

Correction

ARKANSAS DEPARTMENT OF EDUCATION
SPECIAL EDUCATION UNIT

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XXX and XXXXXXXXXXXXX
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PETITIONER

JUL 24 2018 *Petto*

SPECIAL EDUCATION

XXXXXXXXXX
vs.

CASE No. H-2018-21

VILONIA SCHOOL DISTRICT

RESPONDENT

FINAL ORDER

NOW on this 16th day of April, 2018 came on for hearing Petitioners' Request for a Due Process Hearing, Petitioners, **XXXXXXXXXXXXXXXXXX** represented by Theresa Caldwell, Attorney, and Respondent, **VILONIA SCHOOL DISTRICT**, represented by Jay Bequette, 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 April 16th and 17th, 2018 and May 14th and 15th, 2018. Based upon the testimony and perceived validity of the witnesses and the evidence presented which was 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 services offered by Vilonia School District (hereinafter referred to as District or Respondent) from March 14th, 2016, to March 14th, 2018, reasonably calculated to provide **XXXXXXXXXX** (hereinafter referred to as "Student") with a free, appropriate public education (hereinafter referred to as FAPE)?

Was there a failure to revise the Students IEP?

Was there a failure to adequately address the Students academic deficits?

Were there violations in the use of physical restraints?

Were there violations in procedures in the use of a seclusion room?

Was there a failure to consider the results of evaluations provided by the parents?

Were consequences imposed by the Respondent for a physical altercation on school property

allowed under the IDEA?

Was the behavior which led to the altercation a manifestation of the Students disability, and, if found to be, were proper procedures followed to comply with requirements set fourth in the IDEA?

PROCEDURAL HISTORY:

This was the second of two Due Process Hearing Complaints filed by the Petitioners. The first request was dismissed with prejudice following a Settlement Agreement dated June 8th, 2016 by the Hearing Officer at the request of the Petitioner.

On March 12th, 2018, the Arkansas Department of Education (hereinafter referred to as "Department") received a request to initiate due process hearing procedures from **XXXXXXXXXX** (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 is a forth grade, male student, 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 March 16th, 2018 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 March 15th, 2018. Following, the Resolution Conference was held in a timely manner without the ability to resolve the issues. The Due Process Hearing was scheduled and was held on the 16th, 17th and 18th days of April, 2018. A Pre-Hearing Brief was ordered to be due April 12th, 2018 and a Pre-Hearing Conference was held April 13th, 2018.

The respondent filed an Answer to the Complaint on March 22nd, 2018 and on March 26th, 2018 the Hearing Officer received Resolution Tracking notice. On January 26th, 2018. Five day disclosures and witness lists were exchanged by the Petitioner and Respondent on April 10th, 2018, both submitted timely.

The Due Process Hearing started on the 16th, day of April as scheduled. Testimony was also taken on the 17th day of April, 2018. During testimony on the afternoon of the 17th of April, 2018 a collection of documents controlled by the Respondent had not been supplied to the Petitioner. While the Hearing Officer held this was not done intentionally to withhold information it was nonetheless prejudicial to the case of the Petitioner. An oral Motion to Continue was granted and time was granted for the Petitioner to receive and review the new information. The Due Process Hearing resumed May 14th, 2018 and concluded on the 15th day of May, 2018

FINDINGS OF FACT:

- 1) Student is 4th grade at the Vilonia School District, Vilonia, Arkansas;
- 2) Student has been tested and identified with Autism Spectrum Disorder, Unspecified Anxiety Disorder, Unspecified Disruptive Disorder, Impulse Control and Conduct Disorder and qualifies for IDEA protection and services;
- 3) Student has attended school in the Vilonia School District since Kindergarten;
- 4) Student was involved a physical altercation with a staff member on school property;
- 5) Vilonia School District is a Local Education Agency as Defined in 20 U.S.C. 1401(19);

Witness AMY GOERS

Ms. Goers is the Assistant Principal at Frank Mitchell Intermediate School, the school attended by the Student.¹ As to Ms. Goers' dealings with the Student, the witness testified on days the Student is not complying, an administrator is called for, and she is the one there lately.² This witness has a degree in educational leadership, which is when she got her assistant principal job. She has 18 years experience, having taught subjects from third to eighth grade, with focus on math. Her certification is K-6 and math 5-8. She has been an instructional facilitator at a district, K-12, a math coach at a district in a K-5 building, and assistant principal at Frank Mitchell since it opened the 2015-2016 school year. She was hired 2014-2015 to be assistant principal, but the building was destroyed by a tornado, so it could not open and she was math curriculum there that year, then assistant principal when the school opened in 2015. The school houses fourth through sixth grade students. The Student is a fourth grader, his first year at this school.³

When asked to explain the Student's disabilities and how he is impacted at school, the witness testified he has Autism, Oppositional Defiant disorder, and it impacts on compliance doing school work, that her experience is that when the Student does not want to do his work, then he reacts.⁴ The witness testified the first semester of the school year there were not many instances where she was called about the Student. The witness testified on 12-20, just before they got out of school, she

¹Vol. I, P. 12, lines 16-24

²Vol. I, P. 12, line 25, through Vol. I, P. 13, lines 1-7

³Vol. I, P. 13, lines 8-25, and Vol. I, P. 14, lines 1-12

⁴Vol. I, P. 14, lines 13-23

was called on an incident involving Ms. Kinley before school. The witness testified as far as she knows, there has been no use of physical restraint except once in the Refocus Room where his legs were held.⁵ The witness testified she has not used physical restraint with the Student. She testified she did see Ms. Liz Kelley, the LEA, and Rhonda Standridge, and Stacy Simpson, who are paraprofessionals, in the Refocus Room doing physical restraint one time, but the witness did not recall the date.⁶ Describing the Refocus Room, the witness testified it is for students to reset, to get back on track, and they are allowed to go there, where there are different activities they can participate in through the room, and they work their way through the room, and usually in 10-15 minutes they go back to class.⁷ Describing what she does when the Student comes to her, the witness testified sometimes he will not come to her, so she does to him, she asks him to come with her to the office, and she talks to him and tries to get him to come with her.⁸ Describing the Student's behavior plan, the witness testified it is to help in the classroom to keep him on track and try to motivate him to keep on track.⁹

The witness testified when teachers and paraprofessionals have tried those things and the Student is still noncompliant, they will call for someone to come. The witness testified she has never gone to the classroom, he is in the hallway when she goes to him, and she has also gone to the library when the Student was there. When the Student comes to her office, they call his parents usually, she has asked them to pick up the Student on occasion, when he hit someone, she asked the parents to come get him.¹⁰ According to the discipline card for the Student, he was out of school the rest of the day on 12-20, and out of school six and a half days suspended.¹¹ The witness also testified sometimes they call the Student's parents and the Student went back to the classroom after he talked to his parents. In the witness' office, she gives the Student a stress hamburger he squeezes and talks to her, and she also has an ice cream cone he has used. She testified they try to talk about anything that will help calm him down, then try to ask him where he is supposed to go, depending on when he comes in.¹² The witness testified the Student's behaviors are getting more frequent.¹³

⁵Vol. I, P. 16, lines 1-11

⁶Vol. I, P. 16, lines 15-25, through Vol. I, P. 17, lines 2-22

⁷Vol. I, P. 18, lines 18-25 through Vol. I, P. 19, lines 1-2

⁸Vol. I, P. 19, lines 13-20

⁹Vol. I, P. 19, lines 21-25, through Vol. I, P. 20, lines 1-3

¹⁰Vol. I, P. 20, lines 5 through 25

¹¹Vol. I, P. 21, lines 12-25, through Vol. I, P. 22, lines 1-8

¹²Vol. I, P. 23, lines 3-13

¹³Vol. I, P. 25, lines 2-8

Witness XXXXXXXX XXXX

The Student's mother is with the Cyber Unit at the 189th National Guard, full time.¹⁴ She and her husband are both employed with the National Guard. She could be deployed, but right now is not. Her husband has gone on TDY several times.¹⁵ The Student was first enrolled in Vilonia in kindergarten. The witness testified the Student has been diagnosed on the autistic spectrum, he has ADHD, was at one point Oppositional Defiant Disorder, but the most recent evaluations did not mention Oppositional Defiant Disorder. He has some type of Disruptive Disorder, or Unspecified Disruptive Disorder. He does not really understand what is being communicated to him sometimes, and his reaction is to shout out, "I don't understand this," "I'm so stupid." He needs constant encouragement. He has also been diagnosed with anxiety, he seems more scared to do things, he is worried about every little thing.¹⁶

The Student's reading skills are not at fourth grade level, the last time they were told he was within a year and a half or so, from his grade level.¹⁷ Looking at the Student's third grade IEP, the witness testified at the end of third grade the Student could read 52 words per minute and correctly answer five comprehension questions.¹⁸ As to progress, the witness testified she remembered seeing something like 42 and she thought 70 something was there he should be in fourth grade, but it could be more.¹⁹ The witness testified she did not recall the school ever speaking to her about the Student having dyslexia, the only time she remembered any dyslexia mentioned was with CPAC, a counseling service she secured.²⁰

