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THE STATE EDUCATION DEPARTMENT
THE UNIVERSITY OF THE STATE OF NEW YORK

In the Matter of
THE NEW YORK CITY DEPARTMENT OF EDUCATION

v

THEODORE SMITH

Section 3020-a Education Law Proceeding (File)

DATE: March 1, 2007

TIME: 11:21 a.m. to 11:40 a.m.
1:30 p.m. to 3:13 p.m.

LOCATION: New York City Department of Education
Office of Legal Services
49-51 Chambers Street, 6th Floor
New York, New York

BEFORE: JACK TILLEM, ESQ.
Hearing Officer
20 West Marie Street
Hicksville, New York 11801

1 Theodore Smith - 3-1-2007
 2
 3 FOR THE DEPARTMENT:
 4 SUSAN JALOWSKI, ESQ., Of counsel
 5 MICHAEL BEST, ESQ., General Counsel
 6 New York City Department of Education
 7 Office of Legal Services
 8 49-51 Chambers Street, 6th Floor
 9 New York, New York
 10 FOR THE RESPONDENT:
 11 DAVID KEARNEY, ESQ., Of Counsel
 12 Law offices of Neal Brickman, P.C.
 13 317 Madison Avenue, 21st Floor
 14 New York, New York 10017
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1 Theodore Smith - 3-1-2007
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1 Theodore Smith - 3-1-2007
 2 (The hearing resumed at 11:21
 3 a.m.)
 4 THE HEARING OFFICER: Okay.
 5 First of all we'll state our appearances.
 6 Jack Tillem, the hearing
 7 officer.
 8 For the Complainants?
 9 MS. JALOWSKI: Susan
 10 Jalowski, for the Department of Education.
 11 THE HEARING OFFICER: For the
 12 Respondents?
 13 MR. KEARNEY: I'm David
 14 Kearney for Ted Smith.
 15 THE HEARING OFFICER: We also
 16 have the Respondent, Mr. Smith here, and we're
 17 going to be calling a witness on behalf of the
 18 Respondent, and the witness' name is Virginia
 19 Olney, O-L-N-E-Y.
 20 Ms. Olney, would you raise
 21 your right hand, please?
 22 Do you affirm the testimony
 23 you're about to give will be the truth, the
 24 whole truth, nothing but the truth?

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1 Olney - Direct - Kearney
 2 MS. OLNEY: Yes.
 3 VIRGINIA OLNEY; Sworn
 4 DIRECT EXAMINATION
 5 BY MR. KEARNEY:
 6 Q. Good morning, Ms. Olney.
 7 **A. Hi.**
 8 Q. These are just easy
 9 questions, and I don't think you need any notes
 10 for it.
 11 THE HEARING OFFICER: No, no,
 12 no, put --
 13 THE WITNESS: Okay.
 14 THE HEARING OFFICER: --
 15 those notes away, otherwise everybody's going
 16 to want to look at them and see them and
 17 examine them. And so, if the lawyer wants you
 18 to read notes, we'll check them.
 19 BY MR. KEARNEY: (Cont'g.)
 20 Q. Okay. That's good. Are you
 21 currently employed?
 22 **A. Yes.**
 23 Q. In what capacity?
 24 **A. I'm director of the**

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1 Olney - Direct - Kearney
 2 days a week does he teach at the United Nations
 3 school?
 4 **A. Five currently, between four**
 5 **and five while he's been there.**
 6 Q. Since 1995?
 7 **A. '95 yes.**
 8 Q. And I think you testified
 9 that he teaches sports, martial arts; is that
 10 correct?
 11 **A. Yes.**
 12 Q. Have you observed Mr. Smith
 13 in the classroom?
 14 **A. Yes, I have, many times.**
 15 Q. How many times would you say?
 16 **A. Once or twice a week maybe,**
 17 **where I observed parts of his classes.**
 18 Q. Now, it would be once or
 19 twice a week for what period of time?
 20 **A. Ten or fifteen minutes --**
 21 Q. And --
 22 **A. -- maybe longer.**
 23 Q. And when did you begin
 24 observing him once or twice a week?

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1 **Olney - Direct - Kearney**
 2 **after-school program at the United Nations, for**
 3 **children of the employees.**
 4 Q. And how many teachers are
 5 employed by that program?
 6 **A. In addition to myself, we**
 7 **have four, four other teachers.**
 8 Q. And how long have you been
 9 the director of the after-school program at the
 10 United Nations?
 11 **A. Since 1995.**
 12 Q. So, approximately twelve
 13 years, is that correct?
 14 **A. Yes.**
 15 Q. Do you know Ted Smith?
 16 **A. Yes, I do.**
 17 Q. How do you know him?
 18 **A. I hired Ted Smith when I**
 19 **first became director. I hired him into the**
 20 **program to teach sports and martial arts.**
 21 Q. And has he been employed
 22 continuously since 1995?
 23 **A. Yes.**
 24 Q. And approximately how many

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1 Olney - Direct - Kearney
 2 **A. Since I first started.**
 3 Q. When -- when you observed Mr.
 4 Smith teaching his students, did you -- have
 5 you observed any instruction?
 6 **A. Yes.**
 7 Q. And what -- give me an
 8 example of some of the instruction of Mr.
 9 Smith, you -- that you've seen?
 10 **A. Well, in martial arts, I've**
 11 **seen, for example, he walks through all the**
 12 **movements and breaks them down, having the**
 13 **children then practice them until they learn**
 14 **them. He breaks down skills of volleyball,**
 15 **soccer, basketball, hockey. And -- and then he**
 16 **breaks down the movements, the separate**
 17 **movements, one at a time, and has them do basic**
 18 **drills that would encourage their -- help them**
 19 **to be good at their skills.**
 20 Q. Would you consider Mr. Smith
 21 to be a -- do you consider him to be fit to
 22 teach?
 23 MS. JALOWSKI: Objection.
 24 That's her conclusion.

3 (Pages 408 to 411)

1 Olney - Direct - Kearney
 2 THE HEARING OFFICER: Well,
 3 that's --.
 4 MS. JALOWSKI: Second of all,
 5 I don't even know what her credentials are.
 6 THE HEARING OFFICER: Yeah,
 7 you could maybe lay a foundation before you ask
 8 a question about --.
 9 BY MR. KEARNEY: (Cont'g.)
 10 Q. And how long have you been an
 11 educator, Ms. Olney?
 12 **A. Most of my life. I started**
 13 **while in college, first of all, I took**
 14 **education courses, and received a Massachusetts**
 15 **certificate to teach in public schools, where I**
 16 **first started teaching.**
 17 Q. And what year was that,
 18 ma'am?
 19 **A. That would be in 1950 -- '55**
 20 **and '56, I believe.**
 21 Q. So, you've been teaching for
 22 approximately --?
 23 THE HEARING OFFICER: Sounds
 24 like that's leading, sir. How about, as

1 Olney - Direct - Kearney
 2 opposed --
 3 MR. KEARNEY: How long --?
 4 THE HEARING OFFICER: -- to a
 5 yes-or-no answer, let's see if we elicit a
 6 narrative.
 7 BY MR. KEARNEY: (Cont'g.)
 8 Q. How long have you been
 9 teaching?
 10 **A. Since 1955.**
 11 Q. In your experience --?
 12 (Off-the-record-discussion)
 13 THE HEARING OFFICER: I'm
 14 sorry. Go ahead.
 15 BY MR. KEARNEY: (Cont'g.)
 16 Q. You testified that you've
 17 been teaching since 1955 -- 1956.
 18 **A. Yes.**
 19 Q. In your experience as an
 20 educator, do you have an opinion of Ted Smith's
 21 teaching?
 22 **A. I feel Ted Smith is an**
 23 **excellent teacher. He's a very caring teacher.**
 24 **He's very concerned about the children's**

1 **Olney - Direct - Kearney**
 2 **safety, particularly in the area of sports and**
 3 **on the playground, where he -- when he**
 4 **supervises the playground. He has run very**
 5 **successful sport days -- sports days, which he**
 6 **encourages good sportsmanship and friendly**
 7 **competition among the students. He often helps**
 8 **me counsel the students with their problems in**
 9 **personal relationships. He is always in charge**
 10 **when I'm not -- in case I'm absent. He's in**
 11 **charge of the other teachers.**
 12 **Is there another -- another**
 13 **question?**
 14 Q. In your experience as an
 15 educator, do you consider him to be fit to
 16 teach?
 17 **A. Absolutely.**
 18 Q. Have you recommended Mr.
 19 Smith for employment outside of the United
 20 Nations School?
 21 **A. Yes, I have.**
 22 Q. And I just want to show you a
 23 document that I'll mark for identification as
 24 Respondent's --

1 Olney - Direct - Kearney
 2 MR. KEARNEY: Twenty-three?
 3 THE HEARING OFFICER:
 4 Twenty-four.
 5 MR. KEARNEY: Twenty-four.
 6 BY MR. KEARNEY: (Cont'g.)
 7 Q. It is a -- a letter --
 8 THE HEARING OFFICER: Well,
 9 why don't you show it to --?
 10 MS. JALOWSKI: I have a copy.
 11 BY MR. KEARNEY: (Cont'g.)
 12 Q. -- dated June 30, 2006.
 13 THE HEARING OFFICER:
 14 Twenty-four for identification.
 15 Do you recognize that
 16 document?
 17 THE WITNESS: Yes, I do.
 18 THE HEARING OFFICER: Do you
 19 want to tell us what it is?
 20 THE WITNESS: It's a letter
 21 of recommendation I wrote for Ted Smith, on
 22 June 30, 2006.
 23 THE HEARING OFFICER: Any
 24 objection?

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1 Olney - Direct - Kearney
 2 MS. JALOWSKI: No.
 3 THE HEARING OFFICER: In
 4 evidence.
 5 MR. KEARNEY: Nothing
 6 further.
 7 MS. JALOWSKI: Good morning,
 8 Mrs. Olney.
 9 THE WITNESS: Good morning.
 10 MS. JALOWSKI: I'm going to
 11 ask you a few questions now.
 12 CROSS EXAMINATION
 13 BY MS. JALOWSKI:
 14 Q. Now prior to 1995, did you
 15 know Ted Smith?
 16 **A. No.**
 17 Q. Now can you describe -- Mr.
 18 Smith is currently working in your after-school
 19 program?
 20 **A. Yes. Yes.**
 21 Q. And how many days a week does
 22 he work there?
 23 **A. Five days a week.**
 24 Q. And what are his hours?

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1 **Olney - Cross - Jalowski**
 2 **person take his classes, but that was --**
 3 Q. Do you have -- do you have
 4 records from the 2004-2005 school year?
 5 **A. No, I don't. No, I don't**
 6 **keep them.**
 7 Q. Do you have pay stubs to
 8 indicate whether or not he was there -- is
 9 there anything that you have that would
 10 indicate when he was there during the time I'm
 11 asking about?
 12 **A. Possibly the -- the office**
 13 **would have pay stubs -- the office at U.N.**
 14 **School. We are -- we are not the United**
 15 **Nations School. We are an after-school program**
 16 **within the U.N. itself.**
 17 Q. You're not affiliated with
 18 the Department of Education, correct?
 19 **A. No.**
 20 Q. Are you licensed to teach in
 21 the State of New York?
 22 **A. No.**
 23 Q. So you're currently not a
 24 teacher, correct?

