,
6 and after that meeting or that portion of the meeting
7 ended and the speakers from High Focus left the high
8 school and we were getting ready to begin our regular
9 weekly meeting, that's when the incident occurred.

10 Q Okay. And what was this incident?

11 A That Ms. Giuffrida, you know, put both of her
12 hands on either side of my face and kissed me on the
13 lips.

14 Q And I'm not sure if you had mentioned this
15 earlier, but where did this incident occur?

16 A In the Child Study Team / athletic director's
17 conference room.

18 Q And you said that she -- sorry. Could you go
19 over the incident again or a description of it?

20 A Yeah. She had -- she was seated next to me on my
21 right, and she had stood up in her chair and put both
22 of her hands on either side of my face and kissed me on
23 the lips.

24 Q Who else was present at this meeting?

25 A The school psychologist and the school social

1 worker.

2 Q Who is the school psychologist?

3 A Dr. Jordan.

4 Q And the school social worker?

5 A Marcie Bradley.

6 Q What happened prior to Ms. Giuffrida kissing
7 you?

8 A There were -- I believe Ms. Giuffrida was
9 complaining about one of the administrators in the
10 district in the high school, and I had made a comment
11 something to the effect of, you know, "Let us who have
12 been here for years deal with the administrators.
13 You're the new guy in town, so let us deal with that,"
14 and she got up and said, "That's why I love you,
15 Foley," grabbed my face and kissed me.

16 Q You said earlier that there was a High Focus
17 presentation at that meeting. Were the members of the
18 High Focus team still present for that meeting, for
19 that portion of the meeting afterward?

20 A No. They had left.

21 Q Okay. So the people in the room were
22 yourself, Ms. Giuffrida, Mr. Jordan, as you stated, and
23 Ms. Bradley?

24 A Yes.

25 Q Were you all seated in the conference room

1 when this kiss occurred?

2 A Well, prior to the kiss we were all seated. Then
3 Ms. Giuffrida got up out of her chair, and that's when
4 she kissed me.

5 Q Do you recall who was seated where around
6 this table?

7 A The only thing or the only person that I'm 100
8 percent certain of where they were other than myself
9 and Ms. Giuffrida is Mr. Jordan, who was directly
10 across from me, and I don't recall whether Ms. Bradley
11 was to my right or across the table as well.

12 Q Okay. And where was Ms. Giuffrida seated in
13 relation to you?

14 A Immediately on my right.

15 Q How far away was she sitting from you?

16 A The next chair over, so it is as close as she is
17 to her attorney right now.

18 Q For the record, that's roughly maybe a foot
19 or two away?

20 A Mm-hmm.

21 Q Was there anything in between yourself and
22 Ms. Giuffrida?

23 A No, just the chairs we were seated in.

24 Q So your recount of what happened is that Ms.
25 Giuffrida stood up, said something along the lines of,

1 "That's why I love you, Foley." After that did she
2 walk over to you or lean forward? How did she reach
3 over to you to put her hands on your face?

4 A Well, she was seated right next to me. She stood
5 up out of the chair and, you know, turned, and I wasn't
6 watching, but I'm assuming her hip was leaning up
7 against the conference room table, and she leaned
8 towards me.

9 Q And she put both of her hands on either side
10 of your face?

11 A Correct.

12 Q Did she maintain contact, the hands on the
13 face for the duration of the kiss?

14 A Yes, she did.

15 Q And where did she kiss you?

16 A On the lips.

17 Q For how long?

18 A Two long. For a second or two.

19 Q Did you lean into the kiss?

20 A I did not.

21 THE COURT: I'm sorry. What was that
22 question?

23 BY MR. WU:

24 Q Oh. Did you lean into the kiss?

25 A No, I did not.

1 Q Was there any tongue involved?

2 A I don't recall. I know my lips were wet. So I
3 don't know if it was tongue or lipstick or whatever.

4 Q And after Ms. Giuffrida kissed you, what
5 happened?

6 A I wiped my lips to, you know, dry them and told
7 her that, "That was completely inappropriate. Please
8 don't ever do it again."

9 Q How did you feel about what happened?

10 A I felt embarrassed, surprised, shocked that she
11 would do such a thing.

12 Q Had Ms. Giuffrida ever kissed you on the lips
13 before?

14 A No.

15 Q Was there ever any physical contact between
16 yourself and Ms. Giuffrida prior to that point?

17 A No.

18 Q Do you know if anyone else in the room
19 witnessed the kiss?

20 A Yeah. Dr. Jordan witnessed it, Mrs. Bradley
21 witnessed it.

22 Q And after Ms. Giuffrida kissed you, you wiped
23 your lips and you told Ms. Giuffrida not to do that
24 again, that was inappropriate, then what happened?

25 A Then I think, you know, there were -- I think Dr.

1 Jordan made a comment and, you know, Ms. Bradley
2 probably made a comment.

3 MS. OXFELD: I'd like to object to the
4 testimony. The witness should only testify to what he
5 actually remembers, not what he's speculating might
6 have happened. I understand this is a while ago.

7 MR. WU: Well, did --

8 THE COURT: Hold on.

9 MR. WU: Okay.

10 THE COURT: Objection is sustained. One of
11 the reasons, Mr. Foley --

12 THE WITNESS: Yes, sir.

13 THE COURT: -- that I asked you if you had
14 testified before, because usually judges give an
15 instruction, and one of the instructions is if you're
16 not sure of an answer or you're not clear, your memory
17 isn't clear, just say that.

18 THE WITNESS: Okay.

19 THE COURT: You know, I'm sure Dr. Jordan said
20 something. Well, if you don't remember what he said,
21 then maybe he didn't say anything.

22 THE WITNESS: Right.

23 THE COURT: Do you know what I'm saying?

24 THE WITNESS: Mm-hmm.

25 THE COURT: So if you remember it, or you can

1 say he said something but I don't remember what he
2 said, you know, that's fine too. This is a search for
3 the truth.

4 THE WITNESS: Right.

5 THE COURT: So and sometimes, you know, your
6 memory plays tricks on you, and not you, I mean
7 everybody.

8 THE WITNESS: Sure.

9 THE COURT: You know, it's the old story. The
10 longer the time, the bigger the fish got that got away,
11 you know.

12 THE WITNESS: Sure.

13 THE COURT: It's the same. It's just human
14 nature.

15 THE WITNESS: Okay.

16 THE COURT: And it's not being critical, but
17 the idea is we don't want speculation, we don't want
18 guesses. It's two years ago probably, if not more. As
19 a matter of fact, I think it's more. It's over three
20 years ago now. So if the time is about what I think it
21 should be, I wouldn't expect you to have a clear memory
22 of everything.

23 THE WITNESS: Okay.

24 THE COURT: I certainly don't from three years
25 ago. I don't think you do either, but just say that.

1 THE WITNESS: Okay.

2 THE COURT: Okay?

3 THE WITNESS: Thank you.

4 THE COURT: No problem.

5 BY MR. WU:

6 Q So the record is clear, do you recall if
7 anyone at that meeting made a comment about the kiss?

8 A I recall comments were made, but I don't recall
9 exactly what the comments were.

10 Q Okay. And do you recall who made those
11 comments?

12 A No, other than someone in the room.

13 Q All right. You stated earlier that you felt
14 embarrassed by the kiss. Why is that?

15 A Well, I wasn't expecting it. It had never
16 happened to me before. It was certainly unwanted.

17 Q And when Ms. Giuffrida said something to the
18 effect of, "Foley, I love you" or, "That's why I love
19 you," what was the tone of her voice?

20 A Loud.

21 Q Did you tell anyone about what happened at
22 that meeting?

23 A Not initially, no.

24 Q When you mean initially, you're referring to
25 that day?

1 A Did not talk to anyone about that day, no.

2 Q When did you say anything about the incident
3 to someone else?

4 A Approximately a week later.

5 Q And who did you speak to about the incident?

6 A Vice principal Jackie Moore.

7 Q How did that topic of conversation come
8 about?

9 A Mrs. Moore and I were standing in the hallway
10 outside the guidance office, and Ms. Giuffrida was in
11 the guidance office having a loud conversation with a
12 student, and I felt that maybe the student needed to
13 get rescued, because maybe Ms. Giuffrida was going
14 overboard, and Mrs. Moore also said well, you know, "It
15 sounds like she's being inappropriate, and that's when
16 I said, "Well, if you think that's inappropriate, you
17 should, you know, be grateful she didn't kiss you like
18 she kissed me a week ago."

19 Q How did Mrs. Moore respond to what you told
20 her?

21 A She appeared to be in disbelief at the time and
22 asked me, "Are you kidding?" And I was like, "No, I
23 wish I were."

24 Q Did the conversation go any further?

25 A No.

1 Q Did you have any further discussion with her
2 about the incident?

3 A I don't recall if it was the same day or a day or
4 two later that she called me into her office and told
5 me that she needed me to go into more detail as to
6 exactly what I meant by that comment.

7 Q Okay. And what did you tell her?

8 A I told her exactly what I just told you as far as
9 the meeting in that conference room on that Wednesday
10 with High Focus and that she had kissed me on the lips.

11 Q And after you told her that, what was Mrs.
12 Moore's response.

13 A She said that she was going to have to report this
14 higher up the ladder and that an investigation would
15 have to be started.

16 Q Okay. Did you speak with any other
17 administrators about the kiss?

18 A Yes. Again, I don't remember the exact day, but
19 it was sometime after the meeting with Mrs. Moore that
20 I met with Mr. Alfonse, who is the assistant
21 superintendent of schools, and he interviewed me
22 regarding the incident.

23 Q And do you recall how long the time span
24 between your second meeting with Mrs. Moore and your
25 meeting with Mr. Alfonse?

1 A I don't recall the exact, whether it was the same
2 day, a day later or three days. I don't recall the
3 number of days.

4 Q Okay. That's fine. And how did that
5 interview with Mr. Alfonse come about?

6 A I was called to the front office and told that,
7 you know, I had to meet with the administrator.

8 Q Okay. And when you met with Mr. Alfonse,
9 what did he ask you?

10 A Pretty much the same questions that you're asking
11 me today as to what happened, you know, please explain
12 to him the sequence of events that led to, you know,
13 her kissing me on the lips.

14 Q And what did you tell Mr. Alfonse?

15 A The same thing I told you, that we were seated at
16 the table in the conference room, and she kissed me on
17 the lips.

18 Q Okay. There is a binder in front of you. If
19 you don't mind, there are also tabs on the inside, if
20 you could flip to the tab marked P-5, and just flip
21 that over. At the top, there are actually little
22 numbers on the bottom right hand corner. The first
23 page of that exhibit should be labeled DOE-006.

24 (P-5 marked for
25 Identification)

1 A Okay. It's labeled, "DOE-00," and the 6 is cut
2 off, so I can't see the 6.

3 Q If you look on the last paragraph of that
4 page.

5 A Mm-hmm.

6 Q There is a bullet point. Do you see that?

7 A Yes.

8 MS. OXFELD: What page are we on?

9 MR. WU: Sorry. DOE-006, the first page of --

10 MS. OXFELD: Yeah. My pages are cut off, too.

11 MR. WU: Oh, no.

12 THE COURT: It's the first page.

13 MR. WU: Just the very first page of P-5.

14 MS. OXFELD: Okay.

15 BY MR. WU:

16 Q If you could just read over that last
17 paragraph and let me know when you're done reviewing
18 it.

19 A All right. I'm finished.

20 Q Does this refresh your recollection as to
21 anything you may have said to Mr. Alfonse that you
22 didn't already testify to?

23 A Only it clarifies date.

24 Q Okay. How so?

25 A You know, I don't remember the exact dates that

1 this occurred other than it was a Wednesday. So the
2 fact that there is dates in this bullet are helping,
3 you know, my memory as far as, you know, exactly when
4 this occurred.

5 Q Okay. So do you have any reason to doubt, as
6 it states in here, that the interview with Mr. Alfonse
7 occurred on Wednesday, November 2nd, 2011?

8 A No doubt whatsoever.

9 Q Okay. And further within that paragraph,
10 there is a line that says, "Mr. Foley discussed an
11 incident which occurred at a high school Child Study
12 Team meeting on Tuesday, October 25th, 2011 at 9 a.m."
13 Do you have any reason to doubt the accuracy of that,
14 of that date?

15 A No, other than, you know, I thought it was on a
16 Wednesday that, you know, if that's what we're talking
17 about. Is that the actual date of the kiss that we're
18 talking about here, October 25th?

19 Q Yes.

20 A Okay. For some reason, I thought it was on a
21 Wednesday. If the report is saying that it occurred on
22 a Tuesday, it's possible that I was incorrect in my
23 recollection and that it actually was a Tuesday. I
24 would have to go back and find out exactly the date
25 that High Focus came, because it was on the same day.

1 Q Okay. And does the remainder of this
2 paragraph comport with your recollection of what you
3 told Mr. Alfonse?

4 A Yes, it does.

5 Q All right. Now, prior to Ms. Giuffrida
6 kissing you on the lips, how would you describe your
7 relationship with her?

8 A We had a cordial relationship, a professional
9 relationship. We, you know, worked in the same office
10 suite at the high school.

11 Q How would you describe your relationship with
12 Ms. Giuffrida after the kiss incident?

13 A It was a little bit strained. It became more
14 strained after the investigation was started.

15 Q From that week or so in between when the kiss
16 occurred to your interview with Mr. Alfonse, do you
17 recall having any interactions with Ms. Giuffrida?

18 A I don't recall specific interactions, no. I know
19 that we did, but I don't recall exactly what they were.

20 Q Okay. Do you recall having any exchanges
21 with any colleagues about the kissing incident?

22 A Well, yeah. I did have a spirited discussion with
23 Dr. Jordan after the investigation was started.

24 Q You mean you had a discussion with the school
25 psychologist, Dr. Jordan, after Mr. Alfonse interviewed

1 you?

2 A Yes.

3 Q And what was the context of that

4 conversation?

5 A He was angry.

6 MS. OXFELD: I -- well, go ahead. Never mind.

7 Go ahead.

8 THE WITNESS: Dr. Jordan was angry that I was
9 involved in a situation like this and, you know, trying
10 to go after Ms. Giuffrida over a stupid kiss.

11 BY MR. WU:

12 Q I'm sorry. Were those his words?

13 A I don't recall the exact words, but that was the
14 nature of the exchange.

15 Q Okay. Did you tell Dr. Jordan about your
16 participation in the investigation?

17 A I did not.

18 Q So how did you respond to Dr. Jordan's
19 remarks to you?

20 A I just told him that, you know, I wasn't doing
21 anything that, you know, this is not me reporting
22 anything, you know, "I don't know why you're so angry."

23 Q Okay. And why did you say that?

24 A Because I didn't, or at least in my mind, I didn't
25 think that I was the person who reported this. I

1 thought I, you know, made a comment off the record to
2 Jackie Moore and didn't know until I got, you know,
3 spoken to by first Jackie Moore and then by Bob Alfonse
4 that this was going somewhere.

5 Q Okay.

6 THE COURT: So what you're saying is Dr.
7 Jordan was of the position quoting Shakespeare that
8 this was a lot about nothing?

9 THE WITNESS: Yes, Your Honor.

10 THE COURT: Is that a fair way to say it?

11 THE WITNESS: Yes.

12 THE COURT: This thing is getting out of hand?

13 THE WITNESS: Mm-hmm.

14 THE COURT: Okay. Much to do about nothing I
15 think is the quote.

16 THE WITNESS: I didn't want to correct you,
17 Your Honor.

18 THE COURT: No, no. That's okay. That's
19 okay. I wasn't an English major.

20 MS. OXFELD: If we can't expect Mr. Foley to
21 remember something that happened three years ago, I
22 don't want to refer to when you would have been an
23 English major had you been.

24 THE COURT: I know.

25 MS. OXFELD: But your recollections would be

1 even less accurate.

