

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.

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TRANSCRIPT
OF
RECORDED PROCEEDINGS

April 15, 2013

BEFORE:

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

APPEARANCES:

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

OXFELD COHEN
By: Nancy I. Oxfeld, Esq.
Attorney(s) for Respondent

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OFFICE OF ADMINISTRATIVE LAW

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1 THE COURT: The recording is going? Okay. We
2 are now on the record. Good morning, ladies and
3 gentlemen. My name is Judge Schuster. I'm an
4 Administrative Law judge assigned by the Office of
5 Administrative Law to conduct a hearing in the matter
6 of the Certificates of Andrea Giuffrida. This -- this
7 matter bears Office of Administrative Law -- hereafter
8 referred to, by the way, as the OAL -- OAL -- this
9 matter is referred to as OAL docket number EDE 08458-
10 2012 and Agency reference number 1112-202. Today is
11 April 15, 2013, and this hearing is being held in the
12 Trenton offices of the OAL in Mercerville, New Jersey,
13 located in Quakerbridge Plaza. Counsel, may I have
14 your appearance, please? Ms. Oxfeld?

15 MS. OXFELD: Nancy I. Oxfeld of Oxfeld Cohen,
16 P.C. for the respondent, Andrea Giuffrida.

17 THE COURT: Good afternoon, Ms. Oxfeld. Mr.
18 Wu.

19 MR. WU: Frederick H. Wu, Deputy Attorney
20 General, on behalf of the State Board of Examiners.

21 THE COURT: Thank you. Good afternoon, Mr.
22 Wu.

23 MR. WU: Good afternoon, Your Honor.

24 THE COURT: Okay. This is a hearing on an
25 appeal by Ms. Giuffrida from a decision of the board of

1 examiners as a result of the issuance of an order to
2 show cause as to why her teaching certification -- or
3 let me put it this way -- education certification --
4 because they're not all instructional. Some are
5 educational services, and one is a -- an instructional
6 certification -- should not be revoked or suspended.
7 This is an administrative hearing. As such, the rules
8 of evidence are not strictly applied.

9 In general, I will admit all evidence so long as
10 it is relevant, material and probative. The so-called
11 "best evidence rule," "the opinion rule," and any other
12 exclusionary rules do not apply in this forum. In
13 other words, any and all documentary evidence may be
14 received, but I will exclude irrelevant, immaterial and
15 unduly repetitious evidence. I will also exclude any
16 evidence that does not satisfy the residuum rule,
17 including hearsay evidence. I will only admit hearsay
18 evidence if it does satisfy the residuum rule.

19 My decision will be based upon a consideration of
20 the entire record and only upon the record. The
21 respondent has the burden of proving their case by a
22 fair preponderance of the --

23 MS. OXFELD: Your Honor?

24 THE COURT: What?

25 MR. WU: I think that the petitioner --

1 MS. OXFELD: I believe that the petitioner,
2 the State Board of Examiners, has the burden of proof.

3 THE COURT: They do. I consider -- I consider
4 your client the appellant.

5 MS. OXFELD: Okay.

6 THE COURT: Let me see how they mark it in the
7 file. Sometimes, it comes over one way. Sometimes, it
8 comes over another. It depends upon who does the
9 transmittal. Yes, that's true. They have the Board of
10 Examiners being the petitioner. Okay. Everything I
11 said is reversed. As Roseanne Roseannadanna once said,
12 "Never mind." Okay. The petitioner, meaning the Board
13 of Examiners, has the burden of proof, and they must
14 prove their case by a fair preponderance of the
15 credible evidence, and a finding in their favor must be
16 based upon a residuum of competent evidence. As far as
17 I know, there are no joint stipulations of fact, nor
18 are there any joint exhibits, but we'll see how that
19 goes as we proceed. And Mr. Wu, what is your pleasure?

20 MR. WU: I'm sorry?

21 THE COURT: What is your pleasure? Openings,
22 non open [sic], call your witness, whatever makes you
23 happy.

24 MR. WU: I'll do a quick opening if you don't
25 mind, Your Honor.

1 THE COURT: Sure. Go right ahead, please.

2 MR. WU: Prefer if I stand or sit?

3 THE COURT: That's up to you. I want you to
4 be comfortable.

5 MR. WU: Thank you, Your Honor. Your Honor,
6 Ms. Giuffrida was hired at the Point Pleasant school
7 district for the 2011 to 2012 school year. During the
8 fall of 2011, the administration became aware of
9 allegations that she acted inappropriately with several
10 of her male colleagues. The administration conducted
11 an investigation and substantiated these allegations
12 through that investigation. The administration also
13 found that her actions were in violation of policy
14 3362, which is the Point Pleasant school district's
15 policy against sexual harassment and suspended her on
16 November 22, 2011. The board later terminated Ms.
17 Giuffrida's employment with the district on January 20,
18 2012. The board of examiners seeks to revoke Ms.
19 Giuffrida's certificates based on the inappropriate
20 conduct as found by the school district.

21 You will hear testimony from Patrick Brady, a
22 physical education teacher at the district who will
23 testify that Ms. Giuffrida on one occasion grabbed his
24 butt. You will also hear testimony from David Drew, an
25 in-class support teacher for history at the district,

1 who will testify that on one occasion Ms. Giuffrida
2 hugged him and kissed him and also that she made
3 inappropriate comments about her breasts and their
4 physical appearances. You will hear testimony from
5 James Foley, a counselor at the district, who was
6 present at several child study team meetings with Ms.
7 Giuffrida. Mr. Foley will testify that at one meeting,
8 he -- Ms. Giuffrida kissed him on the mouth.

9 You will also hear testimony from Linda
10 Rocco, the principal of Point Pleasant High School, who
11 became aware of these allegations and brought them to
12 administration. You will hear testimony from Robert
13 Alphonse, an administrator at the Point Pleasant school
14 district, who will testify as to his investigation and
15 his findings. Ultimately, these facts will show that
16 Ms. Giuffrida did behave inappropriately towards her
17 colleagues and that such behavior warrants revocation
18 of her certificates. Thank you.

19 THE COURT: Okay.

20 MS. OXFELD: Your Honor, I want to respond to
21 each of the factual allegations and then to the claim
22 of sexual harassment. First of all, Mr. Brady alleges
23 Ms. Giuffrida grabbed his butt. She didn't. She was
24 walking past him in the office. Other people were
25 there. There is no witness that said he said something

1 like "Ouch" or "Stop it" or "Discontinue it." It's
2 hard to imagine she could have walked through an
3 office. He, by his admission, was talking to another
4 person, and no one would have noticed.

5 With regard to Mr. Drew, Ms. Giuffrida admits
6 she hugged and kissed him, and, however, because she
7 was concerned about how he felt about it, she actually
8 sent him an e-mail, which is exhibit P-22, that says
9 "Sorry, I keep touching you, don't mean to make you
10 uncomfortable," and his response was "Not a problem."
11 So, Mr. Drew, who's going to testify that it was a
12 problem, told Ms. Giuffrida "It's not a problem." With
13 regard to the alleged inappropriate comments in the
14 cafeteria, it just never happened. She never made
15 those comments.

16 Mr. Foley, who has alleged Ms. Giuffrida
17 kissed on the mouth, she, in fact, hugged and kissed
18 him during the course of a meeting, which you will hear
19 the explanation as to how it came about. You will also
20 see that it was never on the mouth. You have as one of
21 the exhibits all of the notes taken by Mr. Alphonse, or
22 whatever his -- the investigator would show that
23 everyone says "hugged and kissed on the face," and
24 somehow, in the report, it became "kissed on the
25 mouth," which translates into another story completely.

1 But that was made up by the reporter.

2 And, also, just briefly, if you look at P-7,
3 which is the policy, it says "Sexual harassment
4 includes unwelcome sexual advances," which they were
5 not, "requests for sexual favors," which they were not,
6 and "verbal or physical contacts of a sexual nature
7 that would not have happened but for the employee's
8 gender," which they were not. So, all in all, we have
9 Ms. Giuffrida, was, she will admit to you, overly
10 exuberant, and on two occasions, she did hug and maybe
11 kiss a co-worker, but nothing was meant by it. Nothing
12 was intended by it, and she wasn't warned about it.
13 She got fired. That should have been the end of it.
14 Somehow, it ended up before the State Board of
15 Examiners as conduct unbecoming, sexual harassment. It
16 is not, and we request that the charge be dismissed.

17 THE COURT: Okay. Thank you. Mr. Wu, you
18 gave me two dates.

19 MR. WU: Yes, Your Honor.

20 THE COURT: And I just want to -- by way of
21 background --

22 MR. WU: Absolutely.

23 THE COURT: -- November 26, 2011, was the
24 suspension?

25 MR. WU: I'm sorry, November 22nd.

1 THE COURT: Oh, 22nd. Okay.

2 MR. WU: 22nd, 2011, was the effective date of
3 her suspension.

4 THE COURT: That was the suspension with pay,
5 if you know? If you don't, that's okay.

6 MR. WU: Not off the top of my head, Your
7 Honor.

8 THE COURT: Huh?

9 MR. WU: Not off the top of my head, Your
10 Honor.

11 THE COURT: Okay. And the final
12 determination, you said, was another date?

13 MR. WU: I believe her termination date was
14 January 20, 2011.

15 THE COURT: January -- I didn't get that date.
16 Okay. January 20th. Okay. Okay.

17 MR. WU: The state would like to call its
18 first witness, Patrick Brady.

19 THE COURT: Okay. It came -- hold on a
20 second.

21 MR. WU: I'm sorry.

22 THE COURT: Mr. Wu, one of the things that
23 came out in the course of a conversation some time this
24 morning was the fact that Ms. Giuffrida was not
25 permitted at board level to talk to the board in closed

1 session as a result of a -- because it was a personnel
2 matter.

3 MR. WU: I'm sorry. Are you referring to the
4 Point Pleasant board?

5 THE COURT: Yes. Yes, sir. Local. I said,
6 local, Point, meaning Point Pleasant.

7 MR. WU: Okay.

8 THE COURT: Local is Point Pleasant.

9 MR. WU: Right.

10 THE COURT: You know, the Board of Examiners,
11 I'll refer to as the Board of Examiners.

12 MR. WU: Okay.

13 THE COURT: Do you know anything about that
14 and why she would be denied that right?

15 MR. WU: I am unaware of that.

16 THE COURT: Okay. Not important. I just --

17 MR. WU: Okay. Thank you.

18 THE COURT: I just don't want to put you on
19 the spot, and if there was something -- my recollection
20 was that any matter -- any personnel matter can be
21 requested -- any personnel matter before the board has
22 to be discussed in closed session, unless the effected
23 individual waives that right. So, that would be just
24 the opposite of what happened here. I'm told that the
25 board said, no, you can't discuss this in closed

1 session, it has to be open, which is just the opposite
2 of what I believe the law is in this case. And I just
3 wondered if you knew anything about that.

4 MR. WU: I'm unaware of any of the local board
5 deliberations or --

6 THE COURT: That's fine. I -- I didn't know.

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

8 THE COURT: You know, not a problem. I
9 wouldn't -- it's not something that you should have to
10 know. Okay. Call your witness.

11 MR. WU: Thank you, Your Honor.

12 THE WITNESS: Where am I sitting? Here?

13 THE COURT: Do me a favor, though.

14 THE WITNESS: Yes, sir.

15 THE COURT: I'd like you to turn this a little
16 bit so that it's facing -- not -- too much, too much.
17 That's good. That's good.

18 THE WITNESS: Okay.

19 THE COURT: And you can pull it back a little
20 bit if you want.

21 THE WITNESS: All right.

22 THE COURT: That's fine. I just don't want
23 you hurting your neck between looking at Mr. Wu and
24 looking at Mr. -- looking at me.

25 THE WITNESS: Okay. Thank you.

1 THE COURT: Okay. You may sit down.

2 THE WITNESS: Okay.

3 THE COURT: And your name, sir?

4 THE WITNESS: Patrick Brady.

5 THE COURT: B-R-A-D-Y?

6 THE WITNESS: Yes.

7 THE COURT: Okay. Mr. Brady, would you be so
8 kind as to raise your right hand, sir?

9 P A T R I C K B R A D Y , PETITIONER'S WITNESS, SWORN

10 THE COURT: Thank you. My name is Judge
11 Schuster. Nice to meet you, sir.

12 THE WITNESS: Nice to meet you.

13 THE COURT: Have you ever been a witness in a
14 hearing before or in a trial?

15 THE WITNESS: No, sir.

16 THE COURT: Okay. This is the way it works,
17 kind of like on TV. Okay?

18 THE WITNESS: All right.

19 THE COURT: Mr. Wu will ask you questions.
20 When he gets done with all the questions he has to ask
21 you, okay, then, the lady over here to the right, next
22 to Ms. Giuffrida -- you know Ms. Giuffrida, right?

23 THE WITNESS: Yes.

24 THE COURT: Okay. The lady to her right is
25 named Ms. Oxfeld. She represents Ms. Giuffrida, and

1 she will ask you questions by way of what's called
2 cross examination.

3 THE WITNESS: Okay.

4 THE COURT: You are to answer those questions
5 truthfully and to the best of your knowledge. If you
6 don't know an answer, then, say, "I don't know the
7 answer."

8 THE WITNESS: Okay.

9 THE COURT: If you have to guess or estimate
10 -- well, first of all, we don't allow guessing. But
11 if you have to estimate, then, by all means, just
12 acknowledge that it's an estimate. For example, if
13 somebody says to you, "Well, when you saw this, how far
14 away were you from the motor vehicle?" Okay. "I don't
15 know. I didn't pace it off. I'm going to estimate
16 between 25 and 30 feet."

17 THE WITNESS: Okay.

18 THE COURT: Okay?

19 THE WITNESS: Yeah.

20 THE COURT: That type of thing. And if you
21 don't understand the question, in other words the
22 question is ambiguous, it could mean a couple of
23 different things in your mind --

24 THE WITNESS: Yes.

25 THE COURT: -- then, just say, you know, "Can

1 you clarify that? I don't know exactly what you mean."

2 THE WITNESS: Okay.

3 THE COURT: And then, the question will be re-
4 asked. If I ask a question, and that may happen, okay,
5 those same rules apply.

6 THE WITNESS: Okay.

7 THE COURT: You don't know the answer, say, "I
8 don't know," "I don't remember," "To the best of my
9 knowledge, I think," whatever. Okay? And just qualify
10 it. This is actually a search for the truth, Mr.
11 Brady.

12 THE WITNESS: Okay.

13 THE COURT: Okay. And you're not expected to
14 know every answer.

15 THE WITNESS: Right.

16 THE COURT: All right. All you can do is the
17 best you can do.

18 THE WITNESS: Okay.

19 THE COURT: All right. And that's fine with
20 me. Let me think if there's anything else I might have
21 missed. Any time you need a break, just let me know,
22 give me a signal.