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1 Olney - Cross - Jalowski
 2 **A. Between three and six p.m.**
 3 Q. And -- and that's the same
 4 schedule he's had throughout his tenure?
 5 **A. Yes.**
 6 Q. So in the 2004 -- between
 7 September 2004 and June of 2005, Mr. Smith
 8 worked at your program --
 9 **A. Yes.**
 10 Q. -- from three o'clock to
 11 six-thirty?
 12 **A. Basically, yes.**
 13 Q. And was he -- during the
 14 2004-2005 school years on -- on -- was there
 15 ever an occasion he did not show up?
 16 **A. Yes. There were times that**
 17 **he would have a doctor -- doctor's note, which**
 18 **is what we require.**
 19 Q. Now, was there anything -- on
 20 Mondays, he was there at three o'clock?
 21 **A. Mondays, occasionally, he**
 22 **would have staff meetings, as I recall, and be**
 23 **late or there were certain Mondays that he did**
 24 **not teach. He -- and we would have another**

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1 Olney - Cross - Jalowski
 2 **A. I have always taught in**
 3 **public -- in private schools and colleges.**
 4 Q. Don't you need state
 5 certification to teach in a private school?
 6 **A. Not where I've taught, no. I**
 7 **haven't taught in private schools in New York**
 8 **except for the United Nations after-school**
 9 **program. I've taught in Connecticut and**
 10 **Massachusetts.**
 11 Q. But you're not teaching
 12 there. You're the director of the program,
 13 correct?
 14 **A. I'm the director, right.**
 15 Q. So you never taught in the
 16 New York -- in New York, then?
 17 **A. I've taught in the**
 18 **after-school program. I -- I taught for five**
 19 **years before becoming the director.**
 20 Q. What did you teach?
 21 **A. Dance.**
 22 Q. Now how many -- so what does
 23 the after-school program consist of?
 24 **A. We supervise homework, which**

5 (Pages 416 to 419)

1 **Olney - Cross - Jalowski**
 2 **Ted Smith is involved in.**
 3 **THE HEARING OFFICER: I'm**
 4 **sorry. Homework?**
 5 THE WITNESS: Homework,
 6 right.
 7 **A. (Cont'g.) We supervise their**
 8 **homework. Well, first the teachers meet the**
 9 **bus and bring them from UNIS. They escort them**
 10 **on the bus from --**
 11 **THE HEARING OFFICER: No.**
 12 **No. The question is what do -- what do you**
 13 **teach in the -- is that the question? What do**
 14 **you teach in the after-school program?**
 15 MS. JALOWSKI: Yes.
 16 THE WITNESS: All right.
 17 THE HEARING OFFICER: And the
 18 answer started we supervise homework.
 19 THE WITNESS: Right.
 20 **A. (Cont'g.) All right. And we**
 21 **teach sports, and art, and dance activities. I**
 22 **thought she said what do you -- what do you do?**
 23 **THE HEARING OFFICER: I'm**
 24 **sorry. She may have.**

1 **Olney - Cross - Jalowski**
 2 **Go ahead. Go ahead.**
 3 BY MS. JALOWSKI: (Cont'g.)
 4 Q. What's the age range of the
 5 students in this program?
 6 **A. To eleven.**
 7 Q. So there are no high school
 8 aged children in the program?
 9 **A. No -- yes, actually. They**
 10 **come from UNIS to do community service for us,**
 11 **so that --.**
 12 Q. I'm sorry. Ted Smith does
 13 not teach high school aged children in the
 14 program, correct?
 15 **A. They assist him often in his**
 16 **program.**
 17 **THE HEARING OFFICER: No.**
 18 **No. Try and answer the question.**
 19 BY MS. JALOWSKI: (Cont'g.)
 20 Q. My question was when he's
 21 teaching sports in your program, there are no
 22 children that are high school aged in the
 23 program, correct?
 24 **A. Not that he's teaching from**

1 **Olney - Cross - Jalowski**
 2 **our school, no.**
 3 Q. And how many children are in
 4 the program?
 5 **A. Currently --.**
 6 THE HEARING OFFICER: In his
 7 class or the whole program?
 8 MS. JALOWSKI: I'm asking the
 9 program first.
 10 THE HEARING OFFICER: Okay.
 11 **A. (Cont'g.) Currently,**
 12 **thirty-two. There were thirty-five in the fall**
 13 **term. That's at capacity.**
 14 BY MS. JALOWSKI: (Cont'g.)
 15 Q. And not only -- not all
 16 thirty-two are -- are doing the gym at -- at
 17 one time, correct?
 18 **A. No. There are three**
 19 **different groups.**
 20 Q. So how many children are in
 21 Ted's group?
 22 **A. Between ten and twelve.**
 23 **They're broken into three groups.**
 24 MS. JALOWSKI: I have no

1 Olney - Cross - Jalowski
 2 further questions except that I would ask you
 3 to direct Ms. Olney to bring us if there is
 4 anything that would show what absences Ted
 5 Smith had during the -- you know, between
 6 September 2004 and 2005 -- if there's anything
 7 that reflected what days he did not attend
 8 the -- the program.
 9 MR. KEARNEY: I'm going to
 10 object to the extent that it has nothing to do
 11 with the specifications. She's here to testify
 12 as to his fitness to teach. She has no
 13 experience at the Museum School and has nothing
 14 to do with this case.
 15 THE HEARING OFFICER: Well,
 16 it would go to credibility as to how much he
 17 was absent.
 18 Do you have such records that
 19 you might be able to have at your school?
 20 THE WITNESS: No. The only
 21 records possible would be pay that they might
 22 have in the -- in the office at United Nations
 23 School, which does our payroll. They might be
 24 able to --.

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1 Olney - Cross - Jalowski
 2 THE HEARING OFFICER: But
 3 when -- when did -- forgive me for
 4 interrupting. Would the pay stubs show the
 5 absences necessarily, or do you pay even --?
 6 THE WITNESS: No.
 7 THE HEARING OFFICER: Is
 8 there an absentee program where they get --
 9 they are paid even though they are absent?
 10 THE WITNESS: No. No.
 11 They're paid only when they're present.
 12 THE HEARING OFFICER: So the
 13 payroll records might show --
 14 THE WITNESS: How many days
 15 he was there possibly. I --.
 16 THE HEARING OFFICER: If you
 17 have those records, could you produce them and
 18 just let the Counsel know. Okay?
 19 THE WITNESS: I'd have to ask
 20 for them and see if they have them.
 21 THE HEARING OFFICER: It's a
 22 fair question.
 23 MS. JALOWSKI: I have no
 24 further questions.

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1 Smith - Direct - Kearney
 2 record.
 3 (Off the record)
 4 THE HEARING OFFICER: We're
 5 going to continue now with the direct of the
 6 Respondent, who --.
 7 Mr. Smith, you're still under
 8 oath.
 9 Okay. Your witness.
 10 THEODORE SMITH; Previously sworn
 11 MR. KEARNEY: Mr. Smith -- if
 12 there's no objection, I'd like to refer the
 13 Respondent's attention to specification two.
 14 MS. JALOWSKI: Sure.
 15 DIRECT EXAMINATION
 16 BY MR. KEARNEY:
 17 Q. I just -- I'd like you to
 18 look at specification one --
 19 **A. Uh-huh.**
 20 Q. -- and just read it silently
 21 to yourself. Have you finished?
 22 **A. Yes.**
 23 Q. Sitting here today, do you
 24 recall being absent on November 18th, 19th, and

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1 Olney - Cross - Jalowski
 2 THE HEARING OFFICER:
 3 Anything else?
 4 MR. KEARNEY: Nothing
 5 further.
 6 THE HEARING OFFICER: Thank
 7 you very much.
 8 THE REPORTER: Mr. Tillem?
 9 THE HEARING OFFICER: Yes.
 10 THE REPORTER: Before the
 11 witness leaves, can I just have her spell her
 12 last name for me, please?
 13 THE HEARING OFFICER: I think
 14 it's Olney, O-L-N-E-Y.
 15 THE REPORTER: Thank you.
 16 THE HEARING OFFICER: Any
 17 other spellings we need?
 18 THE REPORTER: No. I'm all
 19 set. Thank you.
 20 THE HEARING OFFICER: Thank
 21 you very much.
 22 MS. JALOWSKI: You want to go
 23 off the record?
 24 THE HEARING OFFICER: Off the

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1 Smith - Direct - Kearney
 2 22 of 2004?
 3 **A. I do.**
 4 Q. And do you recall getting a
 5 substitute for -- let's start with November the
 6 18th, 2004?
 7 **A. Yeah. I called Vonnie**
 8 **Borrer --**
 9 Q. Vonnie Borrer.
 10 **A. -- who substituted -- who is**
 11 **a substitute.**
 12 MR. KEARNEY: Okay. I would
 13 also like to -- this is -- this is in
 14 evidence -- I think it's Department's --
 15 Department's Three.
 16 THE HEARING OFFICER: The
 17 note to the Respondent for his absences --
 18 three pages? Is that what we're looking at?
 19 MR. KEARNEY: No, it's not.
 20 It's the --.
 21 THE HEARING OFFICER:
 22 Department Three?
 23 MR. KEARNEY: Yeah. I think
 24 I'm wrong on the number. It's the message.

7 (Pages 424 to 427)

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1 Smith - Direct - Kearney
 2 THE HEARING OFFICER: Is it a
 3 Department Exhibit or a Respondent Exhibit?
 4 MR. KEARNEY: I think it was
 5 a Department Exhibit. Can I just read --
 6 read --?
 7 THE HEARING OFFICER: Of
 8 course, go ahead.
 9 MR. KEARNEY: I'll show the
 10 witness what I'll -- what I'll mark for
 11 identification as Respondent's Twenty --
 12 THE HEARING OFFICER: Five.
 13 MR. KEARNEY: -- five. It
 14 appears to be some handwritten notes that
 15 were --
 16 THE HEARING OFFICER: Got an
 17 extra one?
 18 MR. KEARNEY: -- yes -- were
 19 provided in discovery.
 20 THE HEARING OFFICER: Thank
 21 you.
 22 BY MR. KEARNEY: (Cont'g.)
 23 Q. This -- could you just read
 24 that document quietly to yourself?

