

ARKANSAS DEPARTMENT OF EDUCATION
SPECIAL EDUCATION UNIT

)	PETITIONER
Parents, on behalf of,)	
)	
)	
)	CASE No. H-2017-08
vs.)	
)	
BRYANT SCHOOL DISTRICT)	RESPONDENT

ORDER

NOW on this 9th day of November, 2016 came on for hearing Petitioner's Request for a Due Process Hearing, Petitioners, _____ represented by Theresa Caldwell, Attorney, and Respondent, Bryant School District, represented by Jeremy Lasiter, Attorney. This cause was submitted upon the pleadings, the testimony of witnesses, argument of Petitioner and Respondent, and other matters and things from all of which the Hearing Officer finds and Orders. Hearing dates were November 9th, 10th and 11th, 2016 in this matter. Based upon the testimony of the witnesses and the evidence presented and admitted into the record of this proceeding, I make the following findings of fact and conclusions of law.

Issues Presented:

Were the educational placements and accompanying medical services offered by Bryant School District (hereinafter referred to as District or Respondent) from September 27th, 2014, to September 27th, 2016 reasonably calculated to provide _____ (hereinafter referred to as "Student") with a free, appropriate public education (hereinafter referred to as FAPE)? A threshold issue is the Student considered eligible to receive services under the IDEA classification of other health impaired and if she is found eligible, what services will the Respondent be required to provide.

Procedural History:

On September 26th, 2016, the Arkansas Department of Education (hereinafter referred to as "Department") received a request to initiate due process hearing procedures from _____ (hereinafter referred to as "Parent" or "Petitioner"), the parent and legal guardian of Student. Parent requested the hearing because he believed that the District failed to comply with the Individuals with Disabilities Education Act of 2004, 20 U.S.C. §§1400-1485, as amended (hereinafter referred to as "FAPE" or the "Act") and the regulations set forth by the Department by not providing the Student with appropriate special education services, as noted in the statement of issues. At the time Parent

filed a request for due processing hearing, Student was a six-year-old, first grade, female enrolled in the District.

In response to the Parent's request for hearing, the Department assigned the case to an impartial hearing officer. Thereafter, the date of October 26th, 2016 was set as the date on which a hearing would commence should the Parent and District fail reach resolution prior to that time. An order setting preliminary time-lines and instructions for compliance with the order was issued on September 27th, 2016. Following, the Resolution Conference was held in a timely manner without the ability to resolve the issues. The Due Process Hearing was re-scheduled and was held on to 9th, 10th and 11th days of November, 2016.

Findings Of Fact:

- 1) Student is age 6 and is enrolled in the 1st grade at the Hill Farm Elementary, 200 NW 4th St. in the Bryant School District;
- 2) Student is a Type 1 Diabetic;
- 3) Bryant School District is a Local Education Agency as Defined in 20 U.S.C. 1401(19);
- 4) Student has attended school in the Bryant School District since Kindergarten;

MELISSA LOUISE LETSON

This witness has also been known in the last two years as Melissa Weaver and Melissa Boyd.¹ Ms. Letson is a registered nurse, finishing her registered nursing degree in 2007.² Since that time she has worked in medical, surgery and orthopedic and school nursing.³ Ms. Letson works at Hill Farm Elementary, 200 NW 4th St. in the Bryant School District.⁴ She testified this is her 9th or 10th year working for the Bryant School District, working there last year and this year both.⁵ The witness testified she had occasion to work with the Student in this case, who is a first grader with Type one

¹ Vol. I, P. 13, L.4-10

² Vol. I, P. 13, L. 22-25; Vol. I, P. 14, L.1

³ Vol. I, P. 14, L. 2-5

⁴ Vol. I, P. 23, L. 11-20

⁵ Vol. I, P. 25, L. 6-12

diabetes, which is where insulin is not produced by the pancreas.⁶ The witness said she had experience with diabetic children, before and since this Student.⁷

The witness testified that if the Student does not get insulin on a daily basis, she could die.⁸ When asked to recite the Student's daily schedule regarding nursing services provided by this witness, she testified when the student arrives in the morning at school this witness hooks up the student, makes sure her wifi is connected, makes sure the her wire is connected, that all her numbers are getting to the website that her numbers go to her Dexcom; the witness said she hooks all that up, the Student gives her lunch box and insulin pump, her Glucagon, to the witness, and then if her numbers are good the Student goes to class.⁹ The witness testified this process can be from 5 minutes to an hour.¹⁰ The witness said she must have consent from a parent to allow her to give the Student a snack to bring up her number in the morning.¹¹ The witness testified school begins at 8 a.m., and the Student usually gets there anywhere between 7:50 to 8 a.m. The witness said a few times the Student has come in not having eaten breakfast, since her parents are not going to let her eat when her numbers are off, to avoid her blood sugar elevating too fast before the insulin could bring it down, so she came in several times and had to eat. She has come in and several times been low.¹² The witness testified the Dexcom is the device inserted in the Student's skin that reads the blood sugar and inner report and is connected via wifi or bluetooth to a phone. The Student carries a Dexcom and two phones. The witness nurse said she uses her iPad to see what the Student's glucose levels are, barring equipment failure.¹³

The Dexcom will alarm, for lows and highs.¹⁴ If the alarm goes off, the witness has to get the Student fast sugar or a snack, according to her plan, but typically the Student has already been treated before the alarm goes off because the witness is glancing at it and monitoring the Student

⁶ Vol. I, P. 24, L. 13-25

⁷ Vol. I, P. 15, L. 17-21

⁸ Vol. I, P. 16, L. 13-17

⁹ Vol. I, P. 16, L. 18-25; Vol. I, P. 17, L. 1-15
Vol. I, P. 110, L. 9-12

¹⁰ Vol. I, P. 37, L. 22-25; Vol. I, P. 38, L. 1-25;
Vol. I, P. 39, L. 1-6

¹¹ Vol. I, P. 39, L. 12-25; Vol. I, P. 40, L. 1

¹² Vol. I, P. 108, L. 22-2; Vol. I, P. 109, L. 1-25

¹³ Vol. I, P. 18, L. 7-25; Vol. I, P. 19, L. 1-14

¹⁴ Vol. I, P. 20, L. 2-3

throughout the day.¹⁵ The witness said most of the children with whom she has dealt with this type diabetes are more leveled, more manageable, and do not have the extreme highs and lows, as many as this Student has throughout the day, nor have the others with whom she has dealt had Dexcom.¹⁶

Talking about the Student's intervention plan from the Student's doctor, the witness said there is an intervention chart she follows when needed that tells her what to give the Student, monitor the Dexcom to a certain number, then have the Student return to class, excluding P.E. or recess.¹⁷ The witness testified that if she does not interact, the Student could go into a diabetic coma, that the witness has to move quite fast to the classroom if the student is going down, that possibly she has 15 minutes, but that she does not take 15 minutes.¹⁸

The Dexcom will alarm at 100 if low and the witness thought the alarm for high was at 210. If it is low, the Student becomes lethargic, pale, might be confused, can have blurred vision, be sleepy, and if high the Student can have blurred vision, and diabetic coma can be from too low or too high, either way.¹⁹ The Student has an OmniPod implanted in her, which is an insulin pump that delivers and measures insulin.²⁰

Talking about an emergency plan for the Student, if the nurse/witness is not there, she said if the Student's blood sugar drops too low (below 70) that is an emergency whether or not the witness is there.²¹ The witness said over 240 is not necessarily an emergency, but needs to be attended to quickly. The low blood sugar is more dangerous since that is where the Student could not come out of the low blood sugar and go into diabetic coma, which kills brain cells when the blood sugar is too low.²² While the Student has her bag with her that has fast-acting sugars and her Glucagon in it, her insulin pump stays on the nurse/witness' desk.²³

¹⁵ Vol. I, P. 21, L. 2-9

¹⁶ Vol. I, P. 22, L. 10-17

¹⁷ Vol. I, P. 25, L. 8-25; Vol. I, P. 26, L. 1-25;
Vol. I, P. 27, L. 1-5

¹⁸ Vol. I, P. 28, L. 4-24

¹⁹ Vol. I, P. 29, L. 7-14; Vol. I, P. 20, L. 10-20
Vol. I, P. 29, L. 16-25; Vol. I, P. 30, L. 1-7

²⁰ Vol. I, P. 34, L. 6-25; Vol. I, P. 35, L. 1

²¹ Vol. I, P. 44, L. 16-25; Vol. I, P. 45, L. 1-4

²² Vol. I, P. 45, L. 9-21

²³ Vol. I, P. 46, L. 6-12

The nurse/witness is away from the school for lunch from 1-1:30 p.m., and said she occasionally gets calls from the secretary who watches the Dexcom while the nurse/witness is gone about the alarm going off.²⁴ When the alarm sounds, the nurse has to lay eyes on the Student.²⁵ The witness said she schedules her lunch at 1 p.m. because that is the only time she does not have any meds, any treatments to do for the Student, and if the Student's reading is below 100 the witness does not leave, she stays at school. The witness said she is supposed to stay until 4, p.m., so they might let her leave a few minutes early, at 3:30 when the children are already gone. The witness said she checks the Student's numbers before leaving for lunch, and if it is too low, the witness gives her a snack and reports that to Brenda, the secretary, and takes all the equipment and logs and doctor's orders to Brenda before leaving for lunch.²⁶ Looking at the nurse's notes, she intervened 7 times the first say of school, 4 in the morning and 3 in the afternoon.²⁷

Every day at lunch the nurse/witness gives the Student insulin.²⁸ When the nurse gives insulin when the Student's blood sugar is high, sometimes it might not work immediately, sometimes it might not work for an hour, and when she give the Student insulin the nurse has to observe the Student during that time period.²⁹

When the Student has P.E., that has to be taken into consideration, and the Student might need an extra snack since the energy might run the Student's blood sugar down. Snacks are given at 10 and 2, and she may need an extra snack at noon.³⁰ Recess is at 10:50, and the Student comes to the nurse every day at 10:50 a.m. before recess, no matter what, for a finger stick.³¹

The snacks take maybe a minute, and are given in the classroom; the nurse gives the Student the snack, makes sure she puts it in her mouth and chews it, then the nurse leaves.³² Prior to the due process filing in this case, the nurse occasionally pulled the Student out to give snacks, when there

²⁴ Vol. I, P. 46, L. 19-25; Vol. I, P. 47, L. 1-10

²⁵ Vol. I, P. 47, L. 18-23

²⁶ Vol. I, P. 106, L. 1-25; Vol. I, P. 107, L. 1-6

²⁷ Vol. I, P. 48, L. 15-22; Vol. I, P. 49, L. 14-25

²⁸ Vol. I, P. 50, L. 15-19

²⁹ Vol. I, P. 52, L. 16-25; Vol. I, P. 53, L. 1-7

³⁰ Vol. I, P. 55, L. 6-7; Vol. I, P. 56, L. 1-12

³¹ Vol. I, P. 59, L. 9-22

³² Vol. I, P. 60, L. 3-8

were several sick kids in her office.³³

Prior to the due process filing, the nurse was not allowed to do the finger stick tests in the classroom, but she does that now. Prior to the due process filing, the nurse did not do this in the classroom because she was told by the supervisor blood borne pathogens could be getting on surfaces, another child might touch it, etc.³⁴ The witness said she was not aware of the state law that allowed testing in the classroom prior to this time, but is aware now.³⁵

The witness said she did not have to watch the Student eat lunch, that she walks the Student to the cafeteria so she can begin eating while the rest of the class is lining up, that it is important to see how much the Student eats. The witness said she and one of the paras in the cafeteria monitor the Student there, and that occasionally the Student has extra time to finish her lunch in the nurse's office.³⁶

The witness said the Student has to be above 100 to get on the bus; otherwise, the witness calls the mother. The witness said the Student's bus ride home is 15-20 minutes.³⁷ The witness said the Student's teachers have done a little basic training, watched a basic training video as to the basics of diabetes.³⁸

The witness/nurse's notes do not say how long the Student is out of class.³⁹ As to what happens when the witness is absent from school, she said there is a regular substitute nurse who comes in, some have been oriented with the witness before coming.⁴⁰

The witness said she sends the logs home to the parents most days, that occasionally she has been busy in the afternoon and does not get to it until the next morning, but the logs tell the parents what snacks the Student got and when, which is important so the parents can make adjustments if needed and let the Student's doctor know.⁴¹

³³ Vol. I, P. 60, L. 15-24

³⁴ Vol. I, P. 60, L. 25; Vol. I, P. 61, L. 1-17

³⁵ Vol. I, P. 61, L. 20-25; Vol. I, P. 62, L. 1-2

³⁶ Vol. I, P. 62, L. 15-25; Vol. I, P. 63, L. 1-17

³⁷ Vol. I, P. 64, L. 20-25; Vol. I, P. 65, L. 1-9

³⁸ Vol. I, P. 74, L. 21-25; Vol. I, P. 75, L. 1

³⁹ Vol. I, P. 75, L. 17-19

⁴⁰ Vol. I, P. 77, L. 16-25; Vol. I, P. 78, L. 1

⁴¹ Vol. I, P. 83, L. 14-25; Vol. I, P. 84, L. 1-6

The witness said as far as changes to the Student's care this year vs. last year, the way interventions were approached, there have been a lot of changes made this year as well as last year. There was a new supervisor this year, who mandated a chart from the doctor that she could look at and decide what to do, that the charts last year were not doctor's orders.⁴² The witness said she had developed health care plans both this year and last year for the Student with the parents.⁴³

The witness reviewed a Bryant School District form titled "Special ed 504 other," not signed by the Student's parents, listing Drs. Fox and Wang of the Arkansas Children's Hospital, with the date August 2016 to August 2017, saying "diabetes management plat attached." That Arkansas Hospital plan is five-pages long.⁴⁴ The witness said there were changes made to it, and when the school year started this was the plan they started out using.⁴⁵

The witness said if the Student needs a bottle of water at her desk, she can have it, and there have been times when other children asked why this Student gets snacks, to which the witness replied it was because the Student has an illness that requires her to have this, and as far as educating the other children in the room about diabetes, the witness said they did a brief, 5 minute, she has an illness and requires her to have snacks and carry these devices on her.⁴⁶

Still looking at the plan, the witness said if the Student's blood sugar gets too low or high, she might have to miss an activity or something.⁴⁷ The witness said she had a more updated health plan used in her office other than the one presented at this hearing, but it has not been signed because there have been so many changes.⁴⁸

The witness said Lisa Steel, the representative for the OmniPod had an in-service with this witness a couple of weeks ago, since the Student's parents filed for due process and talked about this at resolution, where she came to train the witness and all the nurses, none of the staff that worked with the Student.⁴⁹

⁴² Vol. I, P. 86, L. 6-25; Vol. I, P. 87, L. 1-16

⁴³ Vol. I, P. 90, L. 20-25; Vol. I, P. 91, L. 1-20

⁴⁴ Vol. I, P. 91, L. 16-25; Vol. I, P. 92, L. 1-25
Vol. I, P. 93, L. 2-7

⁴⁵ Vol. I, P. 93, L. 8-25

⁴⁶ Vol. I, P. 95, L. 8-23

⁴⁷ Vol. I, P. 96, L. 7-8

⁴⁸ Vol. I, P. 97, L. 23-25; Vol. I, P. 98, L. 1-3

⁴⁹ Vol. I, P. 101, L. 2-20

When the Student goes outside school property, for what they call field days, the witness has to be with the Student.⁵⁰ There were some last year and they've had one this year.⁵¹ The witness said last year she just went and checked on the Student periodically, but this year the witness stayed with the Student the whole time, and said she is more familiar with the Student this year than last, and stayed with her this year because she knew the variability in the Student's blood sugar levels that occurs.⁵² In addition to this Student, the witness has 4 other children who are insulin-dependent at the school, and she has complete doctor's orders for all.⁵³

The witness' office is a couple of hundred feet from the Student's class.⁵⁴ The witness can walk from her office to the Student's classroom in less than a minute.⁵⁵ After the Student goes from the witness/nurse's office to class in the morning, the witness checks on her next between that time and 10 a.m. is monitor (on the Dexcom) her blood sugar to be sure she's coming up from breakfast, and if she's still low the witness goes to the classroom and gives her a snack.⁵⁶

The witness gives the Student a mid-morning snack in the classroom between 9:30 and 9:45, around 10, but if her number is already trending down at 9:30 a snack is given early. No instruction is being missed in the classroom at this time. Recess is at 10:50 a.m., and at 9:45 the teacher sends the Student to the witness, so no instruction is being missed since the children are normally gathering stuff to get ready, cleaning up the room, lining up for recess. This is the time the witness does a finger stick. After the finger stick, the witness gives the Student her insulin and she eats part of her sandwich, a fourth of the half sandwich she gets for lunch before going outside.⁵⁷

After the Student goes to recess, she comes back to the witness' office, gets her lunch, and the witness said she instructs the Student to be sure to eat everything and not play in the cafeteria, as it is part of this witness' responsibility to make sure the Student eats her lunch, and the Student goes to the cafeteria. After lunch the Student comes back to the nurse/witness, at roughly 11:55, and the nurse checks to make sure the Student has eaten everything, has her Super Girl backpack, and if she did eat everything then she does to class. Sometimes the Student comes in a little early because she finished eating early, so in that case she would go back to the lunch room or to class. Class starts

⁵⁰ Vol. I, P. 102, L. 7-16

⁵¹ Vol. I, P. 103, L. 19-22

⁵² Vol. I, P. 103, L. 8-15

⁵³ Vol. I, P. 107, L. 17-23

⁵⁴ Vol. I, P. 107, L. 24-25

⁵⁵ Vol. I, P. 107, L. 1-3

⁵⁶ Vol. I, P. 110, L. 9-25; Vol. I, P. 111, L. 1-2

⁵⁷ Vol. I, P. 111, L. 9-25; Vol. I, P. 112, L. 1-23

again at 12 after lunch.⁵⁸ Around 12:50 the witness checks the Student again on the Dexcom map, and she is not pulled out of class unless there's a problem.⁵⁹

When the witness gets back at 1:30 from her own lunch, she gets all the Student's equipment from the secretary, goes back to her own office, monitors, then start to get prepared for the 2 o'clock snack, and just watch to see if the Student needs it at 1:45 or 2 or 2:15, as that snack has to carry her through the bus ride home.⁶⁰ When the witness is out to lunch, she testified she is normally within 5 minutes or less from the school.⁶¹ The 2 o'clock snack is given in the classroom, but if it's a little after 2 it might be in the Student's pull-out classroom (pull-out being a class such as music, P.E., art, computer lab, library), but she would not miss any instruction when the witness is taking the snack to the classroom.⁶²

When the witnesses checks the Student at 2:50 for her trends for the bus ride home, she is not pulled out of class. The witness said she watches the Student's numbers to make sure she can get on the bus, that the witness takes the insulin pump and puts it in the Student's backpack, goes to her classroom, gets her Glucagon out of her Super Girl backpack and puts it in her regular school backpack so it will be there in case she were to drop low on the bus ride home.⁶³

Discussing a correction that would be given if blood sugar is over 140, the witness said she had asked several times for orders to be able to give a correction dose at meal time, but they have never been provided to her.⁶⁴

