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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: February 28, 2007

TIME: 12:25 p.m. to 12:33 p.m.
1:00 p.m. to 1:50 p.m.
2:55 p.m. to 4:15 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 - 2-28-2007
 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.,
 12 317 Madison Avenue, 21st Floor
 13 New York, New York 10017
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1 Theodore Smith - 2-28-2007
 2 THE HEARING OFFICER: For
 3 appearances, Jack Tillem, the Hearing Officer.
 4 For the Complainant? Susan?
 5 MS. JALOWSKI: Susan
 6 Jalowski.
 7 THE HEARING OFFICER: For the
 8 Respondent?
 9 MR. KEARNEY: David Kearney.
 10 THE HEARING OFFICER: And we
 11 have the Respondent, Mr. Smith, present.
 12 We are ready to continue with the Department's
 13 case. You are calling a witness, Ms. Jalowski?
 14 MS. JALOWSKI: The witness I
 15 had, Vincent Murray, I found is no longer an
 16 employee of the Department of Education and is
 17 living in Wisconsin, so therefore, I will not
 18 be able -- he will not be testifying. And at
 19 this point, the Department rests.
 20 THE HEARING OFFICER: They
 21 just hit the ball over the net to you, sir.
 22 MR. KEARNEY: I would like to
 23 call Respondent, Ted Smith.
 24 THE HEARING OFFICER: Okay.

1 Theodore Smith - 2-28-2007
 2 Oh, you knew better than me where you were
 3 going to sit. Come sit over here, sir. I'm
 4 sorry. State your name for the record, sir.
 5 MR. SMITH: Theodore Smith.
 6 THE HEARING OFFICER: Raise
 7 your right hand, sir.
 8 MR. SMITH: Yes.
 9 THE HEARING OFFICER: Do you
 10 affirm the testimony you're about to give will
 11 be the truth, the whole truth, nothing but the
 12 truth?
 13 (Dropped call)
 14 MR. SMITH: I do.
 15 THE HEARING OFFICER: Good.
 16 Keep your voice up.
 17 THEODORE SMITH; Sworn
 18 THE HEARING OFFICER: Okay.
 19 We are on the record now, right?
 20 THE REPORTER: Yes, you are.
 21 THE HEARING OFFICER: What
 22 happened here, through some glitch in the
 23 system or our mistake here, what we have
 24 already had is testimony from Mr. Smith was not

1 Theodore Smith - 2-28-2007
 2 transcribed. So what the parties have
 3 stipulated to is that I will narrate now what I
 4 have as the testimony so far from my notes and
 5 allow the Counsel from both sides then to add
 6 or amend what I have written here as my notes.
 7 Okay. Mr. Smith began his testimony by saying
 8 that he is certified and has administrative --
 9 license of administrative and principal as well
 10 as teacher in the New York City System and New
 11 York State license. He is in his twelfth year
 12 of teaching. He started at the Museum School
 13 in September of 2004. He has sent resumes all
 14 over the city actually looking for an assistant
 15 principal vacancy, and he had taught health and
 16 phys. ed. in the prior years.
 17 The principal of the middle
 18 school, Ms. Uehling, I'm not sure if I am
 19 pronouncing her name -- called him in of August
 20 of '04 and said she was looking for a phys. ed.
 21 and may have an A.P. vacancy. They scheduled
 22 an in-person interview also in the latter part
 23 of August '04 -- about two or three weeks
 24 before school opened. The principal said that

1 Theodore Smith - 2-28-2007
 2 Mr. Smith would be doing administrative work
 3 and head the phys. ed. department and had to
 4 teach classes, too, in phys. ed. and health.
 5 He was told the grades would be nine through
 6 twelve.
 7 I had never -- I'm
 8 paraphrasing Mr. Smith's testimony -- I had
 9 experience ten years at the high school level
 10 teaching phys. ed. and health; I had never
 11 taught elementary or middle school, and never
 12 having taught grades six through eight. I
 13 didn't know I would teach middle school. I
 14 wasn't told that. The principal told me there
 15 would be thirty-five to forty kids in the
 16 class. I told her the only experience I had
 17 was teaching oversized classes with another
 18 phys. ed. teacher. She offered me a position
 19 phys. ed. supervisor and teacher.
 20 When I began, I taught high
 21 school. A couple of weeks later was the first
 22 time I saw ten- to eleven-year old children.
 23 In mid-September of '04, I taught nine to
 24 twelve and seven to eighth grade. Started

1 Theodore Smith - 2-28-2007
 2 teaching middle school in the middle of
 3 September without an assistant with fifty-seven
 4 to sixty-four kids in the seventh grade,
 5 fifty-eight to sixty-seven kids in the eighth
 6 grade, two sections of the eighth grade each
 7 with forty to forty-five kids. Both sections
 8 start at the same time. In both seventh and
 9 eighth grade in September, there was no
 10 assistant. Both male and female kids.
 11 I couldn't go into the girls'
 12 locker room and the girls took quite a while to
 13 come out. I assigned other kids as monitors to
 14 make them come out to see if I could speed them
 15 up and make them come out a little faster. I
 16 never worked with kids this age, you know, sort
 17 of hormone hopping and the kids felt
 18 embarrassed about coming into the gym and
 19 taking their clothes off. They would come out
 20 late, sometimes just putting their gym clothes
 21 on over their regular day clothes. I spoke to
 22 the principal about assistants for the middle
 23 school in mid-October 2004. I need help, I
 24 told her, in the oversized classes. She told

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1 Theodore Smith - 2-28-2007
 2 me I have no money to hire assistants; make the
 3 best of it.
 4 The middle school had a gym
 5 leak in the roof in September and was closed
 6 from mid-September to mid-November. So I had
 7 to go to the auditorium or the yard or the
 8 cafeteria, and I was alone. I spoke to the
 9 principal almost every week. She said make the
 10 best of it; go out -- maybe go out with the
 11 P.T.A. Director to find an outside facility.
 12 And I did. I found a community center on 18th
 13 Street and Ninth Avenue, and told her about it.
 14 It was available, and I recommended it to her.
 15 I will have to see if I have the money, she
 16 said, and then told me she didn't have any
 17 money available.
 18 She asked me for my advice.
 19 I told her if it were me, I would put the kids
 20 on gym waivers. In other words, they could get
 21 credit for doing after-school -- engaging in
 22 after-school physical activities or sports. I
 23 was having a lot of stress resulting in cardiac
 24 arrhythmia. Prior to 2004, I had had a

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1 Theodore Smith - 2-28-2007
 2 THE HEARING OFFICER: Oh,
 3 Museum School.
 4 MR. KEARNEY: Museum.
 5 Otherwise it doesn't make any sense --
 6 THE HEARING OFFICER: Museum
 7 School, of course. That's a correction. I
 8 meant Museum School. What else?
 9 MR. KEARNEY: That the
 10 diagnosis that he testified to was atrial
 11 fibrillation and atrial flutter, a type of
 12 cardiac arrhythmia.
 13 THE HEARING OFFICER: Not bad
 14 then.
 15 MR. KEARNEY: No.
 16 MS. JALOWSKI: I was going to
 17 say very good.
 18 THE HEARING OFFICER: Huh?
 19 MS. JALOWSKI: No changes.
 20 THE HEARING OFFICER: Okay.
 21 All right. Are we still on the record?
 22 THE REPORTER: Yes, you are.
 23 THE HEARING OFFICER: Thanks
 24 so much.

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1 Theodore Smith - 2-28-2007
 2 diagnosis of arrhythmia and cardiac arrhythmia.
 3 Stress seemed to exacerbate it. I told the
 4 principal of my physical problems. She said
 5 she would look into getting me assistants.
 6 I got assistants for middle
 7 school grades in late November or early
 8 December 2004. The first seventh-grade
 9 assistant was visibly pregnant, leery about
 10 assisting me. She couldn't move around. She
 11 left in February '05, replaced by Victor
 12 Kurniputra until the end of the year. He would
 13 work once a week for a double period. I was
 14 assigned a teaching assistant, Dana Gaudet for
 15 the eighth grade. Found out he had no New York
 16 State certification.
 17 That is pretty much what I
 18 have where we left off. Do you have any
 19 changes? Please?
 20 MR. KEARNEY: Just one thing,
 21 and I think it was inadvertent. At the very
 22 beginning of your recap, you said that he was
 23 contacted by Uehling, principal of the middle
 24 school --

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1 Theodore Smith - 2-28-2007
 2 All right. Let's continue.
 3 As a matter of fact, I want to go off the
 4 record now for a minute. That's how we
 5 realized where we were. Can you go off the
 6 record for a couple of minutes?
 7 (Off the record)
 8 THE HEARING OFFICER: Okay.
 9 Go ahead.
 10 DIRECT EXAMINATION
 11 BY MR. KEARNEY:
 12 Q. With respect to Dana Gaudet,
 13 did you take steps to follow up on the printout
 14 you received that indicated he wasn't licensed
 15 in 2007?
 16 **A. Yes.**
 17 Q. And what steps did you take?
 18 **A. I called the State Department**
 19 **of Albany Teacher's Certification. I spoke to**
 20 **a teacher evaluator about it.**
 21 Q. And what was his name?
 22 **A. Bruce Robinson.**
 23 Q. And what, if anything, did
 24 Mr. Robinson tell you about Mr. Gaudet's state

4 (Pages 324 to 327)