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1 Smith - Direct - Kearney
 2 BY MR. KEARNEY: (Cont'g.)
 3 Q. Did Veronica -- Veronica
 4 Borrer go by any nickname?
 5 **A. Yes; Vonnie Borrer.**
 6 Q. And can you just describe how
 7 you arranged for Veronica Borrer to cover
 8 your -- to substitute for you on the 18th and
 9 19th of November?
 10 **A. I called her at home and I**
 11 **spoke to her. I said -- asked her if she'd**
 12 **like to cover for me. And she said she would**
 13 **be delighted to. And, you know, I would fax**
 14 **over or send over a lesson plan to her.**
 15 Q. And did you communicate
 16 that -- the fact that she had agreed to be your
 17 sub., to the Museum School?
 18 **A. I did. Yes, I did.**
 19 Q. And does the document that
 20 I've marked Respondent's Twenty-five refresh
 21 your recollection at all as to whom you spoke
 22 about the --?
 23 MS. JALOWSKI: Objection.
 24 THE HEARING OFFICER: Let

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1 Smith - Direct - Kearney
 2 **A. Yes.**
 3 Q. Did you -- did you all --
 4 does the document refresh your recollection at
 5 all as to whether you also arranged for Vonnie
 6 to come in on Tuesday, the 19th of November?
 7 **A. Yes, it does.**
 8 Q. And can you tell me exactly,
 9 procedurally, how you arranged for -- for
 10 Veronica Borrer --
 11 **A. Uh-huh.**
 12 Q. -- to substitute for you on
 13 November the 18th and 19th of 2004?
 14 THE HEARING OFFICER: Vonnie
 15 is the same person as Veronica or -- sorry.
 16 MR. KEARNEY: The name is
 17 Vonnie, V-O-N-N-I-E.
 18 THE HEARING OFFICER: Is that
 19 the same person as Veronica? I don't know.
 20 MR. KEARNEY: Let me ask.
 21 THE HEARING OFFICER: Okay.
 22 All right. I didn't understand. We switched
 23 names, so I wasn't --.
 24 All right. Go ahead.

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1 Smith - Direct - Kearney
 2 him -- let him finish the question.
 3 Go ahead.
 4 BY MR. KEARNEY: (Cont'g.)
 5 Q. -- as to whom you informed
 6 about Veronica Borrer substituting for you on
 7 those dates?
 8 MS. JALOWSKI: Objection. He
 9 shouldn't be referring to any documents. If he
 10 needs to refresh his recollection, then he can
 11 look at a document.
 12 MR. KEARNEY: Okay.
 13 MS. JALOWSKI: But I would
 14 actually ask that he not look at the document.
 15 MR. KEARNEY: Okay.
 16 **A. I think it was the -- the**
 17 **principal.**
 18 BY MR. KEARNEY: (Cont'g.)
 19 Q. After communicating that
 20 Veronica would substitute for you on the 18th
 21 and 19th, do you know if she, in fact,
 22 substituted for you on the 18th and 19th of
 23 November 2004?
 24 **A. No, she didn't, because it**

8 (Pages 428 to 431)

1 **Smith - Direct - Kearney**
 2 **came up to my attention sometime later on that**
 3 **she could do it on the 19th.**
 4 Q. What about the 18th?
 5 **A. She did it on the 18th. She**
 6 **said that she could do it on the 18th, the**
 7 **first day.**
 8 Q. And she showed up?
 9 **A. She showed up, yes.**
 10 Q. And she substituted for all
 11 your classes?
 12 **A. She did, yes.**
 13 Q. And what happened -- did she
 14 arrive on Tuesday?
 15 **A. No, she didn't.**
 16 Q. Okay. Do you --?
 17 **A. She --.**
 18 Q. Do you know why she didn't
 19 come on Tuesday?
 20 **A. Yeah, she didn't come on**
 21 **Tuesday --.**
 22 THE HEARING OFFICER: Tuesday
 23 being the 19th?
 24 MR. KEARNEY: Yes.

1 Smith - Direct - Kearney
 2 **A. (Cont'g.) I don't know. I**
 3 **heard later -- sometime later on from the**
 4 **principal saying that she -- she couldn't come.**
 5 **She had some other emergency or some other**
 6 **engagement that came up. That's why she**
 7 **couldn't come.**
 8 BY MR. KEARNEY: (Cont'g.)
 9 Q. And were you aware of that
 10 emergency at the time you spoke to the Museum
 11 School about Ms. Borrer substituting for you?
 12 **A. No, I wasn't aware of that at**
 13 **that -- at that time.**
 14 Q. Do you know if a -- another
 15 substitute was, in fact, brought in -- Tuesday,
 16 the 19th of November?
 17 **A. Yeah. I know that very well.**
 18 Q. Okay. Who was that?
 19 **A. That was Susan Shron.**
 20 Q. And did you arrange for Susan
 21 Shron to come in?
 22 **A. No. Linda Uehling, the**
 23 **principal, did. In fact, Lindy was upset that**
 24 **I didn't call Susan Shron originally. She's --**

1 **Smith - Direct - Kearney**
 2 **she was -- seemed to be very upset about**
 3 **that -- that she wanted Susan Shron there.**
 4 Q. But with respect -- with
 5 respect to November the 18th, 2004, Vonnie B.
 6 substituted for you?
 7 **A. She did on the -- the --.**
 8 MS. JALOWSKI: On what day?
 9 THE WITNESS: Monday.
 10 **A. (Cont'g.) Monday, the 18th.**
 11 **Yeah, she subbed for me then.**
 12 BY MR. KEARNEY: (Cont'g.)
 13 Q. With respect to the 22nd of
 14 November 2004, did you arrange for a substitute
 15 on that day?
 16 **A. I did.**
 17 Q. And who was the substitute on
 18 the 22nd?
 19 **A. Veronica Borrer -- Vonnie.**
 20 Q. Do you know if Vonnie ever
 21 covered your class on the 22nd of November?
 22 **A. She did. She did cover my**
 23 **class.**
 24 Q. With respect to November 18,

1 Smith - Direct - Kearney
 2 2004, did you give Veronica Borrer a lesson
 3 plan?
 4 **A. I did.**
 5 Q. With respect to the 19th of
 6 November, 2004 --
 7 **A. Yes.**
 8 Q. -- did you give Vonnie B. a
 9 lesson plan?
 10 **A. I did.**
 11 Q. And with respect to the 22nd
 12 of November 2004?
 13 **A. I gave her a lesson plan on**
 14 **the 22nd, also.**
 15 Q. I'd like to direct your
 16 attention to the second specification, if you
 17 could just sort of read it to yourself.
 18 Do you have any memory of Lindy Uehling
 19 observing your class on November the 23rd,
 20 2004?
 21 **A. I think so.**
 22 Q. It's yes or no.
 23 THE HEARING OFFICER: Or you
 24 don't recall.

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1 Smith - Direct - Kearney
 2 **A. Yeah. I don't recall.**
 3 BY MR. KEARNEY: (Cont'g.)
 4 Q. If -- if I were to show you
 5 Lindy Uehling's written observation, dated
 6 November the 23rd, 2004, would that refresh
 7 your recollection as to --?
 8 MS. JALOWSKI: Objection.
 9 Leading.
 10 **A. Most likely.**
 11 THE HEARING OFFICER: I'll
 12 allow it; go ahead.
 13 MR. KEARNEY: I'd like to
 14 mark for identification Respondent's
 15 Twenty-six.
 16 THE HEARING OFFICER: Are you
 17 offering R Twenty-five or we'll hold it out for
 18 identification?
 19 MR. KEARNEY: Just hold.
 20 THE HEARING OFFICER: Just
 21 for identification.
 22 MR. KEARNEY: Is there --
 23 would you object to me offering R Twenty-five?
 24 MS. JALOWSKI: Well, I mean

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1 Smith - Direct - Kearney
 2 November 23rd, 2004.
 3 Just look at it and read it
 4 quietly to yourself.
 5 MS. JALOWSKI: Okay. I'm not
 6 following. Are you asking -- what's --?
 7 THE HEARING OFFICER: I'm
 8 looking at a memo dated November 23rd.
 9 MR. KEARNEY: I'm asking him
 10 about specification two.
 11 MS. JALOWSKI: Okay.
 12 MR. KEARNEY: Am I wrong on
 13 that?
 14 MS. JALOWSKI: I thought your
 15 prior question was about an observation.
 16 That's why I didn't understand now.
 17 MR. KEARNEY: Can we go off
 18 the record for a second?
 19 THE HEARING OFFICER: Yes.
 20 (Off-the-record discussion)
 21 BY MR. KEARNEY: (Cont'g.)
 22 Q. Does -- does this document
 23 refresh your recollection as to what occurred
 24 during Lindley Uehling's observation of your

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1 Smith - Direct - Kearney
 2 it's issues with --.
 3 THE HEARING OFFICER: I don't
 4 know what it is. So unless he identifies it,
 5 that he wrote it -- I don't even know who wrote
 6 it, so if he --.
 7 MR. KEARNEY: It was provided
 8 to us from --.
 9 THE HEARING OFFICER: Well,
 10 that may be but --.
 11 MR. KEARNEY: I think there
 12 was testimony on it from Lindy Uehling, isn't
 13 there?
 14 MS. JALOWSKI: Well,
 15 according to -- from what I see, that letter is
 16 dealing with November 15th and 16th.
 17 THE HEARING OFFICER: Yeah.
 18 I'm not even going to take it unless someone
 19 identifies it. Okay? So I'll mark it for
 20 identification at this stage.
 21 We're looking at now Respondent's Twenty-six
 22 for identification.
 23 MR. KEARNEY: It's a
 24 memorandum that was provided in discovery

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1 Smith - Direct - Kearney
 2 teaching on November the 23rd, 2004?
 3 **A. It does very much so.**
 4 Q. Can you describe, without
 5 looking at the -- at the piece of paper in
 6 front of you -- can you describe what you did
 7 to address students who were not dressed up
 8 that day?
 9 **A. Sure. I lined the students**
 10 **up against the wall, close to the water**
 11 **fountain, near the gym office, and I called**
 12 **their parents on the telephone.**
 13 Q. And what did you say to the
 14 parents?
 15 **A. I told the parents, you know,**
 16 **that if they come unprepared more than three**
 17 **times, they're going to fail the class because**
 18 **they have to come suited up for class. That's**
 19 **one of my regulations of many regulations that**
 20 **I offered the gym students -- that -- that one**
 21 **of the regulations and ideas was to come**
 22 **prepared to class. And it was essential that**
 23 **they come on a regular basis, prepared.**
 24 Q. And -- and you spoke to the

10 (Pages 436 to 439)

1 Smith - Direct - Kearney
 2 parents -- was that on the land line or was
 3 that on your cell phone?
 4 **A. No. It was on the land line**
 5 **in the gym office phone. There was a long**
 6 **cord -- an extension from the cord on the**
 7 **phone, so that I could be supervising the gym**
 8 **while I was calling the parents.**
 9 Q. Is -- is the testimony that
 10 you just gave that you lined the children up
 11 and that you were calling parents -- is that
 12 memorialized in the memorandum that I've marked
 13 Respondent's Twenty-six?
 14 **A. I believe so. Yes.**
 15 Q. I'd like to direct your
 16 attention to specification number six, if you
 17 just read it quietly to yourself.
 18 MS. JALOWSKI: I see why I
 19 had a problem with -- I'm dealing with two
 20 cases -- I was looking at this from one page to
 21 the other page. That's why I had a problem
 22 with the dates.
 23 **A. I'm aware of that date.**
 24 THE HEARING OFFICER: We're

1 Smith - Direct - Kearney
 2 looking at specification six.
 3 BY MR. KEARNEY: (Cont'g.)
 4 Q. Have you read specification
 5 six?
 6 **A. Yes.**
 7 Q. Sitting here today, do you
 8 remember being observed by Lindley Uehling on
 9 December the 16th, 2004?
 10 **A. Yeah. It was a double**
 11 **period. What happened during that double**
 12 **period --.**
 13 MS. JALOWSKI: Objection.
 14 The question was --.
 15 THE HEARING OFFICER: Do you
 16 remember, yes or no?
 17 THE WITNESS: I do.
 18 THE HEARING OFFICER: Go
 19 ahead.
 20 **A. (Cont'g.) Now during --**
 21 THE HEARING OFFICER: Wait --
 22 wait -- wait. He'll ask you. Don't -- don't
 23 steal his thunder.
 24 Go ahead.