The witness said all last year the Student's doctor was Dr. Lana Berry with Children's Hospital, and this year, at the beginning of the school year, it was Dr. Wang, Children's Hospital. In early to mid September, it was Dr. Nimmo, so there are 3 different doctors' orders than what she had last year.⁶⁵

Last year the witness had pump orders from Children's Hospital, but has no pump orders right now. The witness said the reason she needs orders for a correction dose outside the meal time to be able

⁵⁸ Vol. I, P. 112, L. 24-25; Vol. I, P. 113, L. 1-24

⁵⁹ Vol. I, P. 114, L. 1-6

⁶⁰ Vol. I, P. 114, L. 13-20

⁶¹ Vol. I, P. 115, L. 5-9

⁶² Vol. I, P. 115, L. 10-25; Vol. I, P. 116, L. 1

⁶³ Vol. I, P. 116, L. 2-18

⁶⁴ Vol. I, P. 118, L. 5-21

⁶⁵ Vol. I, P. 119, L. 14-25; Vol. I, P. 120, L. 1-3

to correct the Student's blood sugar and better care for her.⁶⁶

The Board of Nursing requires signed physician orders for any prescription medications, not just for insulin. Diet plays a big role in terms of the Student's care. The parent provides the Student's snacks, and among the list of snacks are brownies, oatmeal pies, chocolate chip muffins, blueberry muffins, Little Debbie packs, and for fast-acting they have glucose tabs, Pixie sticks, the little Valentine heart candies, fun dip in the past, prunes and a few others.⁶⁷ Discussing the parents' Exhibit 88, and the chart referencing roughly 35% of class time missed because checked out due to no Glucagon coverage or refusal to treat hypoglycemia, the witness said she was not refusing to give it, she just had no orders to be able to give it.⁶⁸

The witness said she was familiar with the 26th of September being the time where the Student's parents began to check her out at 1 o'clock and keep her out the remainder of the day, school being over at 3:30.⁶⁹ When the Student arrived at 7:57 that morning, the witness sent the Student to class at 8:02, after entering her wifi password into the phone, replugging the wire in and checking the wifi connection.⁷⁰

Discussing the Student being pulled out on September 27th of 2016 the witness said she had nothing the Student was pulled out of class.⁷¹ As to the Student leaving September 28 of 2016, the witness said she was checked out at 1 for the remainder of the day.⁷² On September 29, 2016, the witness said she met with the Student's mother about some doctor's orders, and the Student may have stayed in there a little while during that discussion as she had to finish lunch in the nurse's office that day.⁷³ The witness had nothing where the Student would have been pulled out of class on September 30, 2016.⁷⁴

Still looking at the parents' exhibit 88, as to the 3rd through the 7th, the witness said on the 3rd the Student was out for sickness, on the 4th the witness was not there, it was a sub, and from what the

⁶⁶ Vol. I, P. 120, L. 4-19

⁶⁷ Vol. I, P. 121, L. 14-25

⁶⁸ Vol. I, P. 123, L. 2-18

⁶⁹ Vol. I, P. 123, L. 19-25; Vol. I, P. 124, L. 1

⁷⁰ Vol. I, P. 124, L. 18-25; Vol. I, P. 125, L. 15

⁷¹ Vol. I, P. 125, L. 5-9

⁷² Vol. I, P. 125, L. 10-13

⁷³ Vol. I, P. 125, L. 16-22

⁷⁴ Vol. I, P. 125, L. 23-25; Vol. I, P. 126, L. 1

witness reads on the log the Student was in the office until 8:40 so the mother could come give a correction dose of insulin since the Student's insulin was too high that morning. The witness did not have where the Student was pulled out on the 5th, on the 6th the witness did pull the Student out and walk her and give her water for about 5 minutes because her blood sugar was 313. The witness did not know why the parent exhibit would show 80 minutes out on the 6th. On the 7th the child was out 45 minutes for the mother to change the pod because it had failed, and the witness pulled her out to try to pee to check for ketones that day also. The witness said there is no way to check for ketones without pulling the Student out of class since she has to go to the restroom and pee in a cup.⁷⁵

Discussing the 10th through the 25th, as far as times the parents said the child was pulled out, the witness said he records show she Student arrived at school with a low blood sugar so was in the witness' office and was given fruit juice to bring it up. On the 11th the Student had to finish eating breakfast that was sent by the parent in the witness' office; on the 12th the Student arrived with low blood sugar, and the sensor had to be replaced and restarted and then they had to check for ketones; on 10/13 the Student's blood sugar was low and she had to be given juice; on the 13th the Student was still in the classroom being monitored; On the 14th the witness pulled the Student out to check for ketones, then her pod came and the mother said the Student would be fine until she got home, to put the pod in the backpack. However, that day the Student could not pee, so she was given water and they waited to check again in a few minutes, but at 9:32 and 10:47 she still could not pee. The yellow in one group is because the parents checking the Student out for the remainder of the afternoon.⁷⁶

On the 17th the Student came in at 7:59 with a 63 blood sugar; the witness said she called the mother, no treatment at that time, and waited until the next reading per the mother. Also that day the Student forgot her Super girl backpack with the Glucagon and her supplies in it, and she was in the nurse's office until 8:36, when her blood sugar was 72 so she was sent to class. The nurse went to the classroom to give the Student more carbs at 9:23, and to give her snack at 10:02. The nurse's records do not show the Student was out of class the 18th. On the 19th the Student came in with low blood sugar again, but was monitored in class by the nurse.⁷⁷ On the 19th she was pulled because her pod was pulling out—she had 2 pods on her and the Student forgot to remove the old one when they put on the new pod—so the nurse called the mother and confirmed they had forgotten to pull off the old pod. On the 20th the witness went to the classroom and treated the Student for low blood sugar, they had inside recess that day, and the nurse's records do not show the child was pulled from class. On the 24th the child again arrived with low blood sugar, dropping really fast, the nurse monitored it, and the Student went to class at 8:01 and was monitored there. The nurse's notes show she gave a couple of treatments that morning also, at 9:41 and then gave her a snack, and gave her a snack

⁷⁵ Vol. I, P. 126, L. 6-25; Vol. I, P. 127, L. 1-25

⁷⁶ Vol. I, P. 128, L. 1-25; Vol. I, P. 129, L. 1-25
Vol. I, P. 130, L. 1-25

⁷⁷ Vol. I, P 131, L. 1-25

at 9:41 and a Pixie stick at 9:55, because it was not coming up fast enough. Also on the 24th the Student came to the nurse because she said the pod was pulling out, so the nurse said it looked to be intact, it was reinforced with more tape, to be reassessed, and she called the mother to let her know. On the 25th the Student came in at 6:51 with blood sugar of 63, and the nurse had to plug in the phone to charge it that day.⁷⁸ When the witness/nurse monitors the Student in the classroom, she goes to the classroom and takes her iPad with her monitor and sneak in quietly to the back of the room and sit and watch to make sure the Student is not having the lethargic symptoms and going to pass out or anything like that.⁷⁹

Finishing with the parent exhibit 88 and the nurse's notes as to October 26, 2016 through November 2, 2016, picking up with October 26th of 2016, the nurse's notes indicate the Student arrive at t 7:55 and had to finish breakfast in the nurse's office because she was too low to eat breakfast when she came in. She probably stayed there another 15 minutes to eat, but other than that she was not pulled out of class. On the 28th the nurse pulled the check out of class at 2 p.m. to check ketones, and at 2:45 the mother came to give her a correction dose. That was a party day, a fall fest with 22 carbs listed. Oct. 31st the nurse's notes do not indicate the Student was out of class. On November 1st the parents' exhibits reflects 70 minutes out of class; the witness said she was not there that day, it was a sub, and it looks like the sub tried to check for ketones but the Student could not urinate, so she probably was kept out a bit that day. She was also low that day, getting down to 54 and 52, drowsy but answering questions. November 2nd she was out of glass because she had an accident in her pants.⁸⁰ Looking at the District exhibit 79, orders from the Arkansas Diabetes Endocrinology Center, signed by Dr. Nimmo, the witness said the Student's mother had told her she drafted that chart.⁸¹

The witness said over the course of this school year there have been many changes to the Student's care, and said there have been changes by doctor's orders, by different doctors, changes in doctors, changes in the way the Glucagon goes home, for example. Before the changes, the Student took her Super Girl backpack home at the end of the day, which has her testing kit, a few fast-acting carbs, a couple of snacks and her Glucagon, and she took that home on the bus and brought it with her, so it made a full rotating circle with her daily. Then her mother said it was too much for the Student to carry, because she had to carry her lunch box, so now the change is that in the afternoons the witness takes the Glucagon out of the Super Girl backpack and puts it in the Student's regular backpack so it goes home. Then in the mornings, the witness takes it out of the Student's backpack and puts it back in the Super Girl backpack.⁸²

⁷⁸ Vol. I, P. 132, L. 1-25; Vol. I, P. 133, L. 1-23

⁷⁹ Vol. I, P. 133, L. 24-25, Vol. I, P. 134, L. 1-7

⁸⁰ Vol. I, P. 137, L. 20-25; Vol. I, P. 138, L.1-25;
Vol. I, P. 139, L.1-25; Vol. I, P. 140, L. 1-6

⁸¹ Vol. I, P. 140, L. 7-23

⁸² Vol. I, P. 140, L. 24-25; Vol. I, P. 141, L. 1-25;
Vol. I, P. 142, L. 1

Looking at School District Exhibit 88, the witness said it was a draft of the Student's orders. The witness said she, the mother, the doctor some, Brenda Chase, the supervisor, had been trying to consolidate all the orders into one order set, easier to read and more clarified. It includes a correction dose, saying blood sugar greater than 200, 3 or more hours from last bolus, give correction dose not to exceed one unit of insulin per 150 greater than 140 via insulin pump, and call parent to confirm dose. That is what the witness said she would need to issue a correction.⁸³

Looking School District Exhibit 89, the witness said that was the same order set but with more changes that the mother wanted added, such as where the witness had written "needs to cover any extra foods received," and that would be if she purposefully took food off someone else's tray or there was a class party, something like that. The witness said this draft also gives her what she needs in terms of a correction dose. The witness said it was her understanding these orders are acceptable to her and the Student's mother, but neither have been signed by a doctor yet.⁸⁴ The witness said this draft has been in existence since she believed the beginning of October, possible the middle, and when asked if she knew why they hadn't been signed yet, she said the Student's mother said they could not submit anything to the doctor until this was all over.⁸⁵

The witness said Lee Ann McDaniel is the assistant principal at Hill Farm and also the 504 coordinator. At the beginning of the Student's kindergarten year, this witness said she was involved in a meeting between Ms. McDaniel and the Student's mother involving the Student's 504 plan. During that meeting, the issue of special education service did come up. The witness said Ms. McDaniel asked the mother if she thought the Student was going to need special ed, any special services, and the mother said no, that the Student was a smart girl. The witness could not recall if it was at that or another meeting, but said the mother was also offered the opportunity to have the Student ride the special ed bus, but the mother declined because it would have been a longer bus ride than the regular ed bus.⁸⁶ The witness said that since that meeting, neither of the Student's parents have ever mentioned to witness about the Student having difficulty with academics.⁸⁷

Following the due process complaint, the witness said she was present when the mother was asked if she needed instructional support from a para for the Student, there was a meeting, and to the best of this witness' recollection the mother said she did not think it was needed at this time or did not want to include it in the 504 at this time, or something to that extent.⁸⁸ The witness said there are two people on staff there with training to administer Glucagon in the witness' absence, in emergency

⁸³ Vol. I, P. 142, L. 2-25; Vol. I, P. 143, L. 1-4

⁸⁴ Vol. I, P. 143, L. 5-25

⁸⁵ Vol. I, P. 144, L. 1-11

⁸⁶ Vol. I, P. 144, L. 17-25; Vol. I, P. 145, L. 1-14

⁸⁷ Vol. I, P. 145, L. 15-23

⁸⁸ Vol. I, P. 145, L. 24-25, Vol. I, P. 146, L. 1-9

situations.⁸⁹

The witness said there was one emergency this year, the witness thought it was at lunch time, where the Student started dropping very rapidly, the mother had notified the witness the Student did that yesterday and would probably drop kind of fast; the witness went down there and the Student was dropping fast, so the witness picked her up and carried her to the witness' office, sat her there and she finished eating there in the office. She was kind of drowsy, but could and answer questions. The witness said she had the Glucagon on her desk ready to give it if needed, but it was not.⁹⁰

When finger sticks need to be done, that has been done in the witness' office as part of lunch time testing when the Student is low. And the witness has started doing the finger sticks on those other times, apart from lunch, in the classroom.⁹¹

When the witness made the mistake of hitting the extend all at once, she did notify the mother. When the office staff gave the Student a peanut butter cracker instead of a prune, the witness said she thought Brenda Chase, the supervisor, notified the mother, but the witness was not sure since she was on her lunch time.⁹²

When asked how the school staff knew to watch out for signs and symptoms of either hypo or hyper glycemia with the Student, the witness said a bunch of staff have been trained about the basis of diabetes, and she has given them all a sheet with little faces to show the symptoms and she's gone over and they also have what she calls her face sheet with her picture, which tells all the signs and symptoms of low and high blood sugar.⁹³

The witness said in an emergency situation with low blood sugar, she could still give the Student glucose even if its an emergency, and wait a couple of minutes to see what its doing, then if its not bringing her up Glucagon would be needed, which the witness is able to do. With high blood sugar, however, if a correction is needed to be given, the witness has no doctor's order.⁹⁴

Looking at the School District's exhibits 78 and 79 (an order from Arkansas Children's Hospital dated June 8, 2016, and a set of orders from the Arkansas Diabetes and Endocrinology Center September 12, 2016, respectively), the witness said between those two dates she got some

⁸⁹ Vol. I, P. 146, L. 12-16

⁹⁰ Vol. I, P. 146, L. 17-25; Vol. I, P. 147, L. 1-8

⁹¹ Vol. I, P. 147, L. 12-22

⁹² Vol. I, P. 148, L. 18-25; Vol. I, P. 149, L. 1-2

⁹³ Vol. I, P. 149, L. 3-15

⁹⁴ Vol. I, P. 149, L. 16-25; Vol. I, P. 150, L. 1-7

amendments, doctor's orders from Children's Hospital.⁹⁵ Looking at the Parents' pretrial disclosures, the witness said the Addendum to Diabetes Care for School from Arkansas Children's Hospital dated September 8, 2016 is a copy of the order the witness received from Children's Hospital.⁹⁶ On number one, under the Addendum it recites "Utilized attached CGM correctional chart for treatment of hypo or hyperglycemia."⁹⁷

Looking at Parents' pretrial disclosures number 74, the witness agreed this is a CGM correction factor, and said it appears it has a chart for corrections between meals and for meal time, but the mother never provided this to the witness.⁹⁸ The witness said the next chart she received was by the Student's subsequent medical provider, Dr. Nimmo.⁹⁹ The witness said that when she testified earlier that Lisa Still had provided some in-service training to all the nurses regarding the OmniPod, that it was recently, in the last few weeks.¹⁰⁰ Discussing District Exhibit 92, the witness said those were two sheets she had seen before, they were a part of the doctor's orders sent over in addition to the other orders, at a later time.¹⁰¹ The witness said she had neither of these pages at the first of the year to implement.¹⁰² The witness said she had not seen the chart that is page 2 of District Exhibit 92, never got it, so it was not implemented.¹⁰³

Looking at the doctor's orders that were in place, the witness said, looking at page 69 in the pink book, these are the doctor's orders implemented in kindergarten year until new ones were received, prior to the pump.¹⁰⁴ The witness said she did not see where she could give a correction outside of meal time.¹⁰⁵ The witness agreed that if we looked at the doctor's orders just reviewed, they did not

⁹⁵ Vol. I, P. 150, L. 8-22

⁹⁶ Vol. I, P. 150, L. 23-24; Vol. I, P. 151, L. 16-3 2

⁹⁷ Vol. I, P. 151, L. 24-25; Vol. I, P. 152, L. 1-8

⁹⁸ Vol. I, P. 152, L. 4-15

⁹⁹ Vol. I, P. 152, L. 16-21

¹⁰⁰ Vol. I, P. 152, L. 22-25; Vol. I, P. 153, L. 1-6

¹⁰¹ Vol. I, P. 154, L. 5-23

¹⁰² Vol. I, P. 155, L. 5-9

¹⁰³ Vol. I, P. 155, L. 16-25

¹⁰⁴ Vol. I, P. 156, L. 11-25

¹⁰⁵ Vol. I, P. 157, L. 20-24

give her permission to give one unit of insulin.¹⁰⁶ The witness said if the child was unable to respond she would give a Glucose shot, but if the child was able to chew a glucose tab, she would get more glucose tabs.¹⁰⁷

As far as volunteers trained to administer the Student a Glucagon shot to the Student, the witness said she had not trained them, someone else did, but they had an in-depth what to do, when to do it, and it would only be when the nurse witness was absent, and only when the Student was non-coherent and non-responsive.¹⁰⁸ The witness testified that at the time the due process was filed, no one was trained to do Glucagon administration, they were only trained in basic diabetes, so for the last year and a half no one was trained at the school to give the Student that shot if she became unconscious in the nurse/witness' absence.¹⁰⁹

Reviewing the doctor's orders from February, page 64-68, the witness remembered seeing them, but did not know when she got them. On page 64, referring to the pump, the witness did remember around February the Student got a pump and the Dexcom, and according to this plan, it gave the witness an order to give it at meal time.¹¹⁰ It also shows the Student can get an extra snack for P.E. or gym class and also for school parties if needed, and the witness said it shows her if it is less than 100, to give a 15 gram carb.¹¹¹ The schedule about snacks at 10 and 2 was used last year also.¹¹²

Explaining that if she needed to give the Student insulin right now, the witness said the OmniPod, the is a cell-phone size hand-held device kept in her office and is electronically hooked up via bluetooth to the device implanted in the Student to administer insulin to the Student; the Dexcom is the Student's monitor showing the numbers, and this is what gives her the numbers, and she has to be within 5 feet of the witness for the device to give insulin.¹¹³

Going back to the doctor's orders the witness had on 6-8-16, on page 59, that says the pump, for

¹⁰⁶ Vol. I, P. 160, L. 21-25; Vol. I, P. 161, L. 5-25
Vol. I, P. 162, L. 1-23; Vol. I, P. 173, L. 2-20

¹⁰⁷ Vol. I, P. 164, L. 5-15

¹⁰⁸ Vol. I, P. 165, L. 16-25; Vol. I, P. 166, L. 1-13

¹⁰⁹ Vol. I, P. 166, L. 23-25; Vol. I, P. 167, L. 1-8

¹¹⁰ Vol. I, P. 167, L. 20-25; Vol. I, P. 168, L. 1-9

¹¹¹ Vol. I, P. 168, L. 10-21

¹¹² Vol. I, P. 168, L. 2-25; Vol. I, P. 169, L. 1

¹¹³ Vol. I, P. 169, L. 15-25; Vol. I, P. 170, L. 1-25
Vol. I, P. 171, L. 1-24; Vol. I, P. 170, L. 1-25
Vol. I, P. 171, L. 1-25; Vol. I, P. 173, L. 1-25

patients 10 years old and older treated at Arkansas Children's Hospital, the school nurse may use his or her discretion in conjunction with family to decide on pre or post meal dosage while at school, so the witness said she guess it would allow her to provide pre or post meal insulin. However, the witness said they would have to give her another correction order because it still says at meals and snacks only.¹¹⁴