23 THE WITNESS: Okay.

24 THE COURT: Okay?

25 THE WITNESS: All right. Sounds good.

1 THE COURT: And I'll do the same.

2 THE WITNESS: Thank you.

3 THE COURT: Okay. Any questions?

4 THE WITNESS: No, sir.

5 THE COURT: All right. What's your position?

6 THE WITNESS: Teacher, phys ed teacher.

7 THE COURT: Phys ed?

8 THE WITNESS: Yes.

9 THE COURT: At Point Borough?

10 THE WITNESS: Yes, sir.

11 THE COURT: I mean -- yeah, Point Borough,
12 right?

13 THE WITNESS: Point Borough, yes.

14 THE COURT: Okay. How long have you been
15 there?

16 THE WITNESS: Three years.

17 THE COURT: Is that your first teaching job?

18 THE WITNESS: No.

19 THE COURT: Okay. When did you start?

20 THE WITNESS: At Point Borough?

21 THE COURT: Yeah. Which year?

22 THE WITNESS: 2010, I think, 2009, maybe. I
23 was coaching there beforehand, so I've been coaching
24 there for five years.

25 THE COURT: What did you coach?

1 THE WITNESS: Wrestling.

2 THE COURT: Oh, yeah?

3 THE WITNESS: Yeah.

4 THE COURT: Okay. I came in the middle of the
5 year. So, it was February 2nd. It had to be 2010, I
6 guess. Right at the tail end of wrestling season.

7 THE WITNESS: That's it.

8 THE COURT: I have a couple of mat burns.

9 Okay, Mr. Wu.

10 MR. WU: Thank you, Your Honor.

11 THE COURT: You're welcome.

12 DIRECT EXAMINATION BY MR. WU:

13 Q I'm going to dispense with the introductory
14 questions that the judge already asked you. Just to
15 recap, where do you work?

16 A Point Pleasant Borough High School.

17 Q How many high schools are there in Point
18 Pleasant?

19 A Just one.

20 Q You've been working there for how long?

21 A Three years.

22 Q What sort of duties do you have?

23 A Phys ed teacher, health teacher, and I coach there
24 as well.

25 Q Do you know Andrea Giuffrida?

1 A Yes.

2 Q Who is she?

3 A She was the LDTC there.

4 Q What is an LDTC?

5 A Learning disabled teaching consultant.

6 Q Where was she an LDTC at?

7 A Point Pleasant Borough.

8 Q When did you first meet Ms. Giuffrida?

9 A During the school year, the beginning of the
10 school year.

11 Q Which school year is that?

12 A 2011, I guess.

13 Q And when did the school year begin at Point
14 Pleasant High School?

15 A September.

16 Q How would you characterize your relationship
17 with Ms. Giuffrida?

18 A Professional, on a professional basis.

19 Q What interactions did you have in your
20 professional relationship with Ms. Giuffrida?

21 A Only, you know, on a professional basis whenever
22 an IEP came up or something like that.

23 Q When would an IEP come up in the course of
24 your duties?

25 A If a student had an IEP.

1 Q Who would you go to if a student had an IEP?

2 A To whoever the person in that position is at the
3 time.

4 Q And what were Ms. Giuffrida's duties as LDTC?

5 A Can you -- can -- what do you mean by that?

6 Q Oh, sure. I'm sorry. Let me rephrase that.

7 What reasons -- sorry. When would you go to Ms.

8 Giuffrida in a professional capacity?

9 A If I had special ed students in the class.

10 Q How many special ed students did you have?

11 A I'm not sure.

12 Q I'm sorry?

13 A I'm not sure. I mean, I don't know the -- I don't
14 know a specific number.

15 Q Where do these meetings take place?

16 A The child study office.

17 Q And where's that located?

18 A The athletic office.

19 THE COURT: The athletic office and the child
20 study office are the same?

21 THE WITNESS: Yes.

22 THE COURT: Okay.

23 BY MR. WU:

24 Q Do you have an office, Mr. Brady?

25 A Yes.

1 Q Where's that office?

2 A Attached to the locker room next to the gym.

3 Q Is that where the athletic office is?

4 A No, sir.

5 Q How far apart are the -- is your office from
6 the athletic office?

7 A Opposite sides of the building.

8 Q You say that you would go to see Ms.
9 Giuffrida regarding student IEPs? How long did each of
10 these meetings last?

11 A Not long.

12 Q How many meetings did you have?

13 A I'm not sure.

14 Q Can you estimate a number?

15 A I'm really not sure. I know she had the IEPs all
16 printed up, and if I had a student, I went down and I
17 would look through it.

18 Q How many times did you go over to her office
19 to look through IEPs?

20 A I'm not sure.

21 Q Aside from meeting with her to discuss
22 student IEPs, what other interactions did you have with
23 Ms. Giuffrida?

24 A As a -- through what? You mean with the --

25 BY THE COURT:

1 Q Hold on just a second. There's really no
2 foundation for that ques -- for the previous question.
3 Did you go over -- if you had classified students in
4 your gym class, okay, for all those students were you
5 -- were you advised that you had classified students or
6 did you know that there were students that were
7 classified?

8 A Yes, sir.

9 Q And which ones they were?

10 A Yes.

11 Q And to prepare for your classes, did you look
12 at the IEPs for each of those students to see what your
13 function, if any, was?

14 A Yes, sir.

15 Q Okay. So, for each student, you met with Ms.
16 Giuffrida?

17 A Not -- well, multiple at a -- you know, you have
18 multiple at one time. I mean --

19 Q Right. Okay.

20 A Yes.

21 Q But you went through each student with her?

22 A Yeah, I looked through the --

23 Q With Ms. Giuffrida. Okay. And sometimes,
24 you did more than one, at -- if needed?

25 A Yeah, if I had any questions through the IEP,

1 yeah.

2 Q Okay. Well, you initially looked at the IEP
3 with her, correct?

4 A Well, I looked -- they were all in her office, and
5 I looked at the IEP, and if I had any --

6 Q With Ms. Giuffrida or apart from her? She
7 could be somewhere else, and you look at -- look at --
8 do you see what I'm saying?

9 A Yeah, I know what you're saying.

10 Q You have a classified student. You want to
11 make sure you're doing the right thing, right?

12 A Yeah. Yeah. Absolutely.

13 Q Of course. All right.

14 A Yeah.

15 Q Because each one is different?

16 A Yeah.

17 Q Okay.

18 A Yeah.

19 Q So, you go into the office to look at the
20 IEP. And this is all in September, in the beginning of
21 the year?

22 A Yes.

23 Q Okay. Would you wait for Ms. Giuffrida to
24 come in to go over the IEP or would you just look at
25 the file, take a look and if you didn't have any

1 questions, you were satisfied, you'd just move on, or
2 did you wait and talk to her?

3 A Sometimes, I would just move on. I would look
4 through the IEP, and if I had any questions, then, I
5 would approach her about it.

6 Q Okay. Okay.

7 A So.

8 Q Thank you.

9 THE COURT: I'm sorry, Mr. W. Continue.

10 MR. WU: That's fine.

11 DIRECT EXAMINATION BY MR. WU (Cont'd.):

12 Q Aside from meeting with Ms. Giuffrida to
13 discuss student IEPs, what other interactions, if any,
14 did you have with her?

15 A Limited, if any.

16 Q Do you remember October 13, 2011?

17 A Yes.

18 Q How do you remember that date?

19 A Just an incident happened on that date.

20 THE COURT: October?

21 MR. WU: October 13, 2011.

22 THE COURT: Thank you.

23 BY MR. WU:

24 Q What happened on October 13, 2011?

25 A I was handing in my homeroom sheet for --

1 THE COURT: Where were you first?

2 THE WITNESS: I was in the main office. I
3 walked down after homeroom. I don't have a third
4 period class. After second period, we bring our
5 homeroom sheet -- homeroom attendance down. I was
6 handing it in. As I was handing it in, Ms. Giuffrida
7 walked by and grabbed my butt.

8 BY MR. WU:

9 Q What time is your homeroom period?

10 A It ends at 8:50.

11 Q You would go down to turn in your sheets at
12 the end of that period?

13 A At the end of that period, yes.

14 Q Who was in the main office with you?

15 A With me or who was in the main office?

16 Q I'm sorry. I'll rephrase. Who else was in
17 the main office when you were there to turn in your
18 attendance sheets?

19 A I only remember two people. It was Carol Manfra
20 and Ms. Giuffrida. Really, I don't remember anybody
21 else in there.

22 Q How large is the main office?

23 A Maybe a little bit bigger than this room with
24 multiple offices, you know, throughout.

25 Q And where were you when Ms. Giuffrida grabbed

1 your butt?

2 A I was -- I was actually -- my daughter was born
3 that weekend. It was my first day back. So, I
4 remember I was standing there showing Ms. Manfra my
5 daughter's picture, and that's when it happened.

6 THE COURT: The question was where were you in
7 the office?

8 THE WITNESS: Over her desk, at her --

9 THE COURT: Is there a counter or something
10 like that? What is it?

11 THE WITNESS: Behind that, there's multiple
12 desks. Over to -- if you go through the door, past the
13 counter to hand in your homeroom sheet to Ms. Manfra's
14 desk, walk over there. So, I'm facing this way, and
15 behind me was the counter and an alleyway, and that's
16 where it happened as I was showing her.

17 BY MR. WU:

18 Q The description of the office is a little
19 confusing to me. If you open the binder in front of
20 you, there are two blank sheets of paper. If you don't
21 mind sketching out to the best of your --

22 A Okay.

23 Q -- of your recollection the layout of the
24 main office.

25 A All right. Just warning you, I'm not an art

1 teacher. I'm phys ed, so.

2 THE COURT: I'm going to pause the record
3 while this is taking place. There's no reason to
4 continue at this point.

5 (RECORD PAUSED)

6 THE COURT: Okay. Back on the record. During
7 the course of the break, Mr. Brady drew a diagram, a
8 floor plan, of the main office to the high school. It
9 would be the main office?

10 THE WITNESS: Yes, sir.

11 THE COURT: Okay. And gave it to Mr. -- oh,
12 no, he has it in front of him.

13 THE WITNESS: I have it now in front of me,
14 yes.

15 BY MR. WU:

16 Q Using the diagram that you just drew, could
17 you --

18 MS. OXFELD: Could we have that marked?

19 MR. WU: Oh, we can. Why don't we mark it --

20 THE COURT: Are you going to refer to it for
21 some reason?

22 MR. WU: Yes.

23 THE COURT: Okay.

24 MR. WU: Just as an illustrative aide.

25 THE COURT: As an illustrative aide, if you

1 want to mark it -- give me a pen. We'll mark it C-1
2 for Court. C-1 for identification, how's that?

3 MS. OXFELD: That's fine.

4 THE COURT: C-1, I.D., is the floor plan of
5 main office -- of Point Pleasant High School, which
6 will be referred to as PPHS main office.

7 THE WITNESS: There's actually a Point
8 Pleasant Beach too. I don't know if that matters.
9 Point Pleasant Beach, Point Pleasant Borough. I don't
10 know if it matters.

11 THE COURT: Which one are you in?

12 THE WITNESS: Point Pleasant Borough.

13 THE COURT: Okay. Just wanted to make sure.
14 Main office as drawn by Mr. Brady. Okay, Mr. Brady.
15 Thank you very much, sir.

16 (C-1 was marked for
17 Identification.)

18 BY MR. WU:

19 Q Using the diagram in front of you, could you
20 describe what you were doing on the morning of
21 October 13, 2011?

22 A Yeah. I was walking in. I walked in past the
23 counter. I usually walk in past the counter, enter
24 here.

25 MS. OXFELD: I think the problem is the

1 witness is now showing things on the diagram. He's not
2 describing what he's doing, and he's just saying "I
3 walked in here." We don't know what that means --

4 THE WITNESS: As I walked in --

5 MS. OXFELD: -- in a transcript, and I think
6 we have to have -- I object to the way it's being asked
7 and answered.

8 THE COURT: Okay. Why don't you describe it
9 verbally, first, and then, if you need to, what we can
10 do is let me give you different color pens, and we can
11 be more specific.

12 THE WITNESS: Okay.

13 THE COURT: Okay? But how about generally
14 speaking?

15 THE WITNESS: Okay. As I --

16 THE COURT: We'll start and then, we'll go
17 into more specifics. Is that okay with you, Mr. Wu?

18 MR. WU: That's fine.

19 BY THE COURT:

20 Q Okay. Go ahead. You walked in.

21 A When I enter in, I pass a --

22 Q Is there a place where there's a door that
23 you walked in?

24 A Yeah.

25 Q Is it marked?

1 A Yeah. It's an opening there.

2 Q Okay.

3 MR. WU: If you could write "door."

4 THE WITNESS: "Door," you got it. Okay.

5 I open the door, walked in past the counter. There's
6 another door I have to enter, not really -- I don't
7 know if you would call it a door, opening up like half
8 size for the counter opening.

9 BY THE COURT:

10 Q Okay.

11 A So, I had to open that up.

12 Q It's a swing door?

13 A A swing door. Walked to the -- to Ms. Manfra's
14 desk.

15 Q She's a secretary?

16 A She is a secretary there. Yes, she's the
17 attendance officer. So, I walked in, was at her desk.

18 As I handed in my homeroom sheet --

19 Q Is her desk marked?

20 A Yeah. Can I put an "M" for it?

21 Q Yeah, put an "M" there.

22 A That's Manfra. Okay. Her desk's marked "M." I
23 was standing to the edge of the desk showing her -- I
24 took out my phone to show her a picture of my newborn
25 daughter. As that was happening -- so, I was facing

1 the desk. My back was to the counter, and there was a
2 passageway between my back -- my rear end and the
3 counter, and that's when Ms. Giuffrida walked by. As
4 she walked by, she grabbed my rear end. When that
5 happened, you know, I was kind of in shock. I just
6 kind of looked back. She kept going, and I continued
7 on doing what I was doing.

8 Q Okay. Now, Ms. M.'s desk --

9 A Yes.

10 Q -- is that on the in -- is that inside that
11 swing door?

12 A Yes.

13 Q Okay. Put a -- you can't use a "M." Put a
14 "P.B." for where you were standing, Mr. Brady.

15 A Yes, sir.

16 DIRECT EXAMINATION BY MR. WU (Cont'd.):

17 Q How much space would you have around you when
18 you were at Ms. Manfra's desk?

19 A A few feet.

20 Q On either side?

21 A Well, pretty -- a nice amount of space on my left
22 and the right and a few feet behind me. So, her desk
23 is in front of me. On my left and my right is opening.
24 Behind me, there was a couple feet, and then, the
25 mailboxes and the counter area.