During the 16-17 school year, the Student was placed under the Autism category of disability with Special Ed services for his third grade year, and Dr. Sheila Smith did a CIRCUIT referral, consulting with Josh Hart, Liz Sowder, and had a meeting with the Student's parents after that.²¹ Dr. Smith was to have already done some sort of teaching staff members how to deal with autistic children; she

¹⁴Vol. I, P. 27, line 1

¹⁵Vol. I, P. 28, lines 1-15

¹⁶Vol. I, P. 30, lines 1-25, through Vol. I, P. 31, lines 1-7

¹⁷Vol. I, P. 33, lines 1-8

¹⁸Vol. I, P. 34, lines 17-23

¹⁹Vol. I, P. 34, lines 24-25, through Vol. I, P. 35, lines 8-13

²⁰Vol. I, P. 35, lines 17-25, through Vol. I, P. 36, lines 1-2

²¹Vol. I, P. 41, lines 5-23

reported the witness recognized expectations at home are different from those at school.²² The witness testified the Student is not on any medications, and they use a reward system at home for the Student.²³ The Student is receiving occupational therapy and psychological therapy, and Dr. McChristian gives the parents ideas to help implement strategies to handle the Student's behaviors.²⁴ Talking about the Behavior Plan developed for the Student, the witness testified it had a token economy, and she did not recall anything else implemented.²⁵ Discussing the Behavior Intervention Plan developed, the witness testified she was not sure they were actually utilizing that any longer, and that there was not a Functional Behavior Assessment until about a week or so before this hearing.²⁶ The witness testified to her knowledge the Student did great the first half of the school year, and there were only a few bad days, that he was about 96% good on good days. On December 7th, an IEP meeting was held and everything was great.

The witness testified on December 12th, toward the end of the day, she was told they could not get the Student under control. Ms. Kelley had the Student talk to the witness, but the witness testified the Student was upset and hung up on her twice.²⁷ The witness testified she called her husband after being hung up on the second time, as she could not leave work, and she had her husband go pick up their son.²⁸ The witness testified that evening she was told her son was restrained, and that when she talked to Ms. Kelley on the phone she did not mention having to restrain the Student.²⁹ The witness testified she had not given consent to pin a child of theirs to the floor, and had not even really given consent to do escorts, the wrist/triceps and Sunday stroll escorts, which are still restraints.³⁰ The witness testified she never really got an understanding of why the Student was physically restrained with women on top of him, only that she was told he was kicking at people's heads. She testified was also told the Student was trying to get out of the room and knocking things down in the room, and the physical restraint paperwork notes the Student was hitting, biting, running, pushing, spitting. The

²²Vol. I, P. 41, line 25, through Vol. I, P. 42, lines 1-10

²³Vol. I, P. 42, lines 21-25, through Vol. I, P. 43, lines 1-13

²⁴Vol. I, P. 43, lines 14-25, through Vol. I, P. 44, lines 1-2

²⁵Vol. I, P. 44, lines 3-25, through Vol. I, P. 45, lines 1-15

²⁶Vol. I, P. 45, line 25, through Vol. I, P. 46, lines 1-2 and Vol. I, P. 46, lines 14-15 and P. 47, lines 5-9

²⁷Vol. I, P. 47, lines 10-25, through Vol. I, P. 48, lines 1-20

²⁸Vol. I, P. 49, lines 4-12

²⁹Vol. I, P. 49, lines 15-25

³⁰Vol. I, P. 49, lines 22-25, through Vol. I, P. 50, lines 1-5

witness testified it was her understanding this was in the Refocus Room.³¹ When asked if she had ever received a copy of an IEP for the Student that has the use of a Seclusion or Time-Out Room in it, the witness testified not to her knowledge. Vol. I, P. 53, lines 2-4, and lines 15-18 The witness testified Liz Kelley and Josh Hart gave her two sheets dated 12-20-17 they wanted to utilize, the document saying the Student's current progress was that he experienced four challenging episodes of disruption this 18 week semester. Vol. I, P. 55, lines 1-15 After the February 21st IEP, this is what was used, but the witness testified she and her husband stated before they signed the IEP that they did not agree, and they were told it was not part of the IEP. According to the document, if the Student left a classroom without permission, he would be taken to the Refocus Room, but it was not reported to the parents if the Student went to the Refocus Room.³²

The witness testified she did not receive documentation on a daily basis concerning the Student's behaviors.³³ The witness testified now the Student is sent to the Time-Out Room, and if he doesn't complete his work there, she was called. The witness did not know how much time the Student spends in the Time-Out Room or the Refocus Room as they call it, but testified she only knew it was kind of scheduled into the Student's day, that she did not think it is every day, but other times he is sent there because of disruptions.³⁴ When asked about aggressive behaviors, the witness testified she was never really told what kind of aggressive behaviors, but it testified "that would cause injury." The witness testified she did not know what exactly that would be, but to restrain the Student it would only be instances like running into traffic, whenever cars are moving around and related in parking lots.³⁵

When asked about the Student threatening to harm himself, the witness testified the Student had not done so since the first of the year, she thought. She testified when he testified he wished he was dead, that he would go into the woods and let the dogs eat him, poke his eyes out or something, it concerned her enough that she decided to get psychological therapy with Dr. McChristian for the Student, which started in October. At first it was just every other week, but since starting it is now every week.³⁶ The witness testified the Student was never eager to go to school, but at the beginning of the school year he was willing to go, it seemed an excitement, but he is resistant to go now.³⁷

³¹Vol. I, P. 50, lines 11-25 , through Vol. I, P. 51, lines 1-14

³²Vol. I, P. 56, lines 23-25, through Vol. I, P. 57, lines 1-25, and Vol. I, P. 58, lines 1-4

³³Vol. I, P. 58, lines 7-22

³⁴Vol. I, P. 60, lines 2-15

³⁵Vol. I, P. 61, lines 5-18

³⁶Vol. I, P. 61, lines 19-25, through Vol. I, P. 62, lines 1-25, and Vol. I, P. 63, line 2

³⁷Vol. I, P. 63, lines 3-10

The witness testified the Student struggles mostly with reading and writing, and also with being accepted by his social peers.³⁸ When asked why the District had not contacted Dr. Smith, the person who helped with the Student's behavior program last year, the witness testified when they asked in December they could not get a CIRCUIT done because they were told there was not enough data.³⁹

When asked about a behavior para, a Ms. Simpson, the witness testified she knew there was someone there to help the Student if he has issues during the day, and that this year was the first year for paras with the Student.⁴⁰ When asked about the Student's IEP Behavior Plan, the witness testified she did not know if it was being followed, nor did she know if a token economy was being used when the Student displays behaviors of crawling under a table or rolling in the floor, nor did she know whether the Student has Fidgets in the classroom now.⁴¹ The witness testified the Student had occupational therapy to give him coping skills and cope with the stress, being able to positively exert energy if feeling high anxiety. She testified the Student has sensory issues with loud areas.⁴² Looking at page 148 in the parents' book, as 01-22-28 evaluation, the witness testified before they left the initial evaluation she was asked why they did not bring the Student in sooner, that she paid for the evaluation and that she gave it to the school.⁴³ The witness testified she thought the school stopped using the Refocus Room for discipline after the December 12th incident.⁴⁴ The witness testified on February 21st she took to the meeting a speech and language evaluation she obtained dated 1-22-18 as part of the packet she took to school. She did not have the complete psychological evaluation, so took the Testing Summary dated February 20th, 2018, saying the Student participated in the testing on February 5th and 6th.⁴⁵

The witness testified they got the Testing Summary the day before the IEP meeting, and it was not discussed at the meeting because she was told they did not have time to review it. The witness testified the purpose of the meeting she guessed was to talk about the Student's behavior back in

³⁸Vol. I, P. 63, lines 11-21

³⁹Vol. I, P. 63, lines 22-25, through Vol. I, P. 64, lines 1-6

⁴⁰Vol. I, P. 64, lines 7-25, through Vol. I, P. 64, lines 15-25 and Vol. I, P. 65, lines 2-7

⁴¹Vol. I, P. 65, lines 18-25, through Vol. I, P. 66, lines 1-25, and Vol. I, P. 67, lines 1-18

⁴²Vol. I, P. 67, lines 19-25, through Vol. I, P. 68, lines 1-11

⁴³Vol. I, P. 68, lines 21-25, through Vol. I, P. 69, lines 1-25, through Vol. I, P. 70, lines 1-5

⁴⁴Vol. I, P. 71, lines 2-6

⁴⁵ Vol. I, P. 72, lines 7-25, through Vol. I, P. 73, lines 1-3, and Vol. I, P. 74, lines 1-22

December and to go back on their separate conference program.⁴⁶ Going back to the conference documentation, the witness testified an FBA was going to be done, which had been refused when the parents asked for it in December, and the documentation testified the committee added a behavior goal to the Student's IEP and modified the plan developed 12-20, which the witness assumed was talking about a separate programming conference that is the modification, the two-page sheet that was not supposed to be a part of the IEP. The added behavior was to introduce a goal allowing the Student to do a preferred task, and then direct the Student to do a non-preferred task, having about three minutes.⁴⁷ The witness testified she gave the school permission for a Functional Behavior Assessment to be done.⁴⁸ The witness testified on February 21st she and her husband testified they did not agree with anything except allowing the Student to phone them when he needs to be worked down in distressed times, and that the district was going to have the parents' OT evaluations looked over by the district's OT person, so the parents agreed they would wait until the psych education evaluation.⁴⁹