Looking at page 61 where it says give correction dosage of insulin (referring to treatment when the Student's blood sugar is more than 240), then says if elevated at meal time, the witness said there is nothing on that page that would allow her to give a correction dose of insulin if the Student was hyperglycemic, that it was an order to give insulin for such as school parties.¹¹⁵ The witness said she did not have the correction scale; what she had was for meal time only.¹¹⁶

The witness testified to giving the Student insulin for which she had no doctor's orders, but which the Student's mother had her give, that there were missing doctor's orders, that the parents' binder did not have the complete orders where the mother could have the witness administered insulin.¹¹⁷ The witness said she would tell the Student's mother when she, the nurse, disagreed.¹¹⁸ The witness said she would not use the OmniPod and authorize insulin unless the Student's mother told her.¹¹⁹

The witness said if she did not think the Student needed insulin, she would not have given it, and in looking at her logs she said yes, she gave corrections this school year of insulin when the Student's blood level reached 240 or over.¹²⁰

As to page 59, the addendum, the witness said she interpreted it wrong, and that is why they got the addendum, 92-1 and 92-2.¹²¹ The witness said she did not say she never saw this, she said she did not see the chart until the doctor's office sent it to her, when she should have had it at the beginning

¹¹⁴ Vol. I, P. 178, L. 1-21

¹¹⁵ Vol. I, P. 178, L. 22-25; Vol. I, P. 179, P. 1-8

¹¹⁶ Vol. I, P. 181, L. 5-11

¹¹⁷ Vol. I, P. 182, L. 5-25; Vol. I, P. 183, L. 1-25
Vol. I, P. 184, L. 1-3; Vol. I, P. 184, L. 1-25
Vol. I, P. 184, 1-25; Vol. I, P. 185, L. 1-25
Vol. I, P. 186, L. 1-15

¹¹⁸ Vol. I, P. 186, L. 16-25; Vol. I, P. 187, L. 1

¹¹⁹ Vol. I, P. 189, L. 19-25; Vol. I, P. 190, L. 1-6

¹²⁰ Vol. I, P. 192, L. 12-23

¹²¹ Vol. I, P. 194, L. 2-19

of school.¹²²

At the beginning of this year, the witness agreed it changed radically, where she could no longer give any type insulin outside of meal time.¹²³ The witness said she had asked for clarification as to the new doctor's orders issued 9-12.¹²⁴ The witness said she followed the doctor's orders, but they were not specific.¹²⁵ When asked if her nursing supervisor directed her to stop giving correction, the witness said Children's Hospital is the one that told her she didn't need to do that because she had misinterpreted their order, which is why they sent the chart, which she already testified earlier she had not seen.¹²⁶ The witness said she still refigures/recalculated the insulin level by hand, but does not document it.¹²⁷

The witness said she maybe twice called Dr. Nimmo's office for clarifications on the orders, but only spoke to the nurse one time, and told her there were several things in general, and she was going to talk to the doctor and get back to the witness, but never did, so the witness turned it over to her supervisor to take care of.¹²⁸

Discussing last year's orders and this year's orders, the witness said when she went over last year's orders with her supervisor they interpreted them the same way, which was why they gave insulin last year; when the supervisor, Brenda read it, she did not think it was to be interpreted the way the witness did.¹²⁹ The witness said the Dexcom provides her with information about when the Student last had insulin and when she at last.¹³⁰ Responsive to a question about how fast a child can crash when blood sugar is going down, the witness said it could be from 10 minutes to 40 minutes, it can happen pretty fast.¹³¹

BRENDA CHASE

¹²² Vol. I, P. 195, L. 1-4

¹²³ Vol. I, P. 199, L. 3-10

¹²⁴ Vol. I, P. 199, L. 1-11

¹²⁵ Vol. I, P. 200, L. 25; Vol. I, , 201, L.1-5

¹²⁶ Vol. I, P. 209, L. 17-25; Vol. I, P. 210, L. 1-6

¹²⁷ Vol. I, P. 210, L. 15-19

¹²⁸ Vol. I P. 213, L. 5-17

¹²⁹ Vol. I, P. 213, L. 18-25; Vol. I, P. 214, L. 1-6

¹³⁰ Vol. I, P. 220, L. 6-10

¹³¹ Vol. I, P. 230, L. 3-12

She is the District Nursing Supervisor, holding that position since the beginning of the school year, August 8th, and has had a license for registered nurse since 1978.¹³² Previously she was the chief administrative officer for Ozark Guidance in northwest Arkansas, and the last job prior to that was in acute care.¹³³ This is her first public school. At Ozark Guidance she witnessed physical restraints and seclusion, how to document that.¹³⁴

Looking at the chart in the parents' binder, page 58, the witness said she never required a chart, but had seen this one, saying it is the intervention plan.¹³⁵ The witness identified pages 52 to 58 being the current doctor's orders for the Student. When she came in, pages 59-63 were the doctor's orders. As to those orders, the witness said she was concerned and felt they should be confirmed with Dr. Wang's office.¹³⁶

Responsive to the question about the witness' expertise with children having type one diabetes, this witness said she had worked for an endocrinologist in the past, had worked with critical care, surgery, outpatient services, taking care of children, pediatrics in the acute care setting and with diabetes, children with diabetes.¹³⁷ The witness said prior to accepting this position, she had no experience with an OmniPod other than professional development day, October 21st, other than when Lisa Still came in, and reading materials and talking with other nurses who have students with OmniPods and working with them as they were delivering insulin boluses at meal times or whatever.¹³⁸ The witness said there are 23 students in the District with diabetes, and probably 7 or 8 with OmniPods.¹³⁹

The witness said she wanted to work together as a team, this is what she voiced to the Student's mother, with the school nurse and with the parents and with Dr. Wang and his nurse to see if they could get to a point where the Student was a little better managed during the day with her blood sugar levels so it did not require as many interventions throughout the day, since it has to have an impact on the Student's learning experience when her blood sugar is dropping down or going way

¹³² Vol. I, P. 236, L. 7-20

¹³³ Vol. I, P. 236, L. 21-25; Vol. I, P. 237, L. 4

¹³⁴ Vol. I, P. 237, L. 20-25

¹³⁵ Vol. I, P. 238, L. 1-25; Vol. I, P. 239, L. 1

¹³⁶ Vol. I, P. 239, L. 5-13-25; Vol. I, P. 240, L. 1-9

¹³⁷ Vol. I, P. 240, L. 10-17

¹³⁸ Vol. I, P. 241, L. 7-17

¹³⁹ Vol. I, P. 241, L. 21-25

up and requiring the nurse to go into the room and give snacks; just her learning.¹⁴⁰

The witness said she knows it is possible to have the Student better managed than what she is being managed now.¹⁴¹ When asked how many interventions daily the Student required last year, the witness said Melissa told her she had to monitor the Student all the time, all day and intervene numerous times, and the witness said she understood it was probably, could be 6 times a day.¹⁴² This witness is not there on a daily basis, but when asked about this year's interventions the witness said she could not say if I was more or less this year than last year.¹⁴³

The witness said Melissa told her the first day she met her about her concerns for the Student.¹⁴⁴ The witness said they followed the doctor's orders on page 52-58 since they were received.¹⁴⁵ The witness said she did not change the doctor's orders, but said they needed to meet with the mother, the parents, and talk about this being a complete order, that they need the doctor to be able to give them a complete order with a correction scale, be able to meet with the mother and talk about having a conference with Jennifer Sellers or Dr. Wang or both of them, and the mother and the school nurse, to see what could be done that would not require as many interventions during the day and get her diabetes better managed. Also to clarify and get a complete physician's order.¹⁴⁶

When asked if this is a complete doctor's order, the witness said yes, but that she told the parents she needed more doctor's orders because she was requesting the additional insulin and there was no order for additional insulin outside of meals and snacks, and they needed clarification with the physician.¹⁴⁷ The witness said they needed to clarify the doctor's orders, she did not know why the doctors were changed, she called Children's twice, and she talked to Jennifer Sellers but could not recall the date.¹⁴⁸ Other than the doctor's orders that had already been issued, the 5 pages, the witness said she never received any orders.¹⁴⁹ She also said the order was not complete enough to

¹⁴⁰ Vol. I, P. 243, L. 17-25; Vol. I, P. 244, L. 1-10

¹⁴¹ Vol. I, P. 245, L. 1-3

¹⁴² Vol. I, P. 245, L. 14-23

¹⁴³ Vol. I, P. 246, L. 6-25

¹⁴⁴ Vol. I, P. 249, L. 1-14

¹⁴⁵ Vol. I, P. 249, L. 17-23

¹⁴⁶ Vol. I, P. 251, L. 10-25; Vol. I, P. 252, L. 1-5

¹⁴⁷ Vol. I, P. 254, L. 12-23; Vol. I, P. 255, L. 1-5

¹⁴⁸ Vol. I, P. 255, L. 6-25

¹⁴⁹ Vol. I, P. 256, L. 19-23

be able to administer an additional dose of insulin on the mother's request, that it was not a clear order.¹⁵⁰

The witness said after 9-2-2016 the District has refused to give insulin to the Student if her BG level is 240 and above if it is outside of meal time, as they did not have a physician's order to be able to administer.¹⁵¹ When asked if she often had to work with parents or had any knowledge about that, of working with parents on insulin and diabetes, in the giving of insulin, the witness said she did.¹⁵² The witness said Children's had provided sufficient orders, but they do not have physician's orders to be able to administer insulin at the mother's request outside of the orders.¹⁵³ The witness said if the Student's BG is over 200 for more than 3 hours, they have no order to give her insulin, that the doctor can refer them to the pump, but in that order they need the correction scale and the time.¹⁵⁴

The witness said it is typical protocol where a parent may come up and pick up the child and take them home and take care of them, as sometimes they are sick when their blood sugar is 240 or more.¹⁵⁵ The witness said they cannot practice outside the scope of practice as a nurse, that as a nurse she knows what is required in a physician's order for medication administrations, and they do not have a complete physician's order here.¹⁵⁶ The witness said they needed a correction scale from the doctor's orders, giving the time, the dose and the correction scale at other times of the day.¹⁵⁷

Talking about the Student's glucose level going up and down and varying quite a bit throughout the day, the witness said if the Student does not get the correction of insulin and the mother is unable to get to the school, the witness said immediate action would be required, they would have to call an ambulance.¹⁵⁸

The witness said when she was first approached by Melissa about feeling she needed clarification on the orders, Melissa told the witness about the order followed last year, then there was one kind

¹⁵⁰ Vol. I, P. 257, L. 2-6

¹⁵¹ Vol. I, P. 261, L. 4-12; Vol. I, P. 263, L. 1-9

¹⁵² Vol. I, P. 262, L. 11-15

¹⁵³ Vol. I, P. 263, L. 22-25; Vol. I, P. 264, L. 1-2

¹⁵⁴ Vol. I, P. 264, L. 19-24; Vol. I, P. 265, L. 7-13

¹⁵⁵ Vol. I, P. 267, L. 23-25; Vol. I, P. 268, L. 1-2

¹⁵⁶ Vol. I, P. 268, L. 3-13

¹⁵⁷ Vol. I, P. 269, L. 16-20

¹⁵⁸ Vol. I, P. 274, L. 11-24

of similar for this calendar year.¹⁵⁹

The witness said the doctor's order from Children's was interpreted last year that the mother could request insulin doses outside of what was already prescribed.¹⁶⁰ The witness agreed nurses have to follow doctor's orders, and this order was still in effect when school started. The new orders said for the calendar year.¹⁶¹ The witness said again that when Melissa approached her saying she was concerned about interpreting the order, the witness said they needed clarification; if there is an order about which they are not clear, they have to get clarification on correct patient, correct medicine, correct dosage, and correct route.¹⁶²

The witness said she had never seen the document 92, page 1, until the pre-hearing, looking at the materials.¹⁶³ The witness said when she made the decision they needed a correction scale, 9-2, 9-3, she did not know what day it was, but it was early September, she did not notify the parents of the Student in writing, but it was not policy to notify them in writing.¹⁶⁴ The witness said it was dangerous not to give correction, but they did communicate the decision with the parents as to needing clarification, orders, and needed to be able to talk with the physician, it just was not communication in writing.¹⁶⁵ The witness said it was also discussed at the 504 meeting about working with the physician's office to get clarification so the mother could request correction doses outside of what the nurses had to work with the team to see what could be done to improve the situation so the Student was not going through the extreme fluctuations.¹⁶⁶

The witness said their orders have to be in writing, that the doctor can give verbal orders, but the doctor needs to sign the orders.¹⁶⁷ The witness said she did not know if there was anything in the nurse's log to record parents being notified orally of the decision the correction was not going to be

¹⁵⁹ Vol. II, P. 7, L. 15-18, 22-23

¹⁶⁰ Vol. II, P. 8, L. 12-22

¹⁶¹ Vol. II, P. 9, L. 8-24

¹⁶² Vol. II, P. 11, L. 3-22

¹⁶³ Vol. II, P. 16, L. 22-25

¹⁶⁴ Vol. II, P. 25, L. 4-24; Vol. II, P. 26, L. 1-7

¹⁶⁵ Vol. II, P. 26, L. 8-23

¹⁶⁶ Vol. II, P. 36, L. 3-22

¹⁶⁷ Vol. II, P. 26, L. 24-25; Vol. II, P. 27, L. 1-3

given.¹⁶⁸ The witness said she had never spoken with Dr. Wang, but did speak with a Jennifer.¹⁶⁹ The witness said she had looked at some of Melissa's notes of areas of concern, but had not gone through the nurse's notes, every note that had been made.¹⁷⁰

The witness said they had the old orders, where they were able to give insulin with mealtime and snacks, and when the Student were over 200 for more than 3 hours they would contact the mother and give water during the time they decided not to give correction dosages outside the orders they had.¹⁷¹ The witness said there was no consistency, no pattern as to the highs and the lows.¹⁷²

The witness said, looking at the charts, that even if the Student did not have a Dexcom, it would absolutely be possible to manage the Student's blood sugar at school, that they have 22 diabetic students in the district and most of them do not have Dexcoms.¹⁷³ The witness said the Student has frequent interventions, more so than any other diabetic student the witness has seen.¹⁷⁴ The witness agreed that office staff monitored the Student in the nurse's absence, and that there had been an incident where the Student was not given the correct snack for intervention.¹⁷⁵

The witness said if the Student's blood sugar goes too low, she could in 15 minutes go into shock.¹⁷⁶ Talking about if the Student's blood sugar goes too low, the witness said there had been Glucagon training of the bus driver.¹⁷⁷ This witness said the first time she heard of the parents' request for Glucagon training was at the second 504 meeting she was in with the parents, and did not realize the parents had been requesting that for 2 years, nor did she realize the parents had been asking for insulin training.¹⁷⁸

¹⁶⁸ Vol. II, P. 27, L. 6-9

¹⁶⁹ Vol. II, P. 28, L. 20-25

¹⁷⁰ Vol. II, P. 29, L. 2-9

¹⁷¹ Vol. II, P. 30, L. 1-22

¹⁷² Vol. II, P. 38, L. 14-25; Vol. II, P. 39, L. 1-6

¹⁷³ Vol. II, P. 40, L. 3-25; Vol. II, P. 41, L. 1

¹⁷⁴ Vol. II, P. 41, L. 9-10

¹⁷⁵ Vol. II, P. 42, L. 5-25; Vol. II, P. 43, L. 1-25
Vol. II, P. 44, L. 1-21

¹⁷⁶ Vol. II, P. 47, L. 12-16

¹⁷⁷ Vol. II, P. 48, L. 16-25

¹⁷⁸ Vol. II, P. 49, L. 1-2

The witness said State law allows a non-licensed person or non-licensed volunteer to administer insulin in an emergency, but they do not have one. The witness said that law, as she understands, it, is permissive, but the decision was made for them to use registered nurses for an emergency in which a student needs insulin, that if the nurse was absent they have several nurses available within 5 minutes' drive who can administer insulin in an emergency situation.¹⁷⁹ The witness said administrative staff at the second 504 meeting when Doctors Kimbrell and Walters were present made this decision.¹⁸⁰ The parents did not get to take part in that decision.¹⁸¹ Dr. Karen Walters is their deputy superintendent.¹⁸²

The witness looked at 76A, Arkansas law as to furnishing of nursing assistance and assistance by others in an emergency (which the witness said was not looked at during the meeting).¹⁸³ The witness read from the second page, B(I), that a licensed registered nurse employed by a school district or other health care professional shall annually train volunteer school personnel designated as care providers in a health plan of a student submitted under subdivision (11)(A) of that section to administer Glucagon or insulin, or both, to a student with diabetes, and also read above that administration of either or both in a health plan covering diabetes management and is based on the orders of a treating physician for emergency situations.¹⁸⁴

The witness also looked at and read (B)(i)(I) from page 2, that a parent or guardian of a student with diabetes chooses to have care by a care provider, they shall sign an authorization to allow administration of Glucagon or insulin or both to the student by volunteer school personnel designated as care providers who shall be incorporated into the student's health plan submitted under subdivision (11)(A). The witness said in this case the Student's parents did agree to sign consent for Glucagon authorization and requested insulin training also; and that she was the one who verbally notified the Student's mother of the district's decision not to provide insulin.¹⁸⁵

Looking at the Student's health care plan, the witness said it was written by Ms. Letson, and this witness looked at it as the most current health care plan, that she thought they had listed the volunteers for the Glucagon administered.¹⁸⁶

¹⁷⁹ Vol. II, P. 49, L. 9-25; Vol. II, P. 50, L. 1-4

¹⁸⁰ Vol. II, P. 50, L. 13-25

¹⁸¹ Vol. II, P. 51, L. 1-4

¹⁸² Vol. II, P. 54, L. 18-19

¹⁸³ Vol. II, P. 55, L. 9-22

¹⁸⁴ Vol. II, P. 55, L. 24-25; Vol. II, P. 56, L. 1-25

¹⁸⁵ Vol. II, P. 58, L. 21-25

¹⁸⁶ Vol. II, P. 59, L. 1-23

The witness said Dr. Nimmo called her on October 4th, and the witness explained what they needed clarification on, and Dr. Nimmo's nurse emailed that afternoon and gave them clarification if the blood sugar is over 200 for more than 3 hours, and gave them the correction scale and also gave them an order for if the pod were to fall out.¹⁸⁷ However, the witness said that was not put in place since October 4th because the witness put it on the draft and emailed it to Dr. Nimmo for approval, but they never heard back. The witness said the Nursing Board requires a doctor's signature, but they were told not to contact the physician any more until the Due Process was over.¹⁸⁸

The witness said the most recent health care plan in place is page 54, but said there has been another change with the transportation plan made last week with the Student's mother, which the witness did not know if that had been updated yet or not. The witness said health care plans can be revised through the year as things change with a student's health.¹⁸⁹ When asked about the health care plans reviewed not having signatures, the witness said she has seen the one before the signatures and reviewed the one Ms. Letson was working on, as the witness had input in it, that she asked Ms. Letson to meet with the mother to get her signature, but the witness has not seen an executed one.¹⁹⁰