1 THE COURT: If I may, Mr. Wu.

2 MR. WU: Yes.

3 THE COURT: Is that the only door in and out?

4 THE WITNESS: No. There's another one, the
5 other opening.

6 THE COURT: Where? Here or here?

7 THE WITNESS: There's one there, and then,
8 there's one --

9 THE COURT: I'll tell you what, mark it --

10 THE WITNESS: You want me to mark all doors.

11 THE COURT: Mark all doors. Let's do that.

12 THE WITNESS: Yes, sir.

13 THE COURT: And also mark -- here is a red
14 pen.

15 THE WITNESS: Yes, sir.

16 THE COURT: Mark on here where the swing door
17 is, okay?

18 THE WITNESS: Yes, sir.

19 THE COURT: Or what we call a swing door.
20 It's a half door.

21 THE WITNESS: Yeah.

22 THE COURT: Yeah. Yeah. Thank you.

23 BY MR. WU:

24 Q So, where were you facing when you were at
25 Ms. Manfra's desk?

1 A What do you mean by that?

2 Q What direction were you facing in relation to
3 the office?

4 THE COURT: As in north, south, east, west?

5 BY MR. WU:

6 Q Let me rephrase that. Were you facing the
7 counter when you were speaking with Ms. Manfra?

8 A No, sir. I was facing her desk. Her desk is
9 here. The counter is behind me. I was at her desk.

10 Q And how much space is between you and the
11 counter?

12 A I'd say a few feet, an estimate of a few feet.

13 Q What were you doing at Ms. Manfra's desk?

14 A Handing in my homeroom attendance.

15 Q What conversation, if any, did you have with
16 Ms. Manfra as you were handing in your attendance
17 sheets?

18 A My daughter was just born, proud parent, was
19 showing her a picture.

20 Q You said earlier that you had just come back
21 from -- from the hospital was it?

22 A Yeah. Well, I was -- Saturday, my daughter was
23 born. The first day I was back was Thursday.

24 Q So, you were out for that whole week?

25 A Yes. Well, Monday was a holiday, Tuesday,

1 Wednesday.

2 Q How do you know Ms. Giuffrida was the one who
3 grabbed your butt?

4 A She was the only one who could have done it at
5 that time.

6 Q Why is that?

7 A She was walking behind me when it happened.

8 Q How long did Ms. Giuffrida grab your butt
9 for?

10 A I don't know, enough to grab and stop, a second.

11 Q Which part of the butt did she grab?

12 A My right glute.

13 Q How many hands did she use to grab your butt?

14 A One hand.

15 Q Do you know which hand?

16 A I think it was the right.

17 Q If you could demonstrate I guess using your
18 arm what you felt when you say that you felt Ms.
19 Giuffrida grabbed your butt.

20 THE COURT: Indicating a short -- short
21 meaning a one second grab. What else would you call
22 it?

23 THE WITNESS: Grab.

24 THE COURT: Using full -- not a pinch using
25 two fingers, more of a full hand grab.

1 THE WITNESS: It wasn't a pinch. It wasn't a
2 pat. It was like a squeeze, I guess.

3 THE COURT: Okay.

4 BY MR. WU:

5 Q How did Ms. Giuffrida grabbing your butt make
6 you feel?

7 A Uncomfortable.

8 Q What, if anything, did you say to Ms.
9 Giuffrida after she grabbed your butt?

10 A Nothing.

11 Q Why is that?

12 A I was kind of in shock.

13 Q Whom are you aware of, if anyone, that saw
14 Ms. Giuffrida grab your butt?

15 A I don't think anybody.

16 Q Why is that?

17 A Because it was in passing.

18 Q Do you know if Ms. Manfra saw Ms. Giuffrida
19 grab your butt?

20 A I don't think so.

21 Q Why is that?

22 A I was kind of blocking her view of seeing
23 anything. She was in front of me, and this happened
24 behind me.

25 Q How large is Ms. Manfra's desk?

1 A Kind of like the one you're sitting at.

2 Q I'll make representation that it's about 5 by
3 3, 4 maybe, 5 feet by 4. I'm bad with numbers. After
4 Ms. Giuffrida grabbed your butt, what did you do?

5 A Stopped for a second and then just went about my
6 business.

7 Q What business was that?

8 A Whatever I had to do for the day.

9 Q Whom did you tell about the fact that Ms.
10 Giuffrida grabbed your butt?

11 A When I got back to the -- to my office, phys ed
12 office -- I share an office with a few other men -- and
13 I was just -- I was kind of in shock, and I told them,
14 you know, "I just got my butt grabbed."

15 Q When did you get back to the office?

16 A Right after that.

17 Q How long does it take to walk from the main
18 office to your office?

19 A A minute.

20 Q You said earlier that you were at the main
21 office to hand in attendance sheets at the end of the
22 second period?

23 A At the end of homeroom.

24 Q Oh, sorry, homeroom.

25 A Yes.

1 Q And that was -- did you say 8:50?

2 A 8:50. Second period ends at 8:45. 8:50 is the
3 end of homeroom. There's a five minute homeroom. And
4 then, at 8:50, homeroom's over. You go to your third
5 period class.

6 Q So, you were handing in attendance from 8:45
7 to 8:50?

8 A No, 8:50, after that.

9 Q Okay. I see. So, you were back in the
10 office, in your office, at a little before 9? Is that
11 fair to say?

12 A Yes.

13 Q How many other men share your office?

14 A Three.

15 Q Were all three present when you told them
16 about what happened?

17 A I'm not sure.

18 Q What was their response to what you told
19 them?

20 A Kind of --

21 MS. OXFELD: Objection as to relevance.

22 THE COURT: What's the relevance as to what
23 someone else's response is?

24 MR. WU: I'm sorry?

25 THE COURT: What's the relevance as to what

1 someone else's response is?

2 MR. WU: It goes to the nature of the
3 conversation that he had and the attitude of other
4 people in --

5 THE COURT: You want to know the attitude of
6 other people, bring in other people.

7 MR. WU: All right, Your Honor.

8 BY MR. WU:

9 Q Who is Linda Rocco?

10 A School principal at the time.

11 Q What conversations did you have with her, if
12 any, about Ms. Giuffrida grabbing your butt?

13 A She brought me into the office a little while
14 later.

15 THE COURT: Same day?

16 THE WITNESS: No, sir. I'm not sure when. It
17 might have been a couple weeks later. I'm not exactly
18 sure when. She got wind of the incident, brought me in
19 and sat me down and asked me about it.

20 BY MR. WU:

21 Q Which office did she bring you into?

22 A Her office.

23 Q And where is that located?

24 A In the main office.

25 Q Do you have the diagram in front of you?

1 A Yes, sir.

2 Q Can you mark Linda Rocco's office?

3 A Okay.

4 Q With a -- I guess an "L.R."

5 A "L.R." Okay.

6 Q And where is that in relation to Ms. Manfra's
7 desk?

8 A I'd say kind of caddie-corner, maybe, like
9 probably from that door to this -- maybe a little
10 further but to this edge, that type of distance.

11 THE COURT: That would be 2, 4, 6, 8, 10 feet.

12 THE WITNESS: Maybe a little bit further.

13 THE COURT: Maybe 12.

14 THE WITNESS: Maybe -- I'd say about 20 feet
15 maybe from where her door is to where Ms. Manfra's desk
16 is.

17 THE COURT: Can I give you a hint?

18 THE WITNESS: Yes.

19 THE COURT: Every one of these ceiling blocks
20 is 2 by 4.

21 THE WITNESS: Oh, okay. Yeah, I'd say about
22 maybe 15 to 20 feet away.

23 BY MR. WU:

24 Q And who initiated that meeting with you and
25 Ms. Rocco?

1 A Ms. Rocco.

2 Q How did she initiate that meeting?

3 A I was -- I was called down the office.

4 Q Who called you down?

5 A I'm not sure. Either over the phone or -- I'm
6 really not sure about.

7 THE COURT: But it was initiated by Ms. Rocco?

8 THE WITNESS: Who told me to come down there?

9 THE COURT: Yes.

10 THE WITNESS: Yes.

11 THE COURT: The request to meet with her.

12 THE WITNESS: Yes.

13 THE COURT: Okay.

14 BY MR. WU:

15 Q Do you remember when this -- when this
16 meeting took place?

17 A I'm not sure.

18 Q What time during the day?

19 A I think it was towards the end of the day, I mean,
20 ninth period.

21 Q And where were you when Ms. Rocco called you
22 into her office?

23 A I think I was -- actually, I think I was in the
24 cardio room. I was working out.

25 Q I'm sorry. The cardio room?

1 A Yeah. I had just -- I just walked out of the
2 cardio room.

3 Q Who was present at that meeting with you and
4 Ms. Rocco?

5 A Just me and her.

6 Q Describe what happened during that meeting.

7 A She asked me what happened. I said "What do you
8 mean?"

9 THE COURT: Say it again.

10 THE WITNESS: She asked me what happened. I
11 said I didn't know what she was talking about. Then,
12 she asked me what happened. I said, you know, exactly
13 -- I described the situation what happened before.

14 BY MR. WU:

15 Q What was her response, if any, to what you
16 told her?

17 A I don't know. "Okay." I don't know.

18 Q How long did the meeting between you and Ms.
19 Rocco last?

20 A Not long. Maybe five -- estimation of five, ten
21 minutes maybe.

22 Q What other conversations, if any, did you
23 have with Ms. Rocco about the incident in the main
24 office when Ms. Giuffrida grabbed your butt?

25 A That was it.

1 Q Who was Robert Alphonse?

2 A The -- I want to say the assistant superintendent,
3 but he has a different title, I think director of
4 curriculum, maybe, now.

5 Q What conversations, if any, did you have with
6 him about Ms. Giuffrida grabbing your butt?

7 A He -- we had a meeting. He sat me down and -- and
8 asked me to describe what happened.

9 Q When did this meeting take place?

10 A I don't know the exact date or anything.

11 Q I'm going to direct your attention to -- if
12 you could open up the binder in front of you and flip
13 to tab P-14.

14 A Okay. P-14.

15 Q Do you recognize it?

16 A Yes, sir.

17 Q What is it?

18 A A letter about the -- confirming our meeting that
19 we had on November 2nd.

20 MR. WU: Your Honor, I'd like to offer what's
21 been marked as P-14 into evidence.

22 MS. OXFELD: No objection.

23 THE COURT: Okay. We'll mark it P-14 in
24 evidence, and P-14 is letter from Mr. Alphonse to Mr.
25 Brady.

(P-14 was received
in Evidence.)

BY MR. WU:

Q If you could read over that letter and just
let me know when you're finished.

A I read it.

Q Does this refresh your recollection as to
what or when the meeting with Mr. Alphonse occurred?

A Yes.

Q When did that meeting occur?

A November 2, 2011.

Q Who was present at that meeting?

A Our vice principal at the time, Jackie Moore, and
Robert Alphonse.

Q Describe what happened during that meeting.

A He sat me down. I came in, sat down. He asked me
what happened at the -- what happened. I described the
situation, what had happened and went from there.

Q What other meetings, if any, did you have
with Robert Alphonse to discuss Ms. Giuffrida grabbing
your butt?

A I'm not sure. I think that was it. There might
have been one -- there was one other letter, but I
can't remember if there was another meeting about it.

Q Turn your attention now to the exhibit marked

1 P-18 in your binder.

2 A Yes, sir.

3 Q Do you recognize what's been marked as P-18?

4 A Yes, sir.

5 Q And what is it?

6 A A letter confirming the investigation.

7 MR. WU: At this time, I'd like to move what's
8 been marked as P-18 into evidence.

9 MS. OXFELD: I'm just -- I'm thinking about
10 it, because I think its prejudicial value outweighs its
11 probative value, because there wa -- as far as I can
12 tell there was no allegation made by Mr. Brady in terms
13 of an official complaint of sexual harassment. So,
14 someone may have made an official determination, but it
15 wasn't based on any official complaint and --

16 THE COURT: It doesn't say that it is, does
17 it?

18 MS. OXFELD: I don't know what it says. I
19 don't know what -- it says "your allegations." I don't
20 know what it grew out of. I don't know that he had
21 allegations that he made to anybody. Because as far as
22 I can tell, someone told him go see the vice principal,
23 and Mr. Brady went and saw the vice principal, and she
24 said "What happened?" And then, he was told to go to
25 another meeting.

1 THE COURT: No. He went to see the principal
2 first.

3 MS. OXFELD: Whoever. I don't remember, but
4 what I'm saying is he did not initiate a single
5 meeting. People came and looked for him. When someone
6 looks for you, you are not necessarily making an
7 allegation, nor has he ever said he made an allegation
8 of sexual harassment. All this --

9 THE COURT: You're talking about Mr. Brady?

10 MS. OXFELD: Yes. All Mr. Brady said was --

11 THE COURT: This is what happened.

12 MS. OXFELD: -- "This was what happened and
13 then, at some point, someone called me in and said
14 'Tell me what happened,' and at some point, someone
15 else called me in." I haven't heard any complaints he
16 made.

17 THE COURT: Well, does it say that he did?

18 MS. OXFELD: No.

19 THE COURT: Okay.

20 MS. OXFELD: If there doesn't say there was
21 any, I don't know how can there be a -- if it doesn't
22 say there was an actual investigation, I don't know how
23 we know there was an investigation. I don't know what
24 the investigation was, and I don't know what this is
25 conclusive of. If there's a report and we know there's

1 a report, then, we have a report. I don't see how we
2 can have a conclusion of an investigation when we don't
3 have documents of the allegation or who made the
4 complaint.

5 THE COURT: Well, you know there was an
6 investigation because Ms. Rocco called Mr. Brady into
7 her office. Then, he had a meeting with Mr. Alphonse,
8 Mr. Brady did. Okay. And then, he sent him a letter
9 after that meeting. I don't see what the problem is.

10 MS. OXFELD: Again, I --

11 THE COURT: Do we know there's an
12 investigation? Of course we know there was an
13 investigation. You know there's an investigation. I
14 know there's an investigation. Everybody in the school
15 knew there was an investigation.

16 MS. OXFELD: It's not talking about -- it says
17 -- it says Mr. --

18 THE COURT: Because Alphonse was running
19 around talking to people.

20 MS. OXFELD: Right. But it says --

21 THE COURT: And he's the investigator.

22 MS. OXFELD: Right. But it doesn't say it's
23 not re -- P-18 does not refer to the investigation. It
24 refers to an allegation made by Mr. Brady.

25 THE COURT: I didn't see that.

1 MS. OXFELD: Yes.

2 THE COURT: "As you know, an investigation was
3 conducted," and maybe I'm looking at the wrong thing?

4 No, I'm looking at P-18.

5 MS. OXFELD: "Regarding your allegation of
6 sexual harassment."

7 THE COURT: Okay. Well, then, the answer for
8 cross examination is "Mr. Brady, did you ever make an
9 allegation" --

10 MS. OXFELD: Okay.

11 THE COURT: -- "of sexual harassment?"

12 MS. OXFELD: Well, that's --

13 THE COURT: "Or is this a figment of Mr.
14 Alphonse's imagination?" P-18 is in evidence for what
15 it's worth.

16 (P-18 was received
17 in Evidence.)

18 MR. WU: Was P-18 --

19 THE COURT: Hold on. Hold on.

20 MR. WU: I'm sorry.

21 THE COURT: I'm not done marking it. I'm
22 sorry. Letter, Alphonse to Mr. Brady, 11/17/11. Okay.

23 DIRECT EXAMINATION BY MR. WU (Cont'd.):

24 Q Is P-18 a communication that you received
25 from Mr. Alphonse?

1 A Yes, sir.

2 Q What date is that marked?

3 A November 17, 2011.

4 Q Could you take some time to read the letter
5 and let me know when you're done?

6 A Okay.

7 Q During your meetings -- meeting or meetings
8 with Mr. Alphonse, did you ever say that Ms. Giuffrida
9 sexually harassed you?

10 A Can you clarify that? You mean was it ever
11 brought up?

12 THE COURT: Did you ever use those words,
13 "I've been sexually harassed?"

14 THE WITNESS: I don't think so. I can't
15 remember.

16 THE COURT: Is that your question, Mr. Wu?

17 MR. WU: Yes.

18 THE COURT: Okay.

19 BY MR. WU:

20 Q What did you tell Mr. Alphonse during those
21 meetings?

22 A Exactly what happened.

23 Q Which was what?

24 A She grabbed my rear end.

25 Q You stated earlier that the first meeting

1 occurred November 2nd with Mr. Alphonse?