Discussing the witness' documentation of time the Student missed from school because of behavior and suspensions, the witness testified she calculated there were 82 hours worth of instruction missed, eight and a half to nine days of suspensions.⁵⁰ When asked what occurred to make it worse, the witness testified she could only assume it was because the parents took away the district's ability to restrain, as the witness texted Liz Kelley to no longer restrain the Student, and at that point is when things went downhill.⁵¹ The witness testified they did not get any written notices unless they were being called when the Student was suspended for kicking staff members, etc.⁵²

The witness testified missing 82 hours of instruction has been disruptive, making the Student nervous about going to school.⁵³ The witness testified she did not feel the Student had made progress to where he should be for his age level, but he can read some.⁵⁴ The witness testified of the goals and

⁴⁶Vol. I, P. 75, lines 19-25, through Vol. I, P. 76, lines 1-17

⁴⁷Vol. I, P. 77, lines 1-14

⁴⁸Vol. I, P. 77, lines 19-21

⁴⁹Vol. I, P. 79, line 25, through Vol. I, P. 80, lines 1-19

⁵⁰Vol. I, P. 82, lines 1-25, through Vol. I, P. 83, lines 1-21

⁵¹Vol. I, P. 84, lines 16-25, through Vol. I, P. 85, lines 1-2

⁵²Vol. I, P. 85, lines 14-22

⁵³Vol. I, P. 87, lines 25, through Vol. I, P. 88, lines 1-3

⁵⁴Vol. I, P. 88, lines 17-24

objectives on the Student's IEP, only one goal, in math, was mastered.⁵⁵ When asked how she knew what was going on with the Student's IEP, the witness testified she was basically going off what they were told the Student needs.⁵⁶ The witness testified the Student got about an hour of instruction in reading and writing each day, and she did not feel the Student had made any progress this year because of constant classroom disruptions.⁵⁷ The witness testified when concerns about reading were expressed, they were told the Student was doing fine, but would not actually catch up because of not trying.⁵⁸ The witness testified the Student can write, but it is pretty bad and the spelling is terrible.⁵⁹ The witness testified that even though the Student can't spell, write or read on grade level, he is on the honor roll.⁶⁰ The witness testified she does not see daily outbursts by the Student at home.⁶¹ The witness testified Dr. Horton's report has not been discussed by the IEP team yet because they were only given a brief report.⁶²

When asked how she calculated the number of instructional hours lost, the witness testified her husband calculated that.⁶³ The witness testified Josh Hart was the person who told her the Student would not catch up due to his own choice.⁶⁴ The witness agreed that neither she nor her husband had been called to the school for basically the past year and a half to deal with a behavior issue involving the Student.⁶⁵ The witness testified she had never seen the data sheets or graphs concerning the Student until this hearing, nor did they get anything from the district the first nine weeks about the Student's behaviors.⁶⁶ The Student's mother admitted telling the Assistant Principal at the school on the phone while the Student was present, and within earshot of another parent and other students,

⁵⁵Vol. I, P. 92, lines 11-14

⁵⁶Vol. I, P. 96, lines 20-25, through Vol. I, P. 97, lines 1-2

⁵⁷Vol. I, P. 103, lines 17-25, through Vol. I, P. 104, lines 1-6

⁵⁸Vol. I, P. 104, lines 21-25 through Vol. I, P. 105, lines 1-16

⁵⁹Vol. I, P. 109, lines 22-25 through Vol. I, P. 110, lines 1-2

⁶⁰Vol. I, P. 111, lines 9-12

⁶¹Vol. I, P. 162, lines 24-25 through Vol. I, P. 163, lines 1-25 and Vol. I, P. 164, lines 1-2

⁶²Vol. I, P. 175, lines 9-13

⁶³Vol. I, P. 175, lines 20-25, through Vol. I, P. 176, lines 1-24

⁶⁴Vol. I, P. 178, lines 4-18

⁶⁵Vol. I, P. 180, lines 23-25 through Vol. I, P. 181, lines 1-2

⁶⁶Vol. I, P. 181, lines 10-25, through Vol. I, P. 182, lines 1-18

that she did not want to hear shit from him, he wasn't even in the room.⁶⁷ The witness also admitted telling the Student he did not have to answer.⁶⁸

Witness SHEILA SMITH

The witness Sheila Smith is a Behavior Support Specialist with the Arch Ford Education Service Co-op, receiving referrals through CIRCUIT, the centralized intake system for all consultant groups in Arkansas. Through those referrals, she goes to school districts to help, to consult with them, help with behavior planning, FBA assessments, training, whatever the need may be for the individualized student. The witness is a licensed psychologist, holding a doctorate degree in school psychology from the University of Central Arkansas, and is a board certified analyst at the doctoral level. She was contacted by the Vilonia School District to work with this Student, the initial referral being August 1, 2016.⁶⁹ The witness testified after that, it was part of a Settlement Agreement to develop a Functional Behavior Assessment, so she assisted the district in collecting all the needed data to conduct the FBA. She testified after that time, she helped analyze the data and met with the team to develop a Behavior Intervention Plan. The witness testified there was already a Behavior Intervention Plan, so they ended up modifying that based on what was working for the Student at that time.⁷⁰ Explaining the Behavior Intervention Plan and how it was worked on and how it was amended, the witness testified they always conduct a FBA prior to developing a Behavior Plan, and in this situation the district had already conducted an FBA and a BIP, so another FBA was conducted to confirm the results, then those results were compared to what the district had done, and modified the BIP to reflect the FBA results. The witness testified she prepared the BSS Final Summary, a summary of the findings of the data collected during the FBA.⁷¹ Explaining the process followed to develop the Final Summary, the FBA, and to modify the Behavior Plan, the witness testified the first section covers the referral reason, which was part of a settlement to assist the district with an FBA and a BIP, development of a final BIP, she provided the Description of Assessment Methods, doing multiple observations and site visits to collect the data, direct assessments of a Functional Assessment Observation Form, a specific data form used to collect data on antecedents, behavior, and consequences, possible setting events, then had specific data collected on compliance and scatter-plot data, which helped to determine what times of the day the behaviors were occurring. Indirect assessments are those methods conducted through interview, rating scales, record review, so a functional assessment interview was done with the staff, rating scales were done, questions about behavioral function, Motivation Assessment Scale helped determine the function and behavior from

⁶⁷Vol. I, P. 189, lines 20-24, and Vol. I, P. 190, lines 1-10

⁶⁸Vol. I, P. 190, lines 12-17

⁶⁹Vol. I, P. 116, lines 20-25, through Vol. I, P. 117, lines 1-24

⁷⁰Vol. I, P. 118, lines 1-11

⁷¹Vol. I, P. 118, lines 18-25, through Vol. I, P. 119, lines 1-20

multiple sources, then an Autism Social Skills Profile, then the Student record review.⁷²

The witness testified as they go along in the process, the first step was to help determine the problem behaviors, and she assisted the district in coming up with an operational definition for those behaviors, which is what is shown for noncompliance. Initially it was verbal refusal to comply with demands by an adult staff member, but the Student would also bounce away in his chair, scoot back in his chair, grab objects and bang objects on the table. There were incidents of physical aggression, and data was collected on that. There were tantrums, screaming or verbally refusing to get up, so those were behaviors targeted for data collection. At the time of the functional assessment interview, the Student's baseline compliance was 64%, and she also looked at the Student's social skills since she knew that was an area needing to be targeted also. She looked at a preference assessment Mr. Brewer conducted to identify possible reinforcers to be worked into a token economy system. In discussing the data collected, the witness testified a lot of what was going on with the behavior seemed to be escape, avoidance and to get access to a tangible at times the Student would prefer to do another activity. The physical aggression did not occur often, so it was not a huge concern at that time.⁷³

Discussing the major tweaks to the Student's Behavior Plan, the witness testified following the FBA noncompliance was the primary concern, and they worked on incorporating the token economy system into place, there were chunking strategies, reducing assignments and modifications to the Student's assignments to avoid possible triggers.⁷⁴ The witness testified she received another referral earlier this year, and that she met with the Student's parents in April and they did a 2-3 hour parent training as part of the settlement, talked about autism and strategies to use at home with the Student. There were a few followup conversations with the district to monitor progress, and since the Student was doing well, his CIRCUIT case was closed in April 2017. Then a CIRCUIT referral was made on February 27th of this year and a new FBA was requested due to rise in aggressive behavior.⁷⁵

Since then, the witness testified she has been assisting the district with collecting data, rating scales and interviews, as well as doing observations. She testified she requested the district use an ABC analysis to determine antecedents and consequences for behaviors, and she has continued to observe 4-5 times, seeing behaviors very similar to last year with noncompliance. On April 10, Ms. Standridge was escorting the Student from the Refocus Room to Mr. Bullock's room, and in the courtyard there was a gate open, and the Student had the lock and wanted to lock the gate. When Ms. Standridge took the lock, the Student hit her once, attempted to hit her again, and shoved her