2 THE COURT: That's true. Much to do about
3 nothing.

4 MS. OXFELD: Much ado.

5 THE COURT: Oh, is that what it was?

6 MS. OXFELD: Yeah. It took me a while.

7 THE COURT: See? That's how much I read
8 Shakespeare.

9 MS. OXFELD: I needed two wrong versions to
10 finally have the right one come up.

11 THE COURT: Thank you.

12 BY MR. WU:

13 Q And during your interview with Mr. Alfonse,
14 did he give you any direction as to the confidentiality
15 of this investigation?

16 A Yes. He told me that I was not to discuss this
17 with anyone.

18 Q Did that play a part in your response to Mr.
19 Jordan?

20 A Yes.

21 Q So after your interview with Mr. Alfonse, did
22 you receive any correspondence from him?

23 A I don't recall. I know he told me, you know, that
24 there was an investigation going on, and he said that
25 eventually I would get a letter, and I think I did get

1 a letter, but I don't remember exactly when I did
2 receive that letter.

3 Q Okay. If you could turn your binder to P-16.

4 (P-16 marked for
5 Identification)

6 A Okay.

7 Q Do you recognize this, P-16?

8 A Yes, I do.

9 Q What is it?

10 A It looks like it's a copy of a letter that I would
11 have received in November of 2011 from Mr. Alfonse.

12 Q Okay. And the date of that letter?

13 A November 3rd, 2011.

14 Q And it's addressed to you?

15 A Yes, it is.

16 MR. WU: Your Honor, at this time I'd like to
17 ask that P-16 be moved into evidence.

18 MS. OXFELD: No objection.

19 THE COURT: Sure.

20 MR. WU: Thank you.

21 THE COURT: Let me mark it.

22 MR. WU: No problem.

23 (P-16 marked in
24 Evidence)

25 THE COURT: Okay.

1 BY MR. WU:

2 Q And if you could turn again in your binder to
3 P-20.

4 (P-20 marked for
5 Identification)

6 A Okay.

7 Q Do you recognize P-20?

8 A Yes, I do.

9 MS. OXFELD: Could I just object to this?
10 We're concerned at this time, this hearing with the
11 facts of what occurred. Mr. Alfonse's conclusions as
12 to what to call or not call the activity is Mr.
13 Alfonse's conclusion and has no bearing on this Court.
14 If Mr. Alfonse had written to Mr. Foley and said Dear
15 Mr. Foley, we conclude that Ms. Giuffrida engaged in
16 capital murder, it would not bind the Court any more
17 than if he said Ms. Giuffrida threw eggs at you. It's
18 this is his conclusion, nothing else, nothing less,
19 nothing more.

20 THE COURT: I don't know what the purpose of
21 this is being admitted for. If it's for the truth of
22 the document, for the truth of the matter contained in
23 the document, then I'm not going to admit it, because
24 this is Alfonse's opinion.

25 MR. WU: Absolutely, Your Honor. I agree.

1 THE COURT: Nobody else's. So what's it going
2 for, to say the investigation is over?

3 MR. WU: Yes, Your Honor, just simply as a
4 record of the proceedings that occurred.

5 THE COURT: Well, I don't know. I'm not going
6 to admit the document into evidence, because it
7 contains a lot more than that. So I'm going to sustain
8 that part of the objection. However, I will put in the
9 record that Mr. Foley received a letter of November
10 17th, 2011 advising him that the investigation had been
11 concluded. I have no problem with that. How it was
12 concluded I do have a problem with, because Alfonse
13 isn't here to testify, and this is his opinion.

14 MR. WU: Okay. Thank you, Your Honor.

15 THE COURT: Okay. So let me just say that --
16 what was that, 20?

17 MR. WU: Yes.

18 THE COURT: P-20 is not admitted into
19 evidence. However, I accept Mr. Foley's
20 representation. Mr. Foley, you are representing that
21 you received a letter on or about November 17th, 2011
22 from Robert H. Alfonse advising you that his
23 investigation on this matter has been concluded, is
24 that correct?

25 THE WITNESS: Yes, Your Honor.

1 THE COURT: Thank you. I accept Mr. Foley's
2 representation that he received the letter stating he
3 received a letter, and it was hand delivered, so I'm
4 assuming you received it on November 17th, 2011. Would
5 that be your recollection as well, Mr. Foley?

6 THE WITNESS: Yes, it would, Your Honor.

7 THE COURT: Okay. On November 17th, 2011
8 advising him the investigation was concluded. Okay.
9 It's a legal jargon.

10 BY MR. WU:

11 Q And after your interview with Mr. Alfonse,
12 did you send any correspondence to him?

13 A I did not.

14 Q If I can direct your attention to P-13. Do
15 you recognize P-13?

16 (P-13 marked for
17 Identification)

18 A Yes, I do. Yes, I do.

19 Q Oh, and what is P-13?

20 A It looks like it's an e-mail.

21 Q From whom?

22 A From me to Mr. Alfonse.

23 Q So you did send Mr. Alfonse some
24 correspondence in the form of an e-mail, correct?

25 A Yeah. Let me just -- let me read this.

1 Q If you want to review it, that's fine.

2 A Okay.

3 Q So you recognize this document as an e-mail
4 that you sent to Mr. Alfonse?

5 A Yes, I do.

6 Q Okay. And was this also regarding Ms.
7 Giuffrida?

8 A Yes, it is.

9 Q What was the date of the e-mail?

10 A November 15th, 2011.

11 MR. WU: Your Honor, at this time I'd like to
12 ask that P-13 be moved into evidence.

13 MS. OXFELD: No objection.

14 THE COURT: Okay.

15 (P-13 marked in
16 Evidence)

17 MR. WU: Thank you, Your Honor.

18 BY MR. WU:

19 Q I'd like to draw your attention to the last
20 sentence of P-13.

21 A Okay.

22 Q And you stated -- it's, I'm sorry, the last
23 I guess section of that last sentence, "It's just that
24 I never felt like a victim until now."

25 A Mm-hmm.

1 Q And those are your words, correct?

2 A Yes, they are.

3 Q And what did you mean by that statement?

4 A When I --

5 MS. OXFELD: Can I -- I just wanted to object.

6 If the witness remembers, because he didn't even
7 remember sending this e-mail. So he may not remember
8 what his feeling was several years ago.

9 THE COURT: Do you have an independent
10 recollection, Mr. Foley?

11 THE WITNESS: Yes, I do, Your Honor.

12 THE COURT: Okay. Then you can say it.

13 THE WITNESS: I would just like to apologize.
14 When you asked the question did I send any e-mails, I
15 thought you meant after I received that e-mail from Mr.
16 Alfonse on the 17th. I didn't think --

17 THE COURT: I think that's the way the first
18 question was phrased.

19 THE WITNESS: Okay. Okay.

20 BY MR. WU:

21 Q Right. It's all right.

22 A That's okay. When I met with Mr. Alfonse, you
23 know, in the conference room, he told me -- and again,
24 I don't remember the date. I think somewhere along
25 here it was like November 2nd or something like that,

1 but whenever I met with Mr. Alfonse, you know, he told
2 me that, "Well, you're a victim here," and at that time
3 I didn't feel like a victim. I felt like, you know,
4 this was something that was inappropriate, and it was
5 inappropriate, but it was no big deal. It's, you know,
6 we're all adults here. There is a lot worse things
7 happening in this world, and then after the
8 investigation started and then there were closed doors
9 and, you know, Mr. Foley is not invited to any more
10 meetings, you know, then that's what prompted this e-
11 mail is that at that point is when I started to feel
12 like a victim.

13 Q You mentioned -- actually, strike that. Did
14 you after sending this e-mail to Mr. Alfonse, did you
15 ever speak to him about the content of this e-mail?

16 A Yes. He asked me to come over to his office I
17 think. We talked about it, and he said he "can't go
18 into details, but just be patient and, you know, the
19 investigation will be over soon."

20 Q In explaining your statement about feeling
21 like a victim, you mentioned the fact that there were
22 closed doors and you weren't invited to Child Study
23 Team meetings? Did I phrase that accurately?

24 A Yes.

25 Q And can you elaborate on what you meant when

1 you said that?

2 A Well, prior to the investigation we met regularly,
3 whether it was every week or, you know, sometimes due
4 to weather or, you know, vacation or whatever, there
5 were times when a Wednesday would come and we wouldn't
6 meet, but regularly we met, and then once the
7 investigation started, either the weekly Child Study
8 Teams were all held at the middle school, but certainly
9 I was not any longer present for those meetings and,
10 you know, it just felt like, you know, I was the bad
11 guy, I was the person being left out, I was the person
12 that, you know, was no longer welcome at the weekly
13 meetings.

14 Q When was the next time you went to a Child
15 Study Team meeting?

16 A I don't remember the specific date, but it was
17 after Ms. Giuffrida no longer worked at the school
18 district and then not until January of 2012.

19 Q When did you say that you felt this, I'll
20 phrase it as a shifting attitude toward you occur?

21 A After the investigation was started.

22 Q Aside from not being invited to these Child
23 Study Team meetings, was there anything else that gave
24 you the impression that you were the outside or
25 excluded, as you put it?

1 A Well, yeah, like I said in the e-mail, I mean, I
2 would say, you know, "Good morning," no response. I
3 walk into the office suite and, you know, as soon as I
4 walk in, doors get shut, those types of things.

5 Q Okay. Was this treatment something that you
6 received from all members of the Child Study Team
7 office or anyone in particular?

8 A Well, really the only ones that regularly used the
9 high school Child Study Team suite that had offices
10 there were Ms. Giuffrida and Dr. Jordan, but it was by
11 both Dr. Jordan and Ms. Giuffrida.

12 Q You said that the Child Study Team meetings,
13 at least after your interview with Mr. Alfonse, they
14 were moved to the middle school? Is that correct?

15 A That's what it appeared like. Either they were
16 meeting at the middle school or they weren't meeting at
17 all.

18 Q How do you know that?

19 A Well, all the only thing I can know for certain is
20 that I was no longer invited to the meetings. Usually
21 we would have the Child Study Team secretary send out
22 reminders about the meeting, about who is being talked
23 about at any particular meeting, and I was no longer
24 getting those updates and no longer told of when the
25 meetings were.

1 Q Okay. And your office was in the same suite
2 where the Child Study Team meetings were typically
3 held, right?

4 A Yes. My office is right next to the conference
5 room.

6 Q Okay. So if the meeting was going on in the
7 room, you would be able to tell, right?

8 A Yes, I would.

9 Q In that suite.

10 A Correct.

11 Q But after, at least after your interview with
12 Mr. Alfonse, to your knowledge there were no meetings
13 that were held in that suite?

14 A Correct.

15 Q Did you ever inquire as to where the meetings
16 were being held or where they were relocated to?

17 A I did not. I wasn't even getting responded to in
18 good mornings. I wasn't going to subject myself to
19 more rejection.

20 Q Okay.

21 THE COURT: Was that by everybody on the Child
22 Study Team?

23 THE WITNESS: Well, as I said, primarily
24 through Dr. Jordan and Ms. Giuffrida, but those two
25 were the ones who were primarily in the high school

1 office. Marcie Bradley is based at the middle school,
2 so she was rarely over at the high school.

3 THE COURT: Yeah, but don't you have -- and
4 I'm not trying to, you know, cross examine you, but my
5 experience with special ed is that you have like six or
6 eight people on a Child Study Team, don't you?

7 THE WITNESS: Umm --

8 THE COURT: I mean, it depends on the child of
9 course but, you know, when I see IEP's, I usually see,
10 forgetting the parents I see six or eight staff
11 members.

12 THE WITNESS: Mm-hmm.

13 THE COURT: The therapists and whatever,
14 LDTC's of course sometimes, but a speech therapist, and
15 isn't the case manager the one that calls the meetings?
16 Or I don't know what --

17 THE WITNESS: For an IEP meeting, yes.

18 THE COURT: Okay.

19 THE WITNESS: And they do need all of those
20 signatures on the paperwork. So for an IEP meeting,
21 there is always a lot more people.

22 THE COURT: Okay.

23 THE WITNESS: But just for the regular weekly
24 meetings.

25 THE COURT: Oh, okay.

1 THE WITNESS: Which are not --

2 THE COURT: These are just updates type
3 things?

4 THE WITNESS: So they're not official meetings
5 where you have to give notice to parents or anything
6 like that.

7 THE COURT: Okay. Okay. All right. These
8 aren't formal. These are just --

9 THE WITNESS: Like case conferences.

10 THE COURT: Got you. Got you. Okay, thanks.
11 That changes the whole perspective. Okay.

12 BY MR. WU:

13 Q After your interview with Mr. Alfonse, did
14 you have any further interaction with Ms. Giuffrida?

15 A Yes. There was some comments made I think on her
16 last day in the building or whenever she was told by
17 whoever told her, whatever they told her. There was
18 some comments made by her directed at me.

19 Q What were those comments?

20 A In a loud voice I heard her talking from her
21 office to the secretary to the athletic director that,
22 "Don't worry. He's going to get his," and, "Yes,
23 that's right, Foley. I'm talking about you."

24 Q Did you respond to those comments?

25 A I did not.

1 Q Any particular reason why?

2 A Well, I was scared and, you know, actually left
3 the office and went up to the front office.

4 MR. WU: I have no further questions.

5 THE COURT: Okay.

6 CROSS EXAMINATION BY MS. OXFELD:

7 Q Mr. Foley, you mentioned when you heard Ms.
8 Giuffrida make those comments, you were scared,
9 correct?

10 A Yes.

11 Q Now, at that time you had had no interaction
12 with her between October 25th when she kissed you and
13 this particular day, which was her last day at work,
14 correct?

15 A No. I had interactions with her from the date of
16 the kiss up until the date of the investigation was
17 started. Then once the investigation started, that's
18 when the interaction ceased.

19 Q What type of interactions? Did you have
20 anything notable about the interactions between the
21 kiss and when the investigation started?

22 A Anything notable?

23 Q Yes.

24 A I don't think I understand the question. I mean,
25 nothing that --

1 Q Well, let me ask it a different way. Did you
2 feel your interactions, was anything about your
3 interactions with Ms. Giuffrida between October 25th and
4 November 3rd unprofessional?

5 A I mean, I don't -- I apologize for not knowing the
6 exact dates off the top of my head that you're
7 referring to.

8 Q Let me ask you this. Is there anything other
9 than recalling that you had interactions with Ms.
10 Giuffrida between the kiss and the date the
11 investigation started? Do you recall anything about
12 those interactions?

13 A I do not.

14 Q So and then between November 3rd when the
15 investigation started and this last day of work, you
16 had no interactions with her at all, correct?

17 A Correct.

18 Q What were you scared of?

19 A Well, the tone of her voice, of her comment that
20 I'm going to get mine or, "He's going to get what's
21 coming to him," that sounded intimidating to me.

22 Q What did you think she could do to you?

23 A Well, she had -- you know, she had shared stories
24 at meetings in the past that either, you know, some
25 family member was a king pin drug dealer and, you know,

1 I had no idea what she was capable of.

2 Q You thought she might go from a kiss to say a
3 murder?

4 A I don't know.

5 Q Now, let me take you back to that meeting
6 with the kiss. At that point, how long had you known
7 Ms. Giuffrida?

8 A I believe that occurred in October?

9 Q Yes.

10 A Okay. So I would have known her for a month and a
11 half.

12 Q And you would have had approximately how many
13 of those weekly meetings you discussed at which both
14 you and she would have been?