1 Smith - Direct - Kearney
 2 BY MR. KEARNEY: (Cont'g.)
 3 Q. Can you describe for me
 4 generally what you did on the 16th of December
 5 2004, while you were being observed by Lindy
 6 Uehling?
 7 **A. Well, it was a double period.**
 8 **And the first twenty minutes consisted of**
 9 **exercises and the next twenty minutes consisted**
 10 **of soccer drills and soccer skills. And the**
 11 **final part of the class consisted of soccer**
 12 **tournament -- a soccer game. And I told Lindy**
 13 **to come in to the beginning of the class to**
 14 **watch the whole class. And she ended up coming**
 15 **in about one forty-seven, when the class began**
 16 **at twelve twenty-five and ends at two fifteen.**
 17 **She came in at one forty-seven, after the**
 18 **instruction was already --**
 19 MS. JALOWSKI: I -- I -- I --
 20 **A. (Cont'g.) -- already done.**
 21 MS. JALOWSKI: You need to
 22 slow down a little. You're speaking a little
 23 bit too -- too fast.
 24 **A. (Cont'g.) The instruction**

1 **Smith - Direct - Kearney**
 2 **was already done by one forty-seven. We were**
 3 **already playing games. We had them paired up**
 4 **in teams. They were practicing their soccer**
 5 **tournaments. And she walks -- and Lindy**
 6 **Uehling walked in. What she observed were the**
 7 **students playing soccer games and me refereeing**
 8 **the games. And she made a comment to me at the**
 9 **end of the class that she didn't see any**
 10 **instruction going on. And I told her that you**
 11 **came in late -- you said that you were up in**
 12 **your office. You had an important meeting up**
 13 **there and you came in, as you said, at one**
 14 **whatever it was -- one thirty-six or one**
 15 **forty-seven. You came in late and you had**
 16 **missed the soccer instructional piece. And**
 17 **that's what happened.**
 18 BY MR. KEARNEY: (Cont'g.)
 19 Q. All right. I'm going to show
 20 you what I'll mark for Respondent's
 21 Twenty-seven.
 22 MR. KEARNEY: It is an
 23 observation dated December 20, 2004, that
 24 relates to an -- an actual classroom visit on

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1 Smith - Direct - Kearney
 2 December 16th, 2004.
 3 THE HEARING OFFICER: Are you
 4 offering --
 5 MR. KEARNEY: No.
 6 THE HEARING OFFICER: --
 7 Respondent's Twenty-six?
 8 So that's just for identification, previous --.
 9 MR. KEARNEY: I think it's
 10 already in evidence.
 11 THE HEARING OFFICER: It's
 12 not. Respondent's Twenty-six -- under a
 13 different number, you mean?
 14 MR. KEARNEY: No. I think --
 15 I think it was Department Exhibit. I just
 16 didn't --.
 17 THE HEARING OFFICER: What?
 18 Well, All right.
 19 MR. KEARNEY: I just didn't
 20 have the list. I'm sorry.
 21 THE HEARING OFFICER: Okay.
 22 Just bear with me a moment. One second.
 23 That's November 23rd -- let's just see if I can
 24 find it.

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1 Smith - Direct - Kearney
 2 actively engaged in serving as the referee as
 3 most of the playing students demonstrated a
 4 strong commitment to winning the game?
 5 **A. Well, not only did I serve as**
 6 **the referee, I served as the team motivator. I**
 7 **actually played with the students and**
 8 **participated in the activity, not just refereed**
 9 **the game. I mean, the -- as the principal**
 10 **said, the students appeared to enjoy playing**
 11 **soccer --**
 12 MS. JALOWSKI: Objection.
 13 **A. (Cont'g.) -- and they -- she**
 14 **said --**
 15 THE HEARING OFFICER: Ted --
 16 THE WITNESS: Yeah.
 17 THE HEARING OFFICER: --
 18 just --.
 19 THE WITNESS: Yeah.
 20 THE HEARING OFFICER: I
 21 believe that R Twenty-seven is also D Ten.
 22 This one's marked as -- D Ten. Okay? R
 23 Twenty-seven.
 24 BY MR. KEARNEY: (Cont'g.)

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1 Smith - Direct - Kearney
 2 Okay. Let's continue. Go
 3 ahead. No problem.
 4 BY MR. KEARNEY: (Cont'g.)
 5 Q. Now the document that I've
 6 marked for identification as Respondent's
 7 Twenty-seven, could you just read it to
 8 yourself?
 9 THE HEARING OFFICER: Can I
 10 have a copy? Is this it?
 11 MR. KEARNEY: Yes.
 12 THE HEARING OFFICER: Thank
 13 you.
 14 BY MR. KEARNEY: (Cont'g.)
 15 Q. Have you read it?
 16 **A. Yes.**
 17 Q. Directing your attention to
 18 the heading marked summary of instruction at
 19 the bottom of the first page and continuing on
 20 to the third paragraph of the second page, is
 21 the testimony you just gave about the soccer
 22 game memorialized in this document?
 23 **A. Yes.**
 24 Q. And were you, in fact,

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1 Smith - Direct - Kearney
 2 Q. Mr. Smith, can you describe
 3 for the record the activity that you were
 4 instructing -- the specific instruction that
 5 you were giving on December the 16th, 2004?
 6 **A. The instruction I was giving**
 7 **was I was teaching the kids how to pass the**
 8 **ball. I was doing an inside and an outside**
 9 **pass. And they would be able to have a goalie**
 10 **in the goal and the participants would be able**
 11 **to practice by kicking the ball into the goal,**
 12 **learning -- learning how to pass and how to**
 13 **trap the ball. The goalie would be set up in**
 14 **such a way that he would have the cones set up**
 15 **in a very effective way, so that the students**
 16 **could get a -- a feel of practicing of kicking**
 17 **the ball -- and into the goal -- so that they**
 18 **would be able to practice their -- their goal**
 19 **shot, which actually was -- worked out very**
 20 **well because the students were able to practice**
 21 **that skill by participating in these games;**
 22 **thereafter the skill was practiced. So any --**
 23 **any good instruction would -- would only follow**
 24 **the -- would only follow the game.**

12 (Pages 444 to 447)

1 **Smith - Direct - Kearney**
 2 THE REPORTER: Mr. Tillem?
 3 THE HEARING OFFICER: I'm
 4 sorry. We're --.
 5 THE REPORTER: I'm just
 6 having a hard time hearing over the papers
 7 shuffling.
 8 THE HEARING OFFICER: Hold
 9 on.
 10 Okay. Go ahead.
 11 BY MR. KEARNEY: (Cont'g.)
 12 Q. Mr. Smith, did you at any
 13 time take any of your students to the
 14 auditorium without permission from the
 15 administration?
 16 **A. Not that I recall.**
 17 Q. Did you ever give your
 18 classes free -- free play?
 19 **A. From time to time.**
 20 Q. And as a physical education
 21 teacher --
 22 **A. Uh-huh.**
 23 Q. -- is there a pedagogical
 24 reason for giving students time for free play?

1 Smith - Direct - Kearney
 2 **A. Yeah. Usually, like towards**
 3 **the end of the period or if they excelled well**
 4 **in the skill, that would be sort of like a**
 5 **merit system. You would give them free play**
 6 **based on the skills that they'd practiced. And**
 7 **if they'd practiced the skill well, this would**
 8 **be something that they would look forward to.**
 9 **It's sort of like a reward. That's what that**
 10 **would sort of be like.**
 11 Q. Did you ever speak on your
 12 cell phone during a physical education class,
 13 Mr. Smith?
 14 **A. I think I did one time when**
 15 **the principal was standing next to me and she**
 16 **told me -- because I was having problems with**
 17 **my health -- just in case I was having a**
 18 **problem, she -- she said to me pick up the**
 19 **telephone. So I picked up the phone quickly**
 20 **and then I quickly did what I had to and then**
 21 **she said, you know, close it.**
 22 Q. Well, do you recall when this
 23 particular incident occurred?
 24 **A. I don't know. I think it was**

1 **Smith - Direct - Kearney**
 2 **sometime either in December '04 or January**
 3 **'05 -- somewhere in there.**
 4 Q. And what was the particular
 5 health problem that you're referencing?
 6 **A. Atrial fibrillation, atrial**
 7 **flutter, and other types of cardiac**
 8 **arrhythmias.**
 9 Q. Was there a chair in the area
 10 in which you taught physical education?
 11 **A. No, there was not.**
 12 Q. Was there a sofa?
 13 **A. No. You know, if there was a**
 14 **sofa in the gym, do you know how dangerous that**
 15 **would be?**
 16 **THE HEARING OFFICER: No.**
 17 **No. Just answer the question. Just ask the**
 18 **question.**
 19 BY MR. KEARNEY: (Cont'g.)
 20 Q. Did you have a procedure for
 21 grading students in your -- in your physical
 22 education class?
 23 **A. I did.**
 24 Q. And what were the factors

1 Smith - Direct - Kearney
 2 that you used in assessing a student in terms
 3 of letter grades?
 4 **A. Obviously, the first one was**
 5 **attendance -- how much they attended the class.**
 6 **I kept a very close watch on their attendance.**
 7 **The second one was if whether they got**
 8 **prepared -- whether they got dressed or not**
 9 **during class. If they didn't get dressed more**
 10 **than three times -- more than the three**
 11 **times -- I would call their parents on the**
 12 **telephone. And if it exceeded more than four**
 13 **times, they would get an unsatisfactory for**
 14 **that particular semester. And then, of course,**
 15 **the other assessment was based on the**
 16 **instruction. It was done in class, which**
 17 **was -- which was extremely plentiful.**
 18 **There was a lot of instruction going on and**
 19 **it's -- and we had units anywhere from Tae Chi,**
 20 **to aerobics, to soccer instruction, to hockey**
 21 **instruction, to basketball, volleyball -- all**
 22 **different units. And each unit -- unit was**
 23 **usually broken up somewhere between four to**
 24 **eight weeks -- we would have a unit. And they**