⁷²Vol. I, P. 119, lines 21-25, through Vol. I, P. 120, lines 1-25, and Vol. I, P. 121, lines 1-5

⁷³Vol. I, P. 121, lines 6-25, through Vol. I, P. 122, lines 1-25, and Vol. I, P. 123, lines 1-15

⁷⁴Vol. I, P. 123, lines 16-25, Vol. I, P. 124, lines 1-13

⁷⁵Vol. I, P. 124, lines 14-25 through Vol. I, P. 125, lines 1-25

as she was walking away. Ms. Standridge gave the Student a minute or two to calm down, and the Student followed her to the office. The witness testified she had not yet conducted an interview with the parents as part of the current FBA.⁷⁶

The witness testified, when asked if she knew physical restraint was being used with the Student, that physical restraint is not typically part of a Behavior Plan, as that would be in a Crisis Intervention Plan, or Safety Plan, or whatever plan the district has in place. She was aware of a couple of incidents where transportation procedures were used, and had a conversation with the Student's father back in December and he informed the witness about the Student being actually placed down, with people on him. The Student's father had contacted the witness, wanting to ensure the parents had all the documentation the school had, or that the witness had. The witness testified she told the father to speak with Ms. Kelley and the team, as that would be a team decision they could discuss.⁷⁷

The witness testified she had seen the Refocus Room, which had several areas for different things, and the goal, she thought, was to teach the Student to be able to request breaks if he needs one, and she did see him request breaks in the Refocus Room. She testified if breaks are scheduled in the daily routine, it can help prevent noncompliance, and the Student's compliance this year is really good.⁷⁸ The witness testified she believed there was a cleared out classroom across the hall from the Refocus Room, and that if there are times when a student is aggressive or a harm to themselves or others, sometimes if there is an empty classroom, they can be escorted there under supervision to not harm themselves.⁷⁹

The witness testified from what she has observed of the Student, he has exhibited behaviors destructive to property, aggressive toward others or being severely disruptive.⁸⁰ The witness testified she did not believe there is anything in the Student's IEP about use of a Time-Out Room, and under the Department of Education regulations there should be. The witness testified she was familiar with guidelines as to use of student restraint.⁸¹

The witness testified Jody Brewer and Josh Hart have been trained as paras on the use of physical restraint at the Student's school. The witness testified there are a series of steps to be taken in order to de-escalate a student, and if the student reaches continual aggressive, high magnitude disruptive

⁷⁶Vol. I, P. 126, lines 6-25 and Vol. I, P. 127, lines 1-25 and Vol. I, P. 128, lines 1-25

⁷⁷Vol. I, P. 130, lines 22-25, through Vol. I, P. 131, lines 1-25 and Vol. I, P. 132, lines 1-7

⁷⁸Vol. I, P. 135, lines 16-25, through Vol. I, P. 136, lines 1-25 and Vol. I, P. 137, lines 1-14

⁷⁹ Vol. I, P. 142, lines 8-25

⁸⁰Vol. I, P. 144, lines 2-6

⁸¹Vol. I, P. 145, lines 11-19

behavior, the district would follow whatever policy they have in place.⁸² The witness testified the difference between a physical escort, touching or holding a hand, and physical restraint is where a student is immobilized, without the ability to move their arms or legs or torso or head. The witness testified she understood there was one incident where the Student was physically restrained.⁸³ The witness testified consistency of the parents to reinforce what goes on at school is a parental decision, but it would help the Student's Behavior Plan.⁸⁴ The witness testified besides physical escort when the Student is being disruptive, redirection would be the option.⁸⁵

Witness ANDY PENNINGTON

The witness John Andrew Pennington is the Student's school principal. He is in his third year as principal at the school. He obtained his Masters of Arts in teaching in 2003, and began his educational career in 2006. On being hired here as PE teacher, he started building his level administration license, and in 2010 was assistant principal of Vilonia Primary School. He had the Student as a kindergartner and as a first grader.⁸⁶ The witness testified his experience with the Student this year revolved around either Honey, an F1B golden doodle being trained as an educational assistance dog, or something to do with work avoidance or being asked to do something the Student did not want to do.⁸⁷ The witness testified there have been occasions where the Student could be laying down on the dog's bed talking to her, petting her, it was very calming to the Student.⁸⁸ The witness testified he was aware of one incident of physical restraining involving the Student that happened in the Refocus Room.⁸⁹ The witness testified the people involved were Stacy Simpson, Rhonda Standridge and Elizabeth Kelley, all certified in PCM training. The witness was not present, but was told about it since he is the building administrator. He did not know if the parents received a copy of the form, which says at the bottom "To be completed within 24 hours. A copy should be sent to the parents within one school day of the record being completed." The witness agreed the restraint lasted 25 minutes according to the form, and testified he was unaware of any specific policy which refrains from physical restraint. When asked if the policy, the student handbook, tells parents their children will be physically restrained, the witness testified he did not know, nor did he know if the district has a policy allowing for physical restraint to be used. The witness testified corporal

⁸²Vol. I, P. 146, lines 4-25 through Vol. I, P. 147, lines 1-2

⁸³Vol. I, P. 149, lines 3-10

⁸⁴Vol. I, P. 154, lines 23-25, through Vol. I, P. 155, lines 1-10

⁸⁵Vol. I, P. 159, lines 4-20

⁸⁶Vol. I, P. 193, line 25, through Vol. I, P. 194, lines 1-25

⁸⁷Vol. I, P. 195, lines 14-24

⁸⁸Vol. I, P. 197, lines 12-16

⁸⁹Vol. I, P. 201, lines 6-9

punishment is allowed with parental consent, but he did not know if parents are asked for consent for physical restraint.⁹⁰

The witness testified his knowledge of the incident in which the Student was restrained began over a Chrome book to which the Student was not supposed to have access, which led to him going to the Refocus Room, and escalated to the point where the Student was kicking and spitting on staff members, and the kicking was the reason it went to the restraint.⁹¹ The witness testified from the notes he could say the Student was wrist/triceps, then his ankles were held when he began kicking.⁹² Looking at ADE guidelines about use of physical restraint, the witness testified he was familiar with those, and, looking at number one, under "Physical Restraint," "Should not be used except where the behavior poses imminent danger of serious physical harm," the witness testified shortly prior to this incident, another staff member was injured pretty significantly when another student began kicking, so when the Student began to kick his legs up, the imminent danger he was posing was when he began to kick his legs toward staff members, serious harm.⁹³

The witness testified the Student was issued a juvenile citation by a police officer called to the school, as they are required to report to local law enforcement if a student is physically aggressive toward students, and when told through the office that there was a student who had made contact with multiple students, the first step was to talk to those students for statements, then the Resource Officer was contacted, and it is the Resource Officer who views the statements and makes the reporting decision. The incident was during a PE class, and the Student became frustrated once he was tagged as "it," a female student tried to calm the Student down, but the Student became aggressive toward multiple students. The Student physically went after and hit other children, four to five of them. The parents were contacted, and the Student was suspended for his behavior.⁹⁴

After reading statements from the incident, the witness testified the incident was during recess, not in PE.⁹⁵ When asked if the Student's parents told him about the Student's bruises and scratches, the witness testified the parents had not shared that with him.⁹⁶ When asked about noncompliance,

⁹⁰Vol. I, P. 202, lines 12-25, Vol. I, P. 203, lines 1-25, Vol. I, P. 204, lines 1-25, and Vol. I, P. 205, lines 1-8

⁹¹Vol. I, P. 205, lines 9-25, through Vol. I, P. 206, lines 1-2

⁹²Vol. I, P. 206, lines 15-19

⁹³Vol. I, P. 207, lines 16-25, through Vol. I, P. 208, lines 1-12, and Vol. I, P. 209, lines 2-23

⁹⁴Vol. I, P. 211, lines 1-25, Vol. I, P. 212, lines 1-18, Vol. I, P. 213, lines 18-24, and Vol. I, P. 214, lines 1-6

⁹⁵Vol. I, P. 223, lines 12-25 and Vol. I, P. 224, line 1

⁹⁶Vol. I, P. 225, lines 11-15

work refusal, and what was done under the Behavior Plan for the Student, the witness testified first they would redirect, ask, verbally, and give three minutes; once that time was up, the Student was asked to go to the Refocus Room where he could get his work finished. A majority of the time if the Student refuses, he can end up in the office, requesting to call his parents. The witness testified if there is someone by the door, it is not to block the Student, but to try to redirect him, but the Student is not afraid to push through someone to get to the door.⁹⁷

The witness testified they have a safe room, and part of that, it is made up of four rooms. There is a Refocus Room where many things are going on for students, then just to the left of that there is a cleared out room in that safe room. The cleared out room has been used with the Student two, maybe three times. The witness testified he knew that once for sure the Student pushed his way out of the Refocus Room and ran up and down the hallway, turning on and off lights, tearing things off the wall, then he was escorted to the cleared out room.⁹⁸