15 A I would just be guessing anywhere from four to six
16 meetings.

17 Q Now, you mentioned Dr. Drew. How long --

18 MR. WU: I'm sorry. Dr. Jordan?

19 MS. OXFELD: Oh, I'm sorry. Let me start
20 again.

21 BY MS. OXFELD:

22 Q You've been with the district 27 years,
23 correct?

24 A I have, yes.

25 Q Always as a SAC.

1 A Correct.

2 Q And Dr. Jordan, how long did you know him?

3 A I think he's been with the district maybe 24, 25
4 years, so the whole time.

5 Q And was he a school psychologist the whole
6 time?

7 A Yes, he was.

8 Q So for at least 20 years you and he have had
9 a professional relationship, correct?

10 A Yes, we have.

11 Q Did you ever have any troubles in your
12 interactions with him?

13 A No. We've had spirited debates in the past on
14 other topics.

15 Q And who is the social worker?

16 A Marcie Bradley.

17 Q How long had Ms. Bradley been in the
18 district?

19 A I don't know the exact number of years, but a
20 while, more than ten years.

21 Q And during that time had she always been a
22 social worker?

23 A Yes, she had.

24 Q And what had been the nature of your
25 relationship with Ms. Bradley?

1 A A professional relationship.

2 Q Because you mentioned the middle school and
3 the high school, was it just Ms. Giuffrida, Ms. Bradley
4 and Dr. Jordan who were the Child Study Team for both
5 schools or were there other Child Study Team members?

6 A Well, I mean, there is other -- to the best of my
7 knowledge, there is other members to the Child Study
8 Team. Dr. Jordan I believe is the psychologist for the
9 high school and the middle school. Marcie Bradley is
10 the social worker for the high school and the middle
11 school. Ms. Giuffrida was the learning consultant only
12 for the high school. I know they have a learning
13 consultant for the middle school that's only for the
14 middle school. So yes, there are other members to the
15 Child Study Team between the two schools.

16 Q Okay. Now, turning your attention to the
17 meeting where you got kissed by Ms. Giuffrida, do you
18 remember anything coming up about any discussion about
19 the nature of the questions or comments made to the
20 guest speaker?

21 A I --

22 MR. WU: I'm sorry. Could you just clarify a
23 time line?

24 MS. OXFELD: Okay. I'm talking about the --

25 THE COURT: The day of the meeting.

1 MS. OXFELD: The day of the meeting.

2 THE COURT: October 25th.

3 MS. OXFELD: With the guest speaker.

4 BY MS. OXFELD:

5 Q It was from High Point, correct?

6 A High Focus.

7 Q High Focus.

8 A Right.

9 Q Okay. And I take it the speaker from High
10 Focus made a presentation, correct?

11 A They did, yes.

12 Q And were there then comments or questions
13 from people from Point Pleasant?

14 A I'm sure there were, yes.

15 Q Do you remember anyone raising an issue about
16 comments being derogatory or questions being
17 derogatory?

18 A I do not know.

19 Q Do you remember anything coming up about
20 embarrassing behavior?

21 A No.

22 Q Do you remember Ms. Giuffrida saying
23 something to the effect of asking you why you didn't
24 like her?

25 A I don't recall that, no.

1 Q Okay. Do you remember anything about anyone
2 talking about trying to help or work on the
3 relationship between the two of you?

4 A No.

5 THE COURT: Is this ever or is this just on
6 that day?

7 MS. OXFELD: Just at the meeting. Just at the
8 meeting.

9 THE COURT: Okay. I just want to make sure
10 time line we're still at the same place.

11 MS. OXFELD: Okay.

12 BY MS. OXFELD:

13 Q So is it your position that Ms. Giuffrida's
14 kiss came out of nowhere?

15 A No. I think I said earlier or at least my
16 recollection is there was some issue with one of the
17 administrators at the high school, and I at this point
18 don't remember which one it was, and I had said to Ms.
19 Giuffrida, you know, "Let us, let the old timers deal
20 with the administrators. Let us go in there and be the
21 bad guys and challenge the administrators. Don't you
22 do it, because you're the new person in town," and I
23 think that, my recollection is that's why she did it,
24 that, you know, we're the ones who are going to stick
25 up for her. So that was my interpretation as to what

1 her motives were.

2 Q So you felt she kissed you kind of as a thank
3 you.

4 A I was trying to figure out, trying to figure out
5 what her motives could be for doing that, and that's
6 the best I could come up with.

7 Q Did you ever ask her what her motive was?

8 A I did not.

9 Q Do you remember any comment by anyone about
10 someone trying to push someone -- still on the same
11 meeting, the meeting with was it High Focus?

12 A High Focus, yeah.

13 Q High Focus. Do you remember any
14 conversations or comments about anyone trying to push
15 someone else out of the district?

16 A I do not.

17 Q Do you remember Ms. Giuffrida saying
18 something about, "What do you mean I don't like you?"

19 A No.

20 Q So basically, the entire conversation that
21 you recall taking place before the kiss was that Ms.
22 Giuffrida complained about an administrator, and you
23 told her that the people that had been there for a long
24 time should take care of the problem?

25 A Correct.

1 MR. WU: I'm sorry. Can you speak up?

2 THE WITNESS: Yes.

3 MR. WU: Actually, don't know if that might
4 work.

5 THE COURT: Sure it does.

6 MR. WU: All right.

7 THE COURT: It's supposed to.

8 THE WITNESS: They better.

9 BY MS. OXFELD:

10 Q And you never asked Dr. Jordan why you were
11 no longer invited to Child Study Team meetings,
12 correct?

13 A I did not.

14 Q You never asked Ms. Bradley why you were not
15 invited, correct?

16 A I did not.

17 Q You assumed that because through the date
18 that this investigation started you had been invited
19 and after that you were not invited, it had something
20 to do with your mentioning Ms. Giuffrida's actions,
21 correct?

22 A After Dr. Jordan and I had a heated exchange, yes,
23 that was -- it was clear to me that I was not invited
24 or wanted at any of the Child Study Team meetings.

25 Q You say "not wanted." Weren't there times

1 when the Child Study Team might need your expertise?

2 A One would think, sure.

3 Q So is it your position that they didn't
4 invite you when they needed your expertise to retaliate
5 against you?

6 A I don't think it was retaliation. I think it was
7 -- I don't know what it was. It was just, you know,
8 somehow, you know, I was now the bad guy in this
9 situation.

10 Q Did you ever go to any administrator and
11 complain about this conduct?

12 A Other than eventually sending an e-mail to Mr.
13 Alfonse, no.

14 Q But you were upset then with I take it --
15 were you upset with Ms. Bradley too?

16 A No, because, you know, she is over at the middle
17 school most of the time, you know. I felt because, you
18 know, Dr. Jordan and I had known each other for so many
19 years, and I have been to his house and, you know, I
20 think I was more hurt with his reaction than anyone
21 else's.

22 Q And his reaction was that you had made a big
23 to do about nothing, correct?

24 THE COURT: Ado.

25 MS. OXFELD: Ado.

1 THE WITNESS: Ado.

2 BY MS. OXFELD:

3 Q A big ado about nothing. Is that his
4 reaction?

5 A With my -- yes.

6 Q Now, since November of 2011, have you ever
7 been invited to Child Study Team meetings?

8 A Yes, I have.

9 Q And on a regular basis or on an irregular
10 basis?

11 A No. On a regular basis.

12 Q And when did that start?

13 A After Ms. Giuffrida left the district.

14 Q And she left in November of 2011, correct?

15 A Correct.

16 Q So basically when you're saying you weren't
17 invited to meetings, you're talking about whatever
18 meetings might have occurred in the month of November
19 2011, correct?

20 A Well, I don't want to limit it to a particular
21 month, but during the time of the investigation, then
22 starting up again in January of 2012.

23 Q So did you ask anyone if you were not being
24 invited so as not to interact with Ms. Giuffrida?

25 A I'm sorry?

1 Q Did you ask anyone if the reason -- well,
2 strike that. Strike that.

3 A Okay.

4 Q So when you say people stopped inviting you,
5 you're talking about a maximum of two months, correct?

6 A For the weekly meetings, yes.

7 THE COURT: What are the two months? She left
8 in November.

9 MS. OXFELD: Well, but the witness thinks he
10 might have not been invited in December.

11 THE COURT: Oh.

12 MR. WU: By the way, sorry, but I think the
13 witness testified that he wasn't regularly invited
14 again until the new year.

15 THE COURT: Okay. I apologize. I didn't
16 catch that.

17 MS. OXFELD: Can I just step out for a moment?
18 I'll be right back in.

19 THE COURT: Is the same staff still there?

20 THE WITNESS: For the Child Study Team?

21 THE COURT: Yeah, the people that you were --

22 THE WITNESS: Yes.

23 THE COURT: -- Bradley or whatever.

24 THE WITNESS: Mm-hmm.

25 THE COURT: Jordan, they were all still there?

1 THE WITNESS: Yes.

2 THE COURT: I just asked if Jordan and Bradley
3 are still with the district.

4 MS. OXFELD: I have no further questions for
5 this witness.

6 THE COURT: Okay.

7 MR. WU: Very brief redirect, Your Honor.

8 THE COURT: I'm sorry?

9 MR. WU: May I have a brief redirect?

10 THE COURT: Sure.

11 MR. WU: Thank you.

12 THE COURT: Sure.

13 REDIRECT EXAMINATION BY MR. WU:

14 Q On cross examination when you were asked
15 about your interactions with Ms. Giuffrida, you said
16 that you didn't have any interactions with her for the
17 period of time from after the investigation and your
18 interview with Mr. Alfonse until when she left the
19 district, correct?

20 A Yes.

21 Q But that wasn't for lack of trying on your
22 part. You said that you would still attempt to make
23 conversation with her?

24 A Well, I would be socially appropriate and say good
25 morning when somebody walks into the office suite, yes.

1 So when I'm sitting at my desk and somebody walks in,
2 whether it was Ms. Giuffrida or Dr. Jordan, I would
3 say, "Good morning."

4 Q And their response was what?

5 A There was no response.

6 Q Okay. Apart from saying good morning to
7 them, did you attempt any other conversation or
8 interaction throughout the day?

9 A I did not.

10 Q Okay.

11 THE COURT: So are you saying that for two
12 months you never spoke to Jordan?

13 THE WITNESS: I did not speak to him for two
14 months.

15 THE COURT: You worked in the same suite.

16 THE WITNESS: Mm-hmm.

17 MR. WU: I'm sorry. You have to say yes or
18 no.

19 THE WITNESS: Yes.

20 THE COURT: But never spoke.

21 THE WITNESS: Correct.

22 THE COURT: Okay.

23 BY MR. WU:

24 Q Is that the same with Ms. Giuffrida as well?

25 A Yes.

1 Q All right. And just to clarify the time line
2 here, from the time when you were interviewed by Mr.
3 Alfonse, starting then you stated that you were not
4 regularly invited to Child Study Team meetings, right?

5 A Correct.

6 Q And how long did that continue on for?

7 A For the rest of that calendar year.

8 Q Okay. When you had the exchange with Dr.
9 Jordan regarding either this incident or whatever the
10 topic of conversation was, something along the lines of
11 "much ado about nothing" has come up before, what was
12 the tone of Dr. Jordan's voice?

13 A He was agitated, angry.

14 Q Okay. Was he accusing you of doing anything
15 that he thought you shouldn't have done?

16 A Yes. He thought that I went to the administrators
17 and accused Ms. Giuffrida --

18 THE COURT: How do you know what he thought?

19 THE WITNESS: Because he told me as he was
20 yelling at me.

21 THE COURT: Then tell me. Say what he said,
22 not what he thought.

23 THE WITNESS: He yelled at me that, well, I
24 can't remember the exact words, but it was the
25 substance that I'm accusing Andrea of sexual abuse or

1 sexual misconduct or sexual whatever, and I felt
2 handcuffed, because I couldn't discuss the case. The
3 reality of it was the only thing I did was answer
4 questions when people asked it, asked me questions. I
5 answered the questions honestly. I made what I thought
6 was a confidential comment to Jackie Moore in the
7 hallway, and the next thing I know, there is a full
8 blown investigation. At the time, I thought that I was
9 the only person involved. I didn't know that there
10 were other people, other staff members involved, and I
11 suspect that Dr. Jordan didn't know that there were
12 other people involved either.

13 BY MR. WU:

14 Q Okay. During that exchange, did Dr. Jordan
15 insult you at all?

16 A I'm one of eight children, so --

17 Q So if he did, you took it in stride.

18 A Right. I didn't take it personally, no.

19 Q Okay. You mentioned on cross examination
20 that you have had spirited debates with Dr. Jordan
21 before. During those debates, did Dr. Jordan ever --

22 MS. OXFELD: Your Honor, I object. I think
23 we're really going afar here, the nature of beyond the
24 extent that the relationship between this witness and
25 Dr. Jordan impacts the issue between Your Honor, I

1 don't know what difference it makes.

2 THE COURT: The questions are appropriate
3 questions. They may be getting a little bit afield as
4 to relevance, but I don't know. We'll see if they tie
5 together. If they don't tie together, it's a harmless
6 error.

7 MR. WU: Thank you, Your Honor.

8 BY MR. WU:

9 Q With regard to the other debates that you
10 mentioned with Dr. Jordan --

11 THE COURT: Over the years?

12 MR. WU: Right. Yes. Yes. Over the years.

13 THE COURT: There have been spirited debates
14 over the 20 years that they have worked together.

15 MR. WU: Yes. Thank you, Your Honor.

16 THE COURT: Intelligent people can differ.

17 BY MR. WU:

18 Q During --

19 THE COURT: Shakespeare said that.

20 BY MR. WU:

21 Q I'm trying to ask was this the first time
22 that Dr. Jordan ever got that upset at you or
23 accusatory?

24 A Yes. In the past, the spirited debates that we
25 had were typically over policy as to, you know, whether

1 the drug policy was appropriate, whether it was too
2 punitive and not preventative in nature. So the past
3 heated exchanges were always over policy. It was never
4 over --

5 THE COURT: Personal?

6 THE WITNESS: -- a personal issue.

7 BY MR. WU:

8 Q All right. And when you made the comment to
9 Ms. Giuffrida about something like, "Oh, let us fight
10 your battles for you," something along those lines,
11 "Let us handle the administrators."

12 A Mm-hmm.

13 Q Do you expect Ms. Giuffrida to respond with a
14 kiss on the lips?

15 A No.

16 Q Had you ever solicited a kiss from Ms.
17 Giuffrida before?

18 A No.

19 MR. WU: Nothing further.

20 THE COURT: Your --

21 MS. OXFELD: Can I just -- oh, go ahead, Your
22 Honor.

23 THE COURT: Thank you.

24 BY THE COURT:

25 Q On redirect just now, you said that you never

1 spoke to Dr. Jordan or Ms. Giuffrida after I guess the
2 investigation started?

3 A Mm-hmm.

4 Q That's when the ball started rolling down the
5 hill?

6 A Correct.

7 Q Okay. Who else on the Child Study Team
8 didn't you speak to after that?

9 A Really none of them.

10 Q So everybody cut you out?

11 A Well, they --

12 Q Was that your feel?

13 A Well, no. It wasn't everyone cut me out, but it's
14 the other people weren't regularly in the high school.
15 So, you know, Marcie Bradley, even though Marcie
16 Bradley --

17 Q Okay. Go ahead. I'm sorry. I apologize.

18 A Yeah. Even though Marcie Bradley is a social
19 worker for the high school, her primary location is in
20 the middle school. Now, the high school and the middle
21 school are physically across the street from each
22 other. So it's running back and forth between the two.

23 Q Okay.

24 A But 90 percent of her time is spent at the middle
25 school.

1 Q Okay.

2 A And so --

3 Q Well, who would normally attend these
4 meetings? You had these weekly meetings. You --

5 A Dr. Jordan.

6 Q Dr. Jordan.

7 A Right. Ms. Bradley.

8 Q Ms. Giuffrida, Ms. Bradley.

9 A The high school guidance counselor.

10 Q Okay.

11 A The high school administrators.

12 Q Okay. So there's three people other than
13 Jordan and Giuffrida, and my question to you is who
14 else wouldn't speak to you?

15 A That was it.

16 Q Just those two.

17 A Just those two.

18 Q Okay. The other people on the Child Study
19 Team you didn't have a problem with.

20 A Correct.

21 Q Okay. All right. Did they ever talk to you
22 about the incident?

23 A Not till after, not till January the following
24 year.

25 Q Okay. Because you weren't allowed to talk to

1 anybody.