The witness said they have full doctor's orders for the other 22 diabetic children in the District.¹⁹¹ After they advised the parent of the Student there was no order for giving insulin at the parent's request, the witness said the parent came to the school to provide insulin correction.¹⁹² The witness said she, the Student's mother and Ms. Letson worked together on a draft of doctor's orders to go to Dr. Nimmo to be sure every order was clear and complete, but that the mother said it could not be taken to the doctor until we were through the due process.¹⁹³ The witness said this was after 10-4, as it was after the Glucagon training on 10-4-2016.¹⁹⁴ For clarification, Glucagon is the substance, the general substance, and Glucagon is the brand name.¹⁹⁵

Talking about difficulties she experienced in getting the Glucagon training set up as far as timing

¹⁸⁷ Vol. II, P. 68, L. 3-10

¹⁸⁸ Vol. II, P. 68, L. 13-22; Vol. II, P. 69, L. 11-17

¹⁸⁹ Vol. II, P. 79, L. 11-23

¹⁹⁰ Vol. II, P. 82, L. 15-25; Vol. II, P. 83, L. 1-4

¹⁹¹ Vol. II, P. 85, L. 11-18

¹⁹² Vol. II, P. 88, L. 11-19

¹⁹³ Vol. II, P. 94, L. 13-24

¹⁹⁴ Vol. II, P. 94, L. 25; Vol. II, P. 95, L. 1-6

¹⁹⁵ Vol. II, P. 95, L. 13-21

relative to the due process complaint filed about 9-26-2016, the witness said she had been working on getting it set up, but since the State Board of Nursing is very specific about who can provide the training, and after talking to the superintendent, the witness felt it important to have a certified diabetic educator to the training. She said i took some time to get one, that she talk to 13 and spoke to one who was over 3 states and had 12 CDE's reporting to her. The witness said she worked with the Arkansas Department of Education, the State Board of Nursing, the Department of Health, and finally found someone with a doctorate in pharmacy, a professor at Harding University and Chairperson of the Arkansas State Diabetes Advisory Board who was willing to do the training.¹⁹⁶ The training was actually done October 4th, 2016, when Michele Owen and Nancy Wood were trained, and the Student's mother was present.¹⁹⁷

Referring back to the Arkansas statute discussed earlier, the witness said diabetes management is to be based on the orders of a treating physician, and that as of this hearing she did not have complete orders to be able to administer insulin at times other than mealtime.¹⁹⁸ The witness said there is one full time nurse at the Student's school, Hill Farm, and five registered nurses, including this witness, within a 5 minute drive of the school.¹⁹⁹ The Student's mother objected to this witness' suggested changes to Dr. Nimmo, and this witness never received any further signed doctor's orders from Dr. Nimmo.²⁰⁰

Looking through her notes and emails, this witness said Dr. Nimmo's orders were dated 9-12-2016, and the witness spoke with the Doctor's nurse on 9-21-2016.²⁰¹ The witness said she personally spoke to Dr. Nimmo October 4th, 2016.²⁰²

The witness said what they had from Dr. Nimmo's office was several pages, some almost in narrative form, so it was difficult to keep up with so many pages, and this witness thought maybe if everything could be pulled together in one order set it would not be so difficult.²⁰³ The witness said when she sent the information back on October 5th, 2016 she was hopeful they had everything

¹⁹⁶ Vol. II, P. 95, L. 22-25; Vol. II, P. 96, L. 1-25
Vol. II, P. 97, L. 1-6

¹⁹⁷ Vol. II, P. 97, L. 20-21; Vol. II, P. 98, L. 2-19

¹⁹⁸ Vol. II, P. 100, L. 5-17

¹⁹⁹ Vol. II, P. 101, L. 4-11

²⁰⁰ Vol. II, P. 102, L. 15-22

²⁰¹ Vol. II, P. 106, L. 6-13

²⁰² Vol. II, P. 109, L. 3-5

²⁰³ Vol. II, P. 107, L. 1-13

needed and the Doctor would sign it and they could move forward.²⁰⁴

The witness said today that if the Student gets over 200 for more than 3 hours she will not refuse to give correction.²⁰⁵ Yet, yesterday this witness said if the Student goes over 200, no insulin could be given, even if it was an emergency, that an ambulance would need to be called.²⁰⁶

The witness said if there was someone, a care-giver, at the school who was trained, that person could give insulin if the parents had signed the authorization.²⁰⁷ The parents had asked for this, but it was a district decision not to do it, which is in this witness' notes.²⁰⁸ The witness' 10/5/2016 email said "Hi, Denise, I have tried to capture everything into one document. I have highlighted some areas where the nurses must have a physicians's order."²⁰⁹ There was a 10-6-2016 email to Melissa saying as far as the witness knows, she had not seen an order for additional insulin, that she put that as request in the physician's orders emailed to Dr. Nimmo's office yesterday, but had not heard back from Dr. Nimmo or Denise.²¹⁰ On Oct. 6th, 2016 the witness asked Melissa how the Student's pump worked, if you put in the blood sugar, it recommends a correction dosage.²¹¹

The witness looked at a September 22nd, 2016 email from herself, B. Chase, to HFE School administrators and nurse, they were not going to offer training for insulin.²¹² The witness said volunteers cannot give insulin if she is there or a nurse is there, and they have no trained volunteers because she decided not to.²¹³ The witness said Glucagon training was canceled at least two times.²¹⁴ The Glucagon training was canceled because they were in the process of securing a

²⁰⁴ Vol. II, P. 122, L. 12-19

²⁰⁵ Vol. II, P. 122, L. 20-25

²⁰⁶ Vol. II, P. 123, L. 1-8

²⁰⁷ Vol. II, P. 123, L. 9-13

²⁰⁸ Vol. II, P. 123, L. 14-19

²⁰⁹ Vol. II, P. 123, L. 20-25

²¹⁰ Vol. II, P. 124, L. 18-24

²¹¹ Vol. II, P. 126, L. 6-12

²¹² Vol. II, P. 129, L. 2-6

²¹³ Vol. II, P. 129, L. 24-25; Vol. II, P. 130, L. 1-13

²¹⁴ Vol. II, P. 130, L. 14-18

certified diabetic educator to teach the class.²¹⁵

The witness said that with her attempt to consolidate the doctor's orders, the witness was not trying to replace or add to doctor's orders, only to clarify on the correction, and that she also sent a copy to the Student's mother.²¹⁶ The Student's mother had a number of objections.²¹⁷ Referencing the email of September 28, 2016 between the witness and Ms. Kelley, the witness indicated she was missing the correction scale for hyperglycemia, and as of this date there still was no correction scale signed by a doctor.²¹⁸

The witness referenced an email between herself and Ms. Kelley September 30, 2016, where the witness asked for a conference with Dr. Nimmo and Denise, again, trying to clarify the correction scale for a blood glucose over 181, if they were to give it at one and half hours after a meal and 3 hours after a meal.²¹⁹ Referring to an email of October 5, 2016 from Denise Kelley to the witness, the witness read where it said if she wanted to make those changes in a hard copy and send them to her, Dr. Nimmo would sign. The witness said she did do that, but Dr. Nimmo never signed those orders.²²⁰

The witness talked about the difference in giving Glucagon and giving insulin, saying that if a trained volunteer, a non-medical person, administers Glucagon, it is pre-measured so you can't overdose with it, but that an insulin overdose it can kill.²²¹ Discussing the Arkansas law referenced earlier which allows trained volunteers to administer Glucagon and insulin, the witness said even for volunteers the use had to be based on doctor's orders, and there are still not complete orders for what the Student's mother is requesting regarding additional doses of insulin.²²²

When asked if health care plans are supposed to be signed by a parent, the witness said yes, but said she could not answer whether the Student today has an active, signed, current accurate health care plan, as the witness would have to ask the school nurse, that the witness had not asked the nurse if

²¹⁵ Vol. II, P. 131, L. 3-9

²¹⁶ Vol. II, P. 132, L. 5-20

²¹⁷ Vol. II, P. 132, L. 21-23

²¹⁸ Vol. II, P. 133, L. 11-24

²¹⁹ Vol. II, P. 134, L. 3-15

²²⁰ Vol. II, P. 134, L. 21-25; Vol. II, P. 135, L. 1-7

²²¹ Vol. II, P. 135, L. 8-25; Vol. II, P. 136, L. 1-17

²²² Vol. II, P. 136, L. 18-25; Vol. II, P. 137, L. 1-8

she has it executed, but it should be in the school district binder.²²³ When the witness looked in the binder for the school district, she said there was one for 2015, but there was not one in the exhibits for the 2016-2017 school year, and she did not realize the nurse had not submitted it.²²⁴

When asked if she could legally provide medical treatment according to a health care plan that has not been executed and signed by a parent, and doesn't it need a doctor's signature, the witness said a health care plan is secondary to a doctor's order so does not require a signature, but they follow the orders and the care plan from the doctor's office. The witness said it is important to have a care plan, and part of it is based off physician's orders.²²⁵ The witness said there are other things included in a health care plan, but the physician's orders are incorporated and taken into consideration with the care of a student. The witness said as of this date she does not know if a signed health care plan for the Student existed for this year, the witness said it would be in Ms. Letson's file.²²⁶

C. J.

Ms. J. is the Student's mother.²²⁷ The witness said the Student is a Type One diabetic, being diagnosed at age 3, meaning everything she eats must be measured to the gram or come from a pre-packaged package already measured so she can be given insulin in the appropriate proportions for that. All exercise has to be balanced with carbohydrate intake. If she receives carbs, food, for anticipated activity but does not go out and play, she must be given insulin for the carbs because there was no activity to bring the blood sugar down. If she goes out and plays but did not get her carbohydrates, her blood sugar is going to go down and then on the back side must be given her carbohydrates to keep it from going too low.²²⁸

Talking about how diabetes impacts the Student's life, the witness said it is baggage the Student carries everywhere, she literally has devices attached to her body and has devices she had to carry to help those work. Everything she does, she has to check with someone before she can do it or they have to respond to what she has done. Her blood sugar can fluctuate any time of day, with carbs, with activity, or without either one. She can have huge spikes at 3 a.m., se could have huge drops at 3 a.m. Some nights the parents go in almost hourly to give her carbs and struggle to keep

²²³ Vol. II, P. 137, L. 20-25; Vol. II, P. 138, L. 1-25

²²⁴ Vol. II, P. 139, L. 1-17

²²⁵ Vol. II, P. 139, L. 20-25; Vol. II, P. 140, L. 1-11

²²⁶ Vol. II, P. 140, L. 16-25, Vol. II, P. 141, L. 1-2
Vol. II, P. 142, L. 1-4

²²⁷ Vol. II, P. 148, L. 22-25

²²⁸ Vol. II, P. 149, L. 9-25; Vol. II, P. 150, L. 1-2

the blood sugar up. There are other nights they can't get it down and have to give insulin hourly to get it down.²²⁹

The witness said it's the same with school, that everything has to be managed, and that burden rests on Nurse Melissa, as it is too much for a classroom teacher to balance all that and effectively teach the children. Nurse Melissa monitors all the Student's eating, monitors her every time she has physical activity, balancing the two. Any time there is an unexpected spike or drop, she has to respond. Sometimes that means the Student is pulled out of class because the nurse has other students she needs to care for, sometimes the Nurse goes to the Student, it depends on what is going on in the Nurse's office.²³⁰ The Dexcom is the Student's CGM, continuous glucose monitor, which the Student got late January or early February 2015, which gave her some freedom since she could be monitored and the highs and lows caught sooner to intervene earlier to keep her blood sugar regulated.²³¹

That is a big deal, because if she gets too low or too high, she has trouble focusing and concentrating, her vision gets blurry, she has headaches, stomach aches, overall feeling crummy. The witness said a lot of adults with Type One describe a low as where they are about to throw up when they have the flu, being cold, being hot, sweaty, overall bad; some say it's like being drunk, basically intoxicated because their cognitive ability is out of whack, so it removes the Student from activities when she gets to those levels.²³²

Having the monitor allows the parents to intervene earlier, it lets the Student go to her cousin's house and play since the Student can be monitored by the parents from where they are, allowing the Student to stay with someone who may not have the knowledge the parents or Nurse Melissa has. Others can give the Student insulin per the parents' directions if not there, such as a brother-in-law or sister-in-law, a handful of people that have worked with the OmniPod and are able to deliver insulin, and they do that usually with the parents' instructions—"We need to plug in this number, her blood sugar, let me know what amount it calculates," they confirm it together. The witness said she does that with Nurse Melissa.²³³

The witness said it is a good idea to confirm with the parent about insulin, that she and her husband often confirm with each other also, because it is so many decisions to make; they cannot just look at the Student's number and say she needs insulin, it depends on whether she has had activity, is she still burning off the glucose in her system, and it is the same thing about giving carbs; she may have been sitting for 3 hours and they know the insulin in her system is active for

²²⁹ Vol. II, P. 150, L. 3-23

²³⁰ Vol. II, P. 151, L. 1-21

²³¹ Vol. II, P. 151, L. 22-25, Vol. II, P. 152, L. 1-8

²³² Vol. II, P. 152, L. 10-25

²³³ Vol. II, P. 153, L. 1-25

3 hours and they are right on that mark. If she is stable they will say let's check again in 5 minutes and monitor until she comes up naturally, or there is still active insulin on board and its going to be active another few hours, then we should give carbs. They talk together, what are all the factors going right now, and they remind each other not to forget this, not to forget this.²³⁴

The witness said all these factors are important at school, as any mistake means the parents have to respond again. If she gets too many carbs, she will need insulin; if not enough, she will need more; if she reaches low enough, they need carbs, she is going to become cognitively incapacitated.²³⁵ Discussing how long one has to get the Student insulin when she is too high, the witness said it depends on how high she is and how rapidly she is moving; it could be 5 minutes or 30 or 40.²³⁶

Discussing how quickly the Student's blood sugar is moving, the witness said they look at trends from the Dexcom and see the number for every 5 minutes.²³⁷ Looking at page 92, the witness said those are the printout from the Student's Dexcom, the data you plug into the computer that goes into the Dexcom studio program and pulls all of the charts, all the readings for the previous month off of that device. The witness said looking at trends looks at which direction the Student is moving.²³⁸ Talking about the variability of the Student's blood sugar mapped out between the start of school and November 2nd, the witness said there are very few patterns of what happens from day to day to day.²³⁹

The witness said the Student's father packs her lunch daily because it is difficult to have her go to the school lunch and know what she is eating and the carbs in that, to know it was measured exactly, since they are not measuring things on a scale to know that she got exactly that serving size they are supposed to be dosing. Also, if she doesn't want something from that meal, if she doesn't eat it—if she receives insulin she has to eat every bite; if she is pre-dosed for it, she has to eat it, or those carbs be replaced with something else, she has to have carbs for all the insulin she receives.²⁴⁰

Even if the same lunch was packed every day, the Student is not going to have the same levels because of all the factors about which the parent talked earlier—activity level, hormones, anxiety, has she had as much to drink that day, did she sleep well the night before, what was her sugar the 30 or 40 minutes before, did she go to recess and sweat, or did she go out and sit on the sidewalk

²³⁴ Vol. II, P. 154, L. 1-25; Vol. II, P. 155, L. 1-6

²³⁵ Vol. II, P. 155, L. 7-17

²³⁶ Vol. II, P. 155, L. 18-25

²³⁷ Vol. II, P. 156, L. 2-5

²³⁸ Vol. II, P. 156, L. 6-16

²³⁹ Vol. II, P. 157, L. 1-8

²⁴⁰ Vol. II, P. 157, L. 21-25; Vol. II, P. 158, L. 1-16

talking, and all the factors cannot be controlled.²⁴¹ The Student began kindergarten with a Dexcom, she did not come in with a pump.²⁴² The witness said she did not believe the Student would be able to attend school without a Dexcom since she drops and rises so quickly that by the time she becomes symptomatic they would not be able to respond to keep her in range where she would be able to focus.²⁴³

Looking at the doctor's orders during kindergarten from Arkansas Children's Hospital, the witness said hyperglycemia is where blood sugar goes above 200 or 240, and if the Student is close to the 70 she needs fast sugars so it hits the system quickly, between 7-10 minutes to normally start stabilizing racing blood sugars, whereas a snack, if she is higher or moving slower, will take 20-40 minutes for that food to metabolize and begin raising the blood sugar level. A brownie is not so healthy, but its something filling that is helping and keeping the Student stable for a longer period of time versus just giving her sugar because she has to have her sugar raised. If its an urgent situation, there are Glucose tabs, she can also treat with Smarties and Sweet Tarts, they have straight sugar packets at school, Pixie sticks, all of those are fast sugars.²⁴⁴ The witness said the Dexcom is set to alarm at 75, that it rarely goes off at school because the nurses intervene before she reaches the critical point of 75.²⁴⁵

The witness said when they look at charts of the amount of times the nurse has to go in and give the Student snacks or fast sugars, those are all an indicator of if she has not been given that snack, that 75 alarm on the receiver would probably have gone off; she would have continued to drop, and at that point she is not able to function cognitively to her best.²⁴⁶ As to high blood sugar, the witness said it alarms in the nurse's office and on the parents' phones, the first alarm is 200.²⁴⁷

The witness said the receiver the Student carries in her purse will first vibrate, and if the Student does not silence that, five minutes later it will go dah, dah, dah, dah, dah, that anyone around can hear, so they have turned off the high alarm so it is not disrupting as frequently in class, as that's not as urgent to get there in 2-3 minutes, that it can be 5-10 minutes to respond with insulin. They do

²⁴¹ Vol. II, P. 158, L. 17-25; Vol. II, P. 159, L. 1-8

²⁴² Vol. II, P. 160, L. 1-4

²⁴³ Vol. II, P. 160, L. 5-14

²⁴⁴ Vol. I, P. 160, L. 21-25; Vol. II, P. 161, L. 1-25
Vol. II, P. 162, L. 1-10

²⁴⁵ Vol. II, P. 162, L. 14-22

²⁴⁶ Vol. II, P. 162, L. 24-25; Vol. II, P. 163, L. 1-5

²⁴⁷ Vol. II, P. 163, L. 6-14

not have the 100 on her body, as it would constantly go of in class.²⁴⁸ When the Student is going low, at the 100 point is generally when they start treating to prevent the hypoglycemia from occurring (so at 70 there are already there, actually they are there at 75).²⁴⁹

When asked if she had looked at the amount of time the nurse had to intervene with the Student last year, on average, during the school day, the witness said the Student had an average of 7 entries per day, and that included some of the entries that are not there, such as her drop-off in the morning time that she goes in to check her equipment, and then when she comes back after lunch to ensure lunch was completely eaten. Those, on a typical day, were not included, so she had an average of 5 in the logs plus those two a day not noted but are a part of her regular routine.²⁵⁰

For this year, discussing her charting of how many interventions the Student was having during this school year, the witness said close to 10.5 interventions per day are noted, and, again, most days that did not count the morning drop-off or coming back from lunch. For this year they added that she comes to the nurse in between recess and lunch, so there were an average of 7 to 7 ½ per day listed, and then the three that are not listed that are part of the regular routine for the Student.²⁵¹ The witness testified that stress and anxiety as well as when the Student is ill, can cause her blood sugar to go up or down, depending on how her body responds.²⁵²

The witness said when the Student started kindergarten the witness was anxious, since she and her husband, primarily she, had been the Student's main care providers, so she stayed on campus for the first two days, gave a shot the first day and told the Student Nurse Melissa would do it the next day; she walked through some of the situations, when she saw something alarming on the screen, she could go in and talk to Melissa as to what she was seeing, what probably is needed, what probably would happen, just sort of training the nurse a bit. The witness said she stayed on campus maybe a couple of hours Wednesday.