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1 Smith - Direct - Kearney
 2 certification in the year 2004?
 3 **A. He was never state certified**
 4 **in anything.**
 5 Q. What about the year 2005?
 6 **A. He was not state certified in**
 7 **anything, no.**
 8 Q. What about 2006?
 9 **A. He was never state certified**
 10 **at all.**
 11 Q. I am going to show you
 12 with -- did you have any oversized classes in
 13 grades nine through twelve?
 14 **A. Yes, I did.**
 15 Q. Was the tenth grade -- did
 16 you teach tenth grade?
 17 **A. Yes.**
 18 Q. And which subjects did you
 19 teach to tenth grade?
 20 **A. Physical education.**
 21 Q. And did you begin that in
 22 September of 2004?
 23 **A. Yes.**
 24 Q. From September of 2004

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1 Smith - Direct - Kearney
 2 **A. Because she never showed up**
 3 **and never would call the principal as to why**
 4 **she didn't show up to assist me. And the other**
 5 **times she would spend time sitting on the**
 6 **bleachers all of the time; didn't want to get**
 7 **involved.**
 8 Q. Did Ms. Killen ever tell you
 9 why she couldn't be present to assist you at
 10 any time?
 11 **A. She did once.**
 12 Q. And what was the reason she
 13 gave you?
 14 **A. She said she was**
 15 **uncomfortable being in the gym with the**
 16 **oversized classes.**
 17 Q. Did you -- were there
 18 instances where Ms. Killen did assist you in
 19 teaching the tenth grade?
 20 **A. Yes.**
 21 Q. And what, if anything, did
 22 you observe about her punctuality?
 23 **A. She would come late --**
 24 **fifteen -- twenty minutes late to class, and**

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1 Smith - Direct - Kearney
 2 onward, were any of the tenth-grade classes
 3 that you taught in phys. ed. oversized?
 4 **A. Yes.**
 5 Q. How many students were in
 6 them?
 7 **A. Somewhere between fifty-seven**
 8 **and sixty-five students.**
 9 Q. Were you assigned an
 10 assistant for those classes?
 11 **A. I was.**
 12 Q. And what was the assistant's
 13 name?
 14 **A. Judith Killen. Last name**
 15 **K-I-L-L-E-N.**
 16 Q. And when was she assigned to
 17 your class?
 18 **A. Early December, I believe --**
 19 **either the last week of November 2004 or early**
 20 **December of 2004.**
 21 Q. What was it like teaching
 22 with Ms. Killen?
 23 **A. It was very difficult.**
 24 Q. Why was it difficult?

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1 **Smith - Direct - Kearney**
 2 **she would go directly to the bleachers and sit**
 3 **down. I would direct her to get up and help me**
 4 **with attendance, and she would help me with the**
 5 **attendance. I would ask her to walk around**
 6 **with the students to follow my direction, and**
 7 **she said she would rather not do that because**
 8 **she felt that she didn't have the physical**
 9 **education background and --.**
 10 MS. JALOWSKI: I'm just going
 11 to object to the hearsay nature of the
 12 testimony.
 13 A.
 14 (Cont'g.) She didn't have the background, and
 15 she doesn't want to get involved with the
 16 class, so she sat back down.
 17 MR. KEARNEY: (Cont'g.)
 18 Q. Mr. Smith, did you ever --
 19 were you ever directed to attend a meeting with
 20 Lindley Uehling and Judith Killen?
 21 **A. Yes.**
 22 Q. When was the first time you
 23 were told to meet with Lindley Uehling and
 24 Judith Killen?

5 (Pages 328 to 331)

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1 Smith - Direct - Kearney
 2 **A. It was sometime in early**
 3 **December of 2004.**
 4 Q. And who told you to meet?
 5 **A. The principal said we should**
 6 **meet.**
 7 Q. And did you, in fact, meet
 8 with the principal, Ms. Uehling, and Judith
 9 Killen in early December of 2004?
 10 **A. Yes.**
 11 Q. And what was the nature of
 12 the meeting?
 13 **A. That she was supposed to be**
 14 **there to support me and that she was going to**
 15 **assist me in the tenth-grade class.**
 16 Q. Let me rephrase the question.
 17 Was the initial meeting -- was it precipitated
 18 by any kind of event?
 19 **A. I don't recall that.**
 20 Q. What did you understand the
 21 purpose of the first meeting to be?
 22 **A. It was sort of like an**
 23 **introduction to the program.**
 24 Q. And were Ms. Killen's

1 Smith - Direct - Kearney
 2 responsibilities and duties discussed at that
 3 meeting?
 4 **A. Yes.**
 5 Q. And were your
 6 responsibilities and duties discussed at the
 7 meeting?
 8 **A. Yes.**
 9 Q. And was there any decision or
 10 consensus that was arrived at?
 11 **A. The principal said that I**
 12 **should teach her to be a phys. ed. teacher.**
 13 Q. And what did you understand
 14 that to mean?
 15 **A. It means I -- she said that I**
 16 **should train her on how to be able to assist me**
 17 **in teaching a skilled-based lesson in physical**
 18 **education.**
 19 Q. And did you have occasion to
 20 meet with Lindley Uehling and Judith Killen on
 21 any other occasion?
 22 **A. I think there was another**
 23 **time. I think it was in early January of 2005,**
 24 **right after Christmas.**

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1 **Smith - Direct - Kearney**
 2 Q. And tell me about how you
 3 became aware of the meeting.
 4 **A. I believe the principal**
 5 **wanted us to attend a meeting and to discuss**
 6 **Ms. Killen's concerns about the oversized**
 7 **classes.**
 8 Q. I just want you to tell me
 9 how you found out about the meeting.
 10 **A. Yes. The principal told me**
 11 **to attend the meeting.**
 12 Q. And was -- do you know
 13 whether Ms. Killen was notified of the meeting?
 14 **A. Yes, she was.**
 15 Q. How do you know that?
 16 **A. The principal told me.**
 17 Q. Was there a written notice
 18 distributed for the particular meeting?
 19 **A. Yes.**
 20 Q. Okay. Did Ms. Killen attend
 21 the meeting?
 22 **A. No, she did not.**
 23 Q. Did you attend the meeting?
 24 **A. I did.**

1 **Smith - Direct - Kearney**
 2 Q. Did Lindley Uehling attend
 3 the meeting?
 4 **A. She did.**
 5 Q. And did you discuss the fact
 6 that the other person that was supposed to be
 7 at the meeting wasn't present?
 8 **A. Yes.**
 9 Q. And what did you say to the
 10 principal?
 11 **A. That she's supposed to be**
 12 **here at the meeting -- that she's not here.**
 13 Q. And did Ms. Uehling respond
 14 at all?
 15 **A. Yes.**
 16 Q. What was her response?
 17 **A. Go down to Ms. Killen's room**
 18 **and get her -- go find her and bring her in**
 19 **here.**
 20 Q. And what did you do?
 21 **A. I went down and followed the**
 22 **principal's directions and went to Ms. Killen's**
 23 **room to try to find her.**
 24 Q. And did you, in fact, find

6 (Pages 332 to 335)

1 Smith - Direct - Kearney
 2 her?
 3 **A. Yes.**
 4 Q. And what did you tell her?
 5 **A. That we have a meeting and**
 6 **she was supposed to be in there.**
 7 Q. Did you receive a reaction or
 8 response to that?
 9 **A. Yes.**
 10 Q. What was the response?
 11 **A. She said she was doing other**
 12 **things then; she couldn't attend the meeting.**
 13 Q. Did you speak to Principal
 14 Uehling after speaking to Ms. Killen?
 15 **A. Yes.**
 16 Q. And what did you say to
 17 Principal Uehling?
 18 **A. I walked back into Lindley's**
 19 **office and told her that Judith refused to**
 20 **attend the meeting.**
 21 Q. What is a Delany card?
 22 **A. A Delany card is a small**
 23 **little card that has the name, the address, the**
 24 **social security number on the front. It's a**

1 **Smith - Direct - Kearney**
 2 **tiny little card. On the back, it has**
 3 **attendance dates from September through June --**
 4 **throughout the school year.**
 5 Q. In September of 2004, were
 6 you given Delany cards for your seventh-grade
 7 class?
 8 **A. No, I was not.**
 9 Q. Did you, at any time after
 10 September of 2004, receive Delaney cards for
 11 your seventh-grade class?
 12 **A. No, I did not.**
 13 Q. With respect to your
 14 eighth-grade class when you began teaching in
 15 September of 2004, did you -- were you given
 16 Delany cards for the eighth grade?
 17 **A. No, I was.**
 18 Q. Were you given Delany cards
 19 for the eighth grade at any time after
 20 September of 2004?
 21 **A. No, I was not given them.**
 22 Q. With respect to the ninth
 23 grade, were you given Delany cards for ninth
 24 grade in September of 2004?

1 Smith - Direct - Kearney
 2 **A. No.**
 3 Q. Any time after?
 4 **A. No.**
 5 Q. What about tenth grade? Did
 6 anyone ever give you a Delany card for your
 7 tenth-grade class?
 8 **A. No, they did not.**
 9 Q. Was that also true for the
 10 eleventh and twelfth grade?
 11 **A. Yes, that was true.**
 12 Q. You were never given Delany
 13 cards for those grades? Is that your
 14 testimony?
 15 MS. JALOWSKI: Objection.
 16 THE HEARING OFFICER: He's
 17 already said yes, at that point.
 18 BY MR. KEARNEY: (Cont'g.)
 19 Q. At any time, were you
 20 given -- after September of 2004, were you
 21 given Delany cards for any of your classes?
 22 **A. Yes.**
 23 Q. Which classes?
 24 **A. Ninth grade. I was given**

1 **Smith - Direct - Kearney**
 2 **thirty cards by Harold Manners. He said that**
 3 **he didn't have any more cards to give me. I**
 4 **had close to four hundred students. They**
 5 **didn't have any more cards.**
 6 Q. And when was that?
 7 **A. That was about November.**
 8 Q. Had you taken the attendance
 9 prior to November of 2004?
 10 **A. Yes.**
 11 Q. Had you taken attendance
 12 prior to November of 2004?
 13 **A. Yes, right from day one.**
 14 Q. How were you able to take
 15 attendance for your classes without Delany
 16 cards?
 17 **A. I used an attendance book and**
 18 **floor spots.**
 19 Q. Can you describe --?
 20 THE REPORTER: Sorry; what
 21 was the end of that response?
 22 THE HEARING OFFICER: Floor
 23 spots, F-L-O-O-R, spots, S-P-O-T-S.
 24 THE REPORTER: Thank you.