2 A Right.

3 Q So let's see. Let me understand that. The
4 other people that would normally attend the weekly
5 Child Study Team reviews --

6 A Mm-hmm. Are the high school guidance counselors.

7 Q Right.

8 A The high school vice principals.

9 Q But you had no -- there was no problem with
10 them.

11 A No.

12 Q Okay. Everybody else was fine. So you're a
13 victim, you became a victim because of two people that
14 wouldn't say hello to you or talk to you otherwise?

15 A Well, yeah. I mean, it was more than just not
16 saying --

17 Q There was a lot of tension in the air, right?

18 A Yeah. It's tension in the air. It's you walk
19 into the suite.

20 Q You were probably cut with a knife, as they
21 say.

22 A As I said, as soon as I walk into the suite, if
23 they were already in there, the doors get shut and, you
24 know, those types of things. So it was a long two
25 months.

1 Q Okay. And then things patched up with
2 Jordan?

3 A Yes.

4 Q And anybody else that was a problem?

5 A Yes.

6 Q Or there wasn't anybody else.

7 A Or there wasn't any.

8 Q Okay. Okay. And how did you resolve it with
9 Jordan, since Jordan is the big issue here?

10 A I don't know.

11 Q Sit down man to man, go let's go out for a
12 beer, we'll go down to --

13 A It was just, you know, let's --

14 Q -- you know, Tiki bar or we'll go over to
15 Martell's and work it out?

16 A As a drug and alcohol coordinator, that would be
17 highly --

18 Q Does that mean you can't have a beer? Is
19 that part of the job description?

20 A No. It's not part of the job description, but no,
21 I don't drink alcohol.

22 Q Oh, you don't. Good for you.

23 A No. So I have bought Dr. Jordan beers, but no, I,
24 you know, I'll drink the diet coke.

25 Q Okay. Did you go to Martell's and have a

1 coke with Jordan?

2 A We did have a discussion, yes.

3 Q Okay. Man to man, worked it out.

4 A Man to man.

5 Q Okay. Nobody got hurt, no bloody noses?

6 A There were no punches thrown.

7 Q Okay. Glad to hear that part.

8 THE COURT: Your turn.

9 MS. OXFELD: I have no further questions.

10 THE COURT: Okay. All right. Nothing else?

11 MR. WU: Nothing else, Your Honor.

12 THE COURT: All right. Thank you, Mr. Foley.

13 THE WITNESS: All right. Thank you, Your
14 Honor.

15 THE COURT: We're going to go off the record,
16 because it's now 1:24, and we're going to take a short
17 lunch break.

18 MR. WU: Not a problem.

19 THE COURT: But you can tell me while -- okay.
20 Mr. Foley, you can talk right from there. What's High
21 Focus?

22 THE WITNESS: High Focus is an outpatient
23 treatment program in Freehold, New Jersey.

24 THE COURT: Oh, okay.

25 THE WITNESS: That has a psychiatric

1 outpatient program and also --

2 THE COURT: Is it privately run?

3 THE WITNESS: It's privately run.

4 THE COURT: Oh, okay. It's not a government
5 thing.

6 THE WITNESS: No. They were coming to present
7 to us what their services are so that we could send
8 children there.

9 THE COURT: If they needed residential
10 treatment?

11 THE WITNESS: Yes, or outpatient treatment.

12 THE COURT: Or outpatient. They do both
13 residential and outpatient?

14 THE WITNESS: Just outpatient.

15 THE COURT: Just outpatient. Okay. Primarily
16 adolescents or is it the whole gamut?

17 THE WITNESS: Well, no. They have adult
18 programs too.

19 THE COURT: Okay.

20 THE WITNESS: But we're only interested in the
21 adolescent program.

22 THE COURT: Right. Right. Okay, thank you.
23 Okay. Nothing else?

24 MS. OXFELD: Nothing further.

25 THE COURT: You're good, Mr. Wu?

1 MR. WU: Yes. I have two more witnesses
2 waiting.

3 THE COURT: Yeah, I know. I meant with Mr.
4 Foley.

5 MR. WU: Oh, absolutely, yes.

6 THE COURT: Okay. Then we'll go off the
7 record. We'll take a short lunch break.

8 (LUNCHEON RECESS)

9 THE COURT: Okay. All right. We are now back
10 on the record. I have on the witness stand Ms. Linda
11 Rocco. Ms. Rocco, would you be so kind as to raise
12 your right hand, please.

13 L I N D A R O C C O, PETITIONER'S WITNESS, SWORN.

14 THE COURT: Thank you. It is my understanding
15 that you are now one of the fortunate people who are on
16 the roles of retirement, and you have been since
17 September 2012, but in the 2011-2012 school year, you
18 were the principal at Point Pleasant High School, not
19 the beach, the borough, Point Borough High School,
20 right?

21 THE WITNESS: Mm-hmm.

22 THE COURT: Okay. You have to answer yes or
23 no.

24 THE WITNESS: Yes.

25 THE COURT: You can't be, "Mm-mm." Don't get

1 picked up. Okay. With all that being said, Mr. Wu,
2 it's your witness.

3 MR. WU: Thank you, Your Honor.

4 DIRECT EXAMINATION BY MR. WU:

5 Q Prior to your retirement, how long were you
6 principal at Point Pleasant High School for?

7 A Five years.

8 Q And what responsibilities did you have as
9 principal?

10 A I ran the entire building.

11 Q Are you familiar with Andrea Giuffrida?

12 A Yes.

13 Q Who was Ms. Giuffrida?

14 A She was --

15 Q Who is Ms. Giuffrida?

16 A She was a member of the Child Study Team, a
17 learning consultant.

18 Q She was a learning consultant for the Child
19 Study Team?

20 A Yes.

21 Q And when was she a learning consultant for
22 the Child Study Team?

23 A I believe she was hired in August of that year, so
24 she started the school year as a learning consultant.

25 Q August of the 2011-2012 school year?

1 A Yes. Mm-hmm.

2 Q Okay.

3 A I'm not exactly sure of the date of hire, but it
4 was around that time.

5 Q All right. Do you recall when you first met
6 Ms. Giuffrida?

7 A I was involved in the interview process.

8 Q How familiar were you with Ms. Giuffrida over
9 the course of the 2011 to 2012 school year?

10 A Just through meetings. I attended a few Child
11 Study Team meetings with her. I didn't work with her
12 on a day to day basis, nor was I her direct supervisor.

13 Q Okay. Did you have any concerns about Ms.
14 Giuffrida?

15 MS. OXFELD: Objection. We're not here about
16 any generalized concerns. We are here about whether
17 certain facts occurred or didn't occur.

18 THE COURT: Where are you going with that, Mr.
19 Wu?

20 MR. WU: I'm going to her knowledge of or how
21 she became aware of the incidents that we're here to
22 discuss.

23 THE COURT: Well, then ask her how she became
24 aware of the incident.

25 MR. WU: All right.

1 BY MR. WU:

2 Q Ms. Rocco, did you ever hear about any
3 incidents involving Mr. Brady, Mr. Drew and Mr. Foley
4 with regard to Ms. Giuffrida?

5 A Yes.

6 Q What -- strike that. How did you hear about
7 those incidents?

8 A The first incident I heard about was from one of
9 my assistant principals, Mrs. Moore, regarding Jim
10 Foley. Do you want me to tell you what I heard?

11 Q Yes.

12 A Okay. I heard that Andrea had went up to him and
13 kissed him on the lips.

14 Q And she told you this?

15 A She told me that.

16 Q All right. Do you recall when that was?

17 A You know, I believe it was in October some time.

18 I'm not really -- I really don't remember exactly.

19 Q That's all right.

20 A And then I heard about an incident involving Pat
21 Brady in the main office, that she had actually grabbed
22 his back side, and then I had heard about David Drew
23 and Andrea saying some comments to him in the
24 cafeteria, but I don't recall who told me about David
25 and Pat.

1 Q When you say that you heard about Mr. Brady
2 getting grabbed on the back side, was there a specific
3 location where he was grabbed?

4 A Surprisingly right outside my office.

5 Q Oh, I meant on his back side.

6 A Oh, yeah. I just meant where it happened. It
7 happened like supposedly right outside my door. Yeah,
8 I heard that he had been grabbed on his back side.

9 Q Where on the back side?

10 A Oh, I don't know. I don't know specifically.

11 Q Okay.

12 A I just know the back side.

13 THE COURT: It's close enough for government
14 work I think.

15 MR. WU: Okay.

16 BY MR. WU:

17 Q And you said you don't recall how you heard
18 about either Mr. Brady or Mr. Drew?

19 A No. No. You know what? I don't. I wish I could
20 be more specific, but I really can't. I think the
21 three events I was made aware of so quickly that I
22 don't recall.

23 Q Okay. Now, you stated that you heard that
24 Ms. Giuffrida made a comment to Mr. Drew. What did you
25 hear about that comment?

1 A I heard that -- do you want me --

2 MS. OXFELD: Objection. Not because it's not
3 relevant, but because we've heard from Mr. Drew, who
4 was a first hand witness, and this witness is clearly
5 only going to testify I heard from someone else.

6 THE WITNESS: That's true.

7 MS. OXFELD: That such and such said, and I'm
8 not sure adding --

9 THE COURT: Hearsay to direct testimony is
10 helpful?

11 MS. OXFELD: -- hearsay to direct testimony,
12 yeah, is going to add much.

13 THE COURT: Isn't that hearsay?

14 MR. WU: It is, Your Honor, but it's further
15 corroboration of what happened.

16 THE COURT: She heard about it.

17 THE WITNESS: Mm-hmm.

18 THE COURT: From somebody, doesn't know who,
19 right? You know Moore --

20 THE WITNESS: Yes.

21 THE COURT: -- told you about Foley.

22 THE WITNESS: Yes.

23 THE COURT: You don't know who told you about
24 Brady, and you don't know who told you about Drew.

25 THE WITNESS: Right.

1 THE COURT: And you didn't talk to Brady, and
2 you didn't talk to Drew.

3 THE WITNESS: No, I did not.

4 THE COURT: Okay.

5 MR. WU: Thank you, Your Honor.

6 THE COURT: You're welcome.

7 BY MR. WU:

8 Q Aside from with regard to Mr. Drew and Ms.
9 Giuffrida, did you hear about any other, any physical
10 interaction between them?

11 A I'm sorry. Could you repeat that?

12 Q Oh, no problem.

13 THE COURT: Did you hear about any physical
14 contact between those two individuals? You said that
15 you heard about Drew, an inappropriate comment in the
16 cafeteria is what you said, I believe.

17 THE WITNESS: Yes.

18 THE COURT: Did you hear about anything else
19 with Drew?

20 THE WITNESS: No.

21 THE COURT: Mr. Drew. Okay.

22 THE WITNESS: Just some comments in the
23 cafeteria, that one.

24 THE COURT: Okay, that's fine.

25 MR. WU: Okay.

1 BY MR. WU:

2 Q And can you be more specific as to the nature
3 of the comments?

4 THE COURT: She wasn't there. If she heard
5 them, she heard them from somebody else. That's all
6 hearsay, Mr. Wu.

7 MS. OXFELD: And let me add, the witness is
8 not even -- as I understand it, did not even speak to
9 Mr. Drew. So she can't corroborate what Mr. Drew said
10 was said to him. She can only corroborate what someone
11 said to her they heard was -- it's kind of beyond.
12 It's hearsay on hearsay, which is certainly going to
13 add nothing.

14 THE COURT: Anything else that you want to add
15 while you're winning?

16 MS. OXFELD: No.

17 THE COURT: Okay. Before you blow the
18 objection. Objection is sustained. It's all hearsay.

19 BY MR. WU:

20 Q When you heard about these incidents, what
21 action did you take?

22 A What actually?

23 THE COURT: What action?

24 BY MR. WU:

25 Q What action did you take?

1 A Well, I called Andrea's direct supervisor, because
2 I wanted to make sure that if I was going to be
3 responsible for anything, that I did it correctly, and
4 so I called Rita Miller. She spoke to the
5 superintendent, and the superintendent turned it over
6 to the Affirmative Action Officer for an investigation.

7 THE COURT: Rita Miller is the head of, the
8 director of special services or something?

9 THE WITNESS: Yes, and Rita Miller was
10 Andrea's direct supervisor at the time.

11 THE COURT: Well, as an --

12 THE WITNESS: Yes.

13 THE COURT: -- LDTC.

14 THE WITNESS: Mm-hmm. Yes.

15 THE COURT: As a director of special services.

16 THE WITNESS: Yes.

17 THE COURT: Or student services, whatever
18 title you gave it.

19 THE WITNESS: Mm-hmm. Correct. Yes. Yes.

20 THE COURT: That's who it would be.

21 THE WITNESS: Yes.

22 THE COURT: So what did you do with Rita?

23 THE WITNESS: I said to her that, "I've been
24 hearing some things and --."

25 THE COURT: What's going on?

1 THE WITNESS: Yeah. "Let's talk about this,
2 and let's come up with a plan and how to proceed."

3 THE COURT: Okay. And as a result of that
4 meeting, what did you do or those conversations with
5 Ms. Miller?

6 THE WITNESS: I waited to hear from the
7 superintendent.

8 THE COURT: How did it get to the
9 superintendent, through you?

10 THE WITNESS: Rita Miller spoke.

11 THE COURT: Or directly by Miller.

12 THE WITNESS: Yes, because she was in his
13 office. She is a central office person. So she spoke
14 to --

15 THE COURT: Okay. You spoke to Miller.
16 Miller spoke to superintendent.

17 THE WITNESS: Yes, and then I got a call from
18 Mr. Alfonse indicating, and he was the Affirmative
19 Action Officer, that he was going to be conducting an
20 investigation and that I was done.

21 THE COURT: Okay. So apparently it went from
22 the superintendent's office down to Alfonse.

23 THE WITNESS: Yes.

24 THE COURT: Alfonse?

25 THE WITNESS: Yes.

1 THE COURT: Okay. You don't know how it got
2 there, because you weren't part of that conversation.

3 THE WITNESS: No. No.

4 THE COURT: But if you connect the dots,
5 somehow it got from the superintendent to Alfonse.

6 THE WITNESS: Yes.

7 THE COURT: Okay.

8 BY MR. WU:

9 Q Did you speak with any of the three men
10 involved in this?

11 A When I heard about the incidents?

12 Q Yes.

13 A No, I did not.

14 Q What about after your conversation with Rita
15 Miller? Did you speak with Mr. Brady, Mr. Drew or Mr.
16 Foley?

17 A No. David Drew did come to me when he found out
18 he had to go see Mr. Alfonse, but that had been just to
19 ask how he should handle this with his wife.

20 Q So you never reached out to --

21 A Never. No, I did not. I did not. No, it was not
22 my place to do that, and I was instructed not to.

23 Q Okay. And the conversation between you and
24 Mr. Drew was just Mr. Drew expressing his concerns over
25 the --

1 A Well, he was upset.

2 Q Okay.

3 A He was upset and uncomfortable.

4 Q Do you recall what he was uncomfortable about
5 exactly?

6 A He was just embarrassed, and he told me he was
7 embarrassed, he was uncomfortable, he didn't want
8 anybody to know, and did I think he should talk to his
9 wife, because I know David for a long time. I know his
10 wife was one of my teachers when I was principal at
11 L.A. Bennett, and I said, "You need to tell her." I
12 recommended that he did.

13 Q What contact did you have with Ms. Giuffrida
14 regarding these incidents?

15 A None. Zero.

16 Q Ms. Giuffrida was a new hire that year,
17 correct?

18 A Yes. Mm-hmm.

19 Q Is there any training session that's provided
20 to new hires before the start of the school year?

21 A There is teacher induction.

22 Q What is teacher induction?

23 A Teacher induction is just a series of workshops
24 where the new staff is instructed on policies and
25 procedures and expectations of the school district.

1 Q Did you attend teacher induction training for
2 the 2011-2012 school year?

3 A No, I wasn't required to. I probably came in and
4 out of some of the sessions, but I didn't have to
5 actually attend them.