1 **Smith - Direct - Kearney**
 2 **would be assessed on those particular skills.**
 3 **The first year that was in September and that**
 4 **was our fitness unit. And each student got a**
 5 **card and they were told to be paired up**
 6 **together and they would go through the**
 7 **different routines. They went through sit-ups,**
 8 **push-ups, jumping jacks, relay races, a shuttle**
 9 **run that you mentioned yesterday -- they did a**
 10 **shuttle run -- different types of shuttle runs.**
 11 **And we would time those things and they would**
 12 **be watched and each person would write down the**
 13 **amount of time that it took each person to do**
 14 **the number of sit-ups within a minute, the**
 15 **number of push-ups within a minute, the number**
 16 **of chin-ups within a minute, and so forth.**
 17 **That was our first unit, the fitness unit.**
 18 Q. You testified that you broke
 19 up various skills as units. Now did you assign
 20 a certain -- did you assign -- strike that.
 21 How did the individual units contribute to a
 22 final grade for a student in your class?
 23 **A. Well, what I would do is I**
 24 **would add up the number of times that the**

1 **Smith - Direct - Kearney**
 2 **person was absent and if they were absent more**
 3 **than four times and they didn't bring a note**
 4 **in, then they would actually get a -- a -- up**
 5 **to four, they passed; after five, they would**
 6 **get an unsatisfactory, meaning anything under a**
 7 **fifty-five. Then of course, the other grades**
 8 **that I would add into the program in terms of**
 9 **their attendance and also in terms of assessing**
 10 **their lesson based upon whether or not they**
 11 **could perform that particular skill of that**
 12 **lesson. Whether it happened to be at**
 13 **basketball -- if we did basketball, they would**
 14 **practice a -- a jump shot -- how many jump**
 15 **shots they could do -- how many line-ups of**
 16 **drills that they could do, how many side shots**
 17 **they could do, and so forth. So it would be a**
 18 **combination of five factors, attendance, being**
 19 **prepared or not, the skills, and also I would**
 20 **look for determination -- you know, how**
 21 **motivated the students were. That was a big**
 22 **key factor, also -- the motivation and**
 23 **determination.**
 24 Q. Now you have been charged

1 **Smith - Direct - Kearney**
 2 **with failing to provide direction for a**
 3 **substitute on Valentine's Day of 2005, in**
 4 **specification seventeen. Did you, in fact --**
 5 **did you provide any directions for -- for a**
 6 **substitute on that day?**
 7 **A. I'd -- I'd -- I'd have to see**
 8 **the specification. I don't recall that -- that**
 9 **day without, you know, materials in front of**
 10 **me.**
 11 Q. Let me show you a document
 12 that I'll mark Respondent's Twenty-eight. It's
 13 an e-mail dated February 14th, 2005, to J.
 14 Siegel at N.Y.C.B.O.E. dot net.
 15 **A. Uh-huh.**
 16 Q. Does this document refresh
 17 your recollection at all as to whether you
 18 provided any direction for a substitute on
 19 February 14, 2005?
 20 **A. Yes, it does.**
 21 Q. And without looking at the
 22 document, can you just -- can you just tell us
 23 how you directed a substitute on February the
 24 14th, 2005?

1 **Smith - Direct - Kearney**
 2 **A. Well, I -- I e-mailed Jo-Ann**
 3 **Siegel and faxed -- and I also -- I faxed a**
 4 **copy of the lesson plan and then the lesson**
 5 **plan -- there was a health lesson plan and a**
 6 **physical education lesson plan, which entailed**
 7 **what they had to do by -- by each moment,**
 8 **meaning it was broken down by minutes. If it's**
 9 **a forty-two minute class, it would have, you**
 10 **know, the introduction to the lesson, the**
 11 **activities and materials, the assessment on the**
 12 **lesson plan, and also on the sheet.**
 13 THE HEARING OFFICER: Do you
 14 want to see who that is?
 15 Off the record for a moment.
 16 (Off-the-record discussion)
 17 BY MR. KEARNEY: (Cont'g.)
 18 Q. I want to refer your
 19 attention back to what I marked Respondent's
 20 Twenty-six --
 21 **A. Uh-huh.**
 22 Q. -- in front of you. It's
 23 the -- the memorandum of November the 23rd,
 24 2004. Do you have it? It's this one.

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1 Smith - Direct - Kearney
 2 **A. Okay. Thank you. I have it.**
 3 Q. Actually, let me ask you a
 4 question first. Do you -- did Judith Killan
 5 assist you during the observation of November
 6 the 23rd, 2004, at which Lindy Uehling was
 7 present? Do you know?
 8 **A. No, she did not.**
 9 Q. And is -- is the fact that
 10 she did not assist you, is that memorialized in
 11 R Twenty-six?
 12 MS. JALOWSKI: Objection.
 13 The document speaks for itself.
 14 THE HEARING OFFICER: Yeah.
 15 The document speaks for itself. If you want to
 16 point out -- you're referring to the --?
 17 MR. KEARNEY: Yes.
 18 THE HEARING OFFICER: Which
 19 shows -- will notify me if Killan doesn't show.
 20 MR. KEARNEY: No. No.
 21 Actually, in -- in the first paragraph.
 22 Judith --.
 23 MS. JALOWSKI: She was absent
 24 that day.

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1 **Smith - Direct - Kearney**
 2 **when Ms. Killan was absent.**
 3 Q. And did you ever have
 4 occasion to -- in -- to report to Lindy Uehling
 5 that Judith Killan had, in fact, not shown up?
 6 **A. Yes, several times.**
 7 Q. And what -- if -- what did
 8 Ms. Uehling do in response to that before?
 9 **A. Sometimes she said she would**
 10 **try to find somebody else to come down if she**
 11 **could find someone to at that time. But most**
 12 **of the time, I was left there alone. Nobody**
 13 **showed up because they had other classes to**
 14 **attend to.**
 15 Q. Aside from the -- your
 16 regular classroom duties --
 17 **A. Uh-huh.**
 18 Q. -- teaching phys. ed. and
 19 health, as you testified to earlier, did you
 20 have any other assignments at the Museum
 21 School?
 22 **A. Yeah. I had a -- a**
 23 **lunchroom -- instructional lunchroom period of**
 24 **students --**

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1 Smith - Direct - Kearney
 2 THE HEARING OFFICER: Okay.
 3 I see. It says at around nine forty-five, I
 4 stopped by the gym because Judith Killan, the
 5 back-up teacher, is absent.
 6 And is that what you wanted
 7 us to see?
 8 MR. KEARNEY: Right. And in
 9 conjunction with -- all right.
 10 BY MR. KEARNEY: (Cont'g.)
 11 Q. Mr. Smith, was principal --
 12 did you ever speak to Lindy Uehling about
 13 Judith Killan's attendance?
 14 **A. Yes, I did.**
 15 Q. And what did -- what, if
 16 anything, did Ms. Uehling tell you about Ms.
 17 Killan's attendance?
 18 **A. Well, she said that if Ms.**
 19 **Killan didn't show up -- because she didn't**
 20 **show up very frequently at all -- she said to**
 21 **call her upstairs and let her know that if**
 22 **she's not there, that she'd -- she'd try to**
 23 **come down herself or she would try to find**
 24 **another assistant to come down and assist me**

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1 **Smith - Direct - Kearney**
 2 Q. And --
 3 **A. -- about four days a week.**
 4 Q. -- can you describe that for
 5 the record?
 6 **A. It was a type of -- of -- it**
 7 **was actually a class that Lindy Uehling, the**
 8 **principal, added onto my program -- that became**
 9 **actually a class -- into my schedule. And the**
 10 **class was that I was to teach the best I could**
 11 **in this class and supervise a large**
 12 **student-type lunch program where the students**
 13 **would come in and would practice volleyball.**
 14 **They would practice aerobics, stretches. They**
 15 **would practice basketball. And they would have**
 16 **time -- they would have time to play. And**
 17 **there was certain -- there was certain groups**
 18 **where I would instruct students.**
 19 Q. Did this program go by any
 20 particular name?
 21 **A. It was called the -- the**
 22 **lunch, slash, gym program.**
 23 Q. And how many students were in
 24 the program at one time?

15 (Pages 456 to 459)

1 Smith - Direct - Kearney
 2 **A. At one time, well over a**
 3 **hundred students at a time, no more than two**
 4 **hundred students. Sometimes I counted about a**
 5 **hundred and eighty students. Sometimes it was**
 6 **a little less. Sometimes a hundred and forty,**
 7 **but it was always over a hundred students at a**
 8 **time.**
 9 Q. And this was during the lunch
 10 period?
 11 **A. Yes.**
 12 Q. Did there -- were you told
 13 anything by anyone concerning what your duties
 14 were during that lunch, slash, gym program?
 15 **A. Yes, I was.**
 16 Q. And who gave you those
 17 instructions?
 18 **A. Principal Lindy Uehling.**
 19 Q. And what did she tell you?
 20 **A. She told me to -- to**
 21 **supervise the students, to walk around a lot,**
 22 **and if I could, to instruct students, either**
 23 **teaching them basketball or soccer skills.**
 24 Q. How long did this gym, slash,

1 Smith - Direct - Kearney
 2 lunch program continue?
 3 **A. It continued about -- until**
 4 **about May of 2005.**
 5 Q. Let me ask you a different
 6 question. When did it start?
 7 **A. It started in early -- early**
 8 **on, in September '04.**
 9 Q. And was it discontinued?
 10 **A. It was, yes.**
 11 Q. By whom?
 12 **A. By Lindy Uehling.**
 13 Q. And why was it discontinued?
 14 **A. Because she said that it was**
 15 **illegal, that I should have had an assistant in**
 16 **there with me, but she couldn't find anyone to**
 17 **assist me. So I was there all alone with over**
 18 **a hundred students at a time. That's why.**
 19 Q. Did Principal Uehling ever
 20 observe you during the lunch program?
 21 **A. Yes, she did.**
 22 Q. And how would you describe
 23 the -- the behavior of the students during the
 24 lunch program, generally?