1 Smith - Direct - Kearney
 2 THE HEARING OFFICER: By
 3 using floor spots.
 4 BY MR. KEARNEY: (Cont'g.)
 5 Q. Can you explain what that
 6 system involved?
 7 **A. I used an attendance book,**
 8 **and from there I would line up the students on**
 9 **floor spots.**
 10 Q. What is a floor spot?
 11 **A. A floor spot is a place where**
 12 **each student sits. And I did it by**
 13 **alphabetical order.**
 14 Q. And were you directed at some
 15 point to begin using Delany cards?
 16 **A. At some point, yes.**
 17 Q. By whom?
 18 **A. Principal Uehling.**
 19 Q. And when was that?
 20 **A. Sometime around October of**
 21 **2004.**
 22 Q. And did you attempt to do so?
 23 **A. Yes, I did. I brought it to**
 24 **her attention that I didn't have any, that I**

1 **Smith - Direct - Kearney**
 2 **had requested them early on. She said she**
 3 **didn't have any.**
 4 Q. Who is Shanti Kantha?
 5 **A. She was the biology teacher**
 6 **at the New York City Museum School.**
 7 Q. Did there come a time where
 8 Shanti was assigned to your class as an
 9 assistant?
 10 **A. Yes.**
 11 THE HEARING OFFICER: What's
 12 her last name?
 13 MR. KEARNEY: K-A-N-T-H-A.
 14 BY MR. KEARNEY: (Cont'g.)
 15 Q. Which class was she assigned
 16 to?
 17 **A. The ninth-grade physical**
 18 **education class that met on Thursday afternoon.**
 19 Q. And what did you observe
 20 about Ms. Kantha's punctuality?
 21 **A. On time.**
 22 Q. Did she have any particular
 23 attendance problem?
 24 **A. No. I don't recall that.**

1 **Smith - Direct - Kearney**
 2 Q. Did you -- did there come a
 3 time when you were told that you had to give
 4 Ms. Kantha a lesson plan each time she met with
 5 you as an assistant?
 6 **A. Yes, I was told that.**
 7 Q. Who told you that?
 8 **A. Lindley Uehling.**
 9 Q. And do you know when she told
 10 you that?
 11 **A. I don't recall the date on**
 12 **that, but I think it was sometime around**
 13 **December or January -- December '04 to January**
 14 **'05 -- in there.**
 15 Q. Did you -- you were sitting
 16 there when Ms. Kantha was called to testify,
 17 weren't you?
 18 **A. Yes.**
 19 Q. Did you ever give Ms. Kantha
 20 a lesson plan when you taught with her as an
 21 assistant?
 22 **A. I always handed my assistants**
 23 **lesson plans.**
 24 Q. Do you recall whether you,

1 Smith - Direct - Kearney
 2 for example, gave Shanti Kantha a lesson plan
 3 on December 16th of 2004?
 4 **A. I believe I did.**
 5 Q. Just sitting here today, do
 6 you remember giving her a lesson plan on
 7 December 16th, 2004?
 8 **A. I don't recall. I know I**
 9 **gave her lesson plans.**
 10 Q. Is there any document out
 11 there that might refresh your recollection as
 12 to whether you did so?
 13 **A. Yes.**
 14 MR. KEARNEY: I just want to
 15 show the Respondent what I marked --.
 16 THE HEARING OFFICER:
 17 Respondent Twenty-one.
 18 MR. KEARNEY: Twenty-one.
 19 It's a form that's entitled daily lesson plan
 20 sheet.
 21 THE HEARING OFFICER: Are you
 22 going to be offering it?
 23 MR. KEARNEY: Yeah.
 24 THE HEARING OFFICER: Okay.

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1 Smith - Direct - Kearney
 2 Then I'll mark it R Twenty-one.
 3 BY MR. KEARNEY: (Cont'g.)
 4 Q. Do you recognize this
 5 document?
 6 **A. Yes.**
 7 MS. JALOWSKI: Do you have
 8 the original?
 9 MR. KEARNEY: I think --.
 10 THE HEARING OFFICER: Are you
 11 going to offer it or just to refresh his
 12 recollection now?
 13 MR. KEARNEY: I am going to
 14 use it to refresh his recollection.
 15 THE HEARING OFFICER: All
 16 right. Do you have the original?
 17 MR. KEARNEY: Can we go off
 18 the record for a second?
 19 THE HEARING OFFICER: Off the
 20 record.
 21 (Off the record)
 22 THE HEARING OFFICER: Let him
 23 ask the question.
 24 Go ahead, sir.

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1 **Smith - Direct - Kearney**
 2 **remember she was there, yes.**
 3 Q. And can you just describe
 4 briefly the type of activities -- without
 5 looking at the lesson plan? Does it refresh
 6 your recollection as to what you did on that
 7 day?
 8 **A. Yes, it does.**
 9 Q. The 16th of December?
 10 **A. Definitely.**
 11 Q. Okay. Do you know what year
 12 that would refer to?
 13 **A. 2004.**
 14 Q. Any idea why it couldn't have
 15 been December of 2005?
 16 **A. Because I was sitting in a**
 17 **rubber room in 2005.**
 18 Q. Any reason why it couldn't
 19 have been 2003, December?
 20 **A. Because I wasn't at the**
 21 **Museum School in December of 2003.**
 22 Q. Now, Shanti Kantha, which
 23 period did she teach with you?
 24 **A. She taught with me sixth and**

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1 Smith - Direct - Kearney
 2 BY MR. KEARNEY: (Cont'g.)
 3 Q. Do you recognize the
 4 document?
 5 **A. I do.**
 6 Q. What is it?
 7 **A. A lesson plan.**
 8 Q. Is this a typical example of
 9 a lesson plan that you would -- did you write
 10 this?
 11 **A. Yes, I did.**
 12 Q. Is this typical of the lesson
 13 plans that you would write in December of 2004?
 14 **A. Yes.**
 15 Q. Does it have a date on it?
 16 **A. Yes, it does.**
 17 Q. What's the date?
 18 **A. December 16th.**
 19 Q. Sitting here today, does this
 20 document refresh your recollection as to
 21 whether you gave Shanti Kantha a lesson plan on
 22 that day?
 23 **A. Yeah, I remember this lesson**
 24 **plan, and I remember what happened that day. I**

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1 **Smith - Direct - Kearney**
 2 **seventh period on Thursday afternoon.**
 3 Q. And sitting here today, do
 4 you remember -- do you remember the activities
 5 that you engaged in with Ms. Kantha on December
 6 16th, 2004?
 7 **A. Yes.**
 8 Q. What were those?
 9 **A. Kick boxing and soccer.**
 10 THE REPORTER: I'm sorry;
 11 with the papers rustling --.
 12 THE HEARING OFFICER: I'm
 13 sorry. Kick boxing and soccer.
 14 THE REPORTER: Thank you.
 15 BY MR. KEARNEY: (Cont'g.)
 16 Q. Did you often play soccer
 17 with Ms. Kantha assist -- present as your
 18 assistant?
 19 **A. Yes, that's true.**
 20 Q. And how often did you teach
 21 soccer in Ms. Kantha's presence?
 22 **A. We had soccer units for about**
 23 **two months, so that would mean about eight**
 24 **sessions because each class met once a week for**

9 (Pages 344 to 347)

1 **Smith - Direct - Kearney**
 2 **a double period, so it would be about two**
 3 **months of soccer.**
 4 Q. How many kids do you need --
 5 how many kids can play a single game of soccer
 6 at once?
 7 **A. Usually twenty-four.**
 8 Q. And that number is based on
 9 what?
 10 **A. Based on having twelve**
 11 **players per team, and you would usually have**
 12 **four teams with some extras who would serve as**
 13 **substitutes.**
 14 Q. In December of 2004, did you
 15 have a gym at the Museum School?
 16 **A. Yes.**
 17 Q. Did you teach soccer in the
 18 gym?
 19 **A. Yes, I did.**
 20 Q. Why didn't you teach it
 21 outside?
 22 **A. Because it was too cold and**
 23 **also the gym floor was more conducive to**
 24 **playing because it was easier to play in the**

1 **Smith - Direct - Kearney**
 2 **gym than it would be outside because the**
 3 **outside was tar -- tar like asphalt, and the**
 4 **gym was a wooden floor and it's easier to play**
 5 **soccer either on a field, which we didn't have,**
 6 **or on a gym floor.**
 7 Q. And was it possible to have
 8 more than one game of soccer at a time inside
 9 the gym?
 10 **A. No.**
 11 Q. Why not?
 12 **A. Because the gym was too small**
 13 **to have two games of soccer play in full-court**
 14 **soccer in a gym of that size.**
 15 Q. What would you do with the
 16 students who weren't playing a particular game?
 17 **A. They would sit on the**
 18 **bleachers wearing pinnies and they would be**
 19 **waiting for their turn to play while the other**
 20 **two teams were playing.**
 21 Q. And how -- did you have any
 22 kind of organized system for ensuring that each
 23 kid in the class, in fact, played soccer?
 24 **A. Yes.**