6 Q Okay.

7 A And then there is additional teacher training as
8 well, on line training for a variety of subjects.

9 Q Do you recall the nature of the subjects that
10 are covered in on line training?

11 A A lot of safety and security issues, sexual
12 harassment training, because they are required by law.

13 MR. WU: Okay. That's all the questions I
14 have.

15 MS. OXFELD: I have no questions.

16 THE COURT: Thank you, Ms. Rocco.

17 THE WITNESS: Okay.

18 THE COURT: Enjoy retirement.

19 THE WITNESS: Thank you.

20 THE COURT: I'm sure you are.

21 THE WITNESS: Thank you.

22 MR. WU: Thank you very much. Petitioner next
23 calls Mr. Smith to the stand. Is it Mr. or Dr.?

24 MR. SMITH: No, Mr.

25 MR. WU: Okay.

1 THE COURT: First name, Mr. Smith?

2 MR. SMITH: Vincent.

3 THE COURT: Relax. Sit down.

4 MR. SMITH: Okay.

5 THE COURT: Before I forget, I'm going to
6 swear you in. Then I'm going to ask you some
7 questions.

8 MR. SMITH: Okay.

9 THE COURT: Would you raise your right hand,
10 sir.

11 V I N C E N T S M I T H, PETITIONER'S WITNESS, SWORN.

12 THE COURT: Thank you. Have you ever
13 testified before, Mr. Smith?

14 THE WITNESS: It's been a while.

15 THE COURT: All right. Basically, what this
16 is, it's a search for the truth, okay? And you're
17 going to be asked a bunch of questions probably by Mr.
18 Wu, and have you met Ms. Oxfeld?

19 THE WITNESS: Maybe down the road. I know her
20 name. I know she's been around a long time.

21 THE COURT: Not that long.

22 THE WITNESS: No. I only mean that in a good
23 way.

24 THE COURT: Professionally speaking.

25 THE WITNESS: Yes. Well respected. Yes.

1 THE COURT: So, basically, you're going to be
2 asked these questions, and if you don't know the
3 answer, just say you don't know the answer, you know?
4 We're talking about incidents that occurred some two
5 years ago and, you know, memory may have faded. There
6 may have been some questions that you just didn't know
7 the answer to even that day.

8 THE WITNESS: Mm-hmm.

9 THE COURT: Okay?

10 THE WITNESS: Okay.

11 THE COURT: Because you weren't part of a
12 conversation or an event, you didn't witness an event
13 or something like that. Don't guess. You may have a
14 question that is ambiguous in your mind, because you
15 know what happened, but the way the question is asked,
16 it could call for two different answers. Ask for a
17 clarification.

18 THE WITNESS: Okay.

19 THE COURT: Okay?

20 THE WITNESS: Yes.

21 THE COURT: If you ever have a question about
22 anything, just ask.

23 THE WITNESS: Okay. Thank you.

24 THE COURT: And if I can assist you at any
25 time, just tell me.

1 THE WITNESS: Very good.

2 THE COURT: Okay?

3 THE WITNESS: Thank you.

4 THE COURT: What is your position, Mr. Smith?

5 THE WITNESS: Superintendent of schools in the
6 Point Pleasant Borough School District.

7 THE COURT: Okay. And you were in 2011-2012
8 year?

9 THE WITNESS: That's correct.

10 THE COURT: Superintendent Point Borough,
11 2011-2012 year. And you still are?

12 THE WITNESS: I am.

13 THE COURT: God bless you. Okay. Go ahead,
14 Mr. Wu.

15 MR. WU: Thank you, Your Honor.

16 DIRECT EXAMINATION BY MR. WU:

17 Q What are your responsibilities as
18 superintendent of schools?

19 A As the superintendent of schools and the chief
20 school administrator, you know, responsible for the day
21 to day operations of the entire school district,
22 carrying out the policy that the board sets.

23 Q And you were superintendent of Point Pleasant
24 Schools during the 2011-2012 school year.

25 A That's correct.

1 Q During that school year, did you know Andrea
2 Giuffrida?

3 A Yes.

4 Q What was the basis of your knowledge of her?

5 A Well, Andrea was hired I believe in the summer at
6 our August meeting, I believe, as an LDTC to replace
7 somebody who had left, and that's how I first met her.

8 Q Were any concerns brought to your attention
9 regarding Ms. Giuffrida?

10 A Yes.

11 Q What were those concerns?

12 A They were brought to me in the beginning I believe
13 of November by one of my staff members or two of my
14 staff members actually, Rita Miller, the supervisor of
15 pupil personnel services, and Linda Rocco, principal of
16 Point Borough High School at the time came in my office
17 and discussed some incidents that had taken place at
18 the high school.

19 Q And what were those incidents? What did they
20 tell you?

21 A They brought to my attention three incidents of
22 inappropriate conducts, sexual harassment, you know,
23 incidents alleged at that time I should say.

24 Q And did you know who was involved in these
25 incidents at that time?

1 A At that time in that conversation, yeah, the names
2 did come out who were involved. They went over the
3 incidents. Mr. Rocco I know did, because she had the
4 knowledge that brought to Ms. -- you know, she brought
5 those names to Ms. Miller. So they, if I recall, were
6 bringing, you know, filled me in on what took place at
7 the time.

8 Q Okay. And who was involved in these
9 incidents?

10 A Mr. James Foley, students' assistance counselor at
11 Point Borough High School, Patrick Brady, physical
12 education teacher at the high school, and Mr. Dave
13 Drew, special education teacher at the high school.

14 Q And Ms. Giuffrida's name also came up,
15 correct?

16 A That's correct.

17 Q After Ms. Miller and Ms. Rocco brought those
18 incidents to your attention, how did you respond?

19 A I responded by, you know, after reviewing them and
20 taking everything into consideration we, you know,
21 determined that investigation needed to be done because
22 of what was being told to me, and we proceeded with
23 that by directing Mr. Robert Alfonse, who was our
24 director of curriculum instruction but also had the
25 responsibilities of being our Affirmative Action

1 Officer for the school district.

2 Q I'm sorry. You directed Mr. Alfonse?

3 A To start an investigation.

4 Q Okay. How long did it take from the time
5 when Ms. Rocco and Ms. Miller informed you of these
6 allegations to when you directed Mr. Alfonse to begin
7 an investigation?

8 A It took approximately from start to finish by our
9 final actions I would say a little less than three
10 weeks.

11 Q Oh. My question was from the time that you
12 were first informed of the incidents --

13 A Oh, I'm sorry. I thought you meant the --

14 Q -- until when Mr. Alfonse was directed to
15 begin an investigation. What was the time span in
16 between those two dates or those two events?

17 A All right. Let me clarify that then. I'm sorry.

18 Q Okay.

19 A Can I ask for clarification?

20 THE COURT: Sure.

21 BY MR. WU:

22 Q Absolutely.

23 A You're asking once Mr. Alfonse or once those were
24 brought to my attention, what was the time frame I
25 asked Mr. Alfonse to start his investigation?

1 Q Yes, that's correct.

2 A It was basically within a day.

3 Q Okay. And what direction did you provide Mr.
4 Alfonse in regard to his investigation?

5 A You know, based on our board policy, we asked him
6 to conduct an interview, you know, interviews with
7 everybody involved, you know, the three gentlemen, Ms.
8 Giuffrida and anybody, you know, anybody else who had
9 that knowledge that was brought to our attention.

10 Q Okay.

11 A And there were other people later on down the road
12 that were interviewed.

13 Q All right. And you stated that his position
14 was he was director of curriculum and instruction, and
15 he also served as the district's Affirmative Action
16 Officer?

17 A That's correct.

18 Q So what were his duties as Affirmative Action
19 Officer?

20 A It was to, you know, handle any complaints that
21 would come, you know, directed from any of the schools
22 from any of the personnel and to provide, you know,
23 training if necessary on sexual harassment, you know.
24 He would be responsible for doing that in conjunction
25 with myself.

1 Q All right. Were you involved in the
2 investigation conducted by Mr. Alfonse?

3 A I was not directly involved, no. I did not do any
4 -- I didn't conduct any of the interviews. That was
5 his job, because ultimately decisions would have to be
6 made by myself after in reviewing all the
7 documentation, all the reports that he would provide to
8 me. So it was ultimately my job to make that decision,
9 so no, I did not interview Ms. Giuffrida. I didn't
10 interview Mr. Brady, Mr. Foley or --

11 THE COURT: Drew.

12 THE WITNESS: Mr. Drew. We did have a meeting
13 eventually with Ms. Giuffrida, but I didn't interview
14 her during. That was Mr. Alfonse's job.

15 BY MR. WU:

16 Q Okay. And did you receive anything from Mr.
17 Alfonse at the conclusion of his investigation?

18 A I received a report prepared by Mr. Alfonse.

19 Q Okay. If you could turn, there is a binder
20 in front of you, if you could turn to tab P-5.

21 A Yes.

22 Q And if you could just put -- there should be
23 one, two, three, four pages in the document at P-5.

24 A Yes.

25 Q If you need to review it, please do so, but

1 do you recognize P-5?

2 A Yes, I do.

3 Q What is P-5?

4 A P-5 is the report that was prepared by Mr. Alfonse
5 in which eventually he presented to me.

6 Q And --

7 A With his recommendations.

8 Q Okay. Okay. And what is the date of this
9 report?

10 A It's November 17th.

11 Q And you said it was presented to you?

12 A That's correct.

13 Q If you could flip to the last page of P-5.
14 There is a signature half way down the page. Do you
15 recognize that signature?

16 A Yes, I do.

17 Q And whose signature is that?

18 A It's, "Robert H. Alfonse."

19 MR. WU: Your Honor, at this time I'd like to
20 ask that P-5 be moved into evidence.

21 MS. OXFELD: I'd object for the same reason I
22 had objected to a previous document. Mr. Alfonse's
23 conclusions are just that, his conclusions. It's up to
24 the Court to draw its own conclusions.

25 THE COURT: Why is this different now than it

1 was before?

2 MS. OXFELD: Well, it was a different
3 document.

4 THE COURT: No, no, not you. I'm talking to
5 Mr. Wu.

6 MR. WU: Your Honor, it's --

7 THE COURT: I already ruled that it wasn't an
8 appropriate document.

9 MR. WU: Your Honor, this is a business
10 record, something that was created in the ordinary
11 course of business.

12 THE COURT: I don't care.

13 MR. WU: In the course of --

14 THE COURT: Let me tell you something. This
15 is -- you have a bunch of interviews in here, okay?
16 I'm looking at this thing, and I see one, another
17 interview was held. Wait a minute. I'm sorry. I just
18 saw another name, but maybe it isn't -- was at the
19 request of Lee Smarjiosi (phonetic). I don't know how
20 to pronounce that. I mean, it's replete with hearsay
21 and legal conclusions as to whether or not sexual
22 harassment was committed. I know it's, you know, this
23 is no different than a police report that would come in
24 on a -- that would be requested on a criminal trial
25 because it's a business record of the police

1 department, but it contains interviews of people that
2 have not testified.

3 MR. WU: That's correct, Your Honor. Some of
4 the statements made here witnesses have testified to.

5 THE COURT: Some have.

6 MR. WU: That is correct.

7 THE COURT: But some have not.

8 MR. WU: That is correct, Your Honor. To the
9 extent that this report contains hearsay from witnesses
10 that the Court has not heard from, that can certainly
11 be ignored by the Court or stricken from this exhibit.
12 To the extent that there are any conclusions, legal
13 conclusions as to whether or not sexual harassment
14 occurred, respectfully, Your Honor is in the position
15 as a trier of fact to review all of this testimony and
16 all of this evidence essentially de novo.

17 The fact that someone else concluded that
18 these actions were inappropriate or constituted sexual
19 harassment is all well and good, but Your Honor is
20 entitled to give that as much or as little weight as
21 you deem necessary.

22 THE COURT: That's true. That doesn't mean I
23 have to admit the document into evidence. It means I
24 have the option to admit the document into evidence,
25 and I'll tell you, and I'll say it on the record,

1 because I've said it a dozen, dozen, hundreds of times
2 before, Mr. Wu, the problem with allowing hearsay
3 documents into evidence, even if I write in my initial
4 decision, whichever way this goes -- I don't know how
5 it's going to go because I haven't heard all the
6 testimony yet -- but even if I write in my initial
7 decision that I didn't consider P-5, it's P-5, right?

8 MR. WU: Right.

9 THE COURT: I didn't consider P-5, P-5 is
10 going to be in evidence, and it's going to go up to the
11 Board of Examiners who are not attorneys, who are lay
12 persons who don't understand how to distinguish between
13 good evidence and bad evidence, and that is prejudicial
14 to any Petitioner or Respondent that appears before in
15 this Court, because all it does is I find it muddles
16 the record.

17 I'll be perfectly honest with you. I used to
18 allow everything in, and then I would write my initial
19 decision dissecting the good evidence from the bad
20 evidence, and then it would go to the higher authority
21 who makes the final decision, which are your clients,
22 and they would incorporate all the bad evidence in
23 their decision.

24 Well, that's not fair to any litigant. If
25 this was in Superior Court it wouldn't be allowed, and

1 they should have the same protection that they should
2 have in Superior Court. Just because hearsay is
3 allowed in administrative hearings, there is a reason
4 for that, and it's because a lot of those hearings are
5 informal. This isn't one of those hearings that are
6 informal.

7 In other words, you see it all the time where
8 in public assistance cases the agency will come in with
9 what's called a "fair hearing packet," and it will give
10 a history of the client, and it's a business record.
11 Well, that's fine, okay? Because the agency has those
12 documents anyway. That doesn't make any difference.
13 Those are agency documents. So those things come in
14 because the agency has access to them.

15 The agency does not have access or should not
16 have access to hearsay documents and documents that
17 haven't been entered into evidence in the initial
18 hearing, all right? That's the problem. The problem
19 is the prejudice to anyone that comes before this
20 Court, and whether it would be Mr. Smith or Ms.
21 Giuffrida or anybody else. Their fate isn't being
22 decided by me. Their fate is being decided by the
23 higher authority, in this case, the Board of Examiners.
24 I guess the Board of Examiners, is that it?

25 MR. WU: That's correct, Your Honor.

1 THE COURT: Okay. The Board of Examiners,
2 well, they're going to look at these documents, and
3 they're going to say oh, Alfonse said it was okay, so
4 it must be okay. He's the one that did the
5 investigation. No. That ain't the way it's going to
6 work, and we have his report right here. I believe his
7 report more than I believe her testimony or Mr. Smith's
8 testimony or Ms. Rocco's testimony, you know, I believe
9 his report. Well, the report is replete with hearsay
10 and a legal conclusion. It's my job to come up with
11 the conclusion based on the facts and the testimony and
12 the other documents that aren't hearsay and are
13 evidentiary. That's what I'm going to decide, I'm
14 going to make my decision on, and that's what the board
15 should make their decision on. That's my ruling.

16 MR. WU: Thank you, Your Honor. If I may
17 respectfully just note my objection to your ruling.

18 THE COURT: So noted, and I accept it.

19 MR. WU: Thank you. That took out a lot of
20 questions that I was going to ask, so I'll move along.

21 THE COURT: Well, you could ask Mr. Smith
22 about a lot of other things.

23 BY MR. WU:

24 Q Not done just yet, Mr. Smith. One moment.
25 When you received Mr. Alfonse's report, what did you

1 do? What did you -- sorry. What did you do after you
2 received Mr. Alfonse's report?

3 A Once I reviewed it and, you know, with careful
4 consideration because I know what was at stake, I made
5 a recommendation, and I said based on the report, made
6 a recommendation that to the board ultimately to give
7 Ms. Giuffrida her 60 day notice and that we would be
8 terminating her.

9 First it was a suspension with pay and then
10 recommending the board that we terminate her. She was
11 a non-tenured employee, so we gave her her 60-day
12 notice, and I believe it was at our November board
13 meeting with the 60 days running through January, I'm
14 not sure of the date, but 60-day notice, and she was
15 paid through that entire time.