1 Smith - Direct - Kearney
 2 **A. Generally, nobody got hurt.**
 3 **There was a lot of kids in there. They were --**
 4 **a lot of them seemed to enjoy coming to the**
 5 **lunchroom period because they got a chance to**
 6 **work out during this time. They seemed to have**
 7 **a good time. They seemed to be enjoying it.**
 8 Q. Did -- did the children run
 9 around in the gym --
 10 **A. Yes.**
 11 Q. -- during the lunch?
 12 **A. Well, I mean running**
 13 **around -- in a supervised way, they ran around**
 14 **the gym. They just didn't run around the gym,**
 15 **what you call running around, without me there.**
 16 MR. KEARNEY: I have no
 17 further questions at this time.
 18 MS. JALOWSKI: Are you done
 19 with your direct?
 20 MR. KEARNEY: Yes.
 21 THE HEARING OFFICER: You're
 22 done?
 23 It's ten after two. Do you
 24 want to take a break for a few minutes before

1 Smith - Direct - Kearney
 2 you go into your cross? It's a good time.
 3 Just take a short break. Okay?
 4 MS. JALOWSKI: Yes.
 5 THE HEARING OFFICER: What do
 6 you figure you want? Ten minutes? Fifteen
 7 minutes?
 8 MS. JALOWSKI: I guess ten
 9 minutes.
 10 THE HEARING OFFICER: Okay.
 11 Off the record. We'll be back in about ten or
 12 fifteen minutes. Okay?
 13 (Off the record)
 14 THE HEARING OFFICER: Thank
 15 you.
 16 Your witness.
 17 CROSS EXAMINATION
 18 BY MS. JALOWSKI:
 19 Q. Mr. Smith, you testified that
 20 you had a meeting with Ms. Lindley Uehling
 21 about having a job interview, correct?
 22 **A. Yes.**
 23 Q. Now when you were
 24 interviewing with her, it was your

1 Smith - Cross - Jalowski
 2 understanding that it was for a teaching
 3 position, correct?
 4 **A. Not completely correct.**
 5 Q. Isn't it true that she
 6 informed you that she did not have any
 7 administrators, that she was the only
 8 principal, and that she could only hire you as
 9 a teacher?
 10 **A. Not correct. Should I**
 11 **answer?**
 12 Q. Were you hired as a teacher?
 13 **A. I was hired as a supervisor**
 14 **and teacher.**
 15 Q. Mr. Smith, there's no such --
 16 is it your understanding that you either are an
 17 administrator or a teacher, correct?
 18 **A. Not necessarily. No. You**
 19 **could be an administrator and a teacher at the**
 20 **same time.**
 21 Q. So your testimony is that you
 22 were a supervisor teacher, but you were paid as
 23 a teacher. Is that -- is that essentially what
 24 you are saying was your understanding of what

1 Smith - Cross - Jalowski
 2 it was?
 3 **A. My understanding was that she**
 4 **was going to give me administrative duties at**
 5 **the school, that she had an A.P. position**
 6 **possibly available, that I would be teaching**
 7 **students -- maybe thirty-five to forty students**
 8 **top, and that I would be a phys. ed.**
 9 **supervisor.**
 10 Q. Mr. Smith, isn't it true that
 11 Ms. Uehling told you that you would be the only
 12 gym teacher if you took the position?
 13 **A. The only gym teacher?**
 14 Q. Yes.
 15 **A. Yes.**
 16 Q. So therefore, if you were the
 17 only gym teacher, every student, by law, needs
 18 to have gym, correct?
 19 **A. Correct.**
 20 Q. So then you were aware that
 21 you would have to teach every student at the
 22 school if you took the position, correct?
 23 **A. Yes and no. Yes, because I**
 24 **would be teaching the kids, but the other thing**

1 **Smith - Cross - Jalowski**
 2 **is the -- there are certain instances where you**
 3 **can have students go on gym waivers. And gym**
 4 **waivers means that you could take students, put**
 5 **them on gym waivers, and send them to the**
 6 **Y.M.C.A.**
 7 Q. All right. But it was your
 8 understanding, unless a student at the Museum
 9 School was on a gym waiver, that you would be
 10 responsible for teaching that student?
 11 **A. Yes.**
 12 Q. So therefore, at the Museum
 13 School, during the 2004-2005 school year, if no
 14 student was on a gym waiver, you would then be
 15 in charge of teaching every single student at
 16 that school, correct?
 17 **A. Yes.**
 18 Q. So isn't it true that what
 19 Ms. Uehling told you was it would be like you
 20 were supervisor because you would be the only
 21 person -- you would be the gym department,
 22 correct?
 23 MR. KEARNEY: Objection.
 24 THE HEARING OFFICER: No.

1 Smith - Cross - Jalowski
 2 I'll allow that.
 3 BY MS. JALOWSKI: (Cont'g.)
 4 Q. Because in essence that you
 5 would be the entire gym department.
 6 **A. Well, she didn't say it that**
 7 **way. She said I would be the supervisor. She**
 8 **said -- she did say that I would be the only**
 9 **person in the department.**
 10 Q. Right. Because she explained
 11 to you that you would be supervising the
 12 assistants in any of the classes that were over
 13 fifty students, correct?
 14 **A. Incorrect.**
 15 Q. Then who -- what impression
 16 were you under? Who would you be supervising?
 17 **A. Well, you just mentioned**
 18 **assistants. I didn't hear any such word about**
 19 **an assistant.**
 20 **THE HEARING OFFICER: No.**
 21 **The question is who would you be -- who did you**
 22 **think you would be supervising?**
 23 BY MS. JALOWSKI: (Cont'g.)
 24 Q. Who did you think you would

1 Smith - Cross - Jalowski
 2 be supervising if she -- if she -- if you
 3 believed you were going to be a supervisor of a
 4 gym department that consisted of only you?
 5 **A. I guess I would be**
 6 **supervising myself or supervising the students,**
 7 **of course.**
 8 Q. So you did understand when
 9 you took the position that even if it's called
 10 a supervising teaching position, you would be
 11 paid as any other regular teacher who had
 12 twelve years -- or however many years of
 13 teaching you had at that time, correct?
 14 **A. Well, she said that -- she --**
 15 **you know, she was going to try to get me on an**
 16 **administrative line eventually. That's what**
 17 **she said. But I guess at the beginning, on the**
 18 **onset of this, that she would be paying me on a**
 19 **teacher's salary.**
 20 Q. Well, so in fact, if she did
 21 end up getting enough money to hire an
 22 assistant principal, you would be in -- you
 23 wouldn't just be the assistant principal of the
 24 gym department, you would be the assistant

1 Smith - Cross - Jalowski
 2 principal of the entire school, correct?
 3 MR. KEARNEY: Objection.
 4 **A. I'm not really sure. We**
 5 **never got --.**
 6 MR. KEARNEY: That's beyond
 7 the scope of the witness' knowledge.
 8 THE HEARING OFFICER: No. It
 9 goes to the credibility and I'm not sure it's
 10 beyond the knowledge. I'll allow it. It's a
 11 fair cross.
 12 Go ahead.
 13 BY MS. JALOWSKI: (Cont'g.)
 14 Q. All right. So it's your
 15 contention that -- so it's your contention,
 16 though, that you were unaware that any of your
 17 classes would be over fifty students.
 18 **A. That is correct.**
 19 Q. But you did state that Ms.
 20 Uehling did ask you if you had experience in
 21 teaching oversized classes.
 22 **A. No, not in oversized classes.**
 23 **She said did I have experience teaching big**
 24 **classes. She didn't say oversized.**

1 **Smith - Cross - Jalowski**
 2 Q. So what was your response
 3 when she said you have experience teaching big
 4 classes?
 5 **A. Well, my response was I've**
 6 **always worked with a second licensed phys. ed.**
 7 **teacher wherever I've been for the last ten**
 8 **years, and that second phys. ed. teacher and I**
 9 **collaborated and wrote lesson plans together to**
 10 **make the program effective and also organized.**
 11 Q. So during your interview, did
 12 you -- did you ask her how many students were
 13 in the school?
 14 **A. Yes. She told me that**
 15 **roughly it was about three hundred students,**
 16 **but she wasn't telling the truth. It wasn't.**
 17 **It was much more than three hundred.**
 18 Q. In your estimate, how many
 19 students do you think were at the school?
 20 **A. I think it was about four**
 21 **hundred.**
 22 Q. Now though, you were aware
 23 that the gym had to be shared with the Lab
 24 School, correct?

1 Smith - Cross - Jalowski
 2 **A. No; I wasn't at the time.**
 3 **She never said that at all.**
 4 Q. You knew that the Lab school
 5 was in the same facilities as the Museum
 6 School, correct?
 7 **A. No. I wasn't aware of it**
 8 **during the interview. No, not at all. All we**
 9 **talked about was the Museum School.**
 10 Q. Now as soon as Ms. Uehling
 11 was made aware that you didn't have assistants
 12 in the oversized classes, she did provide you
 13 with assistants, correct?
 14 **A. Yeah, but way down the road.**
 15 Q. But as soon as she became
 16 aware, she was -- she was actually apologetic
 17 because she thought there had been assistants,
 18 correct?
 19 **A. She never thought there had**
 20 **been assistants. She knew that there weren't**
 21 **any assistants. She knew I was all alone all**
 22 **along, for three months. How could that be**
 23 **possible?**
 24 Q. Now, Mr. Smith, with the --

1 Smith - Cross - Jalowski
 2 the three observations -- I mean, the three
 3 lesson plans that you put into -- that were put
 4 into evidence by your attorney, isn't it
 5 correct that all those observations actually
 6 corresponded to formal observations that were
 7 performed by Ms. Uehling?
 8 **A. Can you please repeat that**
 9 **question?**
 10 Q. The question was do you
 11 recall that your attorney put in -- I'll
 12 actually show them to you -- R -- this
 13 observation, right?
 14 **A. Uh-huh.**
 15 THE HEARING OFFICER: They're
 16 looking at -- let's just for the record -- R
 17 Twenty-one.
 18 **A. (Cont'g.) Uh-huh.**
 19 BY MS. JALOWSKI: (Cont'g.)
 20 Q. And that observation was
 21 actually for a class that Ms. Uehling formally
 22 observed, correct?
 23 **A. Well, she observed the end of**
 24 **the class. She didn't --.**

1 **Smith - Cross - Jalowski**
 2 Q. But that's the December 16th
 3 class --
 4 **A. I just want to -- yeah, but I**
 5 **just want to --**
 6 Q. -- that you had an
 7 observation?
 8 **A. I -- true, but I want to --**
 9 Q. But that's my question, sir.
 10 THE HEARING OFFICER: Let him
 11 answer the question.
 12 **A. But I just want to make**
 13 **sure -- she didn't observe the whole class.**
 14 BY MS. JALOWSKI: (Cont'g.)
 15 Q. My question was is this the
 16 lesson plan for that class?
 17 **A. Well that's -- yes. That was**
 18 **the lesson plan for -- not that class.**
 19 THE HEARING OFFICER: Not a
 20 good idea to do with lawyers, sir. Just answer
 21 the question.
 22 **A. (Cont'g.) Yes, sir. That's**
 23 **for two classes, not for one class.**
 24 THE HEARING OFFICER: Well,

1 Smith - Cross - Jalowski
 2 if you insist, go ahead.
 3 MR. KEARNEY: Could we go off
 4 the record for a second?
 5 THE HEARING OFFICER: Yeah.
 6 No. No. We will not go off the record, sir.
 7 Let's continue and we'll take a break later.
 8 BY MS. JALOWSKI: (Cont'g.)
 9 Q. It was for the period six and
 10 seven classes --
 11 **A. Yes.**
 12 Q. -- for December 16th?
 13 **A. That's true. Yes.**
 14 Q. And what time is that class
 15 from?
 16 **A. That class is from twelve**
 17 **thirty-five until about two fifteen or two**
 18 **twenty.**
 19 Q. And then I'm going to show
 20 you what's R Twenty-three. And isn't it
 21 correct that this was for your March 9th lesson
 22 that Ms. Uehling observed?
 23 **A. What's the date of that?**
 24 Q. March 9th.