2 A Yes.

3 Q How much time elapsed between your meeting
4 with Principal Rocco and your meeting with Mr.
5 Alphonse?

6 A To be honest, I don't think much time, but I'm not
7 sure of an exact amount of days or hours or anything.
8 I have no idea.

9 Q Do you know if it was less than a week?

10 A Yeah. It was within the week, definitely.

11 Q After you received what's been marked as P-18
12 from Mr. Alphonse, did you have any further
13 communication with him regarding Ms. Giuffrida grabbing
14 your butt or anything related to that?

15 A I'm not sure.

16 Q After Ms. Giuffrida grabbed your butt on
17 October 13, 2011, what, if any, other interactions --
18 I'm sorry -- what, if any, interactions did you have
19 with Ms. Giuffrida?

20 A Not really any.

21 Q Why is that?

22 A I just kind of avoided the office, the athletic
23 office.

24 Q Why did you avoid the athletic office?

25 A Just, I don't know. I wasn't comfortable going

1 down there anymore.

2 Q Was Ms. Giuffrida in the athletic office?

3 A Yes, sir.

4 Q You mean her office was there?

5 A Her office was in there, yes.

6 Q You said you weren't comfortable going down
7 there?

8 A Yes, sir.

9 Q Did you ever have to go down there?

10 A Yeah.

11 Q On what occasions?

12 A I can't remember specifics, but I coach in the
13 fall. You know, I coach football in the fall, and I
14 have to speak with the athletic director sometimes.

15 Q Did you go down to the athletic office to
16 speak with the athletic director during those times?

17 A I'm not sure.

18 MS. OXFELD: During what -- the question was
19 answered, but I don't know what times. The answer to
20 the previous question was that the witness had to go
21 during the fall, and there are a lot of falls between
22 2010, 2011 and 2013, and I don't know what times.

23 BY MR. WU:

24 Q What times did you have to go down -- sorry.
25 Let me rephrase that.

1 THE COURT: Why don't you start with October
2 13th --

3 MR. WU: All right.

4 THE COURT: -- and go from there.

5 MR. WU: Okay. From October 13th to the end
6 of November, how many times did you have to go down to
7 the athletic office?

8 THE COURT: For the record, this is
9 October 13, 2011?

10 MR. WU: 2011.

11 THE COURT: It's okay. I'm just clarifying.
12 No problem.

13 THE WITNESS: I can't remember, to be honest
14 with you. I'm not sure how many times I went down
15 there or what.

16 BY MR. WU:

17 Q Can you give me a rough estimate?

18 A I have no idea, to be honest with you.

19 THE COURT: Do you remember any incident when
20 you went down to that office? I mean, do you ever
21 remember going to that office after -- between those
22 dates, October 13th and November 30th?

23 THE WITNESS: Not specifically between those
24 dates. I don't remember it, but --

25 THE COURT: Okay. If you did, you did. You

1 didn't, you didn't.

2 THE WITNESS: I have no -- yeah. I mean, I'm
3 -- I'm in and out of the office for athletic reasons
4 with --

5 THE COURT: Of course.

6 THE WITNESS: -- the athletic director but --

7 THE COURT: Do you know if you had any speci
8 --

9 THE WITNESS: -- specifically between that,
10 I'm not sure.

11 THE COURT: Do you know if you had any
12 specific meetings regarding IEPs or any classified
13 students with Ms. Giuffrida during that period of time?

14 THE WITNESS: No. No. No.

15 THE COURT: Usually, that's all done in
16 September?

17 THE WITNESS: Yeah. Yeah. For the most part.

18 THE COURT: Okay.

19 BY MR. WU:

20 Q You said that you tried to avoid going down
21 to the athletic office?

22 A Yeah.

23 Q This would be during the -- I'm sorry. This
24 would be after October 13, 2011?

25 A Yes.

1 Q Why is that?

2 MS. OXFELD: Objection, asked and answered.

3 The witness then testified that he doesn't even know if
4 he had to go. So, pursuing the fact that if he might
5 have had have gone, he might have been uncomfortable,
6 but, again, if he can remember if he had to go is a
7 worthless line.

8 THE COURT: He doesn't remember being there,
9 but he knows he tried -- mentally, he wasn't
10 comfortable going down there even if he had to. Is
11 that a fair statement, Mr. Brady?

12 THE WITNESS: Absolutely, yes.

13 THE COURT: Okay. All right.

14 BY MR. WU:

15 Q Why were you uncomfortable with going down
16 there?

17 MS. OXFELD: Objection, asked and answered.

18 THE COURT: I'll allow it.

19 THE WITNESS: That's where Ms. Giuffrida was.
20 It was uncomfortable for me to be down there after this
21 incident. I just tried to avoid it, and after --
22 especially, you know, when there was -- after November
23 2nd, with the meeting with Mr. Alphonse, I didn't walk
24 down there just because -- just to avoid the situation.

25 BY MR. WU:

1 Q Who did you tell about your meeting with Mr.
2 Alphonse?

3 A I don't think anybody.

4 MR. WU: No further questions.

5 THE COURT: Are you okay or do you need a
6 break?

7 THE WITNESS: I'm all right. I'm good.

8 THE COURT: Cross.

9 CROSS EXAMINATION BY MS. OXFELD:

10 Q Mr. Brady, in the book in front of you --

11 A Yes.

12 Q -- I would like you to look at a document
13 that's marked P-8 and let me know if you recognize that
14 document.

15 A I've seen it, yes.

16 Q Do you know what it is?

17 A It's the sexual harassment teaching staff members
18 complaint procedure.

19 Q And for where?

20 A Point Pleasant schools.

21 Q And do you know when you first saw that
22 document?

23 A I was -- I was given the document. I don't know.
24 I saw it. I think it came with the letter or -- I'm
25 not sure.

1 Q With what letter?

2 A It might have come with one of the letters I
3 received during the investigation.

4 Q So, are you saying that on the date that Ms.
5 -- as of -- you started, I guess, the year -- the
6 school year prior to this incident?

7 A Yes.

8 Q So, you had taught in the 2009 -- 2000 --

9 THE COURT: You started teaching February
10 2010?

11 MS. OXFELD: Ten.

12 THE WITNESS: Yes.

13 BY MS. OXFELD:

14 Q And you taught in the 2010-2011 school year,
15 correct?

16 A Yes.

17 Q And then, you continued to teach in the '10
18 -- 2011-2012 school year when this incident occurred,
19 correct?

20 A Yes.

21 Q And yet, you had never seen this document,
22 P-8, until the time you met with Mr. Alphonse? Is that
23 your testimony?

24 A Around that -- around that time I would have seen
25 it, yes.

1 Q And so, I would take -- would I be correct in
2 saying that this is not a document that is regularly
3 handed out to teachers in Point Pleasant at the
4 beginning of each school year?

5 A I'm not sure.

6 Q You don't recall ever receiving it?

7 A I don't recall ever receiving it, no. I'm not
8 sure.

9 Q Now, I'd also like you to look at the
10 document that was marked as P-7.

11 A Okay.

12 Q Let me know if you recognize that document.
13 Do you recognize that document?

14 A Yes, I've seen it.

15 Q And what is that?

16 A The sexual harassment.

17 Q Do you know the difference between P-7 and P-
18 8?

19 A One's the procedure -- one's the complaint
20 procedure and one's the finding of sexual harassment.

21 Q Would I be correct if I said you saw these
22 both at about the same time?

23 A Now, that I'm -- now, that I'm looking at it, I
24 don't know if I have ever seen that.

25 Q That's the P-7?

1 A No.

2 Q Just --

3 THE COURT: Hold on.

4 MS. OXFELD: Okay.

5 THE WITNESS: To be honest with you, I'm not
6 sure. I know I saw some documentation pertaining to
7 the school policy. I'm not sure if it was P-7 or P-8
8 or maybe both.

9 THE COURT: But it was --

10 THE WITNESS: I know I've seen policy
11 regarding that.

12 THE COURT: Okay.

13 BY MS. OXFELD:

14 Q But if --

15 THE COURT: Hold on. You're not sure if it
16 was P-7 or P-8?

17 THE WITNESS: Yeah.

18 THE COURT: But the first time you saw it was
19 dealing with Mr. Alphonse?

20 THE WITNESS: Yes.

21 THE COURT: That part you know?

22 THE WITNESS: Yeah, well, not --

23 THE COURT: I just want to see. That's all.

24 THE WITNESS: Yeah, it was -- it was during
25 that time that everything was going on.

1 THE COURT: Okay.

2 THE WITNESS: Maybe I glanced at it before
3 then, but the time I remember having it or seeing it
4 was then, around that time.

5 BY MS. OXFELD:

6 Q And let me ask you, as a teacher in Point
7 Pleasant, is there something called "Safe Schools"
8 mandatory training that you have to take?

9 A Yes, ma'am.

10 Q And that's training on line?

11 A Yes, ma'am.

12 Q And do you have to do that each school year?

13 A Yes, ma'am.

14 Q And does that include training on sexual
15 harassment?

16 A Yes, ma'am.

17 Q And have you taken that training each year
18 that you've been in the district?

19 A Yes, ma'am.

20 Q So, you would have had it in the 2010-11 and
21 2011-12 school years, correct?

22 A When I came in 2010 and 2011, I'm not -- I don't
23 remember. I know I've taken it every year since then,
24 since then, being in the school.

25 BY THE COURT:

1 Q So, the first year you may have taken it
2 would have been in the 2010-11 year?

3 A No, not the year I came in. It was probably --

4 Q No, you came in in '10.

5 A Because I came in in the --

6 Q You came in in '09-'10.

7 A Oh, I'm sorry. Yes.

8 Q Right?

9 A Oh, yeah. You're right. You're right. Yes, sir.

10 Q So, you didn't -- you don't think you took it
11 in '09-'10?

12 A When I -- no, I came in in --

13 Q February of 2010 is what you told me.

14 A Yeah. I don't think I took it that year.

15 Q Now, you can change that if it's wrong.

16 A I don't think I took it that year.

17 Q Okay.

18 A I'm not sure because I came in the --

19 Q In the middle of the year.

20 A -- middle of the year, so I wouldn't have --

21 Q Toward the end, actually.

22 A Toward the end of the year, yeah, so.

23 Q Okay. So, you think the first time you took
24 it was in the '11 -- was in the '10-'11 year?

25 A '10. Yeah. Yeah, maybe.

1 Q Okay.

2 A Yes. Yes, sir.

3 Q What do you call that training?

4 A Safe Schools training.

5 Q Do you know when is that course offered
6 during the course of the year? How does that work?

7 A In the beginning of the year, we're given Safe
8 School -- the website and our user name, and then, they
9 have mandatory dates that you have to complete each
10 section by. And so, you go through and you -- usually,
11 it's like a little -- I don't want to say Powerpoint
12 but something to that nature, and then, you take a test
13 afterwards, after reading and viewing all that
14 information.

15 Q Is it a written test or is it an online test?

16 A It's online.

17 Q Okay. How does any -- oh, okay. And
18 authority knows that you took it, because you have to
19 sign off with this test?

20 A Yes.

21 Q Okay. Okay.

22 CROSS EXAMINATION BY MS. OXFELD (Cont'd.):

23 Q And turn your attention back to the date of
24 the incident, October 13, 2011. I take it you were
25 showing these pictures of your new baby to Ms. Manfred

1 (phonetic)?

2 A Ms. Manfra.

3 Q Ms. Manfra.

4 A M-A-N-F-R-A.

5 Q And she received it at her desk?

6 A Yes, ma'am.

7 Q And you were leaning over to show her the
8 pictures?

9 A Yes.

10 Q And Ms. Giuffrida passed behind you?

11 A Yes, ma'am.

12 Q And at the time she passed behind you, you
13 say she -- now, the -- let me -- and you can correct
14 me. I saw you make a motion that was that she closed
15 and opened her hand?

16 A Yeah.

17 Q On your butt?

18 A Yes, ma'am.

19 Q Hard or not hard?

20 A What's your definition of --

21 Q I don't know. How would you describe it?

22 A It was enough that you felt the squeeze from the
23 -- pressure from, you know, a hand, where it's a
24 squeeze and then a release.

25 Q So, how did you know it was actually meant as

1 let us say a butt squeeze as opposed to a just sort of
2 holding on to you as she walked by?

3 A Holding on to me as she walked by?

4 Q Just passing by and maybe she put her hand
5 out and she would have put her hand on your shoulder,
6 your side, your butt. How do you know it was intended
7 for your butt?

8 MR. WU: I'm going to object to that as
9 speculation.

10 THE COURT: Well, it might not be speculation
11 if he's the recipient.

12 MS. OXFELD: Well, it's being presented here
13 as sexual harassment and inappropriate conduct, and I
14 think it's crucial to know whether the witness feels --

15 THE COURT: Yeah, it's cross examination.
16 I'll allow it.

17 MS. OXFELD: -- that it was a deliberate move
18 or --

19 THE COURT: We don't need an argument.

20 THE WITNESS: Can I ask you why would she need
21 to hold on?

22 BY MS. OXFELD:

23 Q I'm not -- I'm -- no, you can't ask me any
24 questions.

25 A I'm sorry, then. I apologize.

1 Q You don't know. You wouldn't know that.

2 A I didn't know.

3 Q But -- but the thing is how do you know it
4 was deliberately meant for one part of your body versus
5 another?

6 A Because it was targeted right on my rear end,
7 pretty -- pretty blatant grab.

8 Q It was so blatant that the other individual
9 here didn't see it?

10 A She wasn't in view of it. It was behind me.

11 Q Did you tell Mr. Alphonse that Ms. Giuffrida
12 either punched -- pinched or grabbed your rear end?

13 A No.

14 Q You didn't use the word "pinched" to him?

15 A It wasn't a pinch. It was a grab.

16 THE COURT: No, no. Just ask the -- answer
17 the question.

18 THE WITNESS: I'm not sure.

19 THE COURT: It has to do with what you said to
20 Alphonse. It's not what it was. It's what you said
21 Is the Court -- is the importance of the question.

22 THE WITNESS: I don't think so.

23 BY MS. OXFELD:

24 Q Did you ever go to Ms. Giuffrida and tell her
25 that she had made you uncomfortable?

1 A No.

2 Q And what was the name of the individual who
3 called you into a meeting, the first meeting?

4 A Ms. Rocco.

5 Q Ms. Rocco. She was the principal, right?

6 A Yes, ma'am.

7 Q If Ms. Rocco had not called you into a
8 meeting, would you have ever filed a complaint?

9 A Probably not, no.

10 THE COURT: You said filed a complaint?

11 MS. OXFELD: Yes.

12 THE COURT: Are you going to expand on that?

13 MS. OXFELD: Well --

14 THE COURT: I didn't see any complaint filed
15 yet. That's my que -- that's my point.

16 MS. OXFELD: Right. That's -- that's what --
17 that's what I'm asking. I don't think there's a
18 complaint.

19 THE COURT: No, you haven't asked anything.

20 MS. OXFELD: Okay.

21 THE COURT: You said filed the complaint.

22 BY MS. OXFELD:

23 Q Well, did you ever make any official
24 complaint about Ms. Giuffrida?

25 A When she asked me what happened, I guess that

1 would be the complaint.