The witness confirmed he was part of the Student's IEP team, and looking at page 37 in the parent book, under "Behaviors to be Addressed," "Leaving the classroom without permission, locking himself in the mail room in the front office, disruptive behaviors, rolling in the floor, aggressive behaviors, biting, hitting, kicking, spitting, grabbing and wrapping legs around staff legs," dated December 15th and 20th, the witness testified the aggressive behaviors were starting at this time. The witness testified for work avoidance, for instance, the Student would go to the cleared Refocus Room to complete his classroom work. The witness testified there was not a specific time the Student stayed in the cleared Refocus Room that might be called the Time-Out Room, it depended on the Student's state where he can come out.⁹⁹ The witness testified if the Student needs special ed instruction for reading and writing and math, a para in the Refocus Room would not be licensed to give those services.¹⁰⁰

The witness testified he did not believe he was part of the development of the Behavior Plan on page 255 for the Student.¹⁰¹ The witness testified he was reported to the DHS, with the alleged victim being the Student, and a complaint was also filed with the police. While the witness did not know who made the DHS report, it was the Student's father who made the police complaint, because the parents thought the witness bruised the Student when escorting him to the cleared Refocus Room. The witness testified the police declined it, and he went to the DHS office and shared with them

⁹⁷Vol. I, P. 227, lines 1-25, Vol. I, P. 228, lines 1-25, and Vol. I, P. 229, lines 1-5

⁹⁸Vol. I, P. 229, lines 27-25, through Vol. I, P. 230, lines 1-20

⁹⁹Vol. I, P. 231, lines 14-25, Vol. I, P. 232, lines 1-25, Vol. I, P. 233, lines 1-25, and Vol. I, P. 234, lines 1-6

¹⁰⁰Vol. I, P. 239, lines 2-19

¹⁰¹Vol. I, P. 243, lines 9-18

information to get a verbal clearing.¹⁰² The witness confirmed there was a December 20th incident involving the Student screaming in a teacher's face and chest bumping that teacher, resulting in an out-of-school suspension, and he returned 12-21.¹⁰³

Witness NYSSA SCHUETTER

The witness Nyssa Schuetter is the Student's Special Education teacher, and he is in her class for Resource reading, writing and math. Last year she had the Student for third grade math only. She graduated in 2009 from UCA with Early Childhood Education P-4 and Special Ed P-4. She goes to multiple schools in Vilonia, she is in her sixth year with Vilonia, her first job. She began in self-contained at the Primary, and it was kindergarten through fourth grade.¹⁰⁴ The witness testified last year, in third grade, the Student did fairly well but struggled with multiplication, and does not do well with a timer. She carried that goal to this year, but when he is being timed, like fluency, how fast and speed, the Student gets nervous and totally forgets what he is supposed to do.¹⁰⁵ The witness testified they have moved away from the timer with the Student's academics, and with reading fluency the majority of the time the Student does not see her turn on her phone or stop it for words per minute.¹⁰⁶

The witness testified as to the goals and objectives for the Student with math, that the multiplication ones she carried over from last year because the Student did not get far; she thought he only got to the threes in third grade, and now he is on his sevens. The witness testified in her math class they have IEP goals and also work on a whole gamut of math concepts. The witness testified a child usually learns their multiplication facts from one to 12 usually in the third grade. As far as this Student, the witness testified the Student's level is maybe early third grade.¹⁰⁷

Discussing the Student's reading and writing goals on the current IEP, the witness testified the Student reads at about a mid-second grade, but she had nothing to do with the reading or writing goals for this year.¹⁰⁸ The witness testified the way she measures reading, she has different grade level passages she uses, and the Student has made tremendous progress. In the third grade the Student ended the year at 42 words per minute, and he is currently 55 to 62 words per minute. The witness was not familiar with the Literacy Assessment Record. When asked how she kept up with how the Student is doing in relationship to his grade level benchmarks, she testified she has a sheet in a folder

¹⁰²Vol. I, P. 250, lines 23-25, Vol. I, P. 251, lines 1 and 17-25, Vol. I, P. 252, lines 1-23

¹⁰³Vol. I, P. 254, lines 6-19

¹⁰⁴Vol. II, P. 6, lines 14-19, Vol. II, P. 7, lines 5-25, and Vol. II, P. 8, lines 1-23

¹⁰⁵Vol. II, P. 9, lines 1-24

¹⁰⁶Vol. II, P. 10, lines 8-18

¹⁰⁷Vol. II, P. 13, lines 3-25, Vol. II, P. 14, lines 1-17

¹⁰⁸Vol. II, P. 14, lines 18-25, and Vol. II, P. 15, lines 1-25 through Vol. II, P. 16, line 1

she keeps for the Student and every student, and has highlighted where the Student should be on the scale she has, the words per minute. The witness testified off the top of her head she was not familiar with any of the standards recommended in the Literacy Assessment Record as far as reading and words per minute a fourth grader should be able to read, and to see where the Student was as to his reading level she collaborated with the teachers the year before, and his progress is updated in his IEP. The witness did not know if the Student had ever been tested for dyslexia or given any kind of screener, nor had she seen the testing for dyslexia.¹⁰⁹

The witness testified she was not certified in dyslexia therapy, and did not know if there was anyone in the school who is. She testified there is certified reading specialist or dyslexia therapist or interventionist, Diane King, who is certified in Connections. It is used for dyslexia and for teaching literacy.¹¹⁰ The witness testified she knew the basics of dyslexia, reversals and struggles with reading, number reversals, and testified the Student struggles with reading, but letter and number reversals are very, very few, that if the Student did, it is a "B" for a "D." As to phonemes and things like that, the witness testified she did not know if the Student is capable of the five essential skills of reading.¹¹¹

The witness testified the Student struggles with getting his thoughts down, as well as with spelling.¹¹² Looking at an example of the Student's writing as to his spelling and writing ability, the witness testified the Student is capable of more, but that without any help this would be a good example of what he could do.¹¹³ Discussing how the Student's disabilities impact him in Special Ed classes, the witness testified in her class, the hardest thing for the Student is pencil to paper, but with that testified, the Student has no issues in math with pencil to paper. The witness testified the Student does not enjoy reading, he does not like it, but the better he becomes, he will read in class out loud. The witness testified the Student is progressing toward the Student's goals and toward other areas, and they continue to work on them, but at this moment reading and writing is a struggle.¹¹⁴

The witness testified when she had the Student last year for math only, it was 60 minutes a day, and the majority of that was individual one-on-one, so behavior was at a minimum. This year, she has the Student longer, and for the hour of literacy this year, reading and writing, there is another student. At the beginning of this year the Student's behavior was almost amazing, and math is still one-on-one.

¹⁰⁹Vol. II, P. 16, lines 23-25, Vol. II, P. 17, lines 1-25, Vol. II, P. 18, lines 1-10, Vol. II, P. 19, lines 1-25, and Vol. II, P. 20, lines 1-5

¹¹⁰Vol. II, P. 20, lines 6-20, and Vol. II, P. 20, line 25 through Vol. II, P. 21, lines 1-3

¹¹¹Vol. II, P. 21, lines 7-25

¹¹²Vol. II, P. 22, lines 2-11

¹¹³Vol. II, P. 22, lines 12-25, through Vol. II, P. 23, lines 1-17

¹¹⁴Vol. II, P. 23, lines 20-25, and P. 24, lines 2-12

The Student and the other child for literacy are doing the same things, but the Student does not like literacy. If the Student escalates, the witness testified she gives him several choices, will do a bit of ignoring, then gives him another prompt or cue to get busy, hand the Student a pencil, that if it goes higher she testified she will have to start her timer, which is something created with the Refocus Room, and the majority of the it will bring the Student back down. If it gets too high, the witness testified she will text Rhonda Standridge, the para, to take the Student for a walk or to pet Honey, since the witness could not leave the other student in the room alone.¹¹⁵

The witness testified the Student is aware that however many minutes her timer goes for, or anyone's timer goes for, is how many minutes he is owed in the Refocus, which means he is not allowed to choose the activity for that many minutes. That is called noncompliant minutes. The witness testified she starts the timer after three minutes of noncompliant. The witness testified she keeps the minutes on her phone and shows it to the aide to keep track of the minutes.¹¹⁶ Discussing incentives the witness has for the Student that he is working for, the witness testified there are DVD's and plushies, and the Student also gets money in the classroom, pennies for working hard, making good choices, completing work. Then, there is a little store where the Student can cash in, the Student's favorite being Cookies and Cream Hershey's bar. With the money, the witness testified the Student gets to choose something maybe every two weeks.¹¹⁷

The witness testified she did not keep a record of how much class the Student is missing because of being sent out, that the only time she keeps notes on the Student's behavior is when there are threats made to the Student or others, that one day the Student hit himself in the head with the crayon box.¹¹⁸ The witness had made a note on 8-22 that the Student told her reading made him so angry he wanted to punch her in the face. She also noted the Student lost 13 minutes 35 seconds on noncompliance.¹¹⁹ The witness testified she is in charge of implementing the Student's IEP, and that how the Behavior Plan works is that it is just interventions, accommodations, and modifications for the Student to keep him from becoming agitated, and then if he does become agitated, different resources that can be offered to him.¹²⁰ The witness testified she thought the para was there to offer support to all the Student's teachers, but the Student does not have a one-on-one aide.¹²¹