1 Smith - Cross - Jalowski
 2 **A. It says November 9th.**
 3 Q. I'm sorry. Did I say March?
 4 It's November 9th. I apologize. Thank you.
 5 **A. Can you please repeat the**
 6 **question?**
 7 BY MS. JALOWSKI: (Cont'g.)
 8 Q. My question is that isn't
 9 that what's marked as R Twenty-three -- doesn't
 10 that correspond to the observation that Ms.
 11 Uehling observed on November 9, 2004?
 12 **A. I would have to -- before I**
 13 **could answer that question, I would have to see**
 14 **the observation on November 9th because there**
 15 **were a lot of observations. I'm sorry.**
 16 THE HEARING OFFICER: Okay.
 17 While we're waiting, we could go off the record
 18 in accord with the request of the Respondent's
 19 attorney. If you want to have a -- off the
 20 record, please.
 21 (Off-the-record discussion)
 22 THE HEARING OFFICER: We're
 23 looking at R Twenty-three, the November 9
 24 observation.

1 Smith - Cross - Jalowski
 2 And the question, I believe,
 3 is, was that the lesson plan for that
 4 observation?
 5 THE WITNESS: Yes.
 6 BY MS. JALOWSKI: (Cont'g.)
 7 Q. And then I'm looking at --
 8 and I'm looking at R Twenty-two. Isn't it
 9 correct that that is the lesson plan that you
 10 handed to Ms. Uehling when she came to observe
 11 you on January 6th of 2005?
 12 **A. January 6, '05. Is it**
 13 **possible to see the observation, so I could**
 14 **just refresh my memory? Thank you.**
 15 **Yes, that is. Uh-huh.**
 16 Q. Mr. Smith, is your -- is --
 17 isn't it true that your -- the eighth-grade
 18 classes -- they were -- there were less than
 19 sixty eighth-grade students in the Museum
 20 School?
 21 **A. Less than sixty, did you say?**
 22 Q. Yes.
 23 **A. For eighth grade? No. There**
 24 **were more than sixty.**

1 **Smith - Cross - Jalowski**
 2 Q. But on the day that Ms.
 3 Uehling observed you, there were only fifty-one
 4 students in the period two eighth --
 5 eighth-grade class, correct?
 6 **A. I -- I don't know that for**
 7 **sure.**
 8 Q. Well, would it refresh your
 9 recollection to look at the lesson plan?
 10 **A. Sure.**
 11 **THE HEARING OFFICER: The**
 12 **lesson plan?**
 13 MS. JALOWSKI: The -- the
 14 observation.
 15 **A. (Cont'g.) Okay.**
 16 BY MS. JALOWSKI: (Cont'g.)
 17 Q. So there were only fifty-one
 18 students that day, correct?
 19 **A. That's what the lesson --**
 20 **that's what the observation says.**
 21 Q. Well, Mr. Smith, you did sign
 22 the letter -- I mean, you -- you received this
 23 letter on February 9th, 2005, correct?
 24 **A. Yeah. I signed it under**

1 **Smith - Cross - Jalowski**
 2 **protest, yes.**
 3 Q. And if, in fact, there
 4 weren't fifty-one students in attendance and
 5 there were over sixty, you would have made sure
 6 that you would have made note of that, correct?
 7 **A. Well, I think I told her**
 8 **that, you know, as you refresh my recollection.**
 9 **I do believe there were about fifty-eight or**
 10 **sixty that day, but I think a lot of them were**
 11 **in the bleachers. They were -- about eight of**
 12 **them were unprepared, and she didn't include**
 13 **that in the total number of students. She**
 14 **included the ones that were prepared.**
 15 Q. So you're saying that you --
 16 that Ms. Uehling, when she marked attendance --
 17 the students in the bleacher is in attendance,
 18 correct?
 19 **A. Usually.**
 20 Q. So your interpretation of
 21 when she writes attendance fifty-one students
 22 is that there were really sixty, but she wrote
 23 fifty-one because nine were unprepared. That's
 24 your interpretation?

1 Smith - Cross - Jalowski
 2 **A. Yes.**
 3 Q. Now Mr. Smith, do you think
 4 it's sound pedagogy to be talking -- I'm sorry.
 5 Let me just -- I'd -- I'd like to get a picture
 6 of what the gym looked like. Attached to the
 7 gym, there was an office, correct?
 8 **A. Yes.**
 9 Q. And what is it -- there's a
 10 glass wall between the office and the gym, so
 11 that you could see what was going on if you
 12 were sitting in the office?
 13 **A. There's no glass wall.**
 14 Q. Okay. So if you were inside
 15 the office, then you really cannot see what's
 16 going on in the gym, except for whatever you
 17 would be able to see out of the doorway between
 18 the office and the gym?
 19 **A. Yeah. You'd have to be**
 20 **standing at the doorway.**
 21 Q. Now you had a phone in your
 22 office, correct?
 23 **A. Yes.**
 24 Q. And you had a chair in your

1 Smith - Cross - Jalowski
 2 office, correct?
 3 **A. A chair and a desk.**
 4 Q. There was -- so if somebody
 5 said there was a chair in the gym, they would
 6 be referring to the chair that was at your
 7 desk, correct?
 8 **A. No. There was never a chair**
 9 **in the gym. There was a chair in the office.**
 10 Q. Well, to -- isn't the office
 11 part of the gym?
 12 **A. It's an extension of the gym.**
 13 **I wouldn't call it part of the gym.**
 14 Q. So you didn't think it would
 15 be fair to say that if anything's said that you
 16 were sitting in a chair, that they would be
 17 referring to the chair in your office. If they
 18 said you were sitting in a chair in the gym,
 19 would it be fair to say that they are referring
 20 to the gym -- to the chair that is in your
 21 office?
 22 **A. I'm sorry. Could you -- I'm**
 23 **sorry. Could you please repeat that?**
 24 Q. You testified that there was

1 Smith - Cross - Jalowski
 2 no chair in the gym.
 3 **A. Yes, that's right.**
 4 Q. Would you agree with me that
 5 it would fair to say that if any of these
 6 documents said that you were sitting in a chair
 7 in the gym, that in all likelihood they were
 8 referring to the chair that was in your gym
 9 office?
 10 **A. Well, I would never sit in**
 11 **the -- in the chair --.**
 12 Q. That's not my question, Mr.
 13 Smith. My question is do you agree that it
 14 would be fair to say that if somebody said you
 15 were sitting in a chair in the gym, that they
 16 would most likely mean that you -- that was the
 17 chair that was in your office?
 18 **A. Well, I think there's a**
 19 **difference, Ms. Jalowski. A chair --**
 20 Q. Mr. Smith --.
 21 **A. -- in the gym --.**
 22 THE REPORTER: One at a time,
 23 please.
 24 THE HEARING OFFICER: The

1 Smith - Cross - Jalowski
 2 answer is no.
 3 **A. (Cont'g.) No.**
 4 BY MS. JALOWSKI: (Cont'g.)
 5 Q. Conceivably, Mr. Smith, the
 6 chair was not bolted down to the floor,
 7 correct?
 8 **A. No.**
 9 Q. The chair could be moved from
 10 your office into the gym, correct?
 11 **A. It could, but there would be**
 12 **no purpose to do that.**
 13 Q. Mr. Smith, do you think that
 14 it's sound pedagogy to take the phone from your
 15 office while gym is in progress, while your
 16 assistant is absent that day, and start calling
 17 parents?
 18 **A. I've done it before for the**
 19 **last ten years.**
 20 THE HEARING OFFICER: No --
 21 no; that's not the question.
 22 **A. (Cont'g.) Yes, I do think it**
 23 **is. Yes. Absolutely. Because you know why?**
 24 **THE HEARING OFFICER: She**

1 **Smith - Cross - Jalowski**
 2 **didn't ask you that sir.**
 3 THE WITNESS: Oh. I'm sorry,
 4 sir. I'm sorry. I apologize.
 5 BY MS. JALOWSKI: (Cont'g.)
 6 Q. So then you don't dispute
 7 that there were students outside in the yard
 8 unsupervised that day that -- that Ms. Uehling
 9 came to your gym?
 10 **A. There was nobody out in the**
 11 **yard. Everybody was sitting on their floor**
 12 **spots. And those people that were unprepared**
 13 **were standing against the wall. And I was**
 14 **alone.**
 15 Q. So -- so you disagree with --
 16 in that letter, when Ms. Uehling said that she
 17 went out into the yard and had to get kids back
 18 in, that that never happened.
 19 **A. It happened during the**
 20 **lunchtime that day. The lunch period, there**
 21 **were people out in the yard, but --.**
 22 Q. When she wrote that between
 23 nine forty-five and ten, there were -- she came
 24 to your gym and that you were on the phone

1 Smith - Cross - Jalowski
 2 calling parents -- that she went outside and
 3 there were students outside unsupervised. Do
 4 you disagree with that?
 5 **A. I disagree with that, yes.**
 6 Q. Now, Mr. Smith, when were you
 7 first diagnosed with -- I'm sorry -- with
 8 arrhythmia?
 9 **A. With arrhythmia? 1992.**
 10 Q. And in layman's terms, I
 11 mean, could you give us -- can you give a
 12 definition since -- if you can, of what
 13 arrhythmia is?
 14 **A. It's an irregular heartbeat.**
 15 **It's a -- the blood isn't pumping through the**
 16 **atrium where it enters the ventricles properly,**
 17 **so that there is an improper blood flow and**
 18 **also an improper electrical response to what's**
 19 **happening in the atrium.**
 20 Q. Now, Mr. Smith, what is --
 21 what is your actual -- I know you have an
 22 administrator's license, but I'm just talking
 23 about your teaching license. What is your
 24 actual teaching license?

1 Smith - Cross - Jalowski
 2 **A. Physical education.**
 3 Q. So as -- so there's no
 4 designation from elementary through high school
 5 for a physical education teacher?
 6 **A. I believe I am a licensed**
 7 **high school physical education teacher.**
 8 Q. So your license says high
 9 school only or does it just say you're a
 10 physical education teacher?
 11 **A. As far as I know, it's high**
 12 **school.**
 13 Q. But you do have experience
 14 teaching kids that are not of high school age
 15 prior to 2004, correct?
 16 **A. Only in an after-school**
 17 **program of small classes.**
 18 Q. Now you testified that --
 19 that you had -- that you had left early on the
 20 day you said you felt ill, correct?
 21 **A. There may have been a few**
 22 **days, yes.**
 23 Q. So you've -- you've seen the
 24 specifications, correct?