2 Q But you did not initiate that meeting,
3 correct?

4 A No, ma'am.

5 Q Now, you said you told the athletic director
6 what happened?

7 A No, ma'am.

8 Q Did you tell anyone what had happened?

9 A Yes, ma'am.

10 Q Who did you tell?

11 A I'm not certain of each individual that I might
12 have told about it, but I know it was spoken about in
13 the office, in my office, excuse me.

14 THE COURT: That's all right. And who would
15 be in your office?

16 THE WITNESS: There's coaches in and out of
17 there. There's three other desks.

18 THE COURT: What -- what kind of -- what kind
19 of office do you call it? What's the name for the
20 office?

21 THE WITNESS: Phys ed office.

22 THE COURT: A phys ed office. Okay.

23 THE WITNESS: Yes.

24 BY MS. OXFELD:

25 Q Did you ever tell Mr. Alphonse that you had

1 told the AD you were uncomfortable?

2 A No, ma'am.

3 Q Did you ever tell him you had told the SAC
4 you were uncomfortable?

5 A No, ma'am.

6 MR. WU: I'm going to object to the use of the
7 acronyms. I'm not sure of what "AD" or "SAC" would be.

8 MS. OXFELD: Well, "AD" is the athletic
9 director, "SAC" is substance abuse counselor, but I'm
10 reading from exhibit P-6 of the state's book of
11 exhibits, which is notes taken by Mr. Alphonse, and I'm
12 reading specifically from the page of Mr. Alphonse's
13 notes of what he's saying are his notes of his meetings
14 with Mr. Brady.

15 THE COURT: Don't look. Don't look.

16 THE WITNESS: Oh, I'm not allowed. I'm sorry.

17 THE COURT: Not until somebody tells you to.
18 It's okay, Mr. Brady. You wouldn't know unless I told
19 you, so.

20 THE WITNESS: I don't know.

21 MS. OXFELD: Mr. Wu may not know what an AD or
22 a SAC is, but that's -- he gave us a document that
23 contains those initials, and I'm asking about what is
24 written in the --

25 THE WITNESS: Do you want me to close this

1 now?

2 THE COURT: Well, you can. I don't care. If
3 you feel better -- if you feel better with it closed,
4 close it.

5 THE WITNESS: All right.

6 THE COURT: You just can't go peeking through
7 the book.

8 THE WITNESS: Okay. Sorry.

9 THE COURT: That's okay. It's -- you wouldn't
10 know unless I told you, so.

11 THE WITNESS: Thank you.

12 THE COURT: No hard feelings, believe me.
13 What's the problem?

14 MS. OXFELD: There is no problem.

15 THE COURT: Ask another question.

16 MS. OXFELD: I have no other questions.

17 BY THE COURT:

18 Q Oh. Then, that's sufficient. So, I
19 understand is that you never told anyone that you were
20 uncomfortable being around Ms. Giuffrida?

21 A In the -- in the meeting, yes. I told Mr.
22 Alphonse. I didn't tell the athletic director.

23 Q You told him? Right.

24 A She asked if I told the --

25 Q I understand. I know what she said.

1 A Yes.

2 Q I'm asking you if -- when you got back to the
3 -- we're going to go back to October 13th.

4 A Okay.

5 Q You went back to the office. If any of the
6 coaches were around, you said "Oh, my, you can't
7 believe what just happened?"

8 A Yeah.

9 Q Is that right?

10 A Yes.

11 Q Okay. After that, the whole thing, as far as
12 you knew, died until you got called in by Ms. Rocco?

13 A Yeah. Yeah. Yeah.

14 Q Okay. You felt uncomfortable because of the
15 incident?

16 A Yes, sir.

17 Q Ms. Giuffrida never said anything to you,
18 right?

19 A In regards to the incident?

20 Q With regard to the incident.

21 A No, sir.

22 Q Okay. And you never said anything to her,
23 correct?

24 A Yes.

25 Q Okay. Now, a question I have for you, and

1 I'm not saying you did anything wrong. Don't get me --

2 A Yeah.

3 Q I'm just trying to figure this whole thing
4 out.

5 A Yeah.

6 Q See, my job is to put all of the pieces of
7 the puzzle together.

8 A Yup.

9 Q Okay. So, you work with Ms. Giuffrida
10 periodically, you have to?

11 A Yes, sir.

12 Q Okay. Right. And if there was one of the
13 students that you were having a problem with in gym,
14 you might go to Ms. Giuffrida --

15 A Yes, sir.

16 Q -- and re-look at the IEP or whatever, right?

17 A Yes, sir.

18 Q Now, for this period between October 13th and
19 sometime in -- beginning in November you were feeling
20 uncomfortable. Did it ever cross your mind that we're
21 going to be in contact sooner or later over a student?
22 Did you ever think about that?

23 A I just tried to avoid the situation to be honest
24 with you, sir.

25 Q Well, you never had a student that needed

1 consultation with Ms. Giuffrida?

2 A No, I have, yes.

3 Q No, I mean in between that October 13th and
4 November 3rd, 4th, 5th.

5 A No. No. Not at that time.

6 Q Not at that time?

7 A No.

8 Q Did you ever think about how you were going
9 to handle the situation if that sit -- if that arose
10 where you did have to -- you were forced to?

11 A I would have been forced to. Yes, sir.

12 Q Right. Okay. Did you think about how you
13 were going to handle that?

14 A No. I have no idea, to be honest with you, sir.

15 Q Okay. You have no idea if you thought of it
16 or --

17 A In regards to --

18 Q -- you just didn't think about it?

19 A -- how, you know -- I just didn't think about it,
20 to be honest with you.

21 Q Okay.

22 A I just --

23 Q You felt awkward?

24 A Awkward, just wanted to avoid the whole thing in
25 itself.

1 Q And maybe let it rest, whatever?

2 A Yeah, just kind of try and forget about it.

3 Q You forget about it, maybe it will go away?

4 No, I'm serious.

5 A No, you know.

6 Q Is that true or not true? I'm not trying to
7 put words in your mouth. I'm trying to figure out what
8 you're -- what you're thinking.

9 A You're just trying to avoid it, not really make
10 any -- you know, I didn't -- I never -- I was non-
11 tenured at the time, and I was just trying to get my --
12 my -- really, my --

13 Q Stay under the radar?

14 A Yeah, stable ground. I wanted to stay under the
15 radar. So, yes, I just tried to avoid the situation in
16 itself.

17 Q Okay. Now, the other question I have for you
18 -- first, let me see that diagram, okay?

19 A Yes, sir.

20 Q Now, in a -- I'm going to give you a black
21 pen this time.

22 A Okay.

23 Q To go -- counteract the blue and the red.

24 A Okay.

25 Q And ask you in a dotted -- for a dotted line,

1 dash, okay, what Ms. Giuffrida's path of travel was
2 while she was in the office, if you know?

3 A I believe she came in this way, here, and then --
4 I don't know. I didn't see what -- I don't remember
5 what she continued to do, but there is also a door over
6 there that would lead to her office down the other end.

7 Q Okay. So, in one of these doors, you think?

8 A Well, she might have entered through this door. I
9 don't know how she entered. I don't know if it was
10 this hallway or this door.

11 Q Okay. But, okay --

12 A She came through from this side.

13 Q -- so, she started at that point.

14 A Walked through and there's actually another door
15 behind all the mailboxes here where she could have
16 exited and walked down to her office. This hallway
17 leads to her office here.

18 Q Okay.

19 A This hallway leads to the gym.

20 Q Okay. All right. Now, the other question --
21 let me -- you can -- anybody want to see this?

22 MS. OXFELD: Yes.

23 THE WITNESS: Sorry.

24 THE COURT: That's all right.

25 THE WITNESS: I didn't want to throw it to

1 her.

2 BY THE COURT:

3 Q Okay. Now, a simple question, and I'm trying
4 to picture this in my mind and --

5 A Yes, sir.

6 Q -- based on my own human experiences, okay.
7 The relationship you had with Ms. Giuffrida before this
8 incident was cordial?

9 A I would say so, yes.

10 Q "Hi, how you doing?"

11 A Yeah. Professional.

12 Q "How's the family?" "Did you have a good
13 weekend?" That type of thing?

14 A I wouldn't even go to it that far.

15 Q Okay.

16 A Just really kind of a professional atmosphere.

17 Q Okay. Did everybody know you had -- you were
18 a recent father?

19 A I would think so. I was pretty proud. I wore it
20 all over my face at that time, you know.

21 Q They give you a little party or something?

22 A No. No.

23 Q No?

24 A No.

25 Q You didn't get a couple of little bibs or a

1 couple of Onesies and stuff?

2 A Yeah. Well, yeah, yeah, a bunch of that stuff,
3 yeah.

4 Q Yeah, the school knew, right?

5 A Yeah. Yeah.

6 Q Okay. All right. Now, I'm just wondering,
7 because I've seen this in the past sometimes, where
8 someone will walk past, and as a congratulatory thing
9 give you a pat, not necessarily on the glutes.

10 A Yeah. Yeah.

11 Q Okay. But maybe on the back.

12 A Yeah.

13 Q Okay. And I'm wondering if the pat on the
14 back was lower than intended. You know what I'm
15 saying?

16 A I know what you're saying, but when somebody grabs
17 your rear end, there's a --

18 Q Okay.

19 A -- difference there between --

20 Q A pat.

21 A -- a pat and a grab.

22 Q Okay. Okay. And this was definitely the
23 latter?

24 A Yeah. Yeah. The -- the --

25 Q Right. The latter. This was definitely --

1 you felt a grab?

2 A Yeah. Yes.

3 Q Okay. Okay. Alright. Okay. More than a
4 quiet --

5 A Yes.

6 Q -- tap, congratulatory tap without any
7 comment?

8 A More, yes.

9 THE COURT: Okay. Anything else?

10 MS. OXFELD: Nothing further.

11 THE COURT: Mr. Wu?

12 MR. WU: Brief redirect, Your Honor?

13 THE COURT: Sure, by all means.

14 REDIRECT EXAMINATION BY MR. WU:

15 Q With regard to school board policies and
16 regulations, where can you find them, if you know?

17 A In the handbook, the agenda book.

18 Q There's an agenda book. How -- when is that
19 provided to -- sorry. Who is that provided to?

20 A Everybody is given it. Everybody can find it.

21 Q Including --

22 THE COURT: And what do you call it, a
23 handbook?

24 THE WITNESS: Agenda book.

25 THE COURT: Agenda book?

1 THE WITNESS: Yeah.

2 THE COURT: Oh, okay.

3 BY MR. WU:

4 Q And what policies are listed in the agenda
5 book?

6 A Everything -- everything's in there, school
7 district policy.

8 Q Aside from the October 13, 2011 incident
9 where Ms. Giuffrida grabbed your butt, how many other
10 times has someone grabbed your butt during your
11 employment at Point Pleasant?

12 A Never.

13 MR. WU: No further questions.

14 MS. OXFELD: No questions.

15 THE COURT: Okay.

16 THE WITNESS: Does that mean I can --

17 THE COURT: That means you can leave. But let
18 me tell you --

19 THE WITNESS: Yes, sir.

20 THE COURT: -- until this entire case is over
21 --

22 THE WITNESS: Yes, sir.

23 THE COURT: -- you are not to talk about your
24 testimony or anything that happens in this courtroom or
25 anything concerning Ms. Giuffrida.

1 THE WITNESS: Okay.

2 THE COURT: Okay?

3 THE WITNESS: Yes, sir.

4 THE COURT: There is what's called an order of
5 sequestration, and that means you can't speak to
6 anybody about this.

7 THE WITNESS: Okay.

8 THE COURT: Anybody asks you, tell them
9 "Yankees are winning. That's all that matters." Okay?

10 THE WITNESS: Okay.

11 THE COURT: Seriously.

12 THE WITNESS: All right.

13 THE COURT: All right?

14 THE WITNESS: Yes. Yes, sir.

15 THE COURT: Okay. Thank you very much, Mr.
16 Brady. Nice meeting you.

17 THE WITNESS: Thank you. A pleasure meeting
18 you. Thank you.

19 MS. OXFELD: Could we have a break of about
20 two minutes?

21 THE COURT: Absolutely.

22 (BRIEF RECESS)

23 THE COURT: No jobs, just degrees.

24 MS. OXFELD: Bring -- just bring in the --
25 bring the kids in and the kids --

1 THE COURT: Good afternoon. You are, sir?

2 THE WITNESS: David Drew.

3 THE COURT: David Drew. Okay. Thank you,
4 David. Mr. Drew, my name is Judge Schuster. Have you
5 ever been a witness before or in a courtroom, other
6 than --

7 THE WITNESS: I think when I was like 14 or 15
8 years old.

9 THE COURT: Okay. Were you a witness?

10 THE WITNESS: Yes, I was a witness, yes.

11 THE COURT: Oh, wow, cool.

12 THE WITNESS: Second time.

13 THE COURT: I bet that was an experience, huh?
14 Well, let me give you the one on one on this.

15 THE WITNESS: Okay.

16 THE COURT: You're going to be asked questions
17 by both Mr. Wu and Ms. Oxfeld and some probably by me.
18 Okay. If you don't know the answer, just say you don't
19 know it. I'd be amazed if you knew every one. Okay.
20 If you don't understand a question -- in other words,
21 it could be -- in your mind, it could be ambiguous, it
22 can mean a couple of different things.

23 THE WITNESS: Right.

24 THE COURT: The answer --

25 THE WITNESS: Ask for clarification.

1 THE COURT: -- has one thing in mind, and
2 you're not sure exactly what it is, you need a
3 clarification, ask for it.

4 THE WITNESS: Okay.

5 THE COURT: We don't have a dialogue. It's a
6 question and answer thing, but you're allowed to ask
7 for clarifications and everything, because this is a
8 search for the truth, all right? And unless you fully
9 understand what's going on, you can't really be
10 truthful, because you really -- you know, from our
11 point and perspective.

12 THE WITNESS: Right.

13 THE COURT: I know you would think you're
14 telling the truth, but I don't want you to guess.

15 THE WITNESS: Right.

16 THE COURT: And I don't want you to guess on
17 what a question means either.

18 THE WITNESS: Right.

19 THE COURT: I don't want it -- and I don't
20 want you to guess on an answer. If you don't know,
21 it's okay to say "I don't know." If you're going to
22 estimate on an answer -- for example, "What time did
23 this happen?"

24 THE WITNESS: "Around this time."

25 THE COURT: "I don't know exactly. I estimate

1 between 2 and 2:30." Okay? And that's okay. All
2 right? If you need a break for any reason, for
3 anything, just give me a signal. You'll get your
4 break.

5 THE WITNESS: Okay.

6 THE COURT: If you have any questions of me
7 during the course of the proceeding, by all means, ask.

8 THE WITNESS: Okay.

9 THE COURT: If there is an estimated distance,
10 I will tell you that the ceiling tiles are 2 feet by 4
11 feet. So, if you want to say from here to the window
12 --

13 THE WITNESS: Okay.

14 THE COURT: -- just count how many tiles.

15 THE WITNESS: Okay.

16 THE COURT: Okay?

17 THE WITNESS: Yeah.

18 THE COURT: Okay. All that being said, Mr.
19 Wu's going to ask you questions, and then, you're going
20 to have something called cross examination. Okay. And
21 that means Ms. Oxfeld will ask you questions. All
22 right? You can take that piece of paper right there
23 and just stick it inside the folder. Okay. And those
24 are exhibits that are going to be either introduced,
25 have been or probably will be introduced into evidence,

1 but until you're referred to them.