1 **Smith - Direct - Kearney**
 2 Q. And what was that system?
 3 **A. We would make a list of the**
 4 **names of the children -- rather, of the high**
 5 **school students that were playing soccer, and**
 6 **we would develop lists and we would make a**
 7 **soccer tournament per class, so that each class**
 8 **had a soccer tournament. So we would make a**
 9 **list of those particular students that were**
 10 **playing that game so that everybody would play.**
 11 Q. And did the use of the
 12 pinnies facilitate at all the ensuring that
 13 each student would play?
 14 MS. JALOWSKI: Objection.
 15 Leading.
 16 **A. Yes, it did.**
 17 THE HEARING OFFICER: What is
 18 a pinnie?
 19 BY MR. KEARNEY: (Cont'g.)
 20 Q. What is a pinnie, Mr. Smith?
 21 **A. A pinnie is something that**
 22 **you put over your clothes to distinguish the**
 23 **difference between the teams. Some kids had a**
 24 **red pinnie on and others had blue.**

1 **Smith - Direct - Kearney**
 2 MS. JALOWSKI: Like a vest.
 3 THE HEARING OFFICER: Spelled
 4 like a Lincoln penny? How do you spell it?
 5 What is it? How do you spell it?
 6 MR. KEARNEY: I have never
 7 seen it written.
 8 MS. JALOWSKI: I never heard
 9 that term. I didn't know what he was talking
 10 about.
 11 THE HEARING OFFICER: With
 12 all your degrees, you don't know how to spell
 13 it? Let's continue.
 14 Do you know how to spell
 15 pinnie?
 16 THE REPORTER: I'll have to
 17 look in the dictionary.
 18 THE HEARING OFFICER: Okay.
 19 Continue.
 20 BY MR. KEARNEY: (Cont'g.)
 21 Q. Did there come a time in the
 22 gym when you were playing soccer that you were
 23 observed by Principal Uehling?
 24 **A. Yes.**

1 **Smith - Direct - Kearney**
 2 Q. And if -- would Ms. Uehling's
 3 evaluation of the class session be correct if
 4 it stated that there were students sitting in
 5 the bleachers during a soccer game?
 6 **A. Yes and no.**
 7 THE HEARING OFFICER: Would
 8 you elaborate?
 9 THE WITNESS: Sure.
 10 MS. JALOWSKI: I just -- what
 11 observation are you referring to?
 12 MR. KEARNEY: I'm not
 13 referring to any particular observation.
 14 THE HEARING OFFICER: I think
 15 the question was, was Ms. Uehling ever in the
 16 gym when soccer was going on and there were
 17 kids sitting in the bleachers and the answer
 18 was yes and no. I just asked if he would
 19 elaborate.
 20 **A. (Cont'g.) Yes, because they**
 21 **were all participating and also because they**
 22 **would be sitting in the bleachers being ready**
 23 **to change squads. So while they were sitting**
 24 **in the bleachers, they were ready to**

1 **Smith - Direct - Kearney**
 2 **participate when the other two teams finished**
 3 **playing. I would send those two teams to the**
 4 **bleachers and get the ones that were in the**
 5 **bleachers and bring them out to the floor.**
 6 BY MR. KEARNEY: (Cont'g.)
 7 Q. Did there come a time in the
 8 academic year of 2004-2005 when you split
 9 groups of students inside and outside the gym?
 10 **A. Yes.**
 11 Q. Did Shanti Kantha ever
 12 participate in one of those split groups?
 13 **A. Yes.**
 14 Q. How often?
 15 **A. Two or three times.**
 16 Q. Did you instruct her in any
 17 way with regard to the students that were
 18 outside the gym?
 19 **A. I did.**
 20 Q. What were the instructions
 21 that you gave?
 22 **A. I told her -- because we were**
 23 **playing hockey at that time and it was in the**
 24 **spring, I told her I would make teams for the**

1 **Smith - Direct - Kearney**
 2 **other kids because it was such a big class -- a**
 3 **good-sized class -- and I would put two teams**
 4 **outside in the yard, and I would tell her this**
 5 **is a kickball. I would tell her the basic**
 6 **rules of kickball, and I would tell her to**
 7 **supervise these two particular teams playing**
 8 **kickball while I, in turn, was teaching hockey**
 9 **in the gym. So she served as the person who**
 10 **was supervising, but she really couldn't help**
 11 **me in any other way other than taking**
 12 **attendance because she didn't have any physical**
 13 **education background, and she didn't have any**
 14 **knowledge of any sport or martial arts. So she**
 15 **did her best to take my lead. And in a lot of**
 16 **other cases, she couldn't take my lead because**
 17 **she didn't know anything about sports, so she**
 18 **sat in the bleachers.**
 19 Q. Mr. Smith, did -- what led
 20 you to believe that Ms. Kantha doesn't know
 21 anything about sports?
 22 **A. Because she told me the first**
 23 **day she came into the gym that she didn't know**
 24 **anything about sports, and she couldn't help me**

1 **Smith - Direct - Kearney**
 2 **in any way about assisting me in any type of a**
 3 **sport because she's never played them and she**
 4 **doesn't have any area of expertise in any**
 5 **sport.**
 6 Q. Okay. Did the oversized
 7 classes have any effect on your attendance at
 8 the Museum School?
 9 **A. Yes, it did.**
 10 MS. JALOWSKI: Objection.
 11 Leading.
 12 MR. KEARNEY: All right.
 13 THE HEARING OFFICER: Well,
 14 he answered already. Let's continue.
 15 BY MR. KEARNEY: (Cont'g.)
 16 Q. Did you have -- do you have
 17 any --?
 18 THE HEARING OFFICER: Go
 19 ahead; continue.
 20 BY MR. KEARNEY: (Cont'g.)
 21 Q. What effect, if any, did
 22 class size have on your attendance?
 23 **A. It made me fibrillate more**
 24 **because the oversized classes gave me a lot of**

1 **Smith - Direct - Kearney**
 2 **stress. And the more stress and the more**
 3 **oversized classes, the more I was fibrillating**
 4 **and the more arrhythmia I would have -- cardiac**
 5 **problems.**
 6 Q. And did those problems affect
 7 your attendance at school?
 8 **A. Yes, it did.**
 9 Q. How so?
 10 **A. I had to take days off**
 11 **because I was fibrillating sometimes**
 12 **thirty-six -- thirty-five hours straight. I**
 13 **was in the emergency room being treating**
 14 **intravenously. I take medications for the**
 15 **arrhythmia, and it affected my being able to be**
 16 **in school because of this disability.**
 17 Q. Did you ever have a
 18 discussion with Principal Uehling about
 19 attendance?
 20 **A. Yes.**
 21 Q. More than once?
 22 **A. Yes.**
 23 Q. How many times would you say,
 24 specifically about your attendance?

1 Smith - Direct - Kearney
 2 **A. Probably every other week or**
 3 **so.**
 4 Q. What was the nature of those
 5 discussions?
 6 **A. The nature was Ms. Uehling**
 7 **was concerned that I was missing days and that**
 8 **she didn't have anyone -- she was upset with me**
 9 **because she didn't have any one of her teachers**
 10 **to be able to cover my classes because she said**
 11 **it was quite a burden on the faculty because it**
 12 **was a small faculty, that they couldn't -- they**
 13 **didn't really want to assist when I was out**
 14 **absent. That was her complaint.**
 15 Q. And did you provide to her a
 16 reason why you were out?
 17 **A. Yes, I did.**
 18 Q. And what reason did you give?
 19 **A. I told her that I had this**
 20 **cardiac problem -- I had this heart problem --**
 21 **and I need to take my medicine, and that I was**
 22 **feeling sick and dizzy and weak and nauseous**
 23 **and that I wasn't feeling well.**
 24 Q. Do you recall what are soccer

1 Smith - Direct - Kearney
 2 shuttles?
 3 THE HEARING OFFICER: Soccer
 4 shots, S-H-O-T-S? I'm sorry?
 5 MR. KEARNEY: Yeah.
 6 THE HEARING OFFICER: Soccer
 7 shots or shuttles?
 8 MR. KEARNEY: We'll start
 9 with shuttles.
 10 BY MR. KEARNEY: (Cont'g.)
 11 Q. What are soccer shuttles?
 12 **A. Soccer shuttles is like a**
 13 **game that you can play where you pass a ball**
 14 **around a cone and bring the ball back down the**
 15 **field. It's a shuttle game where you use the**
 16 **ball and the defense is to be able to initiate**
 17 **a score -- to be able to initiate score a**
 18 **point. It's like a run -- a race -- with the**
 19 **ball, a shuttle run.**
 20 MR. KEARNEY: Can we take a
 21 break for a moment?
 22 THE HEARING OFFICER: Yeah.
 23 We want to go off the record.
 24 (Off the record)

1 Smith - Direct - Kearney
 2 THE HEARING OFFICER: Thank
 3 you. Your witness.
 4 BY MR. KEARNEY: (Cont'g.)
 5 Q. Mr. Smith, I just want to get
 6 a sense of how you felt in 2004-2005 academic
 7 year teaching your seventh- and eighth-grade
 8 physical ed. classes.
 9 **A. I felt bad because I felt**
 10 **that I couldn't give the best shot -- the best**
 11 **teaching experience that I could because I**
 12 **couldn't handle teaching up to seventy-five**
 13 **students alone.**
 14 Q. Did you feel that you were
 15 incapable of controlling the middle school
 16 class?
 17 **A. In some ways, yes.**
 18 Q. Can you explain that?
 19 **A. Well, I never taught the**
 20 **middle school before, and it was very difficult**
 21 **for me. And like I said in the beginning, I**
 22 **didn't have anyone to assist me or help me.**
 23 **And I just found it extremely difficult to**
 24 **teach up to seventy-five students, being alone.**