1 Smith - Cross - Jalowski
 2 **A. Yes.**
 3 Q. So you don't dispute that all
 4 the charges that state that you left early,
 5 that that's correct.
 6 **A. Well, I took at look at those**
 7 **charges and I realized that some of them were**
 8 **incorrect, that it wasn't quite fourteen. I**
 9 **think it was -- I'd have to go check my records**
 10 **and get back to you, but I believe it was quite**
 11 **less than fourteen days late or early.**
 12 Q. Now each of those times that
 13 you left early, you went to the doctor's?
 14 **A. Not always, no -- sometimes.**
 15 **Sometimes to the hospital. Sometimes to the**
 16 **doctor.**
 17 Q. For each and every time,
 18 you're saying that you received some sort of
 19 medical treatment for the days that you left
 20 early?
 21 **A. Yes, I did.**
 22 Q. On each and every one?
 23 **A. Whatever days they happened**
 24 **to be, yes. Whether it was phoning the**

1 **Smith - Cross - Jalowski**
 2 **doctor --.**
 3 Q. No. I asked -- I asked --
 4 THE HEARING OFFICER: She's
 5 asking you whether you went.
 6 BY MS. JALOWSKI: (Cont'g.)
 7 Q. -- whether you received
 8 medical treatment, not whether or not you spoke
 9 to the doctor.
 10 **A. Medical treatment, could you**
 11 **be more specific?**
 12 Q. I mean, did you see -- each
 13 and every one of those times, did you see a
 14 doctor?
 15 **A. Oh. Oh. I'm sorry. Let**
 16 **me -- let me take that back. No. Not every**
 17 **single time, no.**
 18 Q. And that's the same with
 19 your -- with your absences. You don't disagree
 20 that you were, in fact, absent on the dates
 21 that were in the specification, right?
 22 **A. I think it was more like**
 23 **fourteen or fifteen days. I don't think it was**
 24 **eighteen. Lindy Uehling originally said it was**

1 **Smith - Cross - Jalowski**
 2 **thirty days at some point in time.**
 3 Q. So which data do you disagree
 4 with?
 5 **A. I'd have to get back to you**
 6 **on that next week. I can go through my records**
 7 **and let you know which one I think they are. I**
 8 **don't -- I'm not able to do that sitting here**
 9 **right now, but I -- I can get back to you on**
 10 **that.**
 11 Q. Mr. Smith, in terms of the
 12 specifications regarding November 18th through
 13 the 22nd on not calling the sub., isn't it true
 14 that -- you're saying that November 18th was
 15 what day of the week -- what day did you get
 16 Vonnie to -- to come -- to come in and sub.?
 17 You said Monday?
 18 **A. I don't remember the exact**
 19 **day it was during that year, but I think it was**
 20 **somewhere during the beginning of the week. I**
 21 **can't be specific.**
 22 Q. Well, Mr. Smith, isn't it
 23 true that you were actually -- what happened
 24 was that you were absent a total of five days

1 Smith - Cross - Jalowski
 2 to take care of a legal matter?
 3 **A. I don't know if it was five**
 4 **days to take care of a legal matter, but there**
 5 **were a few days, yes.**
 6 Q. Isn't it true that you were
 7 subpoenaed and you had to come in November 15,
 8 2004, November 16, 2004, November 18, 2004,
 9 November 19, 2004, and November 22?
 10 **A. That's when --.**
 11 THE HEARING OFFICER: What's
 12 the question? That he came on those dates?
 13 MS. JALOWSKI: That on those
 14 dates, he was -- he had -- that he was not in
 15 school because he had to deal with a legal
 16 matter.
 17 THE HEARING OFFICER: All
 18 right. And it was November 19th until when,
 19 the question?
 20 MS. JALOWSKI: Well, it
 21 was -- because it's not -- it's not continuous
 22 dates, the 15th, the 16th, then the 18th, 19th,
 23 and 22nd.
 24 THE HEARING OFFICER: And the

1 Smith - Cross - Jalowski
 2 question is did he take off those dates to take
 3 care of a legal matter -- is that your
 4 question?
 5 Yeah. Do you want to answer that, sir?
 6 THE WITNESS: Yes, sir.
 7 **A. (Cont'g.) If that's what it**
 8 **says, it was a court subpoena I was sent. I**
 9 **was served a subpoena to attend a legal matter,**
 10 **so I had no choice but to attend.**
 11 BY MS. JALOWSKI: (Cont'g.)
 12 Q. So, isn't it correct that the
 13 two dates that Vonnie came in were for the 15th
 14 and the 16th of November -- for the Monday and
 15 Tuesday that you weren't there.
 16 **A. Not that I'm aware of.**
 17 Q. So you don't believe the
 18 documents that were shown to you was really
 19 referring to November 15th and 16th and
 20 that's --
 21 **A. No. I --**
 22 Q. -- whatever that document
 23 was.
 24 **A. Whatever the document says**

1 **Smith - Cross - Jalowski**
 2 **speaks for itself. That's what the document**
 3 **says.**
 4 Q. Do you recognize this
 5 document?
 6 **A. Yes.**
 7 Q. What do you recognize that to
 8 be?
 9 **A. It's a letter from an**
 10 **attorney, William Gerard, to Ted Smith, that I**
 11 **was subpoenaed to appear in a court matter in**
 12 **State Supreme Court.**
 13 MS. JALOWSKI: I'd like this
 14 marked into evidence.
 15 THE HEARING OFFICER: May I,
 16 sir? Did you see this, sir?
 17 MR. KEARNEY: I'm looking at
 18 it right now.
 19 THE HEARING OFFICER: Let me
 20 just mark it for identification.
 21 MR. KEARNEY: I'm going to
 22 object.
 23 THE HEARING OFFICER: Wait.
 24 Wait. Let me just mark it and then we'll take

1 Smith - Cross - Jalowski
 2 it from there.
 3 I think we're up to D Thirty.
 4 Does that sound right? I'll mark it for
 5 identification as D Thirty. It's being
 6 offered.
 7 And your objection, sir?
 8 MR. KEARNEY: I -- it
 9 contains -- first of all, it's two things. One
 10 is a letter from an attorney. The second is --
 11 is a -- appears to be a subpoena. And there
 12 are various handwritten notations on it that
 13 without a foundation, I would object on a lack
 14 of --.
 15 MS. JALOWSKI: If you would
 16 just disregard the handwritten notation and --
 17 then -- then -- that's -- I -- that's --.
 18 THE HEARING OFFICER: Yeah.
 19 I'll take it for what it's worth. You may want
 20 to redirect on it.
 21 MS. JALOWSKI: He ended up as
 22 being out sick.
 23 THE HEARING OFFICER: Okay.
 24 D Thirty in evidence.

1 Smith - Cross - Jalowski
 2 BY MS. JALOWSKI: (Cont'g.)
 3 Q. So let's get to the December
 4 16th observation.
 5 **A. Uh-huh.**
 6 Q. Ms. Uehling came in -- what
 7 time did you say she came in?
 8 **A. She said she came in at one**
 9 **twenty-five. To my best recollection, I**
 10 **believe she came in about one thirty -- one**
 11 **thirty-seven to one forty-two.**
 12 Q. So your contention is that
 13 she only stayed for ten minutes?
 14 **A. No, that is not my**
 15 **contention.**
 16 Q. How many minutes did --
 17 according to you, was Ms. Uehling there?
 18 **A. Lindy Uehling was there from**
 19 **about one forty until about two fifteen. Class**
 20 **began at twelve thirty-five or twelve thirty.**
 21 Q. All right. So you dispute
 22 when she said that she came in at one
 23 twenty-five -- you dispute that?
 24 **A. Yes.**

1 **Smith - Cross - Jalowski**
 2 Q. So according to you, what
 3 time during the lesson was the soccer
 4 instruction?
 5 **A. The soccer instruction was**
 6 **about from ten minutes to one until about one**
 7 **twenty.**
 8 Q. Well, isn't it true that in
 9 the post -- pre-observation conference, from
 10 one twenty, you were supposed to start soccer
 11 skills at that time?
 12 **A. I don't recall that.**
 13 Q. And looking at R Twenty-two,
 14 that to you is -- is a proper lesson plan?
 15 **A. Yes.**
 16 Q. And is it your testimony that
 17 that was actually written -- when was that
 18 written? Was that written after Ms. Lindy
 19 asked you for your lesson plan and you said you
 20 needed to go into the office to get it or was
 21 that actually written before --
 22 **A. It was written --.**
 23 Q. -- the lesson took place?
 24 **A. It was written the day**

1 **Smith - Cross - Jalowski**
 2 **before.**
 3 Q. Then how did you know the day
 4 before that nine-o-five won?
 5 **A. Very simple. Lindy Uehling**
 6 **was standing next to me and when nine-o-five**
 7 **won, I put it right into the lesson plan in**
 8 **front of her.**
 9 MS. JALOWSKI: I have no
 10 further questions.
 11 THE HEARING OFFICER: Off the
 12 record a moment.
 13 (Off the record)
 14 THE HEARING OFFICER: Okay.
 15 Redirect?
 16 REDIRECT EXAMINATION
 17 BY MR. KEARNEY:
 18 Q. Mr. Smith, were you required
 19 to give lesson plans to Lindy Uehling after --
 20 for every lesson that you taught?
 21 **A. After a certain period of**
 22 **time on a Monday afternoon, I was -- she said**
 23 **to put it into her box and so lesson plans were**
 24 **on a weekly basis in her mailbox.**

1 **Theodore Smith - 3-1-2007**
 2 MR. KEARNEY: Nothing
 3 further.
 4 MS. JALOWSKI: Nothing.
 5 THE HEARING OFFICER: That's
 6 it. Thank you very much.
 7 THE WITNESS: Have a nice
 8 day.
 9 THE HEARING OFFICER: Right.
 10 Okay.
 11 Okay. We're going to recess
 12 now and reconvene on, I believe, it's Thursday,
 13 March 8th at ten a.m. and we will continue with
 14 the Respondent's case.
 15 Okay? Just so -- for the
 16 record, we will not be holding a hearing on
 17 March 6th.
 18 (Off the record)
 19 Pkic
 20
 21
 22
 23
 24

1 Theodore Smith - 3-1-2007
 2 STATE OF NEW YORK
 3 I, Amy Douglas, do hereby certify that the
 4 foregoing was reported by me, in the cause, at
 5 the time and place, and in the presence of
 6 counsel, as stated in the caption hereto, at
 7 Page 403 hereof; that the foregoing
 8 typewritten transcription, consisting of pages
 9 number 403 through 496, inclusive, was prepared
 10 under my supervision and is a true record of
 11 all proceedings had at the hearing.
 12 IN WITNESS WHEREOF, I have
 13 hereunto subscribed my name, this the 15th day
 14 of March, 2007.
 15
 16 _____
 17 Amy Douglas, Reporter
 18
 19
 20
 21
 22
 23
 24

1 Theodore Smith - 3-1-2007
 2 E R R A T A S H E E T
 3 Case: Theodore Smith, File #
 4 Date: March 1, 2007
 5 CORRECTIONS:
 6 Page_ _line_
 7 _____
 8 _____
 9 _____
 10 _____
 11 _____
 12 _____
 13 _____
 14 _____
 15 _____
 16 _____
 17 _____
 18 _____
 19 _____
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 24 _____

A		
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