16 THE COURT: January 20th seems like it might be
17 an appropriate date?

18 THE WITNESS: That sounds appropriate, Your
19 Honor.

20 THE COURT: Right about there?

21 THE WITNESS: Yes.

22 THE COURT: Give or take a day?

23 THE WITNESS: Yes.

24 THE COURT: Okay.

25 BY MR. WU:

1 Q Did you speak to Mr. Alfonse about his
2 report?

3 A Did I speak to him?

4 Q Yes.

5 A Well, when he -- yeah. When he certainly handed
6 it to me, we had some conversations about it, but, you
7 know, I took it, you know. I thought it was a pretty
8 thorough report, you know. I'm not in the legal terms
9 with hearsay and all that.

10 THE COURT: No, I know.

11 THE WITNESS: I, you know, just thought it was
12 thorough. I made my decisions based on his report, and
13 knowing, you know, the people involved, the credibility
14 of the witnesses and all that, so I mean, it was a
15 judgement. It was a judgement on my -- you know, it
16 was a decision that the superintendent of schools had
17 to make, and based on that, I made that decision, and
18 based on the fact that Ms. Giuffrida was a non-tenured
19 employee. So that was, you know, that's why I felt it
20 was the best interest of the district at the time to do
21 what I did.

22 BY MR. WU:

23 Q Mr. Smith, how long have you been
24 superintendent of schools for Point Pleasant?

25 A Since July 1st of 2008.

1 Q Prior to that were you also a superintendent
2 in another school?

3 A I was superintendent in the Woodbridge Township
4 School District.

5 MS. OXFELD: That's how we know each other.

6 THE WITNESS: That's where it was, Nancy.

7 Absolutely. Ms. Oxfeld.

8 THE COURT: She spent a lot of time in the
9 principal's office when she was a girl.

10 THE WITNESS: Yes. Definitely with Toyce
11 (phonetic) Collins and the gang.

12 MS. OXFELD: Yes. Yes.

13 THE WITNESS: But yes, I was superintendent in
14 Woodbridge Township. I was there a total of 17 years,
15 11 as the business administrator and about 6 and a half
16 between acting and permanent job from late November
17 2001 until June 30th of 2008 before I took the job in
18 Point Pleasant as in the role of superintendent.

19 BY MR. WU:

20 Q Based on your experience as a school
21 administrator in a school setting, would it be
22 inappropriate for a man to grab a woman on the rear
23 end?

24 A Yes.

25 Q What about would it be inappropriate for a

1 man to kiss a female colleague on the cheek if it was
2 unsolicited?

3 A Yes.

4 Q What about unsolicited hug from a --

5 A Yes.

6 Q -- male colleague to a female colleague?
7 That would also be inappropriate? And an unsolicited
8 kiss on the lips from a male colleague to a female
9 colleague?

10 A In my opinion, yes.

11 Q Would it be any less inappropriate for a
12 woman to do any of those same acts to a male colleague?

13 A No. It would be treated the same way.

14 Q As -- sorry. Strike that. This was Ms.
15 Giuffrida's first year in the Point Pleasant School
16 District, correct?

17 A That's correct.

18 Q Now, new teachers undergo teacher induction
19 training, right?

20 A That's correct.

21 Q What exactly is teacher induction training?

22 A We have it in Point Pleasant. We have a three
23 year induction program. It starts with, you know,
24 first it's anybody at the time. Well, it's three
25 years, because that's how long it took originally to

1 before the change of the wall to get tenure. So we
2 would have a program for each year that leading up to
3 tenure they would be in a program where, you know, they
4 would, you know, different like seminars, professional
5 development on a variety of subjects, you know, ranging
6 from professionalism to classroom instruction
7 strategies, you name it. It's all done in house by our
8 own staff by some of our, you know, master teachers and
9 veteran teachers, administrators.

10 Q Okay. If you could turn with me to P-10.
11 Are you there?

12 A Yes.

13 (P-10 marked for
14 Identification)

15 Q Do you recognize what P-10 is?

16 A Yes, I do.

17 Q And what is P-10?

18 A P-10 is part of our teacher induction program.
19 This is actually a presentation, a Power Point
20 presentation that is done at the very first day of our
21 new teacher orientation that takes place in August, you
22 know. Usually in August about a week and a half prior
23 to the opening of school, we bring our new staff
24 members in, not just new teachers to the field, but
25 teachers who are even veteran teachers come in for

1 this, and this is a Power Point about professionalism,
2 expectations on how to act and, you know, covers all
3 those areas, ethics.

4 MR. WU: Okay. Your Honor, at this time I
5 would like to ask that P-10 be moved into evidence.

6 MS. OXFELD: No objection.

7 THE COURT: P-10 is in.

8 (P-10 marked in
9 Evidence)

10 MR. WU: Thank you, Your Honor.

11 BY MR. WU:

12 Q Were you present at the teacher induction
13 training in August 2011?

14 A Yes, I was.

15 Q Do you recall if Ms. Giuffrida was present
16 there?

17 A Yeah, I believe, yeah, she was.

18 Q I'd ask you to flip over to P-9. Do you
19 recognize P-9?

20 (P-9 marked for
21 Identification)

22 A It's a sign in sheet from August 24th, 2011. It
23 was the first day of the new teacher orientation.

24 Q And do you see Ms. Giuffrida's name anywhere
25 on this sheet?

1 A Yes, on the first page, the fourth name down on
2 the first page.

3 Q And there is a signature?

4 A Yes, there is.

5 MR. WU: Your Honor, at this time I'd like to
6 ask that P-9 be moved into evidence.

7 MS. OXFELD: No objection.

8 THE COURT: Thank you.

9 (P-9 marked in
10 Evidence)

11 MR. WU: Thank you. I have no more questions.

12 MS. OXFELD: I have no questions.

13 MR. WU: Your Honor, do you have any
14 questions?

15 THE COURT: You do or do not?

16 MS. OXFELD: I do not have any questions.

17 THE COURT: Okay. No. Now, is there
18 something in P-10 that you wanted to highlight?

19 MR. WU: Oh, sure. Sorry about that.

20 BY MR. WU:

21 Q Could you flip back to P-10?

22 A Mm-hmm.

23 Q You mentioned before that professionalism
24 and professional conduct was discussed at teacher
25 induction training. Could you point out the slides

1 that cover those topics?

2 A Give me a few minutes.

3 Q Absolutely. Take as much time as you need to
4 review the slides.

5 A Well, I mean, it starts on the first page. If
6 you're on page 1, you know, it talks about our
7 "district expectations." It talks about "professional
8 hallway and classroom etiquette," about, "Do not use
9 profanity, inappropriate slangs, unprofessional
10 demeanor," you know, a variety of things there. I
11 mean, the whole thing it talks, you know, even on page
12 2, "Student/Teacher Relationships" talks about,
13 "professionalism," I think, you know, eludes to that,
14 "Appropriate computer professionalism" and different
15 types of professional how to deal with things.
16 "Professional attire, attire for men, attire for
17 women."

18 Q I'm sorry. If you're looking at a particular
19 page, if you could refer to.

20 A I'm sorry. The last one was page 5. It talks
21 about, "Professional attire, attire for men, attire for
22 women." Page 4, you know, is talking about, "Cell
23 phones, professional," you know, the use of them and
24 all, "Teacher/parent conferences." Yeah. Page 7
25 about, "Point Pleasant educators and the public." It

1 talks about, "Behavior in public, public conversations,
2 alcohol," you know, before different events. "Keep
3 students out of your car." So it addresses, you know,
4 professionalism in a variety of different ways.

5 Q Okay. Thank you.

6 A And what we expect of our teachers.

7 MR. WU: That's all I have, Your Honor.

8 THE COURT: Nothing?

9 MS. OXFELD: No questions, Your Honor.

10 MR. WU: At this time, Petitioner rests.

11 THE COURT: Okay. We're going to stop just a
12 second.

13 (BRIEF RECESS)

14 THE COURT: Okay. We're now back on the
15 record. Ms. Giuffrida, would you be so kind as to
16 raise your right hand.

17 A N D R E A G U I F F R I D A, RESPONDENT WITNESS,
18 SWORN.

19 THE COURT: Okay. State your name and speak
20 loud.

21 THE WITNESS: Andrea Giuffrida.

22 THE COURT: Thank you.

23 DIRECT EXAMINATION BY MS. OXFELD:

24 Q Ms. Giuffrida, by whom are you currently
25 employed?

1 A Keyport School District.

2 Q And what position do you have with them?

3 A Learning consultant on the Child Study Team.

4 Q How long have you had that position?

5 A I began working there in September of 2013.

6 Q Okay. Now, I'd like you to let the Court
7 know, do you have any New Jersey certifications?

8 A I do.

9 Q What are those?

10 A I have a certificate of advanced standing in
11 elementary education. I have a standard certificate in
12 teacher of students with disabilities and a standard
13 license in learning disabilities teacher consultant.

14 THE COURT: Okay. We've got to slow it down.
15 Advanced in?

16 THE WITNESS: Elementary education.

17 THE COURT: Advanced standing, what does that
18 mean, elementary ed as opposed to a standard elementary
19 ed?

20 THE WITNESS: I don't know.

21 THE COURT: Okay.

22 THE WITNESS: I never worked under it. I just
23 applied for it.

24 THE COURT: Okay. Advanced standing,
25 elementary ed. Standard.

1 THE WITNESS: Teacher of students with
2 disabilities.

3 THE COURT: Standard teacher of students with
4 disabilities.

5 THE WITNESS: And a standard learning
6 disabilities teacher consultant.

7 THE COURT: Okay.

8 BY MS. OXFELD:

9 Q And before you were certificated in New
10 Jersey, did you work in New York State?

11 A Yes.

12 Q And did you have any certificates in New York
13 State?

14 A Yes.

15 Q And what were those certificates?

16 A I had a standard certificate for elementary
17 education, which was a certificate from nursery through
18 sixth grade, and I had a special education teaching
19 certificate as well, which was a kindergarten through
20 12th grade.

21 Q And did you work under those certificates in
22 New York State?

23 A Under I believe just the general education one,
24 the elementary education one.

25 Q For what period of time?

1 A I began working there in 1993, and I was employed
2 in New York until September of 2004.

3 Q And at that point did you relocate to New
4 Jersey?

5 A Yes.

6 Q And did you begin work in New Jersey in
7 September 2004?

8 A Yes.

9 Q And where did you work?

10 A Middletown Township School District.

11 Q And what position did you have there?

12 A Learning consultant.

13 Q And how long did you work there?

14 A Just that school year. I was working on an
15 emergency certificate at the time.

16 Q One year, and then you were not renewed?

17 A No. They needed to find a non-emergent hire.

18 Q And where did you go next?

19 A To Keansburg.

20 THE COURT: That was 2005?

21 THE WITNESS: Mm-hmm.

22 MR. WU: Oh, if you can say yes.

23 THE COURT: You have to say yes.

24 THE WITNESS: Yes. Sorry.

25 THE COURT: That's all right. 2005.

1 BY MS. OXFELD:

2 Q And what position did you have there?

3 A Also learning consultant.

4 Q How long were you there?

5 A Just a few months. I was there from September of
6 that year until January of 2006.

7 Q And why did you leave?

8 A A better position.

9 Q Okay. Where was the better position?

10 A In Jackson.

11 Q So you went to Jackson in January of 2006?

12 A Correct.

13 Q And was that also as a learning consultant?

14 A Yes.

15 Q And how long were you there?

16 A Two and a half years about.

17 Q And then did you leave there?

18 A I did.

19 Q And why did you leave there?

20 A More money.

21 Q And where did you go for more money?

22 A South Brunswick.

23 Q Okay. When did you go to South Brunswick?

24 A It was September of 2008.

25 Q And that was also as a learning consultant.

1 A Correct.

2 Q And how long were you there?

3 A Three years.

4 Q And what happened at the end of three years?

5 A I wasn't rehired.

6 THE COURT: Okay. You were in Jackson. You
7 left Keansburg for Jackson for more money, right?

8 THE WITNESS: For a better position. I don't
9 know that it was more money, but it was a better job.

10 THE COURT: Okay. You said you left someplace
11 for more money.

12 THE WITNESS: Jackson to South Brunswick.

13 THE COURT: You left Jackson for more money?

14 THE WITNESS: Mm-hmm.

15 THE COURT: Okay. I'm sorry. Okay. Better
16 position. And then when did you -- I'm sorry. What
17 came after Jackson?

18 THE WITNESS: South Brunswick.

19 THE COURT: And what year was that?

20 THE WITNESS: That was September of 2008.

21 THE COURT: South Brunswick, and that was for
22 you left Jackson for Brunswick for more money.

23 THE WITNESS: Correct.

24 THE COURT: That was the more money one?

25 THE WITNESS: Yes.

1 THE COURT: Okay. Okay. And then that was
2 for three years, right?

3 THE WITNESS: Yes.

4 THE COURT: So then in 2011, that's when you
5 started --

6 THE WITNESS: With Point Pleasant, yes.

7 THE COURT: Point Borough.

8 BY MS. OXFELD:

9 Q How long were you in Point Pleasant?

10 A I began there in August of 2011, and I was there
11 through the middle of November before I was suspended
12 with pay through January.

13 Q So in November you were given 60 days notice?

14 A Correct.

15 Q And suspended with pay, and the end of your
16 employment was in January.

17 A Yes.

18 Q And did you work at all between Point
19 Pleasant and Keyport?

20 A Yes.

21 Q Where did you work?

22 A Hazlet.

23 Q And when did you go to Hazlet?

24 A September of 2012.

25 Q And how long were you in Hazlet?

1 A Through March of 2013.

2 Q And why did you leave?

3 A It was a long term sub position.

4 Q And did you go anywhere else before Keyport
5 or was Keyport your next position?

6 A Keyport was my next position.

7 Q I'd like you to turn your attention to Point
8 Pleasant. Where were you physically assigned to work?

9 A Point Pleasant Borough High School.

10 Q And where was your office?

11 A There was a suite of offices for the Child Study
12 Team and the athletic director.

13 Q And who worked in that suite of offices?

14 A Myself. I had an office. There was Dr. Jordan,
15 and Marcie Bradley shared another office. They were
16 only there part of the time. Jim Foley had his office
17 in there. The athletic director, Dave Kirk, had an
18 office in there, and the secretary to Mr. Kirk was in
19 the main area.

20 Q So did you say that Dr. Jordan and Ms.
21 Bradley shared an office?

22 A Mm-hmm. Yes. I'm sorry.

23 Q Can you briefly describe your duties as a
24 learning consultant?

25 A Yes. I was responsible for case management of

1 classified students, and I was responsible for doing
2 educational evaluations for students who were either
3 being referred for special education or already
4 classified.

5 THE COURT: What job did Kirk have, athletics?

6 THE WITNESS: Athletic director.

7 BY MS. OXFELD:

8 Q And were you here when Mr. Foley testified?

9 A Yes.

10 Q And he made some mention of weekly meetings.

11 A Yes.

12 Q Do you recall those meetings?

13 A Yes.

14 Q And what were those meetings?

15 A Usually they were informal staffings where we
16 would just talk about any common children on our case
17 loads and how we could support their development or
18 their growth and any overlaps between our children.

19 Q There has been reference to your having
20 kissed Mr. Foley at such a meeting. Did you kiss him?

21 A Yes.

22 Q Can you tell us the events that led up to the
23 kiss?

24 A Yes. At the meeting, there was a guest speaker
25 there, and Mr. Foley had been I guess criticizing was

1 my impression of what he was saying. He was making
2 comments as to the number of questions that I had asked
3 the guest speaker.

4 Q So when you say he was criticizing, you mean
5 he was criticizing you? You have to say yes. You
6 can't just nod your head.