1 **Smith - Direct - Kearney**
 2 **I thought it was a very impossible situation,**
 3 **none of which I have ever had before in the**
 4 **last ten years teaching. And I just thought it**
 5 **was an impossible situation and I felt kind of**
 6 **demoralized.**
 7 Q. Do you know the name Victor
 8 Ramsey?
 9 **A. Yes.**
 10 Q. When is the very first time
 11 you learned of Mr. -- his name? When was the
 12 first time you heard his name?
 13 **A. I guess it was at a workshop**
 14 **in the Bronx.**
 15 Q. Do you recall when that was?
 16 **A. It was at the end of January**
 17 **2005.**
 18 Q. Did you ever receive an
 19 e-mail that was apparently -- that mentioned
 20 you by name and was either received by or sent
 21 by Lindley Uehling?
 22 **A. Yes.**
 23 Q. And when was that?
 24 **A. The end of January 2005. I**

1 **Smith - Direct - Kearney**
 2 **think it was January 29th -- somewhere near**
 3 **that date.**
 4 Q. Just so I get a sense, how
 5 did you come across that e-mail?
 6 **A. Well, it was sent to me I**
 7 **think by mistake. I think it was supposed to**
 8 **be sent to Lindley Uehling, but it was from**
 9 **Faith Hallen.**
 10 Q. And who is Faith Hallen, to
 11 the best of your recollection?
 12 **A. She was a principal's mentor**
 13 **for Lindley Uehling.**
 14 Q. And where were you when you
 15 received the e-mail?
 16 **A. At home.**
 17 Q. Can you describe how you
 18 discovered the e-mail?
 19 MS. JALOWSKI: Objection.
 20 THE HEARING OFFICER: Move it
 21 along. You got an e-mail. Move forward.
 22 BY MR. KEARNEY: (Cont'g.)
 23 Q. To the best of your
 24 recollection, what did the e-mail say?

1 Smith - Direct - Kearney
 2 **A. It said -- it said this is --**
 3 **in order to get Ted out -- Ted out, I guess**
 4 **meaning to fire me -- you have to get --.**
 5 MS. JALOWSKI: Objection.
 6 THE HEARING OFFICER:
 7 Sustained. It speaks for itself and it's in
 8 evidence. You might want to ask him what his
 9 reaction was to that, but not to paraphrase.
 10 MR. KEARNEY: All right. I
 11 just wanted --.
 12 THE HEARING OFFICER: It's in
 13 evidence, is it not?
 14 MR. KEARNEY: It is. I
 15 just --.
 16 THE HEARING OFFICER: Yeah.
 17 He can refer to it if he wants to, but not
 18 paraphrase it.
 19 BY MR. KEARNEY: (Cont'g.)
 20 Q. I would like to direct your
 21 attention to what's already been entered into
 22 evidence as Respondent's Exhibit Six. Just
 23 read it to yourself quietly. Is that the
 24 e-mail you just testified to receiving in or

1 Smith - Direct - Kearney
 2 around January 2005?
 3 **A. Yes.**
 4 Q. Put the note down for a
 5 second. What was your reaction when you
 6 received that e-mail?
 7 **A. I was a little bit upset. I**
 8 **was nervous. I was taken back a little bit.**
 9 Q. And had anyone prior to that
 10 time ever discussed with you the possibility of
 11 removing you from the classroom at the Museum
 12 School?
 13 **A. No.**
 14 Q. When you read the e-mail for
 15 the first time, what it's in evidence as
 16 Respondent Six, did you understand that to
 17 relate to a person other than -- there's
 18 another person mentioned in the e-mail. Who is
 19 it?
 20 **A. Faith Hallen.**
 21 Q. Look at the e-mail for a
 22 second. Is Victor Ramsey -- I'm sorry; is the
 23 name Ramsey in that e-mail?
 24 **A. Yes.**

1 **Smith - Direct - Kearney**
 2 Q. Do you have an understanding
 3 of who that is?
 4 **A. Yes.**
 5 Q. Who?
 6 **A. The Director of Fitness for**
 7 **Region Nine.**
 8 Q. When was the first time that
 9 you met the Director of Fitness for Region
 10 Nine?
 11 **A. I think it was the day after**
 12 **this e-mail was written to me. I don't think I**
 13 **even knew who Ramsey was at this point because**
 14 **I think I went to a professional workshop on**
 15 **1/30/05 and that's the first time I met Victor**
 16 **Ramsey, at a workshop in the Bronx.**
 17 Q. Did you have a discussion
 18 with him at that time?
 19 **A. Yes, I did.**
 20 Q. What was the -- what did you
 21 discuss with Mr. Ramsey?
 22 **A. Well, I discussed my**
 23 **apprehension about working with middle school**
 24 **children; I discussed the apprehension I had**

1 **Smith - Direct - Kearney**
 2 **working with these oversized classes, and if he**
 3 **could help me -- if he could assist me because**
 4 **I found it very difficult to work with these**
 5 **sized classes.**
 6 Q. And what, if anything, did he
 7 say in response?
 8 **A. He said that he would come**
 9 **over to the school, and he would try to assist**
 10 **me.**
 11 Q. Did you ever have a
 12 discussion with Victor Ramsey about the e-mail
 13 that's been entered into evidence as Respondent
 14 Six?
 15 **A. Yes.**
 16 **THE HEARING OFFICER: Go**
 17 **ahead. Are we still on the record? There's no**
 18 **malfunction on our end?**
 19 **THE REPORTER: You are still**
 20 **on.**
 21 **THE HEARING OFFICER: Thank**
 22 **you. I just wanted to test.**
 23 **THE REPORTER: Sure.**
 24 **BY MR. KEARNEY: (Cont'g.)**

1 **Smith - Direct - Kearney**
 2 Q. How many conversations did
 3 you have with Ramsey about that e-mail?
 4 **A. One.**
 5 Q. Do you recall when that
 6 conversation occurred?
 7 **A. Sometime in late -- mid- to**
 8 **late February 2005.**
 9 Q. Where did you have the
 10 conversation?
 11 **A. At a Starbucks coffee shop on**
 12 **Eighth -- a Starbucks coffee shop on Sixth**
 13 **Avenue on 17th or 18th Street.**
 14 Q. And who -- was there anyone
 15 else besides you or Ramsey that was present
 16 during that conversation?
 17 **A. No, there wasn't.**
 18 Q. Tell me to the best of your
 19 recollection what was discussed.
 20 **A. What was discussed were my**
 21 **apprehension, my dissatisfaction with these**
 22 **oversized classes. That was one thing**
 23 **discussed. The other thing was for him to come**
 24 **in and work with me with some of these**

1 **Smith - Direct - Kearney**
 2 **oversized classes; that was number two. And**
 3 **number three was the e-mail that you presented**
 4 **in evidence right here.**
 5 Q. What did you say about the
 6 e-mail to Mr. Ramsey?
 7 **A. I said that I understand you**
 8 **are going to write a bad letter about me, and I**
 9 **was upset about that; could you tell me why you**
 10 **are going to do this?**
 11 Q. Did he respond to you?
 12 **A. Yes.**
 13 Q. What did he say?
 14 **A. He said I don't know anything**
 15 **about this -- this e-mail that you are talking**
 16 **about. I don't know what you are talking**
 17 **about.**
 18 Q. Did you show it to him?
 19 **A. No.**
 20 Q. Did you explain any further
 21 what, at least, you thought the e-mail to mean?
 22 **A. Yeah; I thought it meant that**
 23 **they wanted to terminate me. That's what I**
 24 **thought it to mean.**

1 **Smith - Direct - Kearney**
 2 Q. Did Victor Ramsey, in fact,
 3 observe one of your physical education classes?
 4 **A. Yes, he did.**
 5 Q. And when was that?
 6 **A. That was sometime in February**
 7 **'05, when he first came to visit me at the**
 8 **Museum School.**
 9 Q. And did he submit to you a
 10 written observation of that lesson?
 11 **A. He did.**
 12 Q. Can you describe it for us?
 13 **A. During the class, I worked**
 14 **with the students. He told me how well I did**
 15 **during the class -- during the observation. He**
 16 **said it was a great class and that I modeled**
 17 **the students well. I took attendance -- I**
 18 **could be quicker with the attendance, but I**
 19 **really did a good job modeling the students and**
 20 **working them out and that he thought I did a**
 21 **good job giving them a good workout.**
 22 Q. Did the written observation
 23 that was submitted to you --
 24 **A. Yes.**

1 **Smith - Direct - Kearney**
 2 Q. -- did the written
 3 observation reflect those comments?
 4 **A. No, they did not. Not at**
 5 **all.**
 6 Q. How would you describe the
 7 written evaluation?
 8 **A. The opposite of what he told**
 9 **me in class. He says that I didn't model the**
 10 **kids well, I took too long to take attendance,**
 11 **there were -- I was going from one activity to**
 12 **another activity too quickly; and that -- I**
 13 **don't recall what the other ones were.**
 14 Q. Did you have occasion to
 15 speak to Mr. Ramsey about the difference that
 16 you just described, the written and the verbal
 17 feedback?
 18 **A. Yes.**
 19 Q. And what did you say?
 20 **A. I said I'm kind of taken back**
 21 **by what you wrote to me because you said that I**
 22 **gave a good class and it was a satisfactory,**
 23 **good lesson. I'm surprised that you wrote**
 24 **something like this. I didn't understand why**

1 **Smith - Direct - Kearney**
 2 **you wrote something like this when you told me**
 3 **the class was a good class.**
 4 Q. And what was his response?
 5 **A. He said well he had**
 6 **inadvertently left out some, quote, salient**
 7 **points.**
 8 Q. And what happened then?
 9 **A. He said he was going to**
 10 **update that observation and rewrite it and**
 11 **include other things that I did that were**
 12 **positive in that lesson.**
 13 Q. And did he, in fact, to the
 14 best of your knowledge, rewrite the
 15 observation?
 16 **A. He did.**
 17 Q. And was that resubmitted to
 18 you?
 19 **A. Yes, it was.**
 20 Q. Was there any difference in
 21 the rewritten version of the observation, as
 22 opposed to the prior version?
 23 **A. It was a lot different.**
 24 Q. In what way?