The witness said in kindergarten it took a couple of weeks maybe to sort of get the Student's body regulated to the new schedule, activity, how that affects it, when she is going to eat, which was a different time. Every few days they were giving her fast sugars at this time of day, saying in 30 minutes they would give her a snack instead, and in the 3rd or 4th week of school they got into a routine—here is what she probably needs to keep her in line, and she did great with coming in and responding and following her and tracking her.²⁵³

²⁴⁸ Vol. II, P. 163, L. 15-25; Vol. II, P. 164, L. 1-6

²⁴⁹ Vol. II, P. 164, L. 7-17

²⁵⁰ Vol. II, P. 164, L. 18-25; Vol. II, P. 165, L. 1-9

²⁵¹ Vol. II, P. 165, L. 10-23

²⁵² Vol. II, P. 168, L. 1-25; Vol. II, P. 169, L. 1-2

²⁵³ Vol. II, P. 169, L. 3-14

At the end of kindergarten, the witness said her only concern was the Student's social issue; nearly every day she would have a playground issue and tell her mother about it, like someone not playing with her, someone hurting her feelings, someone saying they did not like her because she got snacks and they didn't. This was at least once a week. However, the witness did not address that with anyone at school during the Student's kindergarten year.²⁵⁴

For this school year, the parent said she addressed that issue on the first day of school, telling Ms. Herbner, the second through fifth grade counselor, about the Student having a lot of issues on the playground, being left out, coming home crying, and asked what she would need to do to get the Student some counseling sessions through the school. However, she was told that was only for students having trouble academically, but she could get me a list of private practice counselors we could look into seeing, and she did give the witness that list that day or the next.²⁵⁵

The witness said the only time special ed services were mentioned to her was at, she thought, the second 504 meeting when they actually talked about accommodations for the Student. When they started that meeting, the mother was told she had the option of a 504 plan or special ed plan if the witness felt the Student was struggling academically. The witness said since the Student was already reading, already doing first grade work before kindergarten, so did not see the need for academic help.²⁵⁶

The witness said this year the Student is starting to come home with homework or practice sheets she does not know how to do, she is coming home with class work she says she missed when in the nurse's office, and that is a problem because the Student does not want to do it. The Student says she missed it, the teacher said she didn't have to do it, then the Student does not understand it. The parent said there was one worksheet in particular the parents could not even make sense of, that maybe it was written wrong, and the teacher said the same thing, that some of those are a little bit off.²⁵⁷

The witness said she made a very conservative estimate based on the log sheets of how much instructional time the Student is missing. Looking at page 88, the witness said it the graph starts at 9-26, the day of the due process filing. She had only log sheets for just a few days prior to that because they were not being sent to her daily. Before that, the parent uploaded the Student's log information electronically through the Dexcom program.²⁵⁸ The witness said they were supposed to send her log sheets daily, the log sheets being very important because you cannot trust a 6-year-old to tell you what she has eaten, how many carbs it was, and when she received that, and that is

²⁵⁴ Vol. II, P. 169, L. 15-25; Vol. II, P. 170, L. 1-6, L. 21-23

²⁵⁵ Vol. II, P. 170, L. 24-25; Vol. II, P. 171, L. 1-16

²⁵⁶ Vol. II, P. 171, L. 17-25; Vol. II, P. 172, L. 1-6

²⁵⁷ Vol. II, P. 172, L. 7-25

²⁵⁸ Vol. II, P. 173, L. 1-16

on the nurse's logs.²⁵⁹ The witness said she did not need to see that, if the nurse told her verbally, but she needs that critical information to know if insulin is needed or if she is going to need a snack.²⁶⁰

The witness said this graph shows about at least a month of school, maybe a little more. This chart shows a very conservative estimate of the times the Student was out of class on those days. They know the Student, per her schedule, comes in each morning to have her equipment checked to be sure it is working, she goes to the nurse's office daily for a finger stick and to receive insulin; the witness said she was told multiple times by the nurse it takes about 10 minutes by the time she gets down there, gets her hands washed, gets her test done, and then Melissa calculates the insulin to be given. Then she comes back to the nurse's office after recess to get her lunch, which is new this year, and the nurse is concerned about the Student taking it with her because she is not the first class in the cafeteria, and if another child came in and began eating her lunch, they would not know how much was eaten to be replaced. Then she comes back after lunch to ensure lunch was eaten. So, with the exception of the insulin before lunch, we have those other three times that are not in the logs generally. That was a minimum of 15 minutes a day not in the log. So, several days, it just says 15. On page 90, that is how the witness figured the time, a minimum of 15 daily.²⁶¹ The witness said since they started this process the Student now receives snacks in the classroom; the nurse goes in, gives her a bite of brownie or muffin, the Student chews it, then she can refocus on class again instead of being pulled out.²⁶²

As far as before the due process was filed, the witness said as far as snacks it depended on what was going on in the nurse's office; if the nurse was available, she would take the snack to the Student in the classroom, but if the nurse had other students in her office, the Student would have to be called to the office for her snack.²⁶³ Prior to the due process complaint, the witness said the district did not have anyone trained to give Glucagon shots, which is to treat hypoglycemia a severe low when the Student has become unresponsive or combative. Because they are in almost an intoxicated state, a lot of people in that situation will refuse to eat anything.²⁶⁴

The witness said she had been asking for the Glucagon injection training for volunteers since the August 504 meeting in 2015, so for more than a year, but to her knowledge that had not been done before the due process filing. By the end of August, 2015, the librarian, two kindergarten teachers

²⁵⁹ Vol. II, P. 173, L. 17-25; Vol. II, P. 174, L. 1

²⁶⁰ Vol. II, P. 174, L. 2-24

²⁶¹ Vol. II, P. 174, L. 25; Vol. II, P. 175, L. 3-25
Vol. II, P. 176, L. 1-9

²⁶² Vol. II, P. 176, L. 11-16

²⁶³ Vol. II, P., 176, L. 17-25; Vol. II, P. 177, L. 1-2

²⁶⁴ Vol. II, P. 177, L. 3-18

and at least one second grade teacher had volunteered, but were never trained.²⁶⁵ Neither was the Student's bus driver trained. The witness said between her and the nurse they ensure the Student's sugar is at what they feel is safe before the Student gets on the bus; otherwise, the witness parent comes to get the Student.²⁶⁶

Discussing what else had changed, the witness said before the due process filing, the Student was pulled out of the classroom any time she needed a finger stick, that either the Student would go to the nurse's office if the nurse was busy, or the nurse would go to the classroom and they would sit in the hallway to do that. The witness said once she tested the Student on campus and they had to sit on the floor to do the test because all the desks and chairs around her were being used for tutoring.²⁶⁷ The witness said at the time due process was filed, the district had stopped giving the Student insulin for a high outside of mealtime.²⁶⁸

The witness said from the meeting on 9-6-2016 she was told they needed to clarify the doctor's orders, and by 9-13-2016, the first incident after that the witness could recall the Student would have required insulin on 9-13--looking on page 122 the blood sugar was 306 at 1:00, so they pulled her out to exercise that day and have her drink water instead of giving her the correction dose, and the parents were not notified at that time that no correction dose was being given.²⁶⁹ The witness said exercise does help in the appropriate amount; if the Student is really high, it will take a lot of exercise; if she is around 200, she could generally go exercise for five minutes and it would start bringing her down.²⁷⁰

Discussing the chart on page 110 through 115, the witness said it shows the pump data, plugging in the pump to the computer and it extracts all the data from the Student's pump. The witness was not sure how far back it extracts when it extracts, but the witness started it on the day of due process.²⁷¹

The witness said page 77 through 86 is her narrative trying to document what was happening and going on with the Student's care since that first meeting, and it starts with 9-3. When she spoke to Jennifer Sellers by phone, the witness said she was told she (Ms. Sellers) had not been contacted on 9-6. The witness said Ms. Sellers actually had been contacted on her personal cell phone Friday

²⁶⁵ Vol. II, P. 177, L. 19-25; Vol. II, P. 178, L. 1-6

²⁶⁶ Vol. II, P. 178, L. 7-14

²⁶⁷ Vol. II P, 178, L. 15-25, Vol. II, P. 179, L. 1

²⁶⁸ Vol. II, P. 179, L. 2-7

²⁶⁹ Vol. II, P. 179, L. 12-25; Vol. II, P. 180, L 1-3

²⁷⁰ Vol. II, P. 180, L. 4-11

²⁷¹ Vol. II, P. 180, L. 21-25; Vol. II, P. 181, L. 1-2

9-3 regarding the Student.²⁷²

Discussing what occurred with Children's Hospital and why doctors were changed, the witness said one thing Nurse Chase had requested was for the doctor to provide explicit instructions for every scenario with the Student so the nurses did not have to make decisions, as she felt there was liability for them to make decisions for the Student.²⁷³ When asked if that is possible, in the witness' opinion, she said not to explicitly say "at this number, do this," that the best that can be offered is a chart such as they provided or the parents provided that gives a range. Even using that, it depends on other factors going on, so if we respond with our best guess at what works, we still have to be prepared to respond, which is where the Dexcom comes in.²⁷⁴

The parents were told on 9-16-2016 there would be no dosage when the Student was high, and that the pages that requested that did not state doctor's orders, so they did not have to be followed.²⁷⁵ Discussing the doctor's orders in place on 9-16-2016, the witness looked at 52 to 58 and confirmed it was her understanding all those doctor's orders were furnished to the school.²⁷⁶

The witness said Nurse Chase said they had to have a specific doctor order for everything they do for the Student, but when the witness told Children's Hospital that, they said they would not prescribe it, that she needed to work it out with the nurse.²⁷⁷ The witness said in the past she and Nurse Melissa had always worked together for the Student.²⁷⁸

The witness said when she got the orders on 9-8-2016 and called Jennifer Sellers to express concerns that, as her doctor, she was not giving an order to the school that they requested to be able to give that insulin, that was going to leave her in danger.²⁷⁹ The witness said they have been able to head off any catastrophic events with the Dexcom.²⁸⁰

Discussing the change in doctors, the witness said when she received the email saying she is not forbidding the dose, she is not prescribing it, work it out with the nurse, the witness called another doctor's office she had heard about that was progressive that was familiar with CGM-continuous

²⁷² Vol. II, P. 181, L. 19-25; Vol. II, P. 182, L. 1-5

²⁷³ Vol. II, P. 182, L. 17-25

²⁷⁴ Vol. II, P. 183, L. 1-15

²⁷⁵ Vol. II, P. 183, L. 16-23

²⁷⁶ Vol. II, P. 184, L. 8-24

²⁷⁷ Vol. II, P. 189, L. 18-23

²⁷⁸ Vol. II, P. 190, L. 2-15

²⁷⁹ Vol. II, P. 194, L. 6-14

²⁸⁰ Vol. II, P. 194, L. 24-25

glucose monitoring-- and all of the Dexcom. She told them what was going on, and they set an appointment for the next morning.²⁸¹ The witness said that doctor worked with her, and the witness suggested it saying "contact parent" so they could work together, as she did not want anything where they were cornered into giving a correction dose that might not actually be needed, because there are so many factors to consider, and that is what the doctor wrote.²⁸² The witness said she took the orders to the school and she signed consent for them to receive information.²⁸³

When asked if Dr. Nimmo's office say anything to the witness about the school's contact with them, the witness said yes, that on multiple occasions they said they were fed up, that Denise Kelley said they had told them what to do, that they had given them what they need, and Dr. Nimmo said her staff had spent far more time on this than ever on school orders. She said she was ready to pull the pump, see how they like dealing with shots, pull the CGM and see how they like dealing with the Student going low all the time and having to intervene when the Student is actually incapacitated. The doctor said if it doesn't stop she might not be able to see the Student as a patient.²⁸⁴

The witness said at that point they had been sent two proposed consolidated orders from Nurse Chase, but the witness had not been in on the collaborative process, and there were multiple omissions from the previous doctor's orders. The witness said on September 22nd, 2016, is the first time she saw those, and while she agreed seven pages of orders condensed down would be easier for everyone, she omitted several things in the original orders. The witness said she pointed out those omissions and several things they had talked about with Ms. Chase and Nurse Melissa that they would need an order for, like parties, using the reverse correction factor in the pump, an order to use the insulin on board factor in the pump, different things like that needed to be included in the orders that she did not put in. Ultimately, the Student has not received a correction by the nursing staff at school in over 2 months except for mealtime.²⁸⁵ The witness said that as a result, she had to go check out the Student on multiple occasions because she was high or she would go to the school and deliver the bolus and leave her at school if she wasn't too high. The witness is about 15 minutes from the school.²⁸⁶

The witness said in looking at her charts, the nursing logs and other things pulled out for her, she

²⁸¹ Vol. II, P. 195, L. 1-13

²⁸² Vol. II, P. 195, L. 15-25; Vol. II, P. 196, L. 1-5

²⁸³ Vol. II, P. 196, L. 6-12

²⁸⁴ Vol. II, P. 196, L. 22-25; Vol. II, P. 197, L. 1-25
Vol. II, P. 198, L. 1-3

²⁸⁵ Vol. II, P. 198, L. 12-25; Vol. II, P. 199, L. 1-22

²⁸⁶ Vol. II, P. 200, L. 9-19

discovered numerous substantial mistakes.²⁸⁷ The witness explained how she calculated last school year, and it averaged 7 per day, just under one hour daily she is not at school.²⁸⁸ The witness said for kindergarten the Student missed 15 ½ days, the majority being related to her diabetes.²⁸⁹ The witness said absences due to being sick related to diabetes were marked un-excused because there was no documentation for it.²⁹⁰

Looking at her data, the witness said the Student was present for 54 out of 55 days this school year, went home 2.5 hours early 11 or 12 days, maybe, and that there were 466 nursing actions for diabetes-related issues over 46.5 days for an average of 10 per day, or 1.35 actions per hour, which she calculated per hour based on the time the Student was there.²⁹¹

Looking at the charts on 141A and B, the witness said A looks at the 36 days through 11-2, once the got the existing doctor's orders, and there were 12 days out of 36 when she did not receive the log sheets that afternoon so the witness said she did not have the information needed, 25 instances in the box the Student did not get the correct snack intervention or was given extra food, and several days they either gave a 6 instead of a 10 or gave the 10 instead of the 6. The witness said this could cause need for another intervention.²⁹²

The witness said she actually went to the Glucagon training on 10-4(16), and the nurse wanted her to sign a permission which the witness was not willing to sign, which she thought said something to the effect that neither party was required to enter into the agreement, which the witness thought meant she could sign but the district could then say they were not required to do something, so training would be a moot point.²⁹³ The witness said that form was brought back the day of the resolution conference, and they (the district) suggested it be changed to state it was entered into voluntarily. Then the witness said she signed it when the revision was made.²⁹⁴

The witness said there were 4 instances of incorrect insulin boluses for lunch delivered or not delivered at all, that on 9-13(16) there were communication issues between Nurse Melissa and the witness, since the decision was made the nurse's personal cell phone could no longer be used to contact parents and all communication had to be via email concerning the Student's care. The witness said she understood they wanted documentation of everything, but sometimes an email

²⁸⁷ Vol. II, P. 200, L. 20-25; Vol. II, P. 201, L. 1-3

²⁸⁸ Vol. II, P. 201, L. 4-18

²⁸⁹ Vol. II, P. 201, L. 19-23

²⁹⁰ Vol. II, P. 203, L. 12-18

²⁹¹ Vol. II, P. 203, L. 19-22; Vol. II, P. 205, L. 13-22

²⁹² Vol. II, P. 206, L. 2-22

²⁹³ Vol. II, P. 207, L. 14-25; Vol. II, P. 208, L. 1-12

²⁹⁴ Vol. II, P. 208, L. 21-25; Vol. II, P. 209, L. 1-6

might not be received and phone contact is more timely.²⁹⁵

The witness said a list of what is in the Student's lunch is sent with exact carb count.²⁹⁶ The witness said there was one occasion where no insulin was given at all, and the Student had another severe hypoglycemic event, which the witness did not realize until she went through the pump logs.²⁹⁷

The witness said they pre-load insulin into the pod attached to the Student's body, and it has to be delivered from the device telling how much insulin to receive, you have to actually hold the device in your hand to tell the machine to give the insulin and confirm the dosages.²⁹⁸

The witness said this year (2016) the Student has been far more anxious about school, wanting to stay home multiple days this year, crying about kids on the playground, crying more, crying at the drop of a hat over little, stupid things and constantly has outbursts. She is afraid at night, wants the parents to stay with her at night, leaves lights on, gets up multiple times in the night with nightmares.²⁹⁹

The witness said she talked to the school about counseling, and the school has begun counseling with the kindergarten and first grade counselor for the Student, the witness thought 2 days a week, as needed, or 2 days a month, as needed, after the due process filing, sometime in mid-October, after the resolution conference.³⁰⁰ The witness said she saw a counselor's log or notes, and it had 2 dates on it with the only notes was one day saying "playground observation," and the witness said it is probably too soon to expect results.³⁰¹ The witness said she has sought out individual counseling for the Student because in addition to the social issues there is a lot with the Student's diabetes, and possibly family counseling is needed also as opposed to just the Student getting individual counseling at school and the parents not really being involved in that process.³⁰² The witness said she has tried to work with Nurse Chase in getting the district exactly what they want from the doctor from the point the witness was allowed to be involved in the process.³⁰³

The witness said there was not a meeting held to develop a health care plan to which she was

²⁹⁵ Vol. II, P. 210, L. 8-25; Vol. II, P. 211, L. 1-25

²⁹⁶ Vol. II, P. 213, L. 8-18

²⁹⁷ Vol. II, P. 213, L. 19-25; Vol. II, P. 214, L. 1-2

²⁹⁸ Vol. II, P. 214, L. 20-24; Vol. II, P. 215, L. 1-14

²⁹⁹ Vol. II, P. 216, L. 1-21

³⁰⁰ Vol. II, P. 217, L. 20-25; Vol. II, P. 218, L. 1-10

³⁰¹ Vol. II, P. 218, L. 11-21; Vol. II, P. 219, L. 1-6

³⁰² Vol. II, P. 219, L. 13-25, Vol. II, P. 220, L. 1-4

³⁰³ Vol. II, P. 222, L. 9-13

invited, and did not recall if she has signed this year's plan or not since there have been multiple revisions. She said the health care plan she received in mid-September (2016) has not been updated with the new doctor's orders, it had not been updated with the field trip the nurse was to attend (that the witness was told twice in official documentation had been added). The witness said one has been updated some, as it says the Student will be a car rider if her blood sugar is not 100, which was one of the changes made this year (2016). Looking at page 91, as to a health care plan in the absence of the nurse, the witness said she was told Nurse Chase prepared that and that the witness was told it was the plan in place but the document shows it was sent 9-23-16, the same day it was sent to the witness. The witness said, looking at page 91, it says it was developed without input from the parents or the school nurse.³⁰⁴