2 THE WITNESS: Okay.

3 THE COURT: Any questions?

4 THE WITNESS: No, sir.

5 THE COURT: Raise your right hand.

6 D A V I D D R E W , PETITIONER'S WITNESS, SWORN

7 THE COURT: Good. Thank you. And your name
8 is David Drew. D-R-E-W, as in Drew University?

9 THE WITNESS: Yes.

10 THE COURT: Wonderful. Good. Mr. Wu.

11 DIRECT EXAMINATION BY MR. WU:

12 Q What is your current position?

13 A I'm a special education teacher in high school.

14 Q I'm sorry. Can you slow down a little bit?
15 Which high school?

16 A Point Pleasant Borough High School.

17 Q How long have you been a special education
18 teacher at Point Pleasant Borough High School for?

19 A This is my second year. This is my third year.

20 THE COURT: When did you start?

21 THE WITNESS: That's a good que -- I mean,
22 I've been -- I've been a teacher in the district for so
23 long. Is this my second year?

24 THE COURT: Well, I'll tell you what, when did
25 you start teaching in the district? Do you mind, Mr.

1 Wu?

2 THE WITNESS: 2001. So, it is probably my
3 second year -- I'm into my third year, currently.

4 BY MR. WU:

5 Q When did you start teaching at Point Pleasant
6 High School?

7 A Two years ago. I'm not really sure about that.

8 THE COURT: Hold on. I thought you started in
9 2001?

10 THE WITNESS: Not at the high school. I've
11 been in Nellie Bennett School District [sic], which is
12 a grammar school, moved up to the middle school and
13 then, moved up.

14 THE COURT: Okay. I'm sorry. I misunderstood
15 that. When did you start in the high school?

16 THE WITNESS: Two years ago.

17 THE COURT: 2011-2012 school year?

18 THE WITNESS: I always forget.

19 THE COURT: That's all right. Take your time.

20 THE WITNESS: Maybe 2010-2011.

21 THE COURT: Okay. You started at Point
22 2/2010.

23 THE WITNESS: Yes.

24 THE COURT: Full time position?

25 THE WITNESS: Yes.

1 THE COURT: Okay.

2 BY MR. WU:

3 Q When did you start in the district?

4 A 2001.

5 Q Okay. And as a special education teacher,
6 what do your duties involve?

7 A It depends on what class you have. I have in-
8 class support classes. So, I team teach with teachers,
9 and my role is to follow an IEP, individualized
10 education program, and make sure that that's being
11 followed and met every day.

12 Q How do you provide in-class support for a
13 classroom?

14 A Well, I don't like to think of it as just I am in
15 there for support. I like to think of it as team
16 teaching. But we go over lesson plans. We look at
17 IEPs. We try to make lessons for every learner, not
18 just one.

19 Q Who was your supervisor during the 2011-2012
20 school year?

21 A Ms. Giuffrida was my LDTC at that time, but there
22 are also supervisors. You know, I was mostly in
23 history classes, so Ed Kenney (phonetic) was my
24 supervisor, and obviously, my principal was Linda
25 Rocco.

1 Q How would you describe your relationship with
2 Ms. Giuffrida?

3 A Our relationship to discuss IEPs, to discuss
4 things like -- I'm not sure. What do you mean by that?
5 How was my relationship in school with her?

6 Q Yes.

7 A You know, she was the LDTC, and I was the special
8 education teacher. So, if I needed to go for extra
9 help or needed help on an IEP or questions, I would go
10 to Ms. Giuffrida.

11 Q Did you ever meet with her outside of school?

12 A No.

13 Q How many times did you meet with her to
14 discuss IEPs or to request help?

15 THE COURT: During what period?

16 BY MR. WU:

17 Q I'm sorry. During the 2011-2012 school
18 year?

19 A I would say -- you know, again, it's an estimate,
20 maybe once a week, maybe twice a week.

21 Q How long were those meetings?

22 A Usually pretty informal, you know, five to ten
23 minutes.

24 Q I'm sorry. You said once a week?

25 A Yeah.

1 Q What other interactions did you have with Ms.
2 Giuffrida during the 2011-2012 school year?

3 A She would observe classes. She would also observe
4 kids in the cafeteria. She did that quite often.

5 Q When you say "observed classes," which
6 classes are you referring to?

7 A I'd be team teaching or teaching with a general
8 education teacher, and she would come in to observe
9 students.

10 Q Was she evaluating you during these
11 observations?

12 A No. She's not evaluating me.

13 Q When she was making classroom observations of
14 you, how -- sorry -- what conversation, if any, did you
15 have with her?

16 A She would just say that, you know, she was in
17 there observing a student. There wasn't much
18 conversation after that.

19 Q You also mentioned that she would observe
20 students in the cafeteria?

21 A Yes.

22 Q How do you know that?

23 A We would discuss. You know, she would tell me
24 that she's in here, she's observing a student, that
25 kind of thing. That's how I know.

1 Q Did you have duties in the cafeteria as well?

2 A Yeah. That was part of my -- my requirements was
3 duty, just that, and my job was the cafeteria. I
4 needed to make sure that the proper people are coming
5 in and out of the building.

6 Q When would you be on cafeteria duty?

7 A Fifth period, which would be probably 10:30 to 11,
8 you know, 11:15.

9 Q 10:30 to 11:15?

10 A Yeah.

11 Q What sort of interactions did you have with
12 Ms. Giuffrida while you were on cafeteria duty?

13 A Mostly informal interactions with her. To get
14 specific, I saw her quite often. There wasn't any one
15 incident that stands out.

16 THE COURT: Say that again, wasn't what?

17 THE WITNESS: There wasn't one -- you know,
18 there wasn't just one incidence as to that. We
19 interacted often.

20 THE COURT: You both have one thing in common,
21 classified students.

22 THE WITNESS: Right.

23 THE COURT: Okay.

24 BY MR. WU:

25 Q What was the nature of the conversations you

1 had with Ms. Giuffrida?

2 A Again, you know, we're talking, you know, two
3 years ago here. Sometimes, those conversations would
4 be strictly about students. Sometimes, they would be,
5 you know, a general conversation between two people.

6 Q Can you elaborate on "general conversation
7 between two people?"

8 A Just the one that stands out because we're in this
9 trial was, you know, the time she was talking about her
10 breasts and saying that she didn't look too bad for a
11 40-year old woman.

12 Q When did that conversation take place?

13 A Again, I don't know the date, but it was in that
14 year.

15 Q I'm sorry, which year?

16 A In the 2011-2012 year. I don't know the specific
17 date.

18 Q That's fine. Where did this conversation
19 occur?

20 A In the cafeteria.

21 Q Who also was present for that conversation?

22 A Nobody.

23 Q Can you describe the volume of that
24 conversation, if you remember?

25 A I mean, it wasn't loud. It was general

1 conversation between two people, the kind of
2 conversation that we're having now.

3 Q Who else was in the cafeteria when you were
4 having this conversation?

5 A There's a number of students that were in the
6 cafeteria at that time, and there were two people who
7 -- two co-workers that worked in there, Bill Burke and
8 Jean Marie Harris.

9 Q Where were the students and the co-workers
10 located relative to you when you had that conversation
11 with Ms. Giuffrida?

12 A We were by one of the exit doors, and students
13 would be, you know, at the table centralized in the
14 cafeteria, but I'm sure you can imagine what a
15 cafeteria looks like and there's, you know, walls
16 around and tables in the middle, and the kids would sit
17 at the tables.

18 Q And you were by one of the exit doors?

19 A Yes. At our school, we're allowed to go out to
20 lunch. Right. So, people have to be able to come back
21 in. So, I have to watch who's coming in and out of the
22 building, make sure that the proper people are coming
23 in.

24 Q How much distance was between you and the
25 tables with the students?

1 A Not feet, I mean inches. The tables are right
2 next to us.

3 Q So, students would be within earshot of your
4 conversations?

5 A If they -- you know, it's very loud in a
6 cafeteria, but, you know, in earshot? I mean, you
7 could hear my voice across the -- halfway across the
8 room I'm sure, yeah.

9 THE COURT: I'm sorry, sir?

10 THE WITNESS: You could hear my voice, you
11 know, halfway across the room if I were speaking out
12 loud. But, you know, there's a lot of conversation
13 going on in a cafeteria, and that kind of muffles
14 everything and, you know, I'm not sure I could hear
15 somebody else speaking.

16 BY MR. WU:

17 Q You said she made a comment about her
18 breasts. What exactly was that comment, if you
19 remember?

20 A I don't. I -- she said "My breasts don't look too
21 bad for a 40-year old woman, do they?"

22 Q What was the context of that comment?

23 A Again, I think it was just two people talking with
24 each other, and when you ask me the context, I'm not
25 sure exactly what you mean.

1 Q Let me -- let me clarify. Did you ask her
2 anything about her breasts?

3 A No.

4 Q Were you remarking on other peoples' breasts?

5 A No.

6 Q Have you ever made a comment about someone's
7 breasts?

8 A No.

9 Q How did that comment make you feel?

10 A Awkward, you know, shocked are two words that, you
11 know, come to mind.

12 Q What did you say to her after she told you --
13 or after she asked you that question?

14 A I'm not sure I said anything.

15 Q What other interactions with Ms. Giuffrida
16 would you characterize as making you feel awkward?

17 A Just one. I checked my mail in the athletic
18 office, where Ms. Giuffrida's office was. I guess she
19 heard me in the office, called me in and approached me,
20 and I don't know. We might have been talking, you
21 know, about life. I'm not sure. And she hugged me and
22 kissed me and then asked me if that felt uncomfortable.

23 Q How did you respond?

24 A I didn't. I didn't respond. I left.

25 Q When did -- when did this incident occur?

1 A Again, I don't know the exact date, sometime in
2 October, maybe, you know, October 21st is sounding like
3 the date.

4 Q I'm going to direct your attention to the
5 binder in front of you.

6 A Sure.

7 Q If you could turn to the tab that's labeled
8 P-11.

9 A Okay. I remember that e-mail, yeah.

10 Q Do you recognize this?

11 A Sure.

12 Q What is it?

13 A It's an e-mail to Mr. Robert Alphonse. It says
14 that the incident took place on Friday --

15 Q Sorry. You don't have to read it.

16 A Okay.

17 Q Who sent the e-mail?

18 A Robert Alphonse.

19 Q I'm sorry.

20 A Oh, who sent it?

21 Q Yes.

22 A I sent it to Robert Alphonse.

23 Q On what date?

24 A November 7, 2011.

25 MR. WU: At this time, I would ask that

exhibit P-11 be introduced into evidence.

MS. OXFELD: No objection.

THE COURT: Okay. I'll be with you in just

two seconds, e-mail from Mr. Drew to Mr. Alphonse,

11/7. Okay. P-11 is in.

(P-11 was received

in Evidence.)

BY MR. WU:

Q If you could take some time and look over

that e-mail, let me know when you're done reading it.

A Okay.

Q Does this e-mail help you recollect when that

incident occurred when Ms. Gluftrida hugged and kissed

you?

A Sure. Absolutely.

Q And when did that incident occur?

A October 20 -- Friday, October 21st, between 12:50

and 12:55 p.m.

Q What exactly occurred?

A In my e-mail? What's written in the e-mail or

what exactly occurred that day?

Q To the best of your recollection.

A To that day, you know, I was in that office

checking my mail like I always do.

Q I'm sorry, which office?

1 A This would be the athletic office. It's also a
2 tandem of the guidance office. It's a mixture of
3 offices.
4 THE COURT: How come you get mail there and
5 not central office?
6 THE WITNESS: Because I'm a coach. So, I have
7 a lot of mail at the central, and then, I have --
8 THE COURT: Okay. That answers it.
9 THE WITNESS: -- an athletic mailbox.
10 THE COURT: Because it's also an athletic
11 office.
12 THE WITNESS: Yeah. Yes.
13 THE COURT: Got you. So, it was coaching mail
14 as opposed to teaching mail?
15 THE WITNESS: Yes, exactly.
16 THE COURT: Got it. Okay. Thank you.
17 THE WITNESS: And Ms. Giuffrida said that, you
18 know, she was having a bad day and, you know, kissed me
19 on the cheek and, you know, asked me if that felt --
20 made me -- made me feel uncomfortable.
21 BY MR. WU:
22 Q Was there anything else with Ms. Giuffrida
23 that day in the athletic office? I'm sorry. Was there
24 any other physical contact that Ms. Giuffrida had with
25 you?

1 A Yeah, she may -- she may have given me a hug
2 maybe.
3 Q Where were you stand -- sorry. Were you
4 standing when --
5 A Yes. I was standing and Ms. Giuffrida was
6 standing as well.
7 Q Where were both of you standing?
8 A In her office.
9 Q Where is her office relative to the athletic
10 office?
11 A They're together. There's different rooms. Ms.
12 Giuffrida has a room. The athletic director has a
13 room. The drug counselor has a room, and one of the
14 school psychologists has a room.
15 THE COURT: There's just one door that leads
16 into the suite of rooms?
17 THE WITNESS: Yes. Yeah. And then, there's a
18 conference room as well.
19 THE COURT: Okay.
20 BY MR. WU:
21 Q Does each separate office have their own
22 door?
23 A Yes.
24 Q Was Ms. Giuffrida's door opened or closed?
25 A Open.

1 Q You stated that the remark she made about
2 having a bad day, that occurred in her office?
3 A Yes.
4 Q Then, what happened after she said she had a
5 bad day?
6 A She had hugged me and gave me a kiss.
7 Q Where did she give you a kiss?
8 A On the cheek.
9 Q Can you demonstrate where?
10 A If this is -- well, I don't -- I don't -- on
11 myself?
12 Q You can point just to the area on your face.
13 A Sure.
14 Q The corner of the mouth?
15 A Yeah.
16 Q Right side?
17 A Oh, that's a good question. I don't know the
18 specific -- I don't know that.
19 Q Okay.
20 A I would assume that the right side, because the
21 wall was on my left side.
22 Q How long did the kiss last for?
23 A You know, a second.
24 Q Was there any tongue involved?
25 A No.

1 Q During the kiss, did you lean into the kiss?

2 A No.

3 Q Physically, what was your body position when the kiss occurred?

4 A I'm standing. She had kissed me, and my body position was, I don't know, in shock. I don't know what kind of position, standing, you know. I'm not sure.

5 Q After she kissed you, what happened?

6 A She said, "I hope that didn't make you feel uncomfortable."

7 Q How did you respond?

8 A I didn't.

9 Q What did you do afterwards?

10 A I left.

11 Q I'm sorry. You left where?

12 A I left the office completely.

13 Q Where did you go?

14 A To my classroom. I had a class, seventh period class.

15 Q Where was your class located?

16 A Seventh period would have been U.S. Two, room 230 in the high school building.

17 Q How did the kiss make you feel?

18 A Uncomfortable, shocked.

Q Who did you -- sorry. Let me rephrase that.

Who did you report the kiss to, if anyone?

A I mean, nobody, my wife, you know. I let her

know. I didn't report the kiss to anybody. I may have

spoken about it to Pat Brady, who I coach football

with. I would have saw him on the football field.

Q When did you speak to him about it?

A We usually meet before practices to discuss what

we're doing that day. So, that would be around 3:00,

and that's when I would have told him.

Q How often do practices happen?

A Monday through Friday at 3:00. Usually a

Saturday, if we don't have a game, we're there at

8 a.m.