1 Smith - Direct - Kearney
 2 **A. It was positive.**
 3 MS. JALOWSKI: Objection.
 4 THE HEARING OFFICER: We have
 5 both in evidence. They speak for themselves.
 6 MS. JALOWSKI: Yeah.
 7 BY MR. KEARNEY: (Cont'g.)
 8 Q. Did you ever tell Victor
 9 Ramsey to get off your back?
 10 **A. Yes.**
 11 Q. Did you ever tell Victor
 12 Ramsey to get off your fucking back?
 13 **A. No, not at all.**
 14 Q. Did you ever use that kind of
 15 language to Mr. Ramsey at any time?
 16 **A. Never. I never used any of**
 17 **that language towards Mr. Ramsey at any time.**
 18 Q. And did you ever use the --
 19 what I'll call the F word -- I think you
 20 understand it.
 21 **A. No.**
 22 Q. Just listen to the
 23 question -- in front of students at the Museum
 24 School?

1 Smith - Direct - Kearney
 2 **A. No, I did not.**
 3 Q. Have you read the
 4 specifications that you have been charged with?
 5 **A. Yes, I have.**
 6 Q. Do you recall, just from
 7 memory, whether or not you have been accused of
 8 using the term get off my fucking back?
 9 MS. JALOWSKI: Objection.
 10 The specifications speak for themselves.
 11 THE HEARING OFFICER: If you
 12 want to refer to the specification and ask him
 13 if that happened or however -- if you want to
 14 rephrase that, I'll allow it.
 15 MR. KEARNEY: No. I'll move
 16 on.
 17 BY MR. KEARNEY: (Cont'g.)
 18 Q. Did you ever at any time have
 19 a discussion with Principal Uehling about the
 20 Peer Intervention Program?
 21 **A. Yes.**
 22 Q. How many conversations did
 23 you have with Principal Uehling concerning the
 24 Peer Intervention Program?

1 Smith - Direct - Kearney
 2 **A. I'm trying to think of the**
 3 **number of conversations. Give me a moment,**
 4 **please. I think there was one conversation**
 5 **with her about it in March of 2005.**
 6 Q. What was said during that
 7 conversation about Peer Intervention?
 8 **A. She said would I attend the**
 9 **Peer Intervention Program?**
 10 Q. And what did you say in
 11 response?
 12 **A. I'm not talking at this time.**
 13 Q. And why did you say you were
 14 not talking?
 15 **A. Because she was threatening**
 16 **me with disciplinary letters and other things,**
 17 **and I just wasn't comfortable speaking to her**
 18 **at that time because she was taking things out**
 19 **of context that I would say and then twist**
 20 **things around to make it appear I said things I**
 21 **never said.**
 22 Q. Did -- were you directed --
 23 strike that.
 24 Did you at any time refuse to

1 Smith - Direct - Kearney
 2 attend Peer Intervention?
 3 **A. No, I did not. Never.**
 4 Q. Did there come a time where
 5 you requested Peer Intervention?
 6 **A. Yes.**
 7 Q. And were you given the
 8 opportunity to go through the program?
 9 **A. No, I wasn't. She never gave**
 10 **me any teacher improvement plan.**
 11 Q. One thing at a time, Mr.
 12 Smith.
 13 THE HEARING OFFICER: The
 14 question is did you request Peer Intervention,
 15 and the answer is yes?
 16 THE WITNESS: Yes.
 17 THE HEARING OFFICER: Okay.
 18 BY MR. KEARNEY: (Cont'g.)
 19 Q. What was the response to your
 20 request?
 21 **A. Denied.**
 22 Q. Were you given any reason as
 23 to why Peer Intervention was denied to you?
 24 THE HEARING OFFICER: Who

1 Smith - Direct - Kearney
 2 denied it by the way, just to be clear? Are we
 3 talking about the principal now?
 4 MS. JALOWSKI: No.
 5 THE HEARING OFFICER: All
 6 right. I just wanted to make sure. We were on
 7 the principal. So we are just saying it was
 8 denied. Go ahead; excuse me.
 9 **A. I applied for it when she**
 10 **first gave me the U-rating. It was June of**
 11 **2005. I applied right after that, and they**
 12 **wrote me a letter back in August of '05 saying**
 13 **it was denied to me because I had been**
 14 **reassigned to the rubber room.**
 15 MS. JALOWSKI: But the letter
 16 didn't say that -- because you -- the letter
 17 said rubber room? I'm sorry.
 18 THE HEARING OFFICER: Go
 19 ahead.
 20 **A. (Cont'g.) Reassigned.**
 21 BY MR. KEARNEY: (Cont'g.)
 22 Q. What is the rubber room,
 23 Teddy?
 24 **A. It's a disciplinary facility**

1 **Smith - Direct - Kearney**
 2 **where teachers are reassigned for disciplinary**
 3 **proceedings.**
 4 Q. Do you know what the -- it
 5 has an official -- does it have an official
 6 name?
 7 **A. Reassignment Center.**
 8 Q. Did there come a time when
 9 you were asked to submit to a medical
 10 evaluation?
 11 **A. Yes.**
 12 Q. Who directed you to report to
 13 a medical examiner?
 14 **A. Lindley Uehling.**
 15 Q. Do you know when?
 16 **A. The first time was about**
 17 **April 28th, during the Easter vacation, 2005.**
 18 Q. Did she ask you to go, in
 19 writing, or did she just tell you verbally?
 20 **A. No, it was in writing.**
 21 Q. Did you attend the medical
 22 exam on or about April -- strike that.
 23 When were you told about the medical exam?
 24 **A. I was told sometime it was**

1 **Smith - Direct - Kearney**
 2 **scheduled for April 28, 2005, but it was**
 3 **subsequently cancelled because of the Easter**
 4 **vacation and my Union Rep couldn't make it**
 5 **there -- couldn't go with me.**
 6 Q. One question at a time. Did
 7 you report to a medical examination on or about
 8 April 28th?
 9 **A. No.**
 10 Q. Why not.
 11 **A. Because it was cancelled.**
 12 Q. Who cancelled it?
 13 **A. I think it was -- I think I**
 14 **cancelled it because it was Easter vacation.**
 15 Q. And why -- I mean --?
 16 **A. Why was it cancelled?**
 17 Q. Yeah.
 18 **A. Because my Union Rep couldn't go.**
 19 MS. JALOWSKI: Objection. He
 20 answered it; it was Easter break.
 21 THE HEARING OFFICER: He gave
 22 the answer; it was his vacation.
 23 MS. JALOWSKI: There's no
 24 school that day.

1 Smith - Direct - Kearney
 2 BY MR. KEARNEY: (Cont'g.)
 3 Q. Was the examination
 4 rescheduled after April 28th?
 5 **A. Yes.**
 6 Q. And when was it scheduled?
 7 **A. May -- I think it was May**
 8 **24th.**
 9 Q. Did you attend the medical
 10 examination on May 24th, 2005?
 11 **A. No. It was cancelled.**
 12 Q. And who cancelled it?
 13 **A. Me.**
 14 Q. And why did you cancel it?
 15 **A. Because Principal Uehling,**
 16 **during that time, wrote letters to the Medical**
 17 **Review Committee -- Medical Board in Brooklyn.**
 18 **I didn't know about that at the time. I wrote**
 19 **to the Medical Bureau. She sent certain**
 20 **letters to the Medical Bureau that was against**
 21 **my due process rights and I felt that it would**
 22 **hurt my chances to go -- to be -- to go**
 23 **successfully to the medical without being**
 24 **prejudiced. I never refused to go, in writing.**

1 **Smith - Direct - Kearney**
 2 Q. Was the examination
 3 subsequently rescheduled?
 4 **A. Yes.**
 5 Q. And when was it rescheduled?
 6 **A. Sometime around June 21st,**
 7 **2005.**
 8 Q. And did you attend the
 9 medical on June 21st, 2005?
 10 **A. Yes, I did.**
 11 Q. And were you, in fact,
 12 examined by a doctor?
 13 **A. Yes, I was.**
 14 Q. And did that doctor write a
 15 report?
 16 **A. Yeah.**
 17 Q. When you wrote lesson plans,
 18 did you ever describe the details of an
 19 activity such as soccer?
 20 **A. I did.**
 21 Q. And how so? In what terms?
 22 **A. I would say students would**
 23 **engage in the practice of either trapping the**
 24 **ball, passing the ball, or blocking the ball.**

1 **Smith - Direct - Kearney**
 2 **Then I would say the activities that would be**
 3 **included in this game as are follows. You need**
 4 **a ball; you need a soccer -- you need soccer**
 5 **goals; you need soccer equipment and so forth**
 6 **and the materials that are used in the**
 7 **activity. So I would give the students a**
 8 **skill; I would break them up in groups; they**
 9 **would practice the skill and then they would be**
 10 **assessed on those particular skills whichever**
 11 **unit we had done at that particular time.**
 12 Q. Do you know who Vinnie Murray
 13 is?
 14 **A. Yes.**
 15 Q. Who is Vinnie Murray?
 16 **A. He was a substitute at the**
 17 **Lab school.**
 18 Q. Did he teach at the Museum
 19 School?
 20 MS. JALOWSKI: At the Lab
 21 School.
 22 MR. SMITH: He was a
 23 substitute at the Lab School.
 24 MR. KEARNEY: Please let me