7 A Yes, and Mrs. Bradley at that time actually.

8 Q And what was the criticism?

9 A That we asked too many questions.

10 Q Okay. And can you describe the conversation
11 and who said what?

12 A To the best of my recollection, Mr. Foley was
13 indicating that we asked too many questions, and then
14 if I recall, I said something to him, to Mr. Foley
15 like, "Why are you always criticizing what I do?" And
16 I believe he then replied, "I'm looking out for you,"
17 or, "I want to take the heat for, you know, stuff you
18 should stay out of," and I believe the conversation I
19 think I said to him was, "Why don't you like me?" And
20 he says, "I do like you, that's why I'm trying to take
21 the heat for you" kind of thing, and it was at that
22 time that I responded with a thank you kiss, if you
23 will, you know. I mean, it wasn't meant for
24 misinterpretation. It was just adding levity to the
25 situation, and I didn't know that it would be received

1 in that way.

2 Q Did Mr. Foley say anything when you kissed
3 him?

4 A I don't believe he did.

5 Q And do you know Mr. Drew?

6 A Yes.

7 Q And how do you know Mr. Drew?

8 A He was a teacher at the school.

9 THE COURT: How do you know him?

10 THE WITNESS: He was a teacher at the school.

11 BY MS. OXFELD:

12 Q Let me just back up back to Mr. Foley for a
13 minute.

14 A Okay.

15 Q Prior to this occasion when you kissed him,
16 had you had interactions with Mr. Foley?

17 A Every day.

18 Q And what was the type of interaction?

19 A Cordial, professional, borderline friendly.

20 Q And you and he worked in the same office
21 area, correct?

22 A Very closely.

23 Q And did you both deal with some of the same
24 students?

25 A Yes.

1 Q Now, I'd like you to turn your attention to
2 Mr. Drew. How did you know Mr. Drew?

3 A He was a teacher at the high school.

4 Q And had you had dealings with him in say
5 September and early October?

6 A Yes.

7 Q And what type of dealings were they?

8 A He was a special education teacher, so he worked
9 in that capacity with a lot of the students that I had
10 case management responsibility for.

11 Q Did you ever speak to him in the cafeteria?

12 A Yes.

13 Q And what would be the occasion of your
14 speaking to him in the cafeteria?

15 A What would we be discussing?

16 Q Yeah. First of all, what would cause you to
17 be in the cafeteria and what would cause him to be in
18 the cafeteria?

19 A He was helping me out. He had just moved to the
20 high school from the middle school, and I had been
21 working very closely with a freshman student who was
22 having difficulties. Mr. Drew had been the teacher on
23 record at the middle school, so he had more knowledge
24 of this particular student than current high school
25 teachers, and so in an effort usually when I would

1 speak with him, it was regarding this one in particular
2 child, but I would sometimes seek him out in the lunch
3 room while he was on his duty to be able to have those
4 conversations without interrupting his class time.

5 Q So he would be in the lunch room on --

6 A Lunch duty.

7 Q -- lunch duty. And you would seek him out in
8 order to speak to him.

9 A At times. I would often try and speak with
10 teachers on their duties to eliminate the need to give
11 up their prep times or their teaching time.

12 Q Did you ever make any comments to him about
13 your age, your physical appearance, how you looked,
14 anything like that?

15 A No.

16 Q Did you ever tell him that you weren't bad
17 looking for someone who was around 40 and in menopause
18 or anything to that effect?

19 A No.

20 Q Did you ever say to him anything about your
21 breasts being okay for someone your age?

22 A No.

23 Q Was there ever any occasion when you gave him
24 a hug and/or a kiss?

25 A Yes.

1 Q And how did that come about?

2 A I thought that we had a friendly relationship. We
3 had spoken about both work related things and other
4 topics, and apparently on one occasion I told him I was
5 having a bad day and hugged him.

6 Q Did you kiss him?

7 A I don't recall. I might have kissed him on the
8 cheek.

9 Q Did he say anything to you at the time?

10 A No.

11 Q And do you know Mr. Brady?

12 A I do.

13 Q And do you recall any time when you were in
14 the office and Mr. Brady was discussing his new child?

15 A Not specifically.

16 Q Do you recall any incident of being in the
17 office with Mr. Brady where people were looking at
18 anything or commenting on a baby or you went by him or
19 anything like that?

20 A Not specifically.

21 Q Did you ever walk by him and pinch him on the
22 butt or touch him on the butt?

23 A No.

24 Q Was there ever a time when Mr. Brady made any
25 mention to you that you had touched him, pinched him in

1 any way inappropriately?

2 A No.

3 Q Now, the three individuals I've named, Mr.
4 Brady, Mr. Drew and Mr. Foley, did any of them at any
5 time tell you you had behaved inappropriately?

6 A No. As a matter of fact, until the investigation
7 began, they all continued to have cordial, friendly
8 working relationships with me and never gave any
9 indication that there was anything out of the ordinary.

10 Q Did you ever send any kind of e-mail to
11 anyone about whether you might have been
12 misinterpreted?

13 A I did.

14 Q And who was that, and why did you send it?

15 A That was to David Drew.

16 Q And what did you send him in the e-mail?

17 A I just think it was a sentence or two that just
18 said, "I'm sorry if my touching you made you
19 uncomfortable."

20 Q And why did you say that, send that?

21 A Again, I don't recall the exact moment, but I
22 guess it was a vibe I got from him that I thought maybe
23 it was an uncomfortable thing for him, and I didn't
24 want it to be.

25 Q And did he respond?

1 A He did.

2 Q And what was his response?

3 A That it was "not a problem."

4 Q Looking back at your conduct at Point
5 Pleasant, do you feel that you did anything wrong or
6 that you could have acted differently in any way?

7 A Yes.

8 Q And looking back, how do you view your
9 conduct?

10 A Looking back, I see that, you know, what may seem
11 like innocuous conduct to me might be interpreted by
12 somebody else as something more so, you know, I believe
13 it was my past experiences and my past work experiences
14 that made me think that those situations that I did
15 engage in were not going to be interpreted as sexual
16 misconduct but just a friendly camaraderie among
17 colleagues, and I now befriend nobody out of fear that
18 it will be misinterpreted.

19 MS. OXFELD: I have no other questions for
20 this witness.

21 THE COURT: Cross?

22 MR. WU: Thank you, Your Honor.

23 CROSS EXAMINATION BY MR. WU:

24 Q Ms. Giuffrida, you were hired in the summer
25 of the 2011-2012 school year?

1 A Correct.

2 Q Do you recall the date of your hire?

3 A I don't.

4 Q That's all right, but prior to that school
5 year, you had not worked at the Point Pleasant Borough
6 School District.

7 A Correct.

8 Q Okay. And so this is your first year in any
9 capacity working in that district.

10 A Yes.

11 Q And you went through your teacher induction
12 training during the summer before you began working
13 there, correct?

14 A I think it was ongoing. We had to stay like once
15 a week or twice a month or whatever.

16 Q Okay.

17 A I think the first training was in the summer.

18 Q Okay. If you could just turn with me to the
19 binder in front of you to P-9.

20 A Okay.

21 Q Let me know when you're there.

22 A Okay. I'm there.

23 Q You signed your name on the sign in sheet for
24 I guess the first day of teacher induction training,
25 right?

1 A Mm-hmm. Yes.

2 Q And if you could turn to P-10, the next tab
3 over.

4 (SOUND OF SNEEZE)

5 MS. OXFELD: Excuse me.

6 THE WITNESS: Bless you.

7 MR. WU: Are you all right? Do you want
8 water?

9 MS. OXFELD: No, no. I'm fine.

10 MR. WU: Okay.

11 BY MR. WU:

12 Q This was you said a Power Point slide that
13 was covered during that training session, correct?

14 A That's what they testified to. I don't recall it.

15 Q Okay. No problem. The teacher induction
16 training was conducted by a Robert Alfonse, right?

17 A Some of them.

18 Q Okay. So there was more than one session
19 during that day, and but during that first day of your
20 induction training, the topic of professional
21 responsibility was covered, correct?

22 A I don't recall.

23 Q Okay. Prior to working at Point Pleasant you
24 were not familiar with David Drew, right?

25 A Correct.

1 Q So you only met him in the beginning of the
2 school year around September when you started working?

3 A Yes.

4 Q And you never had a romantic relationship
5 with him during the time that you were at Point
6 Pleasant?

7 A No.

8 Q You never spent time with him outside of
9 school hours?

10 A No.

11 Q And did he ever express any romantic interest
12 in you?

13 A No.

14 Q You admit that you hugged him at some point
15 during the fall of 2011.

16 A Yes.

17 Q Do you recall the exact date?

18 A The date?

19 Q Yes.

20 A I did not. I mean, I know what the paperwork
21 says.

22 Q Okay.

23 A But I don't recall it.

24 Q If I said it was around October 21st, 2011,
25 would you have any reason to doubt that?

1 A No.

2 Q And you also admitted during direct that --
3 let's see -- that you did kiss Mr. Drew or that you may
4 have kissed him?

5 A May have.

6 Q All right. If you could turn with me in your
7 binder to P-4. Let me know when you're there.

8 A I'm there.

9 Q Okay. And do you recognize what P-4 is?

10 A Yes.

11 Q Okay. These were questions I asked you, and
12 I think you responded then. If you could turn to the
13 third page of P-4, and on the top there where it says
14 number "8," do you see that?

15 A Mm-hmm.

16 Q It says, "On October 21st, 2011 you kissed
17 David Drew," and your answer was, "I could neither
18 admit nor deny the statement. I admit I kissed David
19 Drew on the cheek." Did I read that correctly?

20 A You did.

21 Q That interaction with David Drew, the hug and
22 the kiss, did that occur on the same day?

23 A Yes.

24 Q That wasn't the first time you had touched
25 Mr. Drew though, correct?

1 A Touched? Could you expand on that?

2 Q Sure. Let's turn to P-22. Do you recognize
3 P-22?

4 A Mm-hmm.

5 (P-22 marked for
6 Identification)

7 Q And this was an e-mail that you had sent to
8 Mr. Drew, right?

9 A Correct.

10 Q And the date you had sent that e-mail was
11 October 19th, right?

12 A Right.

13 Q Okay. And in that e-mail, you apologize for
14 touching him, correct?

15 A What I believe is that that was the hug that was
16 shortly after the day, that this was the day of the
17 hug.

18 Q Okay. Do any other instances of physical
19 contact with you and Mr. Drew come to mind?

20 A No. As Mr. Drew testified, I mean, on the arm,
21 like any kind of -- I talk with my hands.

22 Q Okay.

23 A It's not anything more than that.

24 Q And you worked with Mr. Drew. He was an in-
25 class support teacher, is that accurate?

1 A Yes.

2 Q Did you meet with him -- how frequently did
3 you meet with Mr. Drew?

4 A Informally, probably a few times a week.

5 Q Okay. But he wasn't part of the Child Study
6 Team?

7 A He is not part of the Child Study Team. He would
8 be part of an IEP team when he was the teacher of
9 record on shared cases.

10 Q Okay. But the weekly meetings that Mr. Foley
11 testified to --

12 A No, Mr. Drew was not part of that.

13 Q Okay. I understand. And when you e-mailed
14 Mr. Drew in P-22, you thought that your touching him
15 might have made him feel uncomfortable, right?

16 A Yes.

17 Q With regard to Mr. Foley, you also didn't
18 know him before you were hired at Point Pleasant,
19 right?

20 A Correct.

21 Q And your relationship with him, as with Mr.
22 Drew, was strictly professional?

23 A And cordial, you know, friendly in the office
24 place.

25 Q Right.

1 A Yes.

2 Q It wasn't --

3 A It wasn't social.

4 Q -- romantic.

5 A Oh, romantic? No.

6 Q Or social as going --

7 A No.

8 Q -- beyond the --

9 A Workplace, no.

10 Q Okay. And professionally, the bulk of your
11 interactions with Mr. Foley occurred during your weekly
12 Child Study Team meetings, right?

13 A At all times. We -- our offices are like this far
14 apart. So we would speak any number of times outside
15 of a meeting.

16 Q Okay. And you admit to kissing him at a
17 Child Study Team meeting, right?

18 A Yes.

19 Q Your testimony is that you kissed him on the
20 cheek?

21 A Yes.

22 Q You heard Mr. Foley testify today that he
23 thought that you kissed him on the lips.

24 A I did hear that.

25 THE COURT: I'm sorry. You're saying you

1 heard --

2 THE WITNESS: I heard. I did not kiss him on
3 the lips.

4 BY MR. WU:

5 Q Oh, but you did hear him say --

6 A I did hear him say that, yes.

7 Q Okay. All right. Thank you.

8 THE COURT: And that was a kiss on the cheek?

9 THE WITNESS: Correct. You'll notice in Mr.
10 Alfonse's notes, in his investigatory notes --

11 MR. WU: Thank you for pointing out, but those
12 notes --

13 THE COURT: That's okay. Unsolicited comments
14 aren't allowed.

15 THE WITNESS: Okay.

16 THE COURT: Unless I ask you for an
17 unsolicited comment.

18 THE WITNESS: Okay.

19 BY MR. WU:

20 Q You don't have any factual basis as to why
21 Mr. Foley would have made up a statement about you
22 kissing him on the lips if it wasn't true, right?

23 A Repeat that.

24 Q Sure. You don't have any factual basis as to
25 why Mr. Foley might make up that statement, correct?

1 A No. I don't have any factual information.

2 Q With regard to Mr. Brady, similar to the
3 other two males that we discussed, you only first met
4 him when you started working at Point Pleasant, right?

5 A Yes.

6 Q And you didn't interact with him that often,
7 right?

8 A I mean, weekly.

9 Q Okay. His office was in the gym locker room,
10 right?

11 A I think. I never went there.

12 Q Okay. But your office is in the athletic
13 office.

14 A My office is nowhere near his.

15 Q Okay. But it's in the athletic office. That
16 doesn't mean that that was where all the gym coaches
17 worked.

18 A Correct.

19 Q Okay.

20 A Just their mailboxes were there.

21 Q Got you. And you heard him state that you
22 grabbed his butt the morning of October 3rd, 2011,
23 right?

24 A I heard him say that.

25 Q You don't have any reason to believe that he

1 would make that up, right?

2 A Yeah, I believe he made it up.

3 Q Do you have any reason as to why you think
4 that he would make that up?

5 A No.

6 Q Okay. Now, you testified that you thought
7 your interactions with your colleagues was just you
8 being friendly, right?

9 A Yes.

10 Q Okay. Before working in New Jersey, you
11 testified that you taught in New York?

12 A Yes.

13 Q Could you turn with me to P-3? Do you see
14 these answers to interrogatories on the top there?

15 A Yes.

16 Q I'm going to ask you to flip to the middle.
17 If you flip past all the questions.

18 THE COURT: What page? What are you on?

19 MR. WU: P-3.

20 THE COURT: P-3. I'm sorry.

21 (P-3 marked for
22 Identification)

23 BY MR. WU:

24 Q Do you see at the end of that, I guess those
25 13 pages, there is a signature? On page 14, there is a

1 certification of interrogatories.

2 A Okay.

3 Q Page 14, "Certification of Interrogatories"
4 has your signature.

5 A Mm-hmm.

6 Q Do you see that?

7 A Yes.

8 Q Okay. I'm going to ask you to flip over one
9 more page. Now, the next four pages is a, "Stipulation
10 of Settlement," right?

11 A Mm-hmm.

12 THE COURT: I lost you. I'm sorry.

13 MR. WU: Oh, sorry.

14 THE COURT: Tell me where you are here.

15 MR. WU: P-3.

16 THE COURT: We're on P-3.

17 MR. WU: Yes.

18 THE COURT: I'm there.

19 MR. WU: After the --

20 THE COURT: There is page numbers on the
21 bottom.

22 MR. WU: Right. After page 14.

23 THE COURT: Oh, okay. After page 14.

24 MR. WU: Yes.

25 THE COURT: Thirteen has got Ms. Giuffrida's

1 signature, 14 has her signature, and 15 has a post
2 charge stipulation of settlement.

3 MR. WU: Yes.

4 THE COURT: Okay.

5 BY MR. WU:

6 Q Now, if you could flip one, two, it starts
7 with P-1 at the bottom, do you see that?

8 A Yes.

9 Q Okay. If you could flip to page 4 of that.

10 A Yes.

11 Q And do you see your signature at the top?

12 A Yes.

13 Q Okay. And that was dated April 29th, 2004?

14 A Yes.

15 Q Okay. And flip to page 2 of that
16 Stipulation of Settlement.

17 A Okay.

18 Q And in that stipulation, you admit to making
19 an inappropriate comment to a colleague during the
20 2003-2004 school year, right?