The witness agreed it would be inappropriate to give the Student a chore to do as opposed to the

¹¹⁵Vol. II, P. 25, lines 21-25, Vol. II, P. 26, lines 1-25, and Vol. II, P. 27, lines 1-25

¹¹⁶Vol. II, P. 28, lines 10-25, through Vol. II, P. 29, lines 1-19

¹¹⁷Vol. II, P. 33, lines 4-25, through Vol. II, P. 34, lines 1-3

¹¹⁸Vol. II, P. 34, lines 24-25, through Vol. II, P. 35, lines 1-6

¹¹⁹Vol. II, P. 35, lines 17-23

¹²⁰Vol. II, P. 37, lines 4-17

¹²¹Vol. II, P. 44, lines 1-9

work he needs to do for her class when he is non-compliant, and when asked how the Student makes up work not done in her class, the witness testified in the past she sent the work with Ms. Rhonda to help the Student with it, but the Student currently takes it home. The witness testified if the Student's behaviors got to the point of parent contact, it was not her contacting the parent.¹²²

The witness testified the Student is her favorite, because she can't figure him out, that he is so unique, he can be so sweet and loving, then say things like he wants to hit her in the face. The witness testified the worst she has seen the Student is him tearing things up, like when he was banging a hard pencil case on his head. The witness testified when the Student has not banged his head on the wall in her class, but she is unable to calm him down when he hits the top of the roof. The witness testified she did not attribute the behaviors to autism, but a little bit of anxiety and just work avoidance for the most part.¹²³ The witness testified there was a change about a year ago, last spring, in the Student's IEP, in the number of minutes the Student received, as she thought it appropriate the 60 minutes be lowered to 30 because math, the Student's strong subject area, which he enjoys, and she felt that was 30 minutes the Student could be in the General Education class with his peers. That was a committee decision, and the parents were part of that.¹²⁴

The witness testified over the last two years the Student has made a lot of progress, he now reads 55 to 62 words per minute, and is fully capable of comprehending what he reads. He comes to class bragging how he can read, and comes in and reads books from home or the library books he checks out at school. He is very good at math. He is not at grade level, but is so close, and with writing, his imagination is through the roof. But, if he is to write his feelings down or even a personal letter, he struggles with that.¹²⁵ As far as the Student's behavior, the witness testified that at the beginning of the year, and for at least half of the school year, this year, there were very few instances or outbursts, but the witness testified when the Student raises his voice she does not call that an outburst, but, rather, the Student expressing himself. Since then, when they came back from Christmas break, the Student is kind of reversing.

This witness only had the Student last year for math, and her classroom was not connected to the school. She testified the Student is capable of progressing, and she was pleased with his progress and progress toward the Student's IEP goals. When asked what she thought was driving the behavior change from last semester to now, the witness testified when she presents the literacy, the Student states his parents have told him if he did not want to complete the class work at school, he could bring it home and they would help him, so now the Student says he wants to do it at home. She testified she talks with the Student, explaining she was there to help him at school, that is her job, but

¹²²Vol. II, P. 45, lines 18-25, through Vol. II, P. 46, lines 1-20

¹²³Vol. II, P. 47, lines 7-25, Vol. II, P. 48, lines 1-25, Vol. II, P. 49, lines 1-25, and Vol. II, P. 50, lines 1-16

¹²⁴Vol. II, P. 52, lines 4-25

¹²⁵Vol. II, P. 53, lines 3-24, and Vol. II, P. 54, lines 2-6

when it is math time the Student gets right to math. The witness testified if she can see the Student is sensory overloaded with handwriting, as he presses so hard, she will have him tell her what to write and she writes it. As far as a story, like his Minecraft stories, the Student is allowed to brainstorm on a graphic organizer and get his thoughts down, then he will put them into a sentence, and when he has his sentences he speaks it into the Chrome book when he can correct if it is wrong.¹²⁶ The witness testified the Student's IEP expires in April in this school year.¹²⁷

Witness RHONDA STANDRIDGE

The witness Rhonda Standridge is a behavioral paraprofessional with the District. She is over the Refocus Room, and the Student is one of her students who visits her there. She is a high school graduate, has a teenage daughter with ID and a 12-year old nephew she adopted who has multiple diagnoses, including autism, so she has life skill knowledge also.¹²⁸ She has been a para for the Vilonia School District since February of 2007. She had the Student this year and last year also. Explaining being a behavioral para, the witness testified there is not necessarily certification for that, but she has gone through autism training, she did training through Arch Ford for behavioral issues with kids/students, and has done Professional crisis management, which teaches appropriate ways to move students from area to area, ways to calm if they are in a crisis situation, and ways to use physical restraint properly.¹²⁹

Last year when the witness came in, there was a Refocus Room in the primary school, and the Student used it. The witness testified the Student uses it more this year, it is more scheduled; they had just started it last year, so it was not down to a science, while this year the Student has more scheduled time than last year. Looking at the Student's so schedule, the witness testified the Student gets a break after the has had lunch, as sometimes he has trouble transitioning, so it is to calm him down from lunch to refocus on where he is going and what he is doing for the rest of the day. The witness testified the Student now has a break in the morning, when the witness goes to the Student at 9:35 for a five-minute break, and he is allowed to pet Honey, take a break, walk, get a drink, whatever he needs to break up that instructional time, but that if he does not want to take a break he does not have to take one.¹³⁰

The witness testified the Student does a job from 11:40 to 12:05 daily, the Refocus Room from 12:40

¹²⁶Vol. II, P. 54, lines 11-25, Vol. II, P. 55, lines 1-25, Vol. II, P. 56, lines 1-25, and Vol. II, P. 57, lines 1-7

¹²⁷Vol. II, P. 58, lines 6-9

¹²⁸Vol. II, P. 60, lines 10-16 and 19-25

¹²⁹Vol. II, P. 61, lines 1-25, through Vol. II, P. 62, lines 1-8

¹³⁰Vol. II, P. 62, lines 9-21, Vol. II, P. 63, lines 1-25, and Vol. II, P. 64, lines 1-10, Vol. II, P. 73, lines 15-25, and Vol. II, P. 74, lines 23-25 through Vol. II, P. 75, lines 1-4

to 1:00 daily, but also testified the Student does not come to the 12:40 time on Mondays and Wednesdays because of speech.¹³¹ The witness also testified the Student currently comes to the Refocus Room for his 20 minute recess, which has been a month or so, after Christmas.¹³²

The witness agreed the Student's behavior declined around February. The witness attributed that to work avoidance, saying the Student talked a lot about things his parents talk about at home that upset him.¹³³ The witness testified, when asked how she decides the Student is having difficulty and needs to go to the Refocus Room, that she observes him, and after two minutes she sets a timer and tells the Student. If he still chooses not to calm down, she asks him to walk with her to the Refocus Room. The witness testified Ms. Kelley is the one who told her to do that. The witness testified the majority of this year she accompanies him to Mr. Bullock's class, which is social studies, she helps Mr. Bullock in class and is right there if there is anything the Student needs, she sits by him, and while she is there for his behavior, she is happy to help him. She reads to him, she has helped him with his work, she has helped him do projects and refocus, on a daily basis. She also goes with the Student to his computer lab, where she monitors the Student and is there if he needs help.¹³⁴

The witness testified the Student sometimes does not always like to shut down when the rest of the kids do in computer lab, he does not always stay on task, sometimes he is not on the same website as the others, and tends to wander. The witness testified when this happens she sets a timer and the Student has two minutes to comply. If he does not, and she asks him to go with her to the Refocus Room but he refuses, sometimes she waits him out and sometimes she calls administration. The witness testified he will eventually go, but not always quietly. The witness testified she cannot use PCM on the Student, so since her hands are tied she may need to call administration. She did use PCM on the Student previously, maybe five times. The witness testified she need not write a report on a transport or an escort, only on a restraint, and Ms. Kelley is who told the witness that. The witness also denied the PCM guidelines require a report on an escort.¹³⁵

The witness defined a transport as a simple "walk with me," where you put your hand on their back, hand in front to make kind of a channel, testified it is a wrist/triceps, Sunday Stroll, you pull an arm around and it is still on the wrist, just a bit more secure, kind of up under the person's armpit.¹³⁶ The witness testified she was not familiar with the Department of Ed guidelines about use of physical

¹³¹Vol. II, P. 71, lines 22-25, through Vol. II, P. 72, lines 1-9, and Vol. II, P. 72, lines 7-10

¹³²Vol. II, P. 75, lines 6-15

¹³³Vol. II, P. 75, lines 18-25, through Vol. II, P. 76, line 1

¹³⁴Vol. II, P. 76, lines 23-25, Vol. II, P. 77, lines 1-25, Vol. II, P. 78, lines 1-25, and Vol. II, P. 79, lines 1-16