1 **Smith - Direct - Kearney**
 2 ask the questions.
 3 MS. JALOWSKI: I was
 4 repeating what he said; that's all.
 5 MR. KEARNEY: It's a
 6 different question.
 7 BY MR. KEARNEY: (Cont'g.)
 8 Q. Did he teach at the Museum
 9 School?
 10 **A. Not to my knowledge. He may**
 11 **have subbed. He wasn't a teacher there.**
 12 Q. Did there come a time when
 13 you lost your keys to the gym?
 14 **A. No. Never.**
 15 Q. Did there come a time when
 16 there was some kind of issue with the locks on
 17 the doors of the gym?
 18 **A. I think there was something**
 19 **to that effect, yes.**
 20 Q. And what was that, Mr. Smith?
 21 **A. Mr. Manners, who was the**
 22 **Director at the time of the Phys. Ed. program**
 23 **at the Lab school -- they had to change the**
 24 **locks on the doors because there was some**

1 **Smith - Direct - Kearney**
 2 **problem with the locks because after they had a**
 3 **leak in the ceiling, they had a problem with**
 4 **one of the doors, and he changed the locks.**
 5 Q. And were you given keys to
 6 the new lock?
 7 **A. Yes.**
 8 Q. And when were you given keys
 9 to the new lock?
 10 **A. Sometime around November**
 11 **9th -- 15th, 2004.**
 12 Q. And did you subsequently lose
 13 those keys?
 14 **A. Never. No; I never lose any**
 15 **keys.**
 16 MR. KEARNEY: Can I take a
 17 quick break?
 18 THE HEARING OFFICER: Off the
 19 record.
 20 (Off the record)
 21 MR. KEARNEY: I just want to
 22 mark for identification Respondent's
 23 Twenty-one.
 24 THE HEARING OFFICER:

1 **Smith - Direct - Kearney**
 2 Twenty-two; I think the other one was
 3 Twenty-one, the lesson plan.
 4 MR. KEARNEY: Twenty-two; my
 5 apologies. This is the document that we
 6 received in discovery. It's entitled Lesson
 7 Plan, Ted Smith, dated 1/6/05.
 8 THE HEARING OFFICER: For
 9 identification, Respondent Twenty-two.
 10 BY MR. KEARNEY: (Cont'g.)
 11 Q. Mr. Smith, do you recognize
 12 what I have marked as Respondent Twenty-two?
 13 **A. Yeah, it's the lesson plan I**
 14 **wrote on 1/6/05.**
 15 Q. Do you -- is that your
 16 handwriting -- strike that.
 17 Do you recognize -- did you
 18 write the words at the top Lesson Plan, Ted
 19 Smith?
 20 **A. No.**
 21 Q. And the date 1/6/05?
 22 **A. No, I didn't write that.**
 23 Q. Whose -- do you recognize the
 24 handwriting?

1 Smith - Direct - Kearney
 2 **A. No, I don't.**
 3 Q. Okay. And then at the
 4 bottom, there's some writing. Do you recognize
 5 the handwriting there?
 6 **A. No, not really.**
 7 MS. JALOWSKI: Obviously
 8 that's Lindley Uehling's handwriting. I
 9 recognize it as her handwriting. If you want
 10 to stipulate -- if you want to just --
 11 MR. KEARNEY: I'd love to
 12 stipulate to that.
 13 THE HEARING OFFICER: Okay.
 14 Handwriting is Lindley Uehling's -- top and
 15 bottom.
 16 BY MR. KEARNEY: (Cont'g.)
 17 Q. Directing your attention to
 18 the exhibit, under the heading where it says
 19 dodge ball game, can you tell me why, as a
 20 physical education teacher, you would not
 21 elaborate on the dodge ball game as an event?
 22 MS. JALOWSKI: Objection.
 23 Leading.
 24 MR. KEARNEY: Let me

1 Smith - Direct - Kearney
 2 rephrase.
 3 THE HEARING OFFICER: Why he
 4 wouldn't elaborate -- well, I'm assuming he's
 5 going to elaborate. I'll overrule.
 6 Go ahead; I'll allow it. Why
 7 didn't you elaborate?
 8 **A. Because it was a dodge ball
 9 game. It wasn't a skill. We just played dodge
 10 ball amongst -- amongst the kids, so it wasn't
 11 necessary to elaborate on each particular skill
 12 that was necessary. And Lindley Uehling was
 13 standing next to me at the same time.**
 14 BY MR. KEARNEY: (Cont'g.)
 15 Q. Are there rules to dodge
 16 ball?
 17 **A. There's some basic rules,
 18 yes.**
 19 Q. And in the course of teaching
 20 a physical education class in which dodge ball
 21 plays a role, would you teach those rules?
 22 **A. Yeah, you teach the rules,
 23 basically, that you shouldn't hit the person in
 24 the face, that the ball should be controlled.**

1 **Smith - Direct - Kearney**
 2 **Sometimes you use two balls. I have played it2**
 3 **with other phys. ed. teachers at other schools3**
 4 **in the past, and it's always been a fun game4**
 5 **for the kids. They really enjoy it. It's a5**
 6 **good workout.**
 7 MR. KEARNEY: I would like to
 8 move into evidence R Twenty-two.
 9 THE HEARING OFFICER:
 10 Twenty-three. You are always one behind.
 11 MS. JALOWSKI: No objection.
 12 THE HEARING OFFICER: Oh, I'm
 13 sorry. It's the same one.
 14 MR. KEARNEY: Yeah.
 15 THE HEARING OFFICER: I
 16 thought you were taking another one. Okay.
 17 Any objection?
 18 MS. JALOWSKI: No.
 19 THE HEARING OFFICER: In
 20 evidence.
 21 MR. KEARNEY: Now, I would
 22 like to mark for identification --
 23 THE HEARING OFFICER: R
 24 Twenty-three.

1 Smith - Direct - Kearney
 2 MS. JALOWSKI: No objection.
 3 MR. KEARNEY: -- R
 4 Twenty-three, the lesson plan that --
 5 THE HEARING OFFICER: Are
 6 these all the same?
 7 MR. KEARNEY: They are
 8 copies.
 9 THE HEARING OFFICER: Give me
 10 one. I'm sorry. R Twenty-three.
 11 MR. KEARNEY: This document
 12 was received in discovery. It appears to be
 13 some sort of fitness and wellness plan.
 14 BY MR. KEARNEY: (Cont'g.)
 15 Q. Mr. Smith, can you just
 16 review this?
 17 **A. Uh-huh.**
 18 MR. KEARNEY: Will you
 19 stipulate that this is Lindley Uehling's
 20 handwriting at the top?
 21 MS. JALOWSKI: Yes.
 22 BY MR. KEARNEY: (Cont'g.)
 23 Q. Do you recognize this
 24 document?

1 Smith - Direct - Kearney
 2 **A. I do.**
 3 Q. Did you write it?
 4 **A. I did.**
 5 Q. And what is it?
 6 **A. It's a fitness and wellness**
 7 **lesson plan for the tenth grade.**
 8 MR. KEARNEY: I would like to
 9 move it into evidence --
 10 MS. JALOWSKI: No objection.
 11 MR. KEARNEY: -- as R
 12 Twenty-three.
 13 BY MR. KEARNEY: (Cont'g)
 14 Q. Mr. Smith, did you regularly
 15 submit lesson plans when you taught physical
 16 education at the Museum School?
 17 **A. Always.**
 18 Q. Did you give lesson plans to
 19 Shanti Kantha?
 20 **A. Always.**
 21 Q. Did you give lesson plans to
 22 Dana Gaudet?
 23 **A. I did.**
 24 Q. Did you give lesson plans to

1 Smith - Direct - Kearney
 2 the question -- his comment.
 3 BY MR. KEARNEY: (Cont'g.)
 4 Q. As a physical education
 5 teacher, was there any pedagogical reason to
 6 type your lesson plans?
 7 **A. No. Sometimes I would be**
 8 **near the computer, and I would just type them**
 9 **up just to have --.**
 10 MS. JALOWSKI: Objection.
 11 Nonresponsive. Is there a pedagogical reason
 12 to have them typed?
 13 THE HEARING OFFICER: That's
 14 true.
 15 BY MR. KEARNEY: (Cont'g.)
 16 Q. Did you ever tell Victor
 17 Ramsey to leave you alone?
 18 **A. Not that I recall, no.**
 19 Q. I would like to ask you about
 20 the system that was in place for substitute
 21 teachers. While you were employed at the
 22 Museum School, from September 2004 until June
 23 of 2005, was there a system in place where you
 24 could arrange to have a substitute cover your

1 Smith - Direct - Kearney
 2 Judith Killen?
 3 **A. Yes, I did.**
 4 Q. Did you give lesson plans on
 5 a regular basis to Victor Kurniputra?
 6 **A. Yes, I did.**
 7 Q. How often would you give
 8 lesson plans to any of your assistants?
 9 **A. Every time they walked into**
 10 **the gym each period. So they each teacher came**
 11 **in once a week for a double period, I would**
 12 **hand them a lesson plan.**
 13 Q. Did you sometimes -- were
 14 your lesson plans always typed?
 15 **A. Not always.**
 16 Q. Do you have any explanation
 17 as to why some of your lesson plans were not
 18 typed?
 19 **A. Yeah, because there was no**
 20 **reason to retype them. In the past, I have**
 21 **always had lesson plans; no principal has ever**
 22 **criticized my lesson plans before in ten years.**
 23 MS. JALOWSKI: Objection.
 24 That half of the question was not responsive to

1 Smith - Direct - Kearney
 2 classes --
 3 **A. Yes.**
 4 Q. -- in case of an absence?
 5 **A. Yes, there was.**
 6 THE HEARING OFFICER: Wait
 7 until he finishes the question.
 8 The answer is yes, there was. Go ahead.
 9 BY MR. KEARNEY: (Cont'g.)
 10 Q. What was the system?
 11 **A. That I would have a list, and**
 12 **I would call the substitute -- I would have to**
 13 **call the substitute until I had them on the**
 14 **phone until they committed to be able to come**
 15 **into the class to cover my class when I was**
 16 **absent.**
 17 Q. Do you recall whether you
 18 ever had difficulty securing a substitute
 19 teacher in advance because of an absence, at
 20 any time?
 21 **A. There may have been one or**
 22 **two occasions.**
 23 Q. Do you recall when those
 24 occasions were?