The witness said she is asking that the Student be declared eligible to receive special ed services, specifically an aid to either be with the Student or assigned to the health care office to be available any time the nurse has other things going on and the Student has to be pulled out of class or rushed through what is needed, potentially making mistakes that we are now seeing in order to get the Student back to class.³⁰⁵ The witness said the Student needs social skills training to deal with playground issues, like how to step in to play already in place when she's there 10 minutes later because of having been in the nurse's office.³⁰⁶

As far as impact on the Student in the classroom, the witness said there are a lot of disruptions; either she is out of class, missing a chunk of time and comes back and has to figure out what they are doing, what is going on, she may miss class work, may miss the story, may miss the questions that come at the end of the story, a lot of times they have upper level thinking questions at the end of the story to push those higher level students progress on their own instead of being stagnant, the Student may miss a lot of that, as every day she missed at the end of story time to go to the nurse's office for a lunch check.³⁰⁷ The witness said the school offered to do RTI time with the Student and pull her out of special classes if she misunderstands something or misses an activity, but then the Student missed the activity to go to the nurse's office, then they are going to pull her out of another activity from the class to make up for the time she missed before, so it is a cycle, and they want someone with her to assist her.³⁰⁸

Further discussing why she wanted an aide for the Student, the witness said the goal is to keep the Student in the classroom as much as possible, and if the nurse has other things going on the Student has to go to the office, or go to the office for lunch because she has to be in the office to dispense meds, no one else is authorized to do that, it has to be by a nurse. If she has to finish her lunch

³⁰⁴ Vol. II, P. 222, L. 14-25; Vol. II, P. 223, L. 1-5
Vol. II, P. 224, L. 3-21

³⁰⁵ Vol. II, P. 228, L. 21-23, Vol. II, P. 229, L. 1-9

³⁰⁶ Vol. II, P. 229, L. 16-25; Vol. II, P. 230, L. 1-11

³⁰⁷ Vol. II, P. 230, L. 12-25; Vol. II, P. 231, L. 1-2

³⁰⁸ Vol. II, P. 232, L. 8-17

afterwards, she has to go to the nurse's office, as if she goes to the classroom the Student will throw the food away, being the only one eating and feeling singled out, she wants to go back to class. An aide would go with her to the classroom to eat lunch, an aide would stay with the Student in the cafeteria if she is going low or struggling instead of having to be pulled out of class. An aide would be able to ensure things happen when they are supposed to, especially at lunch time and recess and when the nurse's office seems to have the most going on, and an aide could watch the computer monitor for fluctuations. An aide would help maximize time with peers and stay in class.³⁰⁹ The witness said they were starting to teach the Student at home a lot about diabetes and managing it, but the parents cannot help her with that at school, while an aide with the Student would be able to interact with the Student about numbers, exercise and help her learn in the school setting.³¹⁰

The witness said for kindergarten she declined the option of an IDEA or special ed services, but in the due process complaint she requested the Student be declared eligible for Special Ed services on September 26th (2016).³¹¹ The witness said she recalled sending a "Thank You" letter to Nurse Melissa at the end of school last year, May 25, 2016.³¹² The witness verified that there was a typo in a pre-hearing brief, that her daughter does not have autism, that her daughter has only a Type One Diabetes diagnosis.³¹³ The witness said there is no official diagnosis about anxiety or depression.³¹⁴

Talking about the doctor's orders, the witness said the school had everything they need, she told them to use the pump, and the correction factor is in the pump, it calculated and ensures the Student is not receiving too much insulin based on the factors, so it is the doctor's decision you can rely on what is in the pump.³¹⁵

Discussing whether the Student can self-care at this point, the witness said the Student cannot record her snacks. The Student reads and writes at a high level, but at his point the parents have told her not to record or write down; she can get a measured snack and say she took it, but they would not depend on the Student to do recording, that would come from the nurse's log. She does not give herself insulin at this point, but is working toward that with plugging in her numbers into the pump that calculates all these things. She is able to read the screen. She cannot give herself Glucagon because at that point you are unresponsive. She has tested independently since five days out of the

³⁰⁹ Vol. II, P. 235, L. 11-25; Vol. II, P. 236, L. 1-9
Vol. II, P. 327, L. 21-25; Vol. II, P. 327, L. 3-8

³¹⁰ Vol. II, P. 239, L. 19-25; Vol. II, P. 240, L. 1-6

³¹¹ Vol. II, P. 240, L. 13-25; Vol. II, P. 241, L. 1-13

³¹² Vol. II, P. 243, L. 20-25

³¹³ Vol. II, P. 245, L. 4-20

³¹⁴ Vol. II, P. 246, L. 6-12

³¹⁵ Vol. II, P. 247, L. 3-15

hospital.³¹⁶ The witness said the doctor's orders have stated she cannot manage her diabetes, but have not stated she could not test.³¹⁷

Discussing the parents making changes in the pump settings, the witness said they can do that, and the changes are recorded in the pump. The witness said she notifies the school when she changes the setting, last year typically she texted Nurse Melissa, and early this year she thought she gave notice via email.³¹⁸

As to keeping logs of the Student's treatment at home, the witness said every night they plus everything into Night Scout, the app they use to see the Dexcom readings, so everyone looking at the numbers knows exactly what she got. She said she told Nurse Melissa it was an open book, and Nurse Melissa still has access to be able to see that since it is the same app she prefers to use.³¹⁹ When asked if there are still things that need to be done in the nurse's office on occasion if the Student comes to school with a low blood glucose level, the witness said yes, but it does not have to be done in the nurse's office.³²⁰

The witness said she believed Lee Ann McDaniel, the assistant principal at Hill Farm Elementary, was present at each of the 504 meetings the witness had with the school personnel.³²¹

Discussing when the parents do not have doctor's notes for the Student being out, the witness said the school had never asked for parent notes, but when they discussed the Student's absences and tardies being covered, it was agreed that would come from Nurse Melissa, who could look at the Night scout to see the Student had been up dealing with a low or high, that sort of thing, to verify there was a diabetic issue. However, the witness said the school was not actually putting them down as excused on the Student's record.³²²

The witness said, as to any school action taken regarding the absences, the parents continue to receive letters every 2 or 3 weeks about receiving more than 3 absences in a semester, that are hand-

³¹⁶ Vol. II, P. 248, L. 11-25; Vol. II, P. 249, L. 1-20

³¹⁷ Vol. II, P. 249, L. 21-25; Vol. II, P. 250, L. 1

³¹⁸ Vol. II, P. 253, L. 17-22; Vol. II, P. 254, L. 5-16

³¹⁹ Vol. II, P. 254, L. 17-25; Vol. II, P. 255, P. 1-15

³²⁰ Vol. II, P. 258, L. 2-8

³²¹ Vol. III, P. 6, L. 6-15

³²² Vol. III, P. 6, L. 24-25; Vol. III, P. 7, L. 1-14

signed and have a handwritten note saying “Please send excuse notes in,” that sort of thing.³²³ Discussing the resolution meeting on October 11 (2016), the witness said counseling was offered and to her knowledge the Student is attending counseling in the school, that private mental health counseling was offered through the school district during the resolution meeting, but that they are doing that on their own.³²⁴

The witness agreed that during the most recent 504 meeting the issue of instructional support came up, but said that she sent an email to Ms. McDaniel the night, before when informed that would be discussed in addition to counseling, that the parent was not prepared to discuss that at that time since it was her understanding from the resolution conference Mr. Lasiter would be taking the issue of an instructional aide, the health care aide requested back to his superiors to address those instructional issues.³²⁵ The witness said she requested the health care aide during the resolution meeting, and that it was in their original request, but that she kind of got railroaded into a discussion she was not prepared to do.

The witness said Mr. Campbell is the Student’s first grade teacher, and agreed that Ms. Campbell also offered additional instructional support if needed for the Student.³²⁶ The witness agreed it was part of a teacher’s job to provide additional academic assistance to students, regardless of whether there is a health condition. The witness said her concern was that the teacher’s remedy was to pull the Student out of music, art, PE, those type of classes, and part of that 20 minutes that’s designated RTI time, which she understand the Student is not, they go to specials for like an hour, and only 40 of that is actually designated for that. But if the rest of the class is going to music and the Student gets pulled out to be tutored in something else she missed because of her diabetes, she has another time she is removed from her pers and class because of diabetes, which is what the parents want to avoid, so that was not an acceptable solution to them.³²⁷

When asked about how the Student would get additional instructional support with an aide, the witness said the aide would be with the Student, so could tutor her in the class during class time when they are doing class work. When the Student is going to miss that class work, the aid could say “Here is what we are doing, here is what we are working on” and it could be covered then, while they are doing class work, their center time, things like that, as opposed to removing the Student from another group activity, which is what has been offered.³²⁸ The witness said the Student is at or above grade level in math and reading, that she came in ahead of grade level in kindergarten

³²³ Vol. III, P. 7, L. 15-25; Vol. III, P. 8, L. 1

³²⁴ Vol. III, P. 8, L. 8-20

³²⁵ Vol. III, P. 8, L. 21-25; Vol. III, P. 9, L. 1-9

³²⁶ Vol. III, P. 14, L. 3-7

³²⁷ Vol. III, P. 14, L. 8-24

³²⁸ Vol. III, P. 14, L. 25; Vol. III, P. 15, L. 1-13

in Ms. Richards' class.³²⁹ The witness agreed the only academic concerns she ever went to Ms. Richards about was the legibility of the Student's writing.³³⁰

The witness agreed Ms. Campbell is the Student's first grade teacher, and that she had never come to the parents with any concerns about the Student's academics, nor had the parents gone to Ms. Campbell with any concerns about the Student's academic performance prior to filing the Due Process Complaint.³³¹ The witness agreed she signed the Student's fall 2015 document for the parent conference had with Ms. Richards. The witness agreed she signed the card of the Student's spring 2016 parent/teacher conference.³³²

When asked which is to be followed, the doctor's orders or the intervention chart (Vol. III, P. 19, L. 161-17), the witness said at the top of the chart the specific snacks for morning and afternoon are measured snacks based on blood sugar reading to support an activity coming, which is why it is in the doctor's orders, and if the Student does not receive that, she cannot participate in the activity because her blood sugar won't be high enough. Discussing the chart, the witness said is blood sugar is 86 with a straight arrow down, there is a specific action to be followed when you move your fingers to that based on what is happening that has to be responded to, something that is happening with the Student's body that is not based on activity to come.³³³

The witness again agreed that sometimes even at home mistakes have been made as to the Student's diabetes care, involving both snacks and insulin, and said that is part of the reason they have the Dexcom, to see and respond to what has happened. The witness said due to the volatility of diabetes, sometimes what works one day will not work the next, and that since Nurse Melissa has been instructed by Nurse Chase that the Student's blood sugar is only to be checked the three required times daily as required by the doctor and to respond to alarms, there are places in their intervention chart that an alarm is not going to sound for, that different things are happening that if the nurse is not watching periodically the Student's screen, they are going to miss things and not be able to intervene as much as needed.³³⁴

When asked if she thought it should be completely up to the nurse when, what doses of insulin and at what times insulin should be given, the witness said the doctor's orders state on all of the correction periods to call the parent to confirm the dosage, and the witness said it should not be her having to monitor the Student to determine when something is needed and call and request it even though she is working, that it should be the nurse calling the parent, which per the doctor is the way

³²⁹ Vol. III, P. 15, L. 14-23

³³⁰ Vol. III, P. 15, L. 24-25; Vol. III, P. 16, L. 1-3

³³¹ Vol. III, P. 16, L. 4-14

³³² Vol. III, P. 16, L. 21-15; Vol. III, P. 17, L. 1-13

³³³ Vol. III, P. 21, L. 2-18

³³⁴ Vol. III, P. 21, L. 19-25; Vol. III, P. 22, L. 1-18

it is to work.³³⁵ Discussing her calling to request the correction insulin, the witness said correction time was, per Children's Hospital, between the parent and the nurse.³³⁶ The witness said sugar surfing is different from following rigid doctor's orders, and they have rigid doctor's orders for the Student's care at home.³³⁷

Looking at the Student's report card for this year, the witness agreed she was concerned about the 7 days of absences during the first nine weeks of school, which were diabetes related. Vol. III, P. 41, L. 7-16 She said the truancy policy says un-excused absences are an issue, that it's 7, and they (the parents) have also received publication from the school stating that two absences per month, whether excused or un-excused, would have an adverse effect on ability to learn and succeed, and that she agrees with that.³³⁸

The witness said the chart used for the Student in kindergarten was similar to the one for this year, but it was not as aggressive because the Student responded quicker to carbs, that her body is changing and she is not responding as well when she is lower now. The witness said the Student is getting less insulin this year, which is surprising.³³⁹

When discussing whether or not the doctor's orders currently in place say the Student can self-test, the witness said the current ones do not state the Student can self-test.³⁴⁰ However, the witness said it does not mean the Student is not able to self-test, she just is not allowed to do it at school, that the orders are for school. The witness said the Student does self-test at home, and she self-tests at school with the nurse there, that it is something that someone should oversee, but that it is important to build the Student's independence.³⁴¹

SHERRY RICHARDS

Sherry Richards works for Hill Farm School, and was the Student's kindergarten teacher for the 2015-2016 school year. Ms. Richards testified the Student was a good student.³⁴² Looking at the Student's report card for the entire 2015-2016 school year, the witness said it does not show any

³³⁵ Vol. III, P. 27, L. 17-25; Vol. III, P. 28, L. 1-9

³³⁶ Vol. III, P. 28, L. 12-24

³³⁷ Vol. III, P. 31, L. 22-25; Vol. III, P. 32, L. 1

³³⁸ Vol. III, P. 42, L. 1-15

³³⁹ Vol. III, P. 44, L. 22-25; Vol. III, P. 45, L. 1-11

³⁴⁰ Vol. III, P. 50, L. 17-22

³⁴¹ Vol. III, P. 51, L. 3-20

³⁴² Vol. III, P. 67, L. 1-16

academic issues the Student had in kindergarten.³⁴³ The witness testified that in Benchmark testing, the Student did well and improved over the school year.³⁴⁴

Looking at Exhibit 17, the Student's parent/teacher conference form from the fall of 2015, under "Child's Strengths," the witness had entered "(The Student) is a super student. She has mastered all skills with ease. She loves to learn new things, and I'm enjoying pushing her. She is fun to have in class." The witness said there was no areas of concern listed.³⁴⁵

Looking at Exhibit 18, the witness said it was the spring parent/teacher conference form, where she had entered "(The Student) has had a super year. She has learned all the skills easily, has been a joy to have in class. She is reading above the level required at this time of the year. I know she will do great in first grade. The witness said under "areas of concern," she had none, and had put in "Keep reading with her this summer, and have her continue to practice writing."³⁴⁶

The witness said she was aware of the Student having diabetes when she was the Student's teacher, that at times the Student had to leave the classroom for treatment, but the witness did not notice any issues with the Student having to leave class that adversely affected her educational performance, her socialization with other students, or any difficulties adapting to the kindergarten setting. The witness said she did not notice any issues with the Student's emotional development, any behavioral issues, unusual stress or anxiety, any depression or anxiety, any difficulty making friends or relating to other students, or any isolation from her peers, any regression in skills over the school year, nor did she recall the Student or the parents ever complaining about difficulty of school work.³⁴⁷

The witness said there was nothing about the Student's diabetes or care therefor that the witness noticed as adversely affecting the Student's academic performance in this witness' class.³⁴⁸

The witness said she was present around the beginning of the 2015-2016 school year when there was a conversation with the parents when they met to put something up for the WiFi, and they were meeting to talk about what was going to happen next year with the Student's DexCom and what extra services she would need for that. The witness said the parents did not believe Special Ed was necessary at that time, nor did they request Special Ed services from the witness over the course of

³⁴³ Vol. III, P. 68, L. 3-16

³⁴⁴ Vol. III, P. 69, L. 12-25; Vol. III, P. 70, L. 1-25
Vol. III, P. 71, L. 1-19

³⁴⁵ Vol. III, P. 71, L. 20-25; Vol. III, P. 72, L. 1-25

³⁴⁶ Vol. III, P. 73, L. 1-25; Vol. III, P. 74, L. 1-4

³⁴⁷ Vol. III, P. 74, L. 5-25; Vol. III, P. 75, L. 1-25
Vol. III, P. 76, L. 1

³⁴⁸ Vol. III, P. 76, L. 9-12

the kindergarten year.³⁴⁹

The witness said she remembered talking about th Glucagon, and that before school started there was a Power Point sent out to give her some information. She said she had a chart that said if the number is such an however the arrow would be on the Dexcom, what to do. She was not taught to administer insulin, was not told she could do so, was not trained to administer Glucagon, nor did she sign up to be a volunteer.³⁵⁰ When asked what she was to do if the nurse was not there and the Dexcom alarmed, the witness said she assumed there was always someone watching in the office when the nurse was out, and the only thing the witness was told was to give the Student a snack provided by the parents. The witness said she heard the alarm, a handful of times the whole year, and usually the nurse was coming in or she was in the room to give the Student whatever she needed.³⁵¹

The witness said she did not notice the Student having effects from her diabetes from not being able to do something in the classroom.³⁵² The witness said the parents never expressed to her concerning about the amount of time the Student was out of class.³⁵³ Discussing the Student's performance level before going into first grade level, the witness said at their school they want all kids on a four, grade level, but the Student was a 12, far outperforming the basic level. The witness said the Student was at 12 on her reading level and grade level on other academics.³⁵⁴

The witness did not recall the Student ever coming in crying to the witness in class after recess. The witness said she did playground duty, and never noticed when she was there once weekly the Student struggle with being able to integrate to play with someone after being late to the playground.³⁵⁵

The witness said it would be accurate to say the Student was absent a lot, as far as not only did she have daily interruptions in class for her diabetes, but also missed several days.³⁵⁶ The witness said she thought there was a time the mother talked about the playground with the witness, but the

³⁴⁹ Vol. III, P. 76, L.13-25; Vol. III, P. 77, L. 1-12

³⁵⁰ Vol. III, P. 79, L. 3-21

³⁵¹ Vol. III, P. 79, L. 22-25; Vol. III, P. 80, L. 1-25
Vol. III, P. 81, L. 1-7

³⁵² Vol. III, P. 81, L. 8-16

³⁵³ Vol. III, P. 81, L. 17-25; Vol. III, P. 82, L. 1-7

³⁵⁴ Vol. III, P. 85, L. 85, L. 4-25; Vol. III, P. 86, L. 1-21
Vol. III, P. 88, L. 4-19

³⁵⁵ Vol. III, P. 89, L. 8-24

³⁵⁶ Vol. III, P. 90, L. 17-21

witness said that is not uncommon in kindergarten, and that when a parent calls about their child having a problem in class or on the playground, the witness addresses that, but it is not cause for a red flag, something out of the ordinary.³⁵⁷

When talking about having discussed special ed services with the parents for the Student, the witness said the parents were setting up the Student's medical plan, telling them what might be expected, and the parents wanted the least restrictive environment for the Student. When discussing special ed, this witness said she was not thinking it meant a room, that setting up her 504 plan maybe it would be simpler than special ed, that special ed services were not necessary at that time.³⁵⁸ The witness said it was the Student's mother who decided at the meeting that special ed services were not necessary.³⁵⁹ The witness said there was never any discussion about the Student having a personal health care aide to help her with her diabetes and going out and in.³⁶⁰ The witness said academically, the Student has no need for special ed.³⁶¹