Q What about the comment you said about her

breasts, who did you tell that to, if anybody?

A I didn't tell anybody that until, you know, this

all came to a head.

Q I'm sorry?

A I didn't tell anybody that until there was an

investigation going on.

Q Who was Linda Rocco?

A The building principal.

Q When, if ever, did she contact you regarding

your interactions with Ms. Giuffrida?

1 A She did contact me. Again, I can't give you an
2 exact date. It was certainly after Friday,
3 October 21st. It was certainly after that. It was in
4 the middle of the school. You know, she called me down
5 to the office and spoke with me about the incident.
6 Q She called you down to her office?
7 A Her office.
8 Q And what did she ask you?
9 A She asked me if Ms. Giuffrida had kissed me. I
10 had told her yes.
11 Q What else, if anything, did she ask you?
12 A She told me that, you know, she had heard that,
13 that she had heard it. I don't know where she heard it
14 from, but she had heard it, and she just wanted some
15 clarification on it.
16 Q What else did you tell her regarding your
17 interactions with Ms. Giuffrida?
18 A Well, that was when I -- I didn't tell my wife, so
19 I was telling like, you know, I'm going to have to tell
20 my wife about this now, and I felt really uncomfortable
21 about that. And that was pretty much the length of the
22 conversation. She just wanted to know if it happened,
23 and she wanted to, you know, I -- just get -- get to
24 know the facts.
25 Q What, if anything, did she ask you about the

1 comment Ms. Giuffrida made about her breasts?
2 A I'm not sure I told her at that time.
3 Q Did she ask you about it?
4 A No.
5 Q All right. Who else was at that meeting?
6 A Just me and Linda, Linda and I.
7 THE COURT: Linda being Rocco?
8 THE WITNESS: Yes, Linda Rocco. I'm sorry.
9 THE COURT: Okay. I'm sorry.
10 BY MR. WU:
11 Q What happened after that meeting?
12 A I was told not to, you know, speak about the
13 incident or -- you know, that was it.
14 Q Who else, if anyone, approached you about
15 that incident?
16 A Ms. Rocco --
17 THE COURT: Which incident? There's two.
18 BY MR. WU:
19 Q Oh, sorry. Let me -- let me specify. About
20 the kiss with Ms. Giuffrida.
21 A Both incidents were, you know -- Robert Alphonse
22 when he was doing an investigation.
23 Q I'm sorry. When you say "both incidents,"
24 you're referring to both the kiss and the comment about
25 the breasts?

1 A Yes. That's when I brought up the -- I can't
 2 remember. I may have told Ms. Rocco about the
 3 incident, but I know I definitely told Mr. Alphonse
 4 about it.
 5 Q How far apart were your conversations with
 6 Ms. Rocco and Mr. Alphonse?
 7 A A day or two, maybe three. I'm not sure.
 8 Q When did your conversation with Mr. Alphonse
 9 occur?
 10 A It had to be during the next school week. I don't
 11 know, the 25th or 26th. Again, I don't know the
 12 specifics.
 13 Q I'm going to refer you to what's marked P-15.
 14 A Okay.
 15 Q Do you recognize this exhibit?
 16 A Yes.
 17 Q What is it?
 18 A It is a hand delivered letter from Mr. Alphonse.
 19 Q Who is it addressed to?
 20 A David Drew.
 21 Q That would be you?
 22 A That would be me.
 23 MR. WU: At this time, I'd like to offer P-15
 24 into evidence.
 25 MS. OXFELD: No objection.

THE COURT: Okay. One second. Okay. P-15 is

in evidence.

(P-15 was received

in Evidence.)

BY MR. WU:

Q If you could read over it and let me know

when you're done.

A Okay.

Q Does this refresh your recollection as to

when your meeting with Mr. Alphonse occurred?

A Yes.

Q When did it occur?

A November 3rd. So, that would have been two weeks.

Q I'm sorry?

THE COURT: On the 3rd or 2nd?

BY MR. WU:

Q The meeting occurred on November 3rd?

A Yes.

Q Could you read the first sentence of that

letter out loud?

A "This letter will confirm the substance of my

conversation with you during our meeting on November 2,

2011." I misread that line.

Q So, when did the meeting occur?

A November 2nd.

Q Who was present at that meeting?

A Myself, Mr. Alphonse and Jackie Moore, who was the

vice principal at Point Pleasant Borough High School.

Q What happened during that meeting?

A Just discussing that, you know, they were going to

do an investigation and that, you know, to keep this

between yourself, you know.

Q What questions, if any, did Mr. Alphonse ask

you at that meeting?

A There were no questions at that time that I

remember.

THE COURT: He didn't ask you what happened?

THE WITNESS: I'm not sure that Jackie Moore

was there when I was speaking to Mr. Alphonse about --

when he asked me what happened.

THE COURT: Well, the point is what

conversation took place at that meeting? Now, it

doesn't necessarily mean -- let's do it this way. The

meeting with Alphonse, whether Jackie Moore was there

or not.

THE WITNESS: Well, Mr. Alphonse asked me that

--

THE COURT: Isn't that what your question is,

Mr. Wu?

MR. WU: Yes.

1 THE COURT: Thank you.
2 THE WITNESS: He asked me what -- you know,
3 what happened, what can you tell me, can you tell me --

4 and I -- I told him about both incidents that we

5 discussed, you know. And he -- he said that, you know,
6 he will continue to pursue his investigation and to,
7 you know, hang tight I think was one of the words that

8 he said and just, you know, keep going about your

9 business and keep going about your day.

10 THE COURT: Did you tell him anything about

11 those incidents, the two, the speaking and the hugging
12 and kissing incident? The one in the office and the
13 one in the cafeteria? Okay. Or chronologically

14 speaking, I guess, the one in the cafeteria and the one

15 in the office. Other than the things that you

16 testified here today, the particulars, did you tell him

17 anything else?

18 THE WITNESS: I did not.

19 THE COURT: Okay.

20 BY MR. WU:

21 Q How many meetings did you have with Mr.

22 Alphonse regarding these incidents?

23 A At most, two. You know, one was to deliver, I

24 believe, you know, this mail and one to discuss what

25 happened.

1 Q What other communications, if any, did you
2 receive from Mr. Alphonse regarding these incidents or
3 the investigation?
4 A I'm not sure if there was another mail that he had
5 given me. There is a possibility.
6 Q If you could turn to what's hopefully should
7 be marked as P-19.
8 A Okay. There you go.
9 Q Do you recognize this?
10 A Yes, I do.
11 Q What is it?
12 A It's another letter to myself in reference to
13 personal and confidentiality.
14 MR. WU: At this time, I'd like to move to
15 admit P-19 into evidence.
16 MS. OXFELD: I object for the same reasons I
17 objected to a similar letter with the previous witness.
18 THE COURT: Okay. That's overruled.
19 MR. WU: When did you receive this letter?
20 Oh, I'm sorry.
21 THE COURT: It's okay. Go ahead.
22 (P-19 was received
23 in Evidence.)
24 BY MR. WU:
25 Q When did you receive this letter?

1 A On November 17, 2011.

2 Q Between November 2, 2011 and November 17,
3 2011, how many meetings did you have with Mr. Alphonse?

4 A I mean, the first number that comes in my mind is
5 not -- definitely, you know, November 3rd. So, there's
6 one on --

7 THE COURT: You mean November 2nd.

8 THE WITNESS: November 2nd. I keep getting
9 those two dates mixed up. Sorry.

10 THE COURT: That's okay, Mr. Drew. That's
11 okay.

12 THE WITNESS: And, you know, no formal
13 meeting. I think there was an informal meeting where
14 I, you know, ran into Mr. Alphonse.

15 BY MR. WU:

16 Q Okay. Do you remember when that occurred?

17 A Definitely between these two dates, but it was
18 more of should I get a lawyer for myself, just asking
19 him information about that.

20 Q What did he say?

21 A He said, "I don't think you're going to need it."

22 Q After this November 17th letter, did you have
23 any further meetings with Mr. Alphonse regarding this
24 investigation?

25 A None with him, no.

1 Q Any other administrators?

2 A No. You know, just when -- I'll take that back.

3 Yes, there was one. You know, Mr. Smith had told us

4 that you would be coming in again to speak. So, that

5 would be the only time where we didn't discuss it. Mr.

6 Smith is our superintendent of schools, and he just

7 wanted to inform us that you would be coming to speak

8 to us again.

9 Q Oh, when -- when did he say that?

10 A That was, I guess, a day or two before you got

11 there.

12 Q Oh, okay.

13 A I don't remember when you got there.

14 MR. WU: For the record, I visited Point
15 Pleasant school district some time in the fall of last
16 year.

17 THE COURT: For the purpose of conducting
18 interviews, Mr. Wu?

19 MR. WU: Right. For purposes of conducting
20 informal interviews with potential witnesses.

21 THE COURT: Okay.

22 BY MR. WU:

23 Q I'm going to ask you this -- I apologize if I
24 asked you this before, but when did Mr. Giuffrida make
25 a comment about her breasts?

1 A I don't have an exact date.

2 Q Do you know if that was before or after she
3 kissed you?

4 A It was close in time to each other.

5 Q Can you give me a rough estimate as to how
6 close?

7 A A week.

8 Q I'm sorry?

9 A A week.

10 Q What communications, if any, had -- did you
11 receive from Ms. Giuffrida?

12 A Just an e-mail. You know, I believe it was in the
13 afternoon, just asking -- you know, saying that she
14 didn't -- I believe it said something about, "I hope
15 that doesn't, you know, make you feel uncomfortable
16 that I keep touching you."

17 Q If you could turn to what's been marked as P-
18 22. Do you recognize this exhibit?

19 A Yes.

20 Q And what is it?

21 A It's an e-mail between Ms. Giuffrida and myself.

22 MR. WU: At this time, I would like to move P-
23 22 into evidence.

24 MS. OXFELD: No objection.

25 THE COURT: Okay. One moment. P-22 is in

1 evidence, e-mails dated October 19, 2011, both --
2 between the parties, both back and forth, both dated
3 the same day.

4 (P-22 was received
5 in Evidence.)

6 BY MR. WU:

7 Q If you could read the portion of the e-mail
8 that Andrea sent to you out loud?

9 A "Sorry I keep touching you, don't mean to make you
10 feel" -- excuse me -- "Sorry I keep touching you, don't
11 mean to make you uncomfortable. TTYS, talk to you
12 soon."

13 Q When was that sent?

14 A Wednesday, October 19, 2011, and it looks like at
15 2:37.

16 Q And you stated earlier that her hugging and
17 kissing you, that incident occurred on October 21st?

18 A Yes.

19 Q So, that was after this e-mail was sent to
20 you?

21 A Yes.

22 Q When Andrea Giuffrida referred to the fact
23 that she keeps touching you, what -- what does that
24 refer to?

25 A Well, I guess there would be times that, you know,

1 she'd put her arm on my shoulder, her hand on my arm
2 or, you know, something -- you know, on my back. You
3 know, that would be it.

4 Q How did that make you feel?

5 A You know, when -- once, you know, it's not a big
6 deal. When you do it often, it makes you feel a little
7 uncomfortable.

8 Q When did she -- she put her hand on you in
9 the ways that you've just described?

10 MS. OXFELD: I object, because none of this
11 was provided to us in discovery.

12 THE COURT: None of what?

13 MS. OXFELD: No instances, no allegations of
14 any touching incidents other than the ones that have
15 already been discussed. I don't know why they're being
16 introduced, but they certainly can't be being
17 introduced to prove the order to show cause, because
18 they're not in the order to show cause, nor was
19 evidence of any such incidents produced when we
20 received their entire file.

21 THE COURT: Okay. So, what's wrong with
22 putting in information regarding background, because
23 that's what this is, background information? I mean, I
24 don't know.

25 MS. OXFELD: Well, if it's going to --

1 THE COURT: I don't know what --

2 MS. OXFELD: I don't understand what the point
3 is.

4 THE COURT: First of all, don't -- don't talk
5 over me. Second is what did you request in discovery?
6 Is this a violation of a discovery request?

7 MS. OXFELD: I sent interrogatories asking for
8 every witness and every document. I did not --

9 THE COURT: Is this a violation of a discovery
10 request?

11 MS. OXFELD: Yes.

12 THE COURT: Show me the discovery request --

13 MS. OXFELD: Okay.

14 THE COURT: -- that it's a violation of. This
15 is technical stuff you don't have to worry about. This
16 is what lawyers do for a living.

17 MS. OXFELD: 19, which is "Identify all
18 individuals with knowledge of facts relevant to this
19 matter not previously identified and set forth the
20 facts of which each such individual has knowledge," and
21 these are facts not previously identified.

22 THE COURT: Okay. And what's the answer?

23 MS. OXFELD: The answer --

24 THE COURT: I appreciate the question, but the
25 answer is the violation, not the question.

1 MS. OXFELD: I understand you asked me what
2 the -- okay.

3 THE COURT: While she's looking, Mr. Drew,
4 what do you do? You coach football?

5 THE WITNESS: I coach -- I'm the assistant
6 coach for football. I'm the head girls' basketball
7 coach and the head baseball coach.

8 THE COURT: Oh, good for you. That keeps you
9 busy, huh?

10 THE WITNESS: Very busy.

11 THE COURT: Go ahead.

12 MS. OXFELD: The answer is "Respondent objects
13 to this interrogatory on the grounds that it is vague,
14 unduly burdensome, overly broad and calls for
15 speculation."

16 THE COURT: And what did you do about it?
17 Nothing?

18 MS. OXFELD: Nothing.

19 THE COURT: You can ask the question. Your
20 objection is overruled.

21 MR. WU: Thank you, Your Honor.

22 DIRECT EXAMINATION BY MR. WU (Cont'd.):

23 Q In P-22, when Ms. Giuffrida says, "Sorry I
24 keep touching you," what is she referring to?

25 A Just maybe a hand on the back, hand on the arm,

1 you know, that's about it.

2 Q When did those -- when did that contact
3 occur?

4 A Again, I don't have specifics. I don't know the
5 exact dates or times. I didn't document that, but they
6 occurred within the time frame that we're talking
7 about, between, you know, mid October to late October.

8 BY THE COURT:

9 Q Let's get to the bottom line here. Was there
10 anything offensive about the touching? In other words,
11 if you and I are working together and I touched you the
12 same way, okay, assuming that I'm married and have
13 children, would you be uncomfortable?

14 A Like I said before, you know, you do it once or
15 twice, it's not a big deal.

16 Q Go ahead.

17 A When you do it often, yes, it -- you know, it's
18 kind of unwan -- you know, uncomfortable.

19 Q Okay. Okay. Was there anything more than a
20 touch? Were you touched in any place that's
21 inappropriate? Let's start -- let's put it that way?

22 A No, no.

23 Q Okay. It was a touch on the shoulder, the
24 arm?

25 A Exactly.

1 Q Okay. Okay. No inappropriate touching but a
2 lot of --

3 A Right.

4 Q -- non -- non --

5 A She's --

6 Q A lot of appropriate touching?

7 A Right.

8 Q Okay. Okay. Thank you. No inappropriate
9 touching but too much physical touching. Okay. All
10 right. Let me ask you a question or two. Did you ever
11 have any male associates, acquaintances that were
12 touchy, feely people?