¹³⁵Vol. II, P. 82, lines 4-25, through Vol. II, P. 82, lines 1-24

¹³⁶Vol. II, P. 83, lines 4-21

restraint in schools, and testified a Sunday Stroll is a physical escort.¹³⁷

Discussing the difference in the Refocus Room and the Cleared Room, the witness testified the Refocus Room is a room used based on Dr. Howard Gardner's multiple intelligence, divided into seven areas, each one tuning to a student's preferred teaching. There is a rest area that is a tent for seclusion, a movement area where the Student does yoga and plays with balls. There is an area for doing art and watching educational videos, there is a math area with checkers and puzzles, that kind of thing, a reading area, interpersonal/intra personal area they can sit still and read quietly, read to each other or sit and talk. There is an area with a refrigerator and a microwave where there are snacks and water. The center area of the room is kind of the brain area, where a student in need of calming can go and discuss feelings, where they are on the temperature gauge.¹³⁸

The witness testified the Cleared Room is where a child in crisis can be escorted and let all his frustration out without harming himself or anyone else.¹³⁹ The witness testified if the Student is in full meltdown, he is taken to the Cleared Room because there is nothing in there to throw, kick or hit; it is just for him to go in and get all his frustration out.¹⁴⁰

The witness testified once the Student calms down, they go through a couple of compliance checks, such as having him stand up and count to ten, then he steps down to the Refocus Room and finishes his calming there. The witness testified data is kept on the number of minutes the Student is in the Cleared Room, and at the beginning of the year there were four people doing that, but from Christmas Break on it has just been her. The witness testified she is a part of the Student's IEP team, going to the meetings since Christmas. She was told to keep the information by Ms. Kelley, and recorded all behaviors.¹⁴¹

The witness described a meltdown for the Student as being screaming, yelling, maybe some physical contact, noncompliance, arguing.¹⁴² The witness testified the Student in addition to doing helper jobs, he has to make up his noncompliance minutes, which is done a little bit at a time, he will do various things during his refocus time and work the minutes off, such as going to area six and reading for ten minutes instead of having his choice.¹⁴³

¹³⁷Vol. II, P. 85, lines 13-25, through Vol. II, P. 86, line 1

¹³⁸Vol. II, P. 86, lines 7-25, and Vol. II, P. 87, lines 1-24

¹³⁹Vol. II, P. 88, lines 11-17

¹⁴⁰Vol. II, P. 88, line 25, through Vol. II, P. 89, lines 1-7

¹⁴¹Vol. II, P. 90, lines 10-25, Vol. II, P. 91, lines 1-25, Vol. II, P. 92, lines 1-17

¹⁴²Vol. II, P. 95, lines 15-18

¹⁴³Vol. II, P. 101, lines 7-24

Discussing an incident that occurred with the Student in Mr. Bullock's class in November, the witness testified the Student was having trouble with Chrome books, that when the Student ramps he goes from arguing to physical touching, and he grabbed her legs, and that is when Ms. Goers and Ms. Alexander has to remove the Student from the witness' legs, then they told her to leave the hall because the Student was still coming after her.¹⁴⁴ The witness read her statement, which testified she had spoken calmly to the Student, asking him to walk with her out of the room, reminded him several more times he could not have a Chrome book, but he began disturbing the class by screaming and rolling around on the floor, got up and went halfway out the door, then started tugging; she got the Student out of class, took the Chrome book out of his hand, and tried to escort him using a wrist/triceps, but he fell on the ground, grabbing and biting at the witness' legs. Ms. Alexander and Ms. Goers assisted removing the Student from the witness' legs.¹⁴⁵

The witness testified a double wrist/triceps, double Sunday Stroll, is basically the same thing, but there is a staff member on each side. There is movement, but it is limited, and the witness testified to her that was an escort.¹⁴⁶ Looking at the District's binder, page 305, the witness testified she was involved in an escort, shown on a Physical Restraint Form. The witness testified they had the Student in a double Sunday Stroll. It was a wrist/triceps at first, that evolved into a double Sunday Stroll due to him kicking and trying to hit, so when they got the Student to the Refocus Room, he was still kicking, hitting and spitting, so they thought the safest place would be to put him down on two-inch mats and they sat him down there. The witness testified they were not on top of the Student. The witness testified they do not carry, they hurry when there are two people to get where they are going quickly.¹⁴⁷ The witness testified there was 3-4 inches between her and the Student's heights.

The witness testified the Student was trying to attack her, kicking, trying to trip her, spitting and hitting her, and she did try to block him. The Student was on the ground, also trying to bite, and he was not being held down.¹⁴⁸ The witness testified after that 12-12 episode, they were no longer allowed to touch the Student per the parents' request—they could not use any type of escort to touch the Student.¹⁴⁹ The witness testified she used ABC Data Sheets to collect behaviors over a period of time, where she takes her notes, and when asked if there was any other data the witness had that was not on sheets produced for this hearing, the witness testified she has her original sheets she takes notes on daily, but she had not produced those to the District or its attorney because no one asked

¹⁴⁴Vol. II, P. 113, lines 18-25, through Vol. II, P. 114, lines 1-16

¹⁴⁵Vol. II, P. 116, lines 11-25

¹⁴⁶Vol. II, P. 118, lines 10-25

¹⁴⁷Vol. II, P. 121, lines 10-25, through Vol. II, P. 122, lines 1-17, and Vol. II, P. 124, lines 2-12

¹⁴⁸Vol. II, P. 126, lines 2-6, Vol. II, P. 127, lines 4-25, through Vol. II, P. 128, lines 10

¹⁴⁹Vol. II, P. 129, lines 5-13

her for them.¹⁵⁰

When the hearing reconvened, the witness, looking at notes, which were not all her own notes, in the Parents' Binder, pages 252 through 394, testified they were the Student's initial kind of behavior charting system had, it gave him a visual, it was how they blocked off the refocus time, as they had 15 minutes. So, for each minute of noncompliant, they took a minute of refocus time, of his choice in refocus time away. The witness testified the plan came from Ms. Kelley, who made the chart, which was not sent him to the parents, it was just for the witness' purposes. The witness testified the Student really enjoyed helping the teachers, sorting mail, delivering mail, it made him feel important.¹⁵¹

The witness testified after the first of the year, when she was in the Refocus Room all the time, the Student had a set schedule when she noticed him coming there every day.¹⁵² The witness testified she had produced six videos of the Student she took with her cell phone, so that it could be documented later.¹⁵³ The witness testified she was in and out from the beginning of the year, the first of December she started working more with the Student, then after January is when she was solely with the Student.¹⁵⁴

Discussing page 293 under "B," the witness testified she had an independent recollection of that incident, that the Student was yelling and calling out, that was a continuous thing; the out of seat /wandering, he was all over campus. He was in the office, was in the cafeteria when he was not supposed to be there, he was everywhere, just going where he wanted, and he was running through the cafeteria, had been running from staff, through the courtyard, through the building, yelling. So, they got him in the cafeteria to take him to the Refocus Room with a write/triceps. In the Refocus Room was still fighting and kicking, he had fought and kicked the entire way to the Refocus Room, so they had to go from a double wrist/triceps to a Double Sunday Stroll to get him in there, and he was still trying to hurt staff, so they were trying to calm him down before they released him, but the witness testified they were not holding him down.¹⁵⁵

Discussing the 12-18 IEP meeting, the witness testified she went, but she did not talk to the parents

¹⁵⁰Vol. II, P. 147, lines 2-25, through Vol. II, P. 148, lines 1-20

¹⁵¹Vol. III, P. 9, lines 3-25, Vol. III, P. 10, lines 1-25, and Vol. III, P. 11, lines 1-12

¹⁵²Vol. III, P. 13, lines 2-6

¹⁵³Vol. III, P. 25, lines 3-25, through Vol. III, P. 26, lines 1-7

¹⁵⁴Vol. III, P. 33, lines 21-25, through Vol. III, P. 34, lines 2-12

¹⁵⁵Vol. III, P. 39, lines 2-25, Vol. III, P. 40, lines 1-25, and Vol. III, P. 41, lines 1-17

about the data sheets, as it was not her place.¹⁵⁶ The witness testified she was at the IEP meeting as a part of the Student's Behavior Plan, but was there basically listening to the parents' suggestions.¹⁵⁷ The witness testified she did believe she heard the parents request a CIRCUIT referral.¹⁵⁸ The witness testified the behavior consultant came in after that, after December.¹⁵⁹ The witness testified physical restraints were discussed at the conference, whether they could use a wrist/triceps.¹⁶⁰

Discussing the parents stating they did not want the Student restrained or transported, the witness testified Mr. Pratt agreed, except for imminent danger, where the Student was a danger to himself or others.¹⁶¹ Once the Behavior Plan was finalized, the witness testified they no longer did physical escorts of any kind concerning the Student. If he was noncompliant, they set the timer, requested he go to the Refocus Room. She remembered days when the Student would be in Refocus, he was not calming, he would run out the door and up and down the hallway, turning lights on and off, with other students in the FEMA building, while the aides that worked there with the witness would have to stand at each end of the hallway to keep the Student from running out the end, and he would run back and forth for however long he decided to.¹⁶² Aggressive behaviors, threats to self or others, were all handled by calling the parents pick up the Student.¹⁶³

The witness testified the Student's behavior got worse after the IEP meeting held on 12-15 and 20, that whenever she needed the Student to go somewhere, he would say "You can't touch me. My parents testified you cannot touch me." The witness testified that gave the Student a sense of empowerment that he did not have to do what he was told to do.¹⁶⁴ The witness testified on pages 342 and 343 the Student yelled "You guys are making me a devil, I am a devil, I am the son of a devil," and he was biting his arm.¹⁶⁵