CHERYL CAMPBELL

The witness Cheryl Campbell is employed by the Bryant School District, working at Hill Farm Elementary, and she is the Student's first grade teacher this year.³⁶² The witness said the Student is a very good student, the witness is aware of the Student's diabetes, and is aware she occasionally has to leave class to get certain care for her diabetes.³⁶³ The witness said she has not noticed anything about the Student's time outside of class impacting her educational performance in the classroom.³⁶⁴

Looking at the Student's report card for the first 9 weeks, which ended around October 14th (2016), the witness said it covered from the beginning of school to around October 14th, and that, as far as math the Student is on grade level, proficient in her skills, that on reading, the same thing, the Student has a 20, the witness tested the Student on a level 24 in reading, that the time they tested she had to be on a 6, so she was above grade level.³⁶⁵ So, on the first 9 weeks report card the Student was

³⁵⁷ Vol. III, P. 93, L. 7-21

³⁵⁸ Vol. III, P. 94, L. 1-25

³⁵⁹ Vol. III, P. 96, L. 24-25; Vol. III, P. 97, L. 1

³⁶⁰ Vol. III, P. 95, L. 19-25

³⁶¹ Vol. III, P. 96, L. 8-10

³⁶² Vol. III, P. 97, L. 23-25; Vol. III, P. 98, L. 1-10

³⁶³ Vol. III, P. 98, L. 11-19

³⁶⁴ Vol. III, P. 98, L. 20-23

³⁶⁵ Vol. III, P. 99, L. 4-25; Vol. III, P. 100, L. 1-4

either at or above grade level in her academic subjects.³⁶⁶

Looking at Exhibit 20, the witness said the District has a computer software program, I-Ready, the test on in August, September, then roughly December or January, then again in May she thought, which is not reflected on the students' report card, does not affect report card, in-class work or anything; it is just another tool they use to have a beginning, middle and ending point for how well students perform in math and reading. This one says the Student is exactly where she needs to be, she is on level or above.³⁶⁷

Looking at Exhibit 21, the witness said it is the parent/teacher conference form with her signature at the bottom, reflective of the Student's reading level on her report card, she got a perfect score on sight word recognition, and where it shows "Comments and/or Concerns," the witness had written "(The Student) is reading above grade level and performing very well at this time. She is a smart girl and catches on quickly. We will continue to work on expression when reading and slowing down some when reading orally along with comprehension."³⁶⁸

Looking at the Benchmark administered September 16th, the witness said the Student could name 82 letters in a minute, and since the cutoff is low 30's for that, the Student was well above that. The cutoff for phoneme segmentation is also low 30's, and the Student was 52, so she is where she needs to be on both those benchmarks.³⁶⁹

The witness said she had not noticed any issues with the Student's socialization skills, either with the teacher/witness or other students, she had not noticed any issues with the Student adapting to the first grade as opposed to kindergarten, nor any behavioral issues, unusual stress or anxiety, depression, difficulty making friends or relating to other students, or any isolation the Student has from her peers.³⁷⁰

The witness said she has not noticed any regression in the Student's academic skills through this first nine weeks of school, the Student had not ever complained about difficulty in her school work and she is able to do the academic tasks the teacher/witness asked her to do.³⁷¹ The witness said the Student's parents had never brought any concerns they had about difficulty of school work to the witness, and the witness had not noticed any adverse effects of the Student's diabetes on her

³⁶⁶ Vol. III, P. 100, L. 15-19

³⁶⁷ Vol. III, P. 100, L. 20-25; Vol. III, P. 101, L. 1-16

³⁶⁸ Vol. III, P. 101, L. 17-25; Vol. III, P. 102, L. 1-16
Vol. III, P. 103, L. 17-25; Vol. III, P. 104, L. 1-5

³⁶⁹ Vol. III, P. 104, L. 17-25; Vol. III, P. 105, L. 1-11

³⁷⁰ Vol. III, P. 106, L. 1-25; Vol. III, P. 107, L. 1-2

³⁷¹ Vol. III, P. 107, L. 3-14

academic performance in class.³⁷²

The witness said if she did become aware of academic issues, she could help, since they have a time set aside in the afternoon for the first 20 minutes of their pull-out, and while other children are in their pull-out, they are working in the I-Ready program. She said she has a small group that she pulls right now, but she can move the kids around, and if she sees a concern she can pull them and work with them at that time. She could also pull the Student if she had a problem.³⁷³ The witness said the Student's parents had never requested or brought up the issue of special education services from her prior to the time they filed their Due Process Complaint.³⁷⁴ This witness testified that at the resolution conference she offered to pull the Student out of class if the witness saw a problem.³⁷⁵

The witness said she had not had a student with diabetes before this Student, and that she knew ahead of time she would be having this Student.³⁷⁶ As far as how many times a day this year the nurse was coming in or the Student was going out of the classroom daily on average, counting everything, lunch, snacks, going in and coming out and before getting on the bus, this witness said in her mind she would say like six or seven, that ten seemed high, but she guessed it depended on the day.³⁷⁷

When asked how often the alarm went off the classroom and what she is supposed to do, the witness said occasionally, and that if she does not hear it the Student will come and tell the witness and they will look at the number, and by the time she is looking at it, Melissa (the nurse) is coming in the door.³⁷⁸ As far as any intervention training, the witness said she went to training where Melissa (the nurse) did a training at the beginning of the year with the finger stick, and that if the alarm goes off and Melissa is not there, she calls Melissa, and if she cannot get hold of Melissa, she calls Brenda in the office, but she has not had to call Brenda.³⁷⁹

The witness said she is not trained to provide Glucagon. She also said she had not seen any effects of diabetes to the extent the Student becomes lethargic or like an intoxicated person, but there was one day the Student was acting a little bit off when she was doing the calendar that day, so the

³⁷² Vol. III, P. 107, L. 15-21

³⁷³ Vol. III, P. 107, L. 22-25; Vol. III, P. 108, L. 1-17

³⁷⁴ Vol. III, P. 108, L. 22-25; Vol. III, P. 109, L. 1-5

³⁷⁵ Vol. III, P. 109, L. 15-25; Vol. III, P. 110, L. 1

³⁷⁶ Vol. III, P. 110, L. 6-19

³⁷⁷ Vol. III, P. 111, L. 17-25; Vol. III, P. 112, L. 1-13

³⁷⁸ Vol. III, P. 112, 18-25; Vol. III, P. 113, L. 1-5

³⁷⁹ Vol. III, P. 113, L. 6-24

witness called Melissa (the nurse) to come into the classroom.³⁸⁰

The witness said she is trained at least in some regard to look for those type things, that if she says something and the Student looks at her like she does not understand, the witness repeated it, as normally the Student catches on very quickly, so the witness knows something is off. The witness also looks at the Student's color; if she is complaining a lot, her head hurting, her stomach hurting, needing to go to the bathroom, the witness looks at her Student's number and if it is not where it should be then Melissa is called if she is not already coming through the door.³⁸¹

When asked if the parents ever alerted the witness to maybe the Student having a rough night when she comes in, the witness said yes, and if mom says the Student may be in a foul mood today, the witness is on the lookout. The witness also said she looks for the Student being irritable.³⁸²

The witness said there was discussion about social problems on the playground at the resolution conference.³⁸³ The witness said counseling services were discussed for anxiety the witness thought the Student was having at home, and maybe that the Student thought at recess she was having some issues, but nothing the witness had noticed.³⁸⁴ The witness said it was her understanding the anxiety at home was over homework.³⁸⁵

The witness said the Student had an "I" for inconsistent on her handwriting, that it is throughout the day when they are doing writing. The witness said she did not think it was because the Student tried to hurry and get work done from maybe being out of class, the witness thought sometimes the Student is just not in a hurry because she has been gone, but just in a hurry to get it down on the paper.³⁸⁶

The witness said it is true that the parents want a personal health care aide for the Student, and that to her knowledge the District did not agree to provide that.³⁸⁷

The witness testified that to her knowledge the Student's days missed as shown on her report card

³⁸⁰ Vol. III, P. 114, L. 3-19

³⁸¹ Vol. III, P. 114, L. 20-25; Vol. III, P. 115, L. 1-15

³⁸² Vol. III, P. 115, L. 16-25; Vol. III, P. 16, L. 1-6

³⁸³ Vol. III, P. 116, L. 22-25; Vol. III, P. 117, L. 1-2

³⁸⁴ Vol. III, P. 117, L. 3-19

³⁸⁵ Vol. III, P. 117, L. 20-23

³⁸⁶ Vol. III, P. 118, L. 23-25; Vol. III, P. 119, L. 1-14

³⁸⁷ Vol. III, P. 121, L. 10-19

on District's 19, were related to the Student's diabetes.³⁸⁸ When asked when, in her opinion, absences start interfering with a child's learning, the witness said she did not think there is a certain number, that it depends totally on the child.³⁸⁹

The witness said to her knowledge the Student has received counseling, that Mr. Watkins comes in the morning, maybe once a week, pulls the Student for a short time when they are doing their lunch count and reading basket and bathroom and all that, approximately between 8 and 8:30 in the morning, and the Student is out maybe 10, 15, 20 minutes. Vol. III, P. 132, L. 5-25

The witness said sometimes the counselor, Mr. Watkins, is on the playground when she is there on recess duty, that she is always Monday, and swaps out occasionally on Wednesdays. She said Mr. Watkins has asked if the witness noticed anything in the classroom as far as socialization or anxiety, and she told him "No." Vol. III, P. 133, L. 8-24

NATHAN WATKINS

The witness Nathan Watkins is employed by the Bryant School District, assigned to three schools: Hill Farm Elementary, Hurricane Creek Elementary and Robert L. Davis Elementary. Vol. III, P. 139, L. 19-25 The witness said at present he is completing the process for license in counseling, he is in his last semester at UCA, has practiced his practice exam, and the only thing left is turning in assignments, graduation is December 10, 2016. He went through the non-tradition program with the state, taught kindergarten for 3 years and second grade for 2 years. He is on an approved conditional licensure plan for the Department of Education.³⁹⁰

He holds a current standard teaching license for elementary, and a provisional license for school counseling. When he gets his degree on which he is working at UCA, he will have a school counseling Masters degree for K-12.³⁹¹

When he is a licensed counselor, he will just have his license, like he does his teaching license, as opposed to a licensed counselor licensed who can go out and do independent counseling, he would not be able to do that. In the school setting, as a licensed counselor, he could not give the Student a diagnosis.³⁹²

The witness knows the Student as part of being a counselor at Hill Farm. He has met with her in his

³⁸⁸ Vol. III, P. 121, L. 20-24; Vol. III, P. 122, L. 1-10

³⁸⁹ Vol. III, P. 122, L. 20-24; Vol. III, P. 123, L. 6-7

³⁹⁰ Vol. III, P. 140, L. 3-14

³⁹¹ Vol. III, P. 145, L. 10-25; Vol. III, P. 146, L. 1-2

³⁹² Vol. III, P. 1489, L. 2-18

counseling office, then at classes when he does in to do a counseling session.³⁹³ So far, he has had about 3 interactions with the Student, since around mid-October of this year. After the meeting for the 504 plan with the Student's mother and other members, the witness began seeing the Student the next week to see how she is doing and start building that relationship.³⁹⁴ It was the witness' understanding the counseling he would be providing to the Student was at the parents' request.³⁹⁵

When asked if during counseling the Student talks about friends or making friends, the witness said the Student lists a couple of girls she is playing with, Lila is one, her counsel is the other. There are a couple of other girls she mentioned she plays with. When asked if the Student expresses difficulty making or keeping friends, the witness said when he said to her that her mother said she had some anxiety coming home, that she was upset because the Student was not playing with anybody, the Student told him she had talked to that girl and they worked it out. So, the witness said he took that as she is working through it. As far as exhibiting anxiety, the witness said when she comes to his office she is very open and is talking, very friendly, talks highly of her friends, and he has not really noticed her being upset currently about any girls or friends, nor does he notice her being anxious.³⁹⁶

When asked if he ever talked with the Student about how she was doing in school, the witness said as a general rule, when they are building a relationship, he asks how school is going, how is your family, things like that, and the Student has always replied "Good" or in a positive way, but they have not discussed she is making this, this and this in the classroom, they just discuss in a general sense how school and home are going.³⁹⁷ The witness said he has seen the Student on the playground once, and there was nothing unusual as compared to other first graders.³⁹⁸

When asked if there is anything giving him any concern about the Student's academic or social well-being at school, the witness said currently, no, that she seemed to be a very happy child.³⁹⁹ When asked about a plan for going forward, the witness said according to the Student's 504 plan, he is to meet with the Student at least twice a month, and he will meet with her just to see how she is doing. If she needs further times, if she just wants to come see him, his door is always open for her, and if he is not there, since he rotates between the three schools, the Student can always go see Ms. Herbner, the other counselor.⁴⁰⁰

³⁹³ Vol. III, P. 140, L. 15-25

³⁹⁴ Vol. III, P. 141, L. 1-9

³⁹⁵ Vol. III, P. 141, L. 10-15

³⁹⁶ Vol. III, P. 141, L. 16-25; Vol. III, P. 142, L. 1-14

³⁹⁷ Vol. III, P. 142, L. 15-25; Vol. III, P. 143, L. 1-7

³⁹⁸ Vol. III, P. 143, L. 08-25; Vol. III, P. 144, L. 1-2

³⁹⁹ Vol. III, P. 144, L. 3-13

⁴⁰⁰ Vol. III, P. 144, L. 14-25; Vol. III, P. 145, L. 1

The witness said the mother was present at the meeting about the Student's 504 in October, but he had not had a one-on-one meeting with the Student's mother.⁴⁰¹

The witness said he met and collaborated with the Student's teacher, who said the Student was working fine in the classroom and had not mentioned anything about friendship, he had not talked to the nurse, and the only thing he picked up in that meeting was the Student was having problems when she came home about friendship, anxiety about not having friends on the playground; he was not told anything about her having anxiety about not getting work done at school.⁴⁰² The witness said he has an ethical responsibility to keep notes of counseling sessions, which he keeps in a folder with him since he rotates between the buildings. He said he gave the parents' attorney a print-off and sent another one to Ms. McDaniel, but did not provide those to the parents as usually those are kept confidential and with counselors unless it's a court case.⁴⁰³ Discussing doing any evaluations before counseling, the witness said they would do a needs assessment, which does not involve the parent, and is done for a first grader, but the witness said he had not done one with this Student.⁴⁰⁴

The witness said it was true he told the parent he could include the Student in some kind of social skills group but has not yet done that. He said he has two groups about friendship, one with girls that are very mean toward each other, and its about those three girls, then he has another group of kids who do not know how to make friends yet. The witness said the Student could be in that second group, but there is a little boy the Student does not get along with in that group. The witness said he knows this because the Student has mentioned that boy's name several times from the playground and the witness did not think it would work well to have the Student in the same group with that child.⁴⁰⁵

The witness said the sessions he has had with the Student so far are about 15-20 minutes each. They are usually around 8 or 8:15, after she gets out of the nurse's office, it just depends, that he did not want her to miss so much of her classroom instruction, so usually in that hour from 8 to 9, once a week usually, because it's at least twice a month. The witness said he had met with the Student each week except this week.⁴⁰⁶

The witness agreed that school counselors do not have to have the community counseling requirements for two or three years' supervision with a supervisor which would allow the witness to go out and hang his shingle in the community and be a licensed professional counselor, that he

⁴⁰¹ Vol. III, P. 149, L. 7-23

⁴⁰² Vol. III, P. 150, L. 2-21

⁴⁰³ Vol. III, P. 151, L. 7-25; Vol. III, P. 152, L. 1

⁴⁰⁴ Vol. III, P. 152, L. 9-25; Vol. III, P. 153, L. 1-5

⁴⁰⁵ Vol. III, P. 153, L. 19-25; Vol. III, P. 154, L. 1-10

⁴⁰⁶ Vol. III, P. 155, L. 2-16

is strictly limited with his degree and his school counseling license to being a school counselor.⁴⁰⁷ The witness' license is coming as a Master's degree in school counseling out of the Department of Education, and would be similar to a Master's degree in Special Ed, only this allows him to provide school counseling.⁴⁰⁸

VICKIE KINGSTON

The witness Vickie Kingston testified she is employed by Bryant Public Schools, and is their Special Education Director. She has so served 12 years as Director, 3 more as Assistant Director. She has been licensed in the area of Special Education 36 years. She holds a Bachelors degree in education, Special Education from UCA, and has a Master's degree in Special Education from UALR.⁴⁰⁹ Looking at tab 12 of the binder of school district exhibits, the witness said it was the Bryant School District Child Find Plan for last year, and identified tab 13 as the Plan for the 2016-2017 school year and agreed it makes provision for identifying children for Special Education services at the school level.⁴¹⁰

Looking at page 8 of Exhibit 13, the witness agreed this page reflects the provision she referred to about identifying children for Special Education services at the school level, and as far as implementing it, the witness said for students suspected of having a disability, their school intervention team, whether an RTI or 504 team, they are round table teams that teachers meet with to work on any concerns about children. Those teams review individual students' progress, test scores, teacher concerns to develop interventions, track progress, make referrals for additional and/or comprehensive evaluations that the teams determine to be needed.⁴¹¹ The witness said this provision is important in terms of the Student's case here, as this begins at the very first time a school perceives there to be any concern about a child, and it is ongoing until the school district feels the student is progressing at an appropriate rate. The witness said according to what she has heard over the course of this hearing, the Student is still progressing.⁴¹²

The witness testified there are a little over 9,000 students in the Bryant School District, and just a little over 1,000, or around 11%, of those receive Special Education services. The witness said there is no cap or limit on the number of students who can be referred, tested or placed in Special Education, and the decision must be made at an individual student level without regard to total numbers or percentages. When asked if the Bryant School District bases any of its decisions regarding Special Education on percentages or numbers, the witness said they only use them to plan

⁴⁰⁷ Vol. III, P. 157, L. 6-20

⁴⁰⁸ Vol. III, P. 158, L. 5-18

⁴⁰⁹ Vol. III, P. 159, L. 17-25; Vol. III, 160, L. 1-11

⁴¹⁰ Vol. III, P. 160, L. 12-25; Vol. III, P. 161, L. 1-2

⁴¹¹ Vol. III, P. 161, L. 6-20

⁴¹² Vol. III, P. 161, L. 21-25; Vol. II, P. 162, L. 1-7

staffing to meet those students' needs.⁴¹³

When asked if the Bryant School District has students with the Other Health Impairment aspect of Special Education under IDEA, the witness said yes, and a close guess would be about 180.⁴¹⁴ The witness said she believed the nurse testified to 2 students having diabetes within the Bryant School District. Vol. III, P. 163, L. 15-18 The witness said none of those 22 students with diabetes have IEP's.⁴¹⁵

When asked with regard to Other Health Impairment and how might it come about that a student with a chronic health condition might end up with an IEP, the witness said, once again, it would go back to that team at the school level feeling that additional services might be warranted, that there might be a disability there, and they would make a referral. And at that time, information would be taken from the school, the nurse, the parents, all available data would be looked at to determine if additional data is needed to make an eligibility determination.⁴¹⁶