1 Smith - Direct - Kearney
 2 **A. I don't recall.**
 3 Q. Do you recall sending an
 4 e-mail to -- strike that.
 5 THE HEARING OFFICER: What's
 6 that? Off the record.
 7 (Off the record)
 8 THE HEARING OFFICER: Thank
 9 you.
 10 BY MR. KEARNEY: (Cont'g.)
 11 Q. Sitting here today, do you
 12 have any independent recollection of being
 13 absent three consecutive school days in
 14 November of 2004?
 15 MS. JALOWSKI: I'm sorry;
 16 what's the question?
 17 THE HEARING OFFICER: Does he
 18 have any recollection of being absent three
 19 consecutive days in November '04?
 20 **A. I don't recall.**
 21 BY MR. KEARNEY: (Cont'g.)
 22 Q. When you were absent, Mr.
 23 Smith, how would you arrange to have someone
 24 cover for your class if you could not,

1 Smith - Direct - Kearney
 2 yourself, find a substitute?
 3 **A. What I would do is I would**
 4 **fax a lesson plan to Jo Ann Siegel or I would**
 5 **call Lindley on the phone and tell her that I**
 6 **couldn't find a substitute -- could you please**
 7 **help me find one -- if one was not available.**
 8 **In most cases, they were available, and I got**
 9 **them.**
 10 Q. What was your understanding
 11 of how Lindley would find a substitute if you
 12 couldn't find one?
 13 **A. It was my understanding that**
 14 **she would call Susan Shron sometimes.**
 15 Q. At any time, were you
 16 assigned two teaching assistants in the same
 17 classroom?
 18 **A. Not that I recall. Oh,**
 19 **excuse me; once.**
 20 Q. And when was that?
 21 **A. I think it was sometime**
 22 **around Christmas vacation or right before that**
 23 **time.**
 24 Q. In what year?

1 Smith - Direct - Kearney
 2 **A. 2004.**
 3 Q. And what do you recall about
 4 getting two assistants in the same class?
 5 **A. I think that one of the**
 6 **classes that was so oversized -- it was before**
 7 **vacation and they were very unruly during that**
 8 **period that day, so I took them to the**
 9 **auditorium. And I recall there were two**
 10 **assistants in there with me, helping me out.**
 11 Q. Do you know their names?
 12 **A. Judith Killen and Dana**
 13 **Gaudet.**
 14 Q. And was there -- did you
 15 conduct instruction in the auditorium on that
 16 day?
 17 **A. Instruction during that day?**
 18 **I think I gave them a short essay to write -- a**
 19 **short, like, note or something.**
 20 Q. Why were the students in the
 21 auditorium?
 22 **A. Because they weren't behaving**
 23 **very well, and it was right before vacation.**
 24 **They are very unruly and very difficult the day**

1 **Smith - Direct - Kearney**
 2 **before vacation.**
 3 Q. Do you recall which grade you
 4 were teaching?
 5 **A. I think that was eighth**
 6 **grade. That was the biggest class I had, and**
 7 **it was up to -- almost up to -- between**
 8 **sixty-five and seventy-five kids.**
 9 Q. Did you ever have a
 10 conversation with Lindley Uehling in which you
 11 discussed possibly resigning in exchange for
 12 getting a satisfactory rating?
 13 **A. I believe we had some type of**
 14 **conversation about that, yes.**
 15 Q. And can you describe that
 16 conversation for the record?
 17 **A. Well, it was about --**
 18 **somewhere around December 16th. She came into**
 19 **the gym, and it was a double-period class, and**
 20 **I was teaching soccer instruction. She said**
 21 **she would come at the beginning of class and**
 22 **observe me while I had the kids on the floor**
 23 **spots. And I was exercising with them and**
 24 **doing soccer instruction, and the class had**

1 **Smith - Direct - Kearney**
 2 **started about twelve twenty-five and ended**
 3 **about two fifteen. And Lindley came in about**
 4 **one forty or one forty-five -- about halfway**
 5 **through the class. And we were already**
 6 **playing -- I had already paired up the teams,**
 7 **so they were playing soccer.**
 8 **And at the end of the class,**
 9 **she said that she didn't see any instruction**
 10 **going on here. And this is a very large class.**
 11 **And I said well you missed the instruction**
 12 **because you didn't come in, in the first**
 13 **period; you came in the middle of the second**
 14 **period. And I explained to her what we did.**
 15 **And I had a kid write a statement because she**
 16 **seemed to have difficulty understanding why the**
 17 **lesson plan that I gave her didn't match the**
 18 **lesson plan that was going on during the class.**
 19 **I said well if you had came in at the beginning**
 20 **of the class -- she said that she apologized**
 21 **that she didn't come in at the beginning**
 22 **because she was busy in the office -- something**
 23 **happened.**
 24 **So then I invited her to come**

1 **Smith - Direct - Kearney**
 2 **into another class. So then she wrote it up**
 3 **and she gave me -- my first unsatisfactory**
 4 **rating was around December 16th, 2004. And I**
 5 **had a conference with her. And during that**
 6 **conference I said, you know, I'm very**
 7 **uncomfortable with these oversized classes, and**
 8 **I would rather go to another school that didn't**
 9 **have such large classes and, you know, if you**
 10 **would get rid of this unsatisfactory or come**
 11 **observe me again in a regulated sized class, I**
 12 **would appreciate that. But I said that I**
 13 **really wasn't comfortable teaching the type of**
 14 **classes and asked her possibly to transfer.**
 15 **MS. JALOWSKI: I apologize.**
 16 **What date did you say this is?**
 17 **MR. KEARNEY: I'm sorry?**
 18 **MS. JALOWSKI: The date we**
 19 **are talking about.**
 20 **THE WITNESS: Sometime around**
 21 **December 16th, right around before Christmas**
 22 **vacation.**
 23 **BY MR. KEARNEY: (Cont'g.)**
 24 **Q. Did you ever ask to be**

1 **Smith - Direct - Kearney**
 2 **transferred out of the Museum School?**
 3 **A. Yes, several times.**
 4 **Q. And who did you ask for a**
 5 **transfer?**
 6 **A. I asked two people, Lindley**
 7 **Uehling -- I wrote her a letter in December of**
 8 **'04. And I wrote Michael Laforgia and Peter**
 9 **Heany, the Superintendent of Region Nine, a**
 10 **letter, also in December of 2004 and asked them**
 11 **for a transfer, that this school really wasn't**
 12 **for me.**
 13 **THE REPORTER: Sorry; could I**
 14 **ask the first person you mentioned?**
 15 **MR. SMITH: Yes. The first**
 16 **person was Lindley Uehling.**
 17 **THE REPORTER: Okay. Thank**
 18 **you.**
 19 **MS. JALOWSKI: Do you have**
 20 **them all? He mentioned Michael Laforgia and**
 21 **Peter Heany.**
 22 **THE REPORTER: And Peter**
 23 **Heany?**
 24 **THE WITNESS: Yes.**

1 **Smith - Direct - Kearney**
 2 **THE REPORTER: Okay. Thanks.**
 3 **THE HEARING OFFICER: Do you**
 4 **have the spelling for that?**
 5 **THE REPORTER: No; we can do**
 6 **it later if you like.**
 7 **THE HEARING OFFICER: Do you**
 8 **want to spell it now? Do you want to spell**
 9 **Heany?**
 10 **MS. JALOWSKI: I think it's**
 11 **H-E-A-N-Y.**
 12 **BY MR. KEARNEY: (Cont'g.)**
 13 **Q. Did you receive any response**
 14 **to your request to transfer?**
 15 **A. No, I did not.**
 16 **Q. Who is Marisa Russo?**
 17 **A. Marisa Russo was an assistant**
 18 **that I had for the seventh -- seventh and ninth**
 19 **grade -- I think it was seventh grade.**
 20 **Q. Did she teach with you for a**
 21 **long time?**
 22 **A. No; she taught for me -- I**
 23 **think, it was for one semester.**
 24 **MR. KEARNEY: And -- can I**

1 Theodore Smith - 2-28-2007
 2 adjourn for the day?
 3 THE HEARING OFFICER: Yeah,
 4 sure. You want to at this time?
 5 MR. KEARNEY: Yeah.
 6 THE HEARING OFFICER: Any
 7 problems?
 8 Okay. We are going to
 9 adjourn now and close the hearing for today and
 10 we will continue tomorrow at eleven a.m.
 11 Is that my understanding?
 12 MS. JALOWSKI: Yes.
 13 THE HEARING OFFICER: Okay.
 14 Anything else for the record now?
 15 Off the record.
 16 (Off the record)
 17
 18
 19
 20
 21
 22
 23
 24

1 Theodore Smith - 2-28-2007
 2 STATE OF NEW YORK
 3 I, Gerry Revai, 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 315 hereof; that the foregoing typewritten
 8 transcription, consisting of pages number 315
 9 through 399, inclusive, was prepared under my
 10 supervision and is a true record of all
 11 proceedings had at the hearing.
 12 IN WITNESS WHEREOF, I have
 13 hereunto subscribed my name, this the 14th day
 14 of March, 2007.
 15
 16 _____
 17 Gerry Revai, Reporter
 18
 19
 20
 21
 22
 23
 24

1 Theodore Smith - 2-28-2007
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 3 Case: Theodore Smith, File #
 4 Date: February 28, 2007
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