The witness testified from her own personal experience with autistic children that consistency is key,

¹⁵⁶Vol. III, P. 45, lines 6-20

¹⁵⁷Vol. III, P. 45, lines 21-25

¹⁵⁸Vol. III, P. 46, lines 24-25, through Vol. III, P. 47, lines 1-2

¹⁵⁹Vol. III, P. 47, lines 7-9

¹⁶⁰Vol. III, P. 47, lines 12-17

¹⁶¹Vol. III, P. 48, lines 4-25, through Vol. III, P. 49, lines 1-4

¹⁶²Vol. III, . 50, lines 5-25, Vol. III, P. 51, lines 1-25

¹⁶³Vol. III, P. 56, lines 24-25, Vol. III, P. 57, lines 1-4

¹⁶⁴Vol. III, P. 68, lines 3-19

¹⁶⁵Vol. III, P. 71, lines 21-25, through Vol. III, P. 72, lines 1-8

modeling good behavior, behaviors for a lot of social skills for children with autism.¹⁶⁶ The witness testified she has just about seen it all with her own son, so she has a knack to read kids and know which direction to move to maybe head off certain behavior and has helped her with the Student. At the beginning of this school year, the Student's social skills were better, then after the beginning of the year, after the parents were upset with the school, the Student's behavior declined, so the Student was modeling his parents' behavior, as he would come in telling the witness "Mom and Dad testified this," or "Mom and Dad told me this," or "I heard Mom and Dad talking about," different scenarios of things he overheard. Also things like "You all are idiots," "This school is full of idiots," "You can't touch me," "I don't have to do what you say," "I don't have to go where you tell me to go," "Mr. Pennington is an idiot," "Mr. Pennington can't do this," "Mr. Pennington can't touch me," "You should be put in jail," "The whole school is against me." The witness testified those were just some of the things the Student testified.¹⁶⁷ The witness testified the Student is easily swayed, and he was also mad about charges being filed on him, and had a hard time differentiating between what he is made about and who is mad at and keeping it from spreading to others.¹⁶⁸

The witness testified, when asked about the Student's academic progress this year, that the Student has it in him, and gave an example of answering a question in class so perfectly she was shocked, but testified the majority of the time the Student simply chooses not to do it, that work avoidance is a huge problem for him. The witness gave another example of the Student's work on a project about which he was excited, but testified his work avoidance is detrimental to him once he gets it in his head he is not going to do something.¹⁶⁹ The witness narrated a Power Point in the District book, beginning on 561, showing the Refocus Room, procedures, the areas, the things there are to do there, and testified any student can use it.¹⁷⁰ Discussing her involvement in a decision made with the Student's mother on Dec. 12th, the witness testified the Student's mother did not think it a good idea for the Student to stay home, she did not think he would learn his lesson, so he stayed with the witness the rest of the day and the following day in the Refocus Room.¹⁷¹

The witness narrated a video of the Cleared Room from December 13th, where the Student was to calm down, and he was talking to an adult and calming down. The witness testified basically the Student was there long enough to calm down and use his frontal lobe to answer questions calmly and rationally, then come out. The witness testified de-escalation is the primary purpose of the Cleared

¹⁶⁶Vol. III, P. 75, lines 18-25, through Vol. III, P. 76, lines 1-24

¹⁶⁷Vol. III, P. 77, lines 12-25, Vol. III, P. 78, lines 1-25, Vol. III, P. 79, lines 1-5

¹⁶⁸Vol. III, P. 79, lines 6-25, through Vol. III, P. 80, lines 1-11

¹⁶⁹Vol. III, P. 81, lines 4-25, through Vol. III, P. 82, lines 1-15

¹⁷⁰Vol. III, P. 82, lines 16-25, Vol. III, P. 83, lines 1-25, Vol. III, P. 84, lines 1-25

¹⁷¹Vol. III, P. 85, lines 8-25, through Vol. III, P. 86, lines 1-7

Room, and they want to make sure the Student is in a good place before he leaves that room.¹⁷²

The witness testified she learned in January that the Student's parents had reported her, Ms. Simpson and Ms. Kelley to DHS for allegedly engaging in child maltreatment as to the Student. She testified she was with the Student, and a DHS investigator came out to speak to him, so she took the Student to the DHS investigator in the counselor's office. When she left, Mr. Pennington told the witness the DHS investigator wanted to speak to her. The witness testified she was in shock, but gave the DHS investigator the document from the day in question.¹⁷³ The witness also narrated an incident Feb. 26th when they were just trying to make sure the Student did not leave the building when he was running back and forth, the witness was trying to get him to go into the Cleared Room or the Refocus Room—she testified she was saying it calmly and repetitively, but the Student was also turning lights on and off even though not agitated or out of control, just noncompliant. The witness testified no one is escalated, but at one point she asked for the office to be called. The Student was laying on the floor, and the witness testified she opened the door to the Cleared Room and asked the Student to come in, but he started tearing all the decorations off the wall, as well as tearing down a full size tree in the entry, saying it was stupid and nobody liked it. The witness testified she has a lot of patience from 18 years of dealing with special needs children. The witness testified Mr. Pennington came in, talking calmly to the Student, trying to de-escalate, and everyone had a calm posture trying to calm the Student, but then the Student became angry again and starting to try to hit the witness with the paper and she had no where to go. She testified she told the Student he needed to put that down, and he began trying to go out the door again. The witness testified she thought a teacher was on the other side holding it closed. The witness testified escort was their last resort, it was three steps to the Cleared Room, and they simply took the Student in and they left.¹⁷⁴

When asked again about the Student modeling parental behaviors, the witness testified she had heard the Student's mother on the phone with Mr. Hart saying pretty much what the Student was saying when he would say people were idiots and they could not touch him. The witness also testified she was in the office one afternoon and saw the Student's mother standing outside Mr. Pennington's office screaming at him, and the Student was in the hallway screaming and yelling at the witness.¹⁷⁵

When asked who taught her calming techniques, the witness testified in addition to 12 years of

¹⁷²Vol. III, P. 86, lines 12-25, through Vol. III, P. 87, lines 1-20, and Vol. III, P. 88, lines 1-18

¹⁷³Vol. III, P. 89, lines 10-25, through Vol. III, P. 90, lines 1-20

¹⁷⁴Vol. III, P. 90, line 25, through Vol. III, P. 91, lines 1-25, Vol. III, P. 92, lines 1-19, Vol. III, P. 93, lines 1-25, and Vol. III, P. 94, lines 1-25, through Vol. III, P. 98, lines 1-9

¹⁷⁵Vol. III, P. 104, line 22-25, through Vol. III, P. 105, lines 1-22

experience with an autistic son, the witness testified she also coaches Special Olympics and go on overnights with all kind of children on the spectrum and her 17-year-old son is intellectually disabled.¹⁷⁶ The witness testified there are eight students scheduled throughout the day for the Refocus Room, three who are scheduled to come at the same time, that lately she has up to four drop-ins in the afternoon, that all the children are fourth through sixth graders, ages 9 to 12, but not all are special needs students. The witness is the only staff member there, so if an incident occurs that removes her from the room, the other children go back to class.¹⁷⁷

Witness JOSH HART

The witness Josh Hart is employed by the District as the Assistant Special Ed Director for the Vilonia School District. He was originally a school psychology specialist and still holds his certification there. He obtained a Masters degree at UCA, and has an EDS in educational leadership from Arkansas State University. This is his eighth or ninth year, and he has spent the past, including this year, three as the Assistant Special Ed Director. Prior to that, he was a school psychologist for the Vilonia School District.¹⁷⁸ When asked if he was familiar with an evaluation or an assessment done for the Student regarding whether or not he should be diagnosed with dyslexia, the witness testified he did what would constitute a level two dyslexia screener as part of that evaluation. They did components looking at weaknesses in phonological awareness and phonics and phonological processing, which could identify dyslexia characteristics, which is also a specific learning disability. The witness testified the report he authored was in July 2016, the evaluation being at the primary school.

Testifying as to the extent he assessed for dyslexia, the witness testified the main components used were the WJ-IV, which looks at auditory processing, which is also something used to determine if there is a specific learning disability in basic reading skills. The witness testified the CTOPP-2, the Comprehensive Test of Phonological Processing, is really the gold standard to use when identifying weaknesses in phonological processing such as related to phonological awareness. The witness testified that was followed by the Woodcock Reading Mastery Test, which is more of a curriculum-based measurement looking at different areas composing reading. Explaining in detail the multiple tests, the witness testified the Student's work avoidance behaviors and his past history made it hard to determine if some of those behaviors were not the primary cause of the deficits. The witness testified the Student's third grade teacher was trained in the Connections program, which is a program created to address dyslexic characteristics. The witness testified he was not able to conclude the Student was dyslexic or not, as there are too many other variables that would impede making the determination it is not unexpected, that dyslexia is unexpected when looking at the whole

¹⁷⁶Vol. III, P. 108, lines 21-24, through Vol. III, P