When asked, with regard to the students with Other Health Impairment, to give examples about what kind of health impairments they have, the witness said there is a wide variety, that they have students with very severe seizure disorders, children with brain tumors, degenerative brain disorders, children with ADHD, to name a few.⁴¹⁷

The witness said presence of a chronic health condition alone is not enough to allow for an IEP, provision of Special Education services, because there are several factors listed that they must meet the test for. One would be a diagnosis of a chronic or acute health condition, they also need to show that it limits their alertness, their vitality, their ability to participate in their educational environment; they also need to establish there is an adverse effect, and then it must require the provision of Special Education and related services.⁴¹⁸

The witness said there are other students at Hill Farm Elementary who have been referred for Special Education.⁴¹⁹ As the witness said earlier, one of possibilities for having a student referred for Special Education is through a 504 team, but no Special Education referral was made by this Student's 504 team.⁴²⁰

⁴¹³ Vol. III, P. 162, L. 8-25, Vol. III, P. 163, L. 1-6

⁴¹⁴ Vol. III, P. 163, L. 7-14

⁴¹⁵ Vol. III, P. 164, L. 8-10

⁴¹⁶ Vol. III, P. 164, L. 11-22

⁴¹⁷ Vol. III, P. 164, L. 23-25; Vol. III, P. 165, L. 1-6

⁴¹⁸ Vol. III, P. 165, L. 7-20

⁴¹⁹ Vol. III, P. 165, L. 21-24

⁴²⁰ Vol. III, P. 166, L. 25; Vol. III, P. 167, L. 1-6

When asked how many Bryant School District students have a one-to-one paraprofessional or aide, as is being asked for in this case, the witness said there are 7.⁴²¹ Discussing in general terms why those students have a one-on-one paraprofessional or aide, the witness said those are students who present a clear and present danger to themselves or others and require intensive supervision. Other students' needs in this district are met by classroom or building level paraprofessionals.⁴²²

When asked if this witness, hearing testimony over the course of this proceeding and looking at the records pertaining to this Student, has evidence to support a determination as to whether the Student is eligible under the IDEA as a child with Other Health Impairment, the witness said that decision is never meant to be answered by one person alone, that it should be answered by a team, but at this time the witness said she did not see any evidence before her that would automatically make the Student eligible.⁴²³

When asked who is the decision for, if the process were followed through the school district, the witness said initially the referral conference team would make the decision to move forward, then the evaluation team, after all evaluations are completed, would make the decision.⁴²⁴ The witness said it is not only a school district who can make a referral for Special Education services, that it can be anyone who has knowledge of the child and feels there is a disability.⁴²⁵ The witness said an IEP is not required for the Student to receive classroom accommodations.⁴²⁶

When asked if the school district contracts with an outside entity to provide mental health services, the witness said with individually licensed therapists, yes, and if that service is provided, it is free of charge to the student and their parents.⁴²⁷ When asked if an IEP is required for the Student to receive academic assistance, the witness said no.⁴²⁸

When asked if an IEP is required for any kind of modification to the classroom schedule for the Student to ensure she is not missing areas of instruction and discussion that are deemed to be a priority for her, the witness said no, that the 504 team could make those adjustments to the Student's schedule, and that outside of an IEP, a plan could exist to include additional staff support

⁴²¹ Vol. III, P. 167, L. 7-12

⁴²² Vol. III, P. 167, L. 11-24; Vol. III, P. 168, L. 4-9

⁴²³ Vol. III, P. 168, L. 11-18; Vol. III, P. 168, L. 24-25
Vol. III, P. 169, L. 1-7

⁴²⁴ Vol. III, P. 169, L. 8-15

⁴²⁵ Vol. III, P. 169, L. 16-21

⁴²⁶ Vol. III, P. 169, L. 22-24

⁴²⁷ Vol. III, P. 171, L. 3-9

⁴²⁸ Vol. III, P. 171, L. 10-12; Vol. III, P. 171, L. 24-25
Vol. III, P. 172, L. 1

during specific times during the day if the 504 team agreed to that.⁴²⁹

When asked if she had ever refused to hold a referral conference when a parent had requested one, the witness said no, and that in this case she did not get the benefit of having a referral conference or evaluations.⁴³⁰ When asked if she agreed or disagreed with the allegation made by the parents in this case that the school district failed in its Child Find obligation, the witness said she disagreed, that there is a clear process in place by which that referral could have been made by school staff with concern or by parents. The witness said to her knowledge, prior to filing the Due Process Complaint, the parents in this case did not bring any concerns about Special Education to her attention. The witness said had they done so, a referral conference would have been scheduled.⁴³¹

This witness testified she attended the resolution meeting on October 11, 2016, which was her first meeting with the parents after they filed the Due Process Complaint. This witness said she offered to conduct a referral conference at that point, to go through the process to determine if there would be evidence to require further assessments to determine Special Education eligibility, but the parents declined.⁴³² The witness said the Student cannot be evaluated for Special Education services without parental consent.⁴³³

The witness said if at any time in the future it appears the Student's diabetes is having an adverse impact on her educational performance, a referral conference could be held at that point, that the parents could ask for a referral conference at that point.⁴³⁴ The witness disagreed with the parents' Complaint allegation of denial of FAPE, because there is no IEP in place and they have no referral process in place at this time.⁴³⁵

The witness agreed that diabetes is specifically listed in the statute as being a health impairment.⁴³⁶ However, the witness testified that for the Student to be eligible for Special Education they would need to see evidence of decreased vitality or alertness or awareness of her environment, an adverse effect on her educational performance, and it needs to require Special Education, which would be specialized instruction related services.⁴³⁷

⁴²⁹ Vol. III, P. 172, L. 2-11

⁴³⁰ Vol. III, P. 173, L. 24-25; Vol. III, P. 174, L. 1-5

⁴³¹ Vol. III, P. 174, L. 21-25; Vol. III, P. 175, L. 1-11

⁴³² Vol. III, P. 175, L. 18-25; Vol. III, P. 176, L. 1-8

⁴³³ Vol. III, P. 176, L. 9-11

⁴³⁴ Vol. III, P. 176, L. 12-19

⁴³⁵ Vol. III, P. 176, L. 20-25; Vol. III, P. 177, L. 1-2

⁴³⁶ Vol. III, P. 178, L. 5-7

⁴³⁷ Vol. III, P. 178, L. 10-22

When asked if the Student has one of the 13 categories of disability in the Other Health Impaired category, does she fall in that category of disability, the witness said she would say that decision has not been made yet, and she is not eligible under one of the 13 categories today, she has a disability that might qualify her for that.⁴³⁸ The witness said, when asked if it was true that for the Student to qualify for Special Education, it is a two-part test, that she thinks for Other Health Impairment it is more than a two-part test.⁴³⁹

When asked what test she thinks it is, the witness said as she said before, she believes that you have to have a qualifying medical condition, which this Student has, there has to be evidence of limited strength, vitality, there is another word in that on, then you have to document an education – the adverse effect on educational performance, and then it must require Special Education, which would include specialized instruction and related services.⁴⁴⁰ When asked if the Student has limited vitality as a result of her diabetes, the witness said she thought that for intervals the Student may, but the witness did not see a clear and prolonged period of time testified to where the Student was not able to be alert and engaged in her academics.⁴⁴¹

When asked if the Student's diabetes adversely affects her educational performance, the witness said she does not have enough evidence to say that is a true statement at this time, that there is not enough evidence to make a determination, and that she would not make that determination alone.⁴⁴² The witness said that the information she has heard in these three days of testimony have not led her to believe there is an adverse affect on the Student's education, that if they would want to prove that so they could consider eligibility, they would need to do a comprehensive evaluation. They would be looking for an adverse effect in her academics or her social or emotional or any other area related to the child, and she has not heard that in the testimony from the school staff.⁴⁴³ When questioned about having heard the nurse's testimony about some incidents coming in from the playground and having heard the parent's testimony about anxieties, the witness said she has no proof that any anxieties are impacting the Student's educational performance at school.⁴⁴⁴

When asked if the school district implementing counseling services because of the Student's anxieties discussed at the resolution conference, the witness said that was in response to a parent's request, that they would do that for any parent, that need for counseling would be determined between the parent and the counselor, and in this case it was because of the parent's request and

⁴³⁸ Vol. III, P. 181, L. 14-24

⁴³⁹ Vol. III, P. 183, L. 17-22

⁴⁴⁰ Vol. III, P. 183, L. 23-25, Vol. III, P. 184, L. 1-10

⁴⁴¹ Vol. III, P. 184, L. 11-17

⁴⁴² Vol. III, P. 187, L. 15-24

⁴⁴³ Vol. III, P. 189, L. 3-17

⁴⁴⁴ Vol. III, P. 190, L. 4-14

concerns.⁴⁴⁵

When asked what difference a referral conference would make after hearing all this evidence, the witness stated a referral conference is the required process, that a referral conference is held, all the concerns would be heard, all the information, and a formal determination would be made at that time about moving forward. The witness again stated she is not the only person on that team.⁴⁴⁶ The witness agreed that at the referral conference there are two decisions, one being are we going to test the child, evaluate the child, and the other is about temporarily placing the child.⁴⁴⁷ When asked if it was true the parent had asked the district to do that, both at the resolution conference and since, the witness said she recalled the parent declining a referral conference which would allow that temporary placement and evaluation.⁴⁴⁸ The witness said the only time she has heard that the parents have requested a Special Education referral or placement is in the Complaint in this case.⁴⁴⁹ The witness said that, up until today, prior to this time, the parents have not asked for Special Education.⁴⁵⁰

When asked if the parents asked for an aide, a personal health care aide, at the resolution conference or up until this date to be provided to the Student in the classroom, the witness said yes.⁴⁵¹ When asked if that is an example of a Special Ed service, the witness said not always, that it can be provided outside of Special Education.⁴⁵² When asked since she said it could be provided outside of Special Ed services, why then it has not been provided by the district since the parent asked for it, the witness said apparently the team did not agree.⁴⁵³ The witness said Special Education is defined as specialized instruction and related services.⁴⁵⁴

When asked if it was true that at the resolution conference the witness said she would have to check on whether an aide could be provided and she would let them know, the witness said she did not recall those specific words, could be. When asked why would the witness have to decide and check on whether an aide could be provided if it was not a Special Ed service, the witness said because

⁴⁴⁵ Vol. III, P. 190, L. 15-25; Vol. III, P. 191, L. 1-5

⁴⁴⁶ Vol. III, P. 192, L. 10-24

⁴⁴⁷ Vol. III, P. 193, L. 2-9

⁴⁴⁸ Vol. III, P. 193, L. 10-17

⁴⁴⁹ Vol. III, P. 194, L. 4-12

⁴⁵⁰ Vol. III, P. 194, L. 16-25

⁴⁵¹ Vol. III, P. 195, L. 7-15

⁴⁵² Vol. III, P. 195, L. 16-21

⁴⁵³ Vol. III, P. 196, L. 4-8

⁴⁵⁴ Vol. III, P. 195, L. 22-24

that would be an existing paraprofessional in the building who could cover particular parts of the Student's day, depending on availability.⁴⁵⁵ The witness said she never got back with the parents on whether an aide could be provided because that went back to the district's attorney since they were in litigation.⁴⁵⁶

When the question was asked if she had any information to support the 504 team was ever told they could provide that, the witness said they had done it in the past in this district, it is practice.⁴⁵⁷ When asked if a child has to have an academic deficit to qualify for an IEP, the witness said not always, but most commonly, yes.⁴⁵⁸

When asked if there is any requirement in the statute that a child has to have an academic deficit to qualify for Special Ed services, the witness said there has to be an adverse effect on educational performance, which can be academic or it can be not academic, it does not require an academic deficit to qualify.⁴⁵⁹

Discussing a clear and present danger to themselves, when asked if the witness felt there is a clear and present danger to the Student from her not being treated right now, at least when she has a high in the classroom, the witness said she thought there has been a well-developed plan that still has some glitches to work through, but even then there are back-up plans and back-up plans, so she does not perceive that there is a clear and present danger to the Student or others at this moment.⁴⁶⁰ The witness said she does not think it is a clear and present danger that the school has refused to give the Student insulin during a high, as she believes other plans have been made, and does not feel it is a clear and present danger to the Student's health.⁴⁶¹

CONCLUSIONS OF LAW and DISCUSSION

Current case law holds that "the burden of proof absent a State Statute to the contrary in an administrative hearing challenging a denial of FAPE is properly placed upon the party seeking relief, whether that is the disabled child or the school district."⁴⁶²

FAPE as defined for the purposes of this part are:

⁴⁵⁵ Vol. III, P. 196, L. 12-23

⁴⁵⁶ Vol. III, P. 197, L. 2-9

⁴⁵⁷ Vol. III, P. 197, L. 13-17

⁴⁵⁸ Vol. III, P. 198, L. 1-3

⁴⁵⁹ Vol. III, P. 198, L. 9-19

⁴⁶⁰ Vol. III, P. 198, L. 20-25; Vol. III, P. 199, L. 1, and L. 7-13

⁴⁶¹ Vol. III, P. 199, L. 15-24

⁴⁶² Schaffer v. Weast, 44 IDELR 150 (U.S.2005)

- a) To ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment an independent living;
- b) To ensure that the rights of children with disabilities and their parents are protected;
- c) To assist States, localities, educational service agencies and Federal agencies to provide for the education of all children with disabilities; and
- d) To assess and ensure the effectiveness of efforts to educate children with disabilities.

Pursuant to Part B of the IDEA, States are required to provide FAPE for all children with disabilities between the ages of three (3) and twenty one (21).⁴⁶³ In 1982 In *Hendrick Hudson Dist. Bd. Of Educ. V. Rowley*, the U.S. Supreme Court addressed the meaning of FAPE and set fourth a two part analysis that must be made by Courts and Hearing Officers in determining whether or not a school district has failed to provide FAPE as required by Federal law.⁴⁶⁴ Pursuant to *Rowley*, the first inquiry a Court or Hearing Officer must make is whether the State, i.e., the local educational agency or district, has complied with the procedures and regulations as set out in the IDEA. Therefore, it must determine whether the IEP developed pursuant to the IDEA procedures was reasonably calculated to enable the student to receive educational benefits.⁴⁶⁵ From the initial contact with the district, there has always been an IEP in place for the student.

Regardless of the first inquiry, that of whether the District has complied with the procedures set forth in the IDEA, the Hearing Officer notes that Counsel for the Petitioners in this case did not raise any procedural violations of the IDEA and as such, this Hearing Officer hereby finds that the District did not deny FAPE to the student on account of any violation of any procedural issues.

Having analyzed the first prong of the FAPE analysis, it is now necessary to consider whether or not the District substantively denied FAPE to the Student *i.e.*, whether the District failed to provide an IEP that was reasonably calculated to enable the Student to receive educational benefits.⁴⁶⁶ In the present case there has never been an IEP developed for the Student because the parents have never requested a special education evaluation and because no indicators existed in the Student's educational experience to suggest that her diagnosis of Type 1 Diabetes adversely affected her educational performance or that the Student needed specialized services.

⁴⁶³ 20 U.S.C. 1412(a); 34 C.F.R. 300.300A(a)

⁴⁶⁴ 458 U.S. 176, 206-07 (1982)

⁴⁶⁵ Id

⁴⁶⁶ 34 C.F.R. 300.511(d); 20 U.S.C. 1415(f)(3)(B)

Pursuant to *Rowley*, the goal of the IDEA is “more to open the door of public education to handicapped children on appropriate terms than to guarantee any particular level of education once inside.”⁴⁶⁷ Essentially, an IEP is not required to be designed to “maximize the student’s potential commensurate with the opportunity provided to other children,” thus making the standard that the District must meet very minimal.⁴⁶⁸ However, what constitutes educational benefit when dealing with a disabled student must be determined on a case-by-case basis. Specifically, “the IDEA requires Public School Districts to educate ‘a wide spectrum of handicapped children,’ and the benefits obtained by children at different ends of the spectrum will ‘differ dramatically.’”⁴⁶⁹

After hearing each witness and evaluating their credibility and reviewing the evidence presented in the transcript of the Due Process Hearing, the Hearing Officer finds the following:

The Student was provided FAPE in the Bryant School District. For purposes of the IDEA, a child with a disability means a child having an other health impairment and who by reason thereof, needs special education and other related services⁴⁷⁰ Federal regulations define other health impairment as having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment and adversely affects a child’s educational performance.⁴⁷¹ There has been no demonstration of any diminished educational performance by the Student caused by her Diabetes which would constitute a denial of FAPE.

Having determined that the District did provide FAPE to the student it is noted that there is no requirement in the IDEA that a child shall be provided with the specific educational placement or services that his or her parents prefer.⁴⁷² Additionally, nothing in the IDEA requires that a school district maximize a student’s potential or provide the best possible education at the expense of the public.⁴⁷³ Pursuant to *Rowley*, a districts obligations under the IDEA are satisfied when a child receives FAPE, i.e., “personalized instruction with sufficient support services to permit the child to

⁴⁶⁷ *Rowley*, 458 U.S. 176, 206-07 (1982)

⁴⁶⁸ *CJN v. Minneapolis Public Sch.*, 323 F.3rd 630, 63-68 (8th Cir.), cert denied, 540 U.S. 984 2003

⁴⁶⁹ *C.B. by and through his parents, B.B. and C.V. v. Special School District No. 1, Minneapolis MN*, , 262 F. 3rd 981 (8th Cir. 2011) (quoting *Rowley*, 458 U.S. 176, at 202 (1982))

⁴⁷⁰ 20 U.S.C. 140(3) and 34 C.F.R. 300.8(a)

⁴⁷¹ 34 C.F.R. 300.8(c)(9)

⁴⁷² *Rowley*, 458 U.S. 176, at 203 (1982)

⁴⁷³ *T. F. v. Special School District St. Louis Co.*, 449F 3rd 816, 821(8th Cir. 2006)

benefit educationally from that instruction.”⁴⁷⁴ As addressed previously, a public school district has a responsibility under the IDEA to offer eligible children instruction and programming reasonably calculated to provide some educational benefits.⁴⁷⁵

ORDER

After due consideration of the record, evaluation of the witnesses, review of the evidence and the foregoing Findings of Fact and Conclusions of Law, it is hereby found that no relief sought by Petitioners is Ordered.

FINALITY OF ORDER AND RIGHT TO APPEAL

The decision of this Hearing Officer is final and shall be implemented unless a party aggrieved by it shall file a civil action in either Federal District Court or a State Court of competent jurisdiction pursuant to the Individuals with Disabilities Education Act within ninety (90) days after the date on which the Hearing Officer’s Decision is filed with the Arkansas Department of Education.

Pursuant to Section 10.01.36.5, *Special Education and Related Services: Procedural Requirements and Program Standards*, Arkansas Department of Education 2008, the Hearing Officer has no further jurisdiction over the parties to the hearing.

It is so Ordered.

Michael McCauley

Michael McCauley
Due Process Hearing Officer
December 23rd, 2016

⁴⁷⁴ Fort Zumwalt Sch. Dist. v. Clynes, 119 F. 3rd 607 612 (8th Cir. 1997)

⁴⁷⁵ Rowley, 458 U.S. 176, at 203 (1982)