13 A No.

14 Q No? You never had that?

15 A No.

16 Q Some people don't. I mean -- you know, I
17 have, just, you know, whenever they talk to you, they
18 grab your arm. It drives me nuts, you know. I'm just
19 wondering if it was that kind of a thing. But if you
20 never had that experience --

21 A No, I'm not -- no, no, yeah.

22 Q You know, I had -- there are some people that
23 do that. They can't talk to you without grabbing your
24 arm.

25 A Yeah.

1 Q You know.

2 A Okay.

3 Q Okay. So, you felt uncomfortable because of
4 the quantity but not because of the location?

5 A Right.

6 Q Okay. Okay. Thank you, Mr. Drew. Go ahead,
7 Mr. Wu.

8 DIRECT EXAMINATION BY MR. WU (Cont'd.):

9 Q What was your response to Andrea's e-mail to
10 you?

11 A I said "Not a problem."

12 Q Why?

13 A Ms. Giuffrida is -- you know, she's my LDTC.
14 She's, you know, she's kind of my supervisor, so, you
15 know, you don't want to cause any waves.

16 BY THE COURT:

17 Q But it was a problem is what you're saying.
18 You just didn't disclose it?

19 A Right.

20 Q Is that true?

21 A True.

22 Q Okay. You were uncomfortable with it, but
23 you never brought it up?

24 A Right.

25 Q Okay. Now, she wasn't a direct supervisor

1 for you, was she? Now, I'm not trying to cross examine
2 you but --

3 A She's the learning -- no, she's the learning
4 disabled teacher consultant. So, she's in charge of
5 every child's IEP.

6 Q Was she the case manager for all of your
7 children? And when I say "children," I mean all of
8 your students?

9 A Not all but, yeah, half, sure.

10 Q She was the case manager for some?

11 A Yeah, I don't know exactly what her load is. Do
12 you know what I mean? But she was definitely the case
13 manager of most, yeah.

14 Q Was she in the chain of command, and I don't
15 know what the chain of command of Point Borough High
16 School is?

17 A My -- right.

18 Q But was she your direct supervisor or did you
19 answer to the director of special services?

20 A Right. No, she's not my direct supervisor. That
21 is correct. My direct supervisor --

22 Q I don't care who the name is.

23 A Right.

24 Q It would be the director of special services,
25 right?

1 A Right.

2 Q And you would both be theoretically under
3 that person, her in a different line than you?

4 A Sure.

5 Q You in a teaching capacity.

6 A I guess so.

7 Q Her in the testing, evaluation capacity. Is
8 that a fair statement?

9 A Yes.

10 Q Okay. Okay. She's not a supervisor. She's
11 a co-worker?

12 A Okay.

13 Q Okay. But you weren't sure how to react, I'm
14 assuming?

15 A That's correct, Your Honor.

16 Q Okay. Did you ever complain to anybody?

17 A No.

18 Q Okay. Okay. And you never complained to
19 her? You told her it wasn't a problem, right?

20 A Right.

21 THE COURT: Okay. Go ahead, Mr. Wu. I can
22 write and listen at the same time on this one.

23 MR. WU: Thank you, Your Honor.

24 DIRECT EXAMINATION BY MR. WU (Cont'd.):

25 Q Did you ever complain about Ms. Giuffrida

1 touching you with regard to the October 19th e-mail to
2 anyone?

3 A No. No.

4 Q But you mentioned the comment about the
5 breasts and the hugging and kissing to Linda Rocco and
6 Robert Alphonse?

7 A Yes.

8 Q What other communications did you have with
9 Robert Alphonse regarding his investigation?

10 A You know, pretty sure other than they were
11 conducting, you know, an investigation and, you know,
12 not to talk about it with anybody.

13 Q I'm sorry?

14 A And not to talk about it with anybody.

15 Q Can I turn your attention to what's been
16 marked as P-12 in your exhibit binder?

17 THE COURT: 12, Mr. Wu?

18 MR. WU: Yes.

19 BY MR. WU:

20 Q Do you recognize this exhibit?

21 A Yes.

22 Q What is it?

23 A It's an e-mail from myself to Mr. Alphonse.

24 MR. WU: At this time, I'd like to move -- to
25 mark it as P-12 in evidence.

1 MS. OXFELD: I have no objection.

2 THE COURT: Thank you.

3 (P-12 was received

4 in Evidence.)

5 BY MR. WU:

6 Q What is this e-mail in reference to?

7 A I guess Mr. Alphonse may have asked me a question
8 on who -- you know, how Ms. Rocco may have found out
9 about the situation, and I responded in, you know,
10 saying that I did not speak to someone specifically,
11 Mr. Kirk specifically, and that I was still unclear on
12 how Ms. Rocco had found out but that I had never spoke
13 to Mr. Kirk directly.

14 Q What prompted this -- this e-mail to Mr.
15 Alphonse?

16 A I don't know. I think he was just doing his
17 investigation and trying to find out facts.

18 Q Did he ask you about who you contacted at the
19 November 2nd meeting?

20 A I don't know. Go ahead, again.

21 THE COURT: During the meeting, during the
22 November 2nd meeting.

23 THE WITNESS: Did he ask me how --

24 THE COURT: That's his question. I don't
25 know.

1 BY MR. WU:

2 Q Right.

3 A What are you -- he asked me who I spoke to or --

4 Q Yes.

5 A I -- I mean, maybe he did. I -- I mean, maybe he
6 did, but I -- you know, there was no one that I spoken
7 to about it other than, you know, Pat Brady on the
8 football field.

9 Q So, is this e-mail a result of a separate
10 conversation you had with Mr. Alphonse?

11 A Yeah. Yeah.

12 Q Do you know when that conversation occurred?

13 A No, I don't.

14 Q All right. You said that both the comment
15 about the breasts and the hugging and kissing incident
16 on the 21st of October, both of them made you feel
17 uncomfortable. What other interactions, if any, would
18 you characterize as uncomfortable with Ms. Giuffrida?

19 MS. OXFELD: I object. I think it's been
20 asked and answered. He had the witness testify that
21 before that, there were a number of incidents in which
22 this --

23 THE COURT: I know what -- I know what he
24 said. Yes, he did. Let's see if there's anymore.
25 You can answer the question. Anything other than

1 you've already described, sir?

2 THE WITNESS: No. Nothing that I could be
3 very clear about. No.

4 THE COURT: Okay.

5 BY MR. WU:

6 Q How did -- how, if at all, did these
7 interactions effect your professional relationship with
8 Ms. Giuffrida?

9 A There were definitely times where I tried to avoid
10 her.

11 Q Can you describe a specific example?

12 A If I -- well, there's a number of stairwells in
13 our school. One hallway is lengthy. If I saw her at
14 one end of the hallway, I'd go up the stairs.

15 Q Why is that?

16 A To avoid any uncomfortable situation.

17 Q When did -- when did the example you describe
18 occur?

19 A That happened the day after the discussion with
20 Ms. Rocco, when I knew that there was going to be an
21 investigation.

22 Q So, the day after you -- after Ms. Rocco
23 called you into her office, you saw Ms. Giuffrida?

24 A Yeah, I'm sure -- I'm sure -- I don't know if it
25 was that day. I mean, there were a couple of times

1 where I may have done that.

2 Q Any other incidents where you were avoiding
3 Ms. Giuffrida?

4 A No. I mean, I always had to do my job, so I
5 always had to be in my classrooms. You know, I would
6 not, you know, check my mail in the athletic office
7 every day. I would not do that. I'd try to get there
8 at a time where I would think, you know, nobody was
9 there.

10 Q Did this avoidance behavior start -- when did
11 it start?

12 A You know, after the kiss, certainly after the kiss
13 and definitely, you know, after I had spoken with --
14 that I knew there was an investigation going on.

15 Q So, after the kiss occurred on October 21st,
16 what other interaction did you have with Ms. Giuffrida
17 then?

18 A None.

19 MR. WU: Okay. No further questions.

20 THE COURT: Okay. So, let me understand that,
21 Mr. Drew. You said that the avoidance took place
22 after, what was it, the October 21st incident?

23 THE WITNESS: Yes.

24 THE COURT: Before that --

25 THE WITNESS: Before that, yeah. It was --

1 THE COURT: -- things were cool, things were
2 okay?

3 THE WITNESS: Yeah.

4 THE COURT: Okay. But that was the one that
5 pushed you over the edge?

6 THE WITNESS: Sure.

7 THE COURT: Okay. And you said her office
8 door was open?

9 THE WITNESS: Yes.

10 THE COURT: Okay. Alright. Okay. Ms.
11 Oxfeld, cross.

12 CROSS EXAMINATION BY MS. OXFELD:

13 Q Mr. Drew, I got a little confused about how
14 long you were a teacher in -- are you saying -- is
15 Point Pleasant High School a separate school district
16 from the elementary schools?

17 A No.

18 Q So, it's one school district?

19 A Yes.

20 Q With how many schools?

21 A Four schools.

22 Q And how many years did you teach in one of
23 those schools as of 2011?

24 A I taught in a lot of the schools. I was -- I was
25 inspiring [sic] to be a coach, and to be a coach, you

1 know, getting to the high school really is where you
2 want to be. So, I started of in the Nellie Bennett as
3 a teacher. That was my --

4 THE COURT: That's a grammar school?

5 THE WITNESS: Yeah, Nellie Bennett Elementary
6 School. And then, I worked up to the middle school,
7 which got out earlier, which allowed me to coach. And
8 then, I moved up to the high school, which allowed me
9 to be with my students.

10 BY MS. OXFELD:

11 Q So, how many years were you a teacher,
12 approximately, in the elementary school?

13 A Four. Yeah.

14 Q More or less?

15 A Yeah, three or four, yeah.

16 Q And how about the middle school?

17 A Three or four.

18 Q So, by the time you got to the high school,
19 you had been a teacher six to eight years, right?

20 A Yes.

21 Q I'd like you to look at the documents P-7 and
22 let me know if you recognize that.

23 A P-7. I recognize it, yes.

24 Q And what is that?

25 A It's a sexual harassment policy.

1 Q Of?

2 A You want me to read it to you?

3 Q No. No. I just wanted to -- I -- you mean
4 of the school district, correct?

5 A Oh, yeah, of the school district, yes.

6 Q And how -- how are you aware of it?

7 A I believe we're given it every year, the beginning
8 of the school year.

9 Q Okay. And I'd like you to look at P-8 and
10 let me know if you know what that is.

11 A Yeah, it's regulations on sexual harassment.

12 Q And are you familiar with those also?

13 A Yeah.

14 Q At the bottom of the first page of P-8, is
15 there a process by which to file sexual harassment
16 complaints?

17 A There's a grievance procedure.

18 Q And had you ever filed any complaint under
19 that procedure?

20 A Never.

21 Q And you never filed a complaint under that
22 procedure against Ms. Giuffrida, correct?

23 A That's correct.

24 Q And you were a tenured teacher when you got
25 to the high school?

1 A Yes.

2 Q I might be wrong, but I thought you and Ms.
3 Giuffrida had offices close to each other?

4 A No.

5 Q Okay. I misunderstood that then.

6 A I don't have an office.

7 THE COURT: You use the athletic office for
8 coaching, right?

9 THE WITNESS: Just mail. Yeah, just for mail.

10 THE COURT: Right.

11 THE WITNESS: And the athletic director's in
12 there and the athletic secretary.

13 THE COURT: Just to be clear, you do have a --

14 THE WITNESS: Yeah. There would be times
15 where I would be around her office.

16 THE COURT: You'd be in there because of your
17 coaching duties. It's the athletic office?

18 THE WITNESS: Yes, sir.

19 THE COURT: Okay. And it's part of the suite
20 that Ms. Giuffrida has her office?

21 THE WITNESS: Yes. Yes.

22 THE COURT: Okay.

23 MS. OXFELD: I have no other questions for
24 this witness.

25 THE COURT: Okay. Mr. Wu?

1 REDIRECT EXAMINATION BY MR. WU:

2 Q What did you tell Mr. Alphonse when he called
3 you in to talk about this incident?

4 A I talked about the incidents of the speaking of
5 the breasts and the kiss that had happened. You know,
6 that was pretty much it.

7 Q Where did that meeting take place?

8 A It's a good question. In one of the -- in one of
9 the high school offices.

10 MR. WU: No further questions.

11 MS. OXFELD: No questions.

12 THE COURT: Okay. You may step down.

13 THE WITNESS: Thank you.

14 THE COURT: I have to advise you that I have
15 issued what's called an order of sequestration.

16 THE WITNESS: Okay.

17 THE COURT: I know it's not going to be easy,
18 especially with Mr. Brady, but I told him the same
19 thing I'm telling you, do not discuss this any further.
20 Even though you're not -- you're no longer witnesses,
21 this case is not over at least until a final decision
22 comes down from the board of examiners. Okay?

23 THE WITNESS: Okay.

24 THE COURT: So, I know it's going to be
25 difficult, especially with friends and, you know, and I

1 know you're not going to listen to me when I say don't
2 talk to your wife about it, because you are. And
3 that's okay, because I would do the same thing. A
4 happy wife is a happy life. So, I understand that.
5 The point is don't talk to anybody at work, okay?

6 THE WITNESS: Okay.

7 THE COURT: And preferably as little as
8 possible outside of work, okay? But you have to keep
9 the family happy. I understand that. And I'm not
10 going to ask -- tell you to do something that I know
11 you can't do. All right. But don't discuss it with
12 anybody else, especially, in particular, anybody who
13 has not testified. And the only person that has
14 testified so far are you and Mr. Brady. You're both
15 nice guys. Don't talk about it. Talk about, like I
16 told him, talk about the Yankees, talk about the
17 Knicks.

18 THE WITNESS: How about the Mets?

19 THE COURT: Talk about the Mets, you know. I
20 feel bad for you if you're a Met fan, but that's okay.

21 THE WITNESS: Yeah. No problem.

22 THE COURT: Okay?

23 THE WITNESS: Okay.

24 THE COURT: You're allowed to talk about
25 anything else but not this. All right?

1 THE WITNESS: Yup.

2 THE COURT: Thank you, Mr. Drew.

3 THE WITNESS: All right.

4 THE COURT: I appreciate your candor.

5 THE WITNESS: Thank you.

6 THE COURT: Have a great day and get home

7 safely. Good luck on the baseball field.

8 THE WITNESS: Thank you. We need it.

9 THE COURT: Okay. Are we done for the day?

10 Can I close the record? Or the hearing, rather. I

11 can't close the record that's for sure.

12 MR. WU: Yes, Your Honor.

13 THE COURT: Anything else we have to do today

14 on the record, Ms. Oxfeld?

15 MS. OXFELD: No.

16 MR. WU: Are we assigning additional dates?

17 THE COURT: I can't do that to you right now,

18 because I'm here.

19 MR. WU: No problem.

20 THE COURT: Okay? Let's get off of this.

21 {Whereupon, the proceedings were adjourned.}

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1 STATE OF NEW JERSEY }

2 COUNTY OF MERCER }

3
4 I, Carla Nale, AD/T # 520, assigned
5 transcriber, do hereby affirm that the foregoing is a
6 true and accurate transcript of the proceedings in the
7 matter of New Jersey State Board of Examiners v. Andrea
8 Giuffrida, bearing Docket No. EDE 8458-12, heard on
9 April 15, 2013, before the Office of Administrative Law
10 Court.

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15 Carla Nale, AD/T# 520
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