21 A Yes.

22 Q So you have engaged in inappropriate conduct
23 before, right?

24 A No.

25 Q Well, you admit here that you made an

1 inappropriate comment, right?

2 A Right.

3 MR. WU: Okay. That's all. Nothing further.

4 MS. OXFELD: I have no other questions.

5 THE COURT: You don't?

6 MS. OXFELD: No.

7 BY THE COURT:

8 Q Okay. So let me understand. Foley you
9 didn't kiss on the cheek, you kissed him -- I mean, you
10 kissed him on the cheek. You didn't kiss him on the
11 lips.

12 A Yes.

13 Q Brady you didn't touch at all.

14 A No.

15 Q And Drew, you kissed Drew on the cheek and
16 hugged him, and that was a one time incident.

17 A Correct.

18 Q As a result of having you said a bad day?

19 A Correct.

20 Q Why did you go to Drew?

21 A I thought we were friends.

22 Q Okay.

23 A I had worked more closely with him than anyone
24 else in that school, and we had had, I thought, a
25 friendly relationship.

1 Q More personal than --

2 A I thought so.

3 Q -- business?

4 A Or equal to. People hug a lot at my job, and I
5 notice it now even more than I did before. So I guess
6 there's just some people who respond or view it as
7 something, as a different type of conduct than it was
8 motivated by.

9 Q The bad day you were having --

10 A Mm-hmm.

11 Q -- did it have to do with school or home?

12 A I would guess school.

13 Q No, don't guess. I don't want a guess.

14 A I don't know.

15 Q Don't recall.

16 A Okay. I don't recall.

17 Q That's okay. Fine.

18 A I didn't talk about home things really at work, so
19 that's why I say it was probably school.

20 Q And when this happened, how did Mr. Drew
21 respond?

22 A There was no real response. It was --

23 Q I mean, was it like kissing, not kissing, I
24 mean, was it like hugging a telephone pole?

25 A No. I mean, it was a two second like just deep

1 breathing and back to work. It was there was no
2 conversation. There was no real response. Had it been
3 a female coworker it could have gone very similarly.

4 Q What made you think that Drew was
5 uncomfortable enough that you would send him that e-
6 mail on whatever date that was?

7 A I don't recall specifically why I felt that, but I
8 know I did, because I must have felt it enough to have
9 reached out and make sure that it wasn't concerning for
10 him, because as I indicated in the e-mail, I didn't
11 mean to make him uncomfortable, so I don't know
12 specifically if it was just a vibe or if I -- I don't
13 believe he said anything, but I knew my intention was
14 -- I mean, I don't look to make people uncomfortable at
15 work or anywhere, and his response of not being a
16 problem was somewhat of what I would have expected his
17 response to be based on the nature of our relationship.

18 Q But you knew he was uncomfortable, because
19 you sent him the memo or the e-mail.

20 A I knew he could have. He was potentially
21 uncomfortable.

22 Q No. You didn't send him something because he
23 was potentially uncomfortable. You sent it to him
24 because you got a vibe.

25 A That he could have been uncomfortable.

1 Q That he was, not that he could have been.

2 A Okay.

3 Q I mean, you tell me. Let's think about this
4 for a minute before you answer it. There was something
5 that made you say, I've got to send -- he's a friend of
6 mine, I don't want to lose a friend, you send him an e-
7 mail.

8 A Mm-hmm.

9 Q You don't reach out to somebody unless there
10 is a reason. Now, what was the reason?

11 A I don't know specifically what the reason was. As
12 I said, I think it was probably just a feeling I got.
13 I don't recall that there was anything specific leading
14 up to that.

15 Q You said that was the same incident. I want
16 to see if I had some other question marks in my notes.
17 Excuse me just a second.

18 A Sure.

19 Q Now, the day that the incident happened with
20 Foley, it's my understanding you and Ms. Bradley were
21 asking the people from High Focus is it --

22 A Yes.

23 Q -- too many questions or did Foley think they
24 were improper questions or just too many, like he had
25 someplace else to be?

1 A He's very busy.

2 Q Yeah. We all are, but I know when we go to
3 training sessions, there is always somebody up front
4 that keeps asking questions. It's at the end of the
5 day, 3:30, you don't want questions.

6 A Right.

7 Q I understand, you know. That's normal.
8 That's human nature.

9 A So he just objected to us asking questions.

10 Q Okay. The quantity or the quality is what
11 I'm asking?

12 A Probably both.

13 Q Both? Okay. Okay. All right. So there was
14 already some tension in the room?

15 A Yes.

16 Q Okay. And then the issue came up about
17 something with administration.

18 A Yes.

19 Q All right. And were you seeking some sort of
20 action by administration?

21 A No.

22 Q Okay. What was the -- how did the
23 administration get sucked into this issue?

24 A Mr. Foley brought that up.

25 Q Okay.

1 A My recollection was simply based on him commenting
2 that I asked too many questions and then my responding
3 with, "Why do you have a problem with that?" And,
4 "What's going on? Why don't you like me?"

5 Q Okay.

6 A And that's why he said, "I do like you. That's
7 why I try and take this from administration," and
8 that's when that all evolved. Like where he's saying,
9 "I'll fight these battles, you don't fight these
10 battles" kind of thing, but I don't know that we were
11 engaged in a specific conversation about anything
12 administrative. I think it was more of a general him
13 cautioning me to stay out of stuff.

14 Q Okay.

15 A He felt like I was too vocal of an advocate for
16 my students, and he would bring that to my attention
17 periodically.

18 Q And when did things start going sour with
19 Foley?

20 A Once it was brought to my attention that he had
21 reported this conduct as being inappropriate and
22 harassing. Mr. Foley had never said anything to me
23 about my conduct or about his discomfort with my
24 behavior. We continued to work together, as he
25 testified, from that date until the investigation

1 commenced, and at that point, I ceased conversation
2 with him, because there was no reason to speak with
3 him. From October 25th through November 3rd, I didn't
4 know that Mr. Foley and I, the nature of our
5 relationship had changed at all.

6 Q Okay. Okay. Now, the other thing you said
7 was that, "There was a lot of hugging going on." You
8 made that comment. Do you remember saying that?

9 A In jobs that I've had in the school district?

10 Q Well, that's what I want to know, what you're
11 talking about. Are you talking about Point? Are you
12 talking about Keyport? Are you talking about Jackson?
13 Are you talking about New York?

14 A All of the above.

15 Q Okay.

16 A As a matter of fact, on the day I was leaving the
17 building in Point Pleasant for hugging somebody, the
18 custodian hugged me to say I'm sorry that this is
19 happening. Like while I'm being escorted out for
20 hugging, I was being hugged.

21 Q Okay.

22 A Yes. I've worked previously and since, and
23 colleagues do on occasion hug each other. We're warm
24 people.

25 Q Would you say that is not an uncommon

1 experience in the school settings, in school settings?

2 A I would say it's not uncommon.

3 THE COURT: All right. Let me -- my computer
4 is locked. I don't know why that is. Hmm. Okay. All
5 right. Let me take one quick look at my -- let's go off
6 the record for just one second. I want to stop
7 recording.

8 (BRIEF RECESS)

9 A N D R E A G U I F F R I D A, RESPONDENT WITNESS,
10 PREVIOUSLY SWORN, RESUMES THE STAND.

11 THE COURT: Okay. We're back on the record.

12 BY THE COURT:

13 Q Do you remember the incident with Mr. Drew?

14 A Yes.

15 Q Was there any consoling on his part when this
16 incident happened or was it just stoic?

17 A About the bad day?

18 Q Yeah. That's all a part of it, isn't it?

19 A I think it was -- I don't know that there was any
20 real conversation beyond it. I don't believe there was
21 a discussion about why it was a bad day.

22 Q Okay. But no comment from him that you
23 recall?

24 A No.

25 Q Okay. How about when you kissed Foley?

1 A I don't believe he said anything to me.

2 Q Did he say anything to anybody else in the
3 room?

4 A I didn't think so, no.

5 Q And you're sure it wasn't on the lips.

6 A A hundred percent.

7 Q Okay.

8 A It didn't become the lips until it got into Mr.
9 Alfonse's report. The notes all indicate it was face.

10 MR. WU: Your Honor, I'm just going to ask
11 that that last sentence be stricken from the record.

12 THE COURT: What's that?

13 MR. WU: Oh, that Ms. Giuffrida said that the
14 notes, it didn't become --

15 THE COURT: I haven't seen any notes.

16 MR. WU: Right.

17 THE COURT: So it doesn't make any difference
18 to me.

19 MR. WU: Right.

20 THE COURT: I haven't seen any notes.

21 MR. WU: Okay.

22 THE COURT: If somebody wants to present
23 notes, that would be a different story, but so far I
24 haven't seen any notes, so and the only notes might be
25 in the documents that I won't admit into evidence. I

1 have no idea.

2 MR. WU: Thank you, Your Honor.

3 THE COURT: You know, I mean, I'll go through
4 all the documents that are in evidence, but if it's not
5 in evidence, I have no idea what notes we're referring
6 to. So it's either in the record by way of the order
7 to show cause, which is the pleading in this matter,
8 the answer, if there is one filed, I don't recall, or
9 in the documents that are admitted into evidence.

10 MS. OXFELD: There is, but it's basically --

11 THE COURT: I'm sorry?

12 MS. OXFELD: If you don't have copy, the
13 answer just denies anything.

14 THE COURT: I'm sure I have an answer.

15 THE WITNESS: This is -- I mean, it's in
16 evidence.

17 MS. OXFELD: No, no. That's not evidence.

18 THE WITNESS: This isn't evidence?

19 MS. OXFELD: No.

20 THE WITNESS: Okay.

21 THE COURT: Okay. And I don't look at
22 anything that isn't in evidence, because I don't want
23 to be prejudice, and I don't want, just like I don't
24 want the board to be prejudiced, I don't want to be
25 prejudiced. All right. I have nothing else. Anything

1 else, Mr. Wu?

2 MR. WU: Nothing else, Your Honor.

3 THE COURT: Ms. Oxfeld?

4 MS. OXFELD: Yeah.

5 REDIRECT EXAMINATION BY MS. OXFELD:

6 Q You mentioned something, Ms. Giuffrida, about
7 Mr. Foley felt you were too vocal an advocate for
8 students?

9 A Yes.

10 Q How do you know that's what he felt?

11 A He would tell me.

12 Q Do you recall any specific incidents?

13 A No.

14 MS. OXFELD: I have no other questions.

15 THE COURT: So in the past he gave you, for
16 lack of a better term, constructive criticism?

17 THE WITNESS: Yes.

18 THE COURT: Okay. On your job.

19 THE WITNESS: Yes.

20 THE COURT: Okie doke. Nothing else?

21 MR. WU: Nothing else, Your Honor.

22 THE COURT: Nothing else.

23 MS. OXFELD: Nothing else.

24 THE COURT: Okay, thank you.

25 THE WITNESS: Thank you, Judge.

1 THE COURT: You may step down wherever you
2 feel comfortable. We're almost finished here. All
3 right. Post hearing submissions.

4 MS. OXFELD: Can I just ask can we make sure
5 we agree on what's in evidence?

6 THE COURT: Okay. Not a problem. P-1 is not.
7 P-2 is not. P-3 is not. P-4 is not. P-5 is not. P-6
8 is not. P-7 is not. P-8 is not. P-9 is. P-10 is.
9 P-11 is, 12 is, 13 is, 14 is, 15 is, 16 is, 17 is not,
10 18 is, 19 is, 20 is not, 21 is not, 22 is, and 23 is
11 not existent. I don't have a 23.

12 MR. WU: That's how it should have been.

13 THE COURT: P-23 is subject to addition later
14 on in the case.

15 MR. WU: And C-1 was identified but not
16 admitted.

17 THE COURT: C-1 is for identification but not
18 admitted.

19 MR. WU: Thank you, Your Honor.

20 THE COURT: And that was the office location
21 sketch. It's not admitted. Any questions on that, Ms.
22 Oxfeld?

23 MS. OXFELD: No questions. I just wanted to
24 make sure that we were all on the same page.

25 THE COURT: Okay. What do you want? How long

1 do you need for post hearings.

2 MS. OXFELD: A month.

3 MR. WU: Yeah, a month should be fine.

4 THE COURT: Okay. Whenever they come in.

5 MS. OXFELD: Whenever they come in? Do you
6 want us to have some coordination on dates?

7 THE COURT: That's up to you guys. If you
8 want to do them simultaneously, work out a date and do
9 them simultaneously.

10 MR. WU: Simultaneous. Are you paying for the
11 transcripts, Nancy?

12 MS. OXFELD: I don't know.

13 MR. WU: Okay. Yeah, I'm not sure yet. We'll
14 see.

15 MS. OXFELD: Well, if we have time to order
16 transcripts, I would order transcripts.

17 MR. WU: Okay. We could make -- I'm really
18 not in a rush.

19 MS. OXFELD: So we could do a month from when
20 the transcripts arrive?

21 THE COURT: Whatever you want. I don't know
22 what your schedule is.

23 MR. WU: Want to just make it -- it will take
24 a while, right?

25 MS. OXFELD: Yes.

1 MR. WU: Let's make it two months?

2 MS. OXFELD: Okay.

3 MR. WU: Two months from today?

4 THE COURT: Whatever you want.

5 MR. WU: I don't know what date that is.

6 THE COURT: Whatever you want.

7 MS. OXFELD: That would be April 18th.

8 THE COURT: I mean, I know some DAG's that are
9 swamped. They keep telling me, "I've got to write
10 that, I've got five cases before the App. Div. I've
11 got to get done."

12 MR. WU: We'll all get a date of April 19th for
13 simultaneous submissions.

14 THE COURT: Fine.

15 MR. WU: Thank you, Your Honor.

16 THE COURT: Fine. And if for some reason --
17 work it out between you. If you can't, put me in the
18 loop.

19 MS. OXFELD: Okay.

20 THE COURT: I'm always here. I don't go very
21 far.

22 MR. WU: Thank you so much, Judge. Okay. You
23 good?

24 MS. OXFELD: Thank you, Judge.

25 THE COURT: And you have no exhibits.

1 MS. OXFELD: No exhibits. No.

2 THE COURT: Okay. That's fine. Okie dokie.

3 Thank you very much.

4 MS. OXFELD: Thank you.

5 THE COURT: Enjoy. Go out and play in the
6 snow.

7 UNIDENTIFIED FEMALE: It looks like your blue
8 light is on.

9 THE COURT: We're closing that right now.

10 {Whereupon, the proceedings were adjourned.}

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1 STATE OF NEW JERSEY }

2 COUNTY OF MERCER }

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I, KATHLEEN A. COSENTINO, assigned

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transcriber, do hereby affirm that the foregoing is a

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true and accurate transcript of the proceedings in the

8

matter of New Jersey State Board of Examiners versus

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Andrea Giuffrida, bearing Docket No. EDE 8458-12 heard

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on February 18, 2014 before the Office of

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Administrative Law Court.

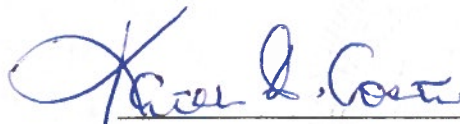
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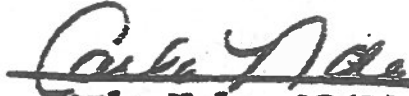
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A/D/T CERTIFICATION

I, Carla Nale, AD/T #520, certified
transcriber, do hereby affirm that the foregoing is a
true and accurate proofread transcript in the matter of
New Jersey State Board of Examiners versus
Andrea Giuffrida, bearing Docket No. EDE 8458-12 heard
on February 18, 2014 before the Office of
Administrative Law Court.


Carla Nale, AD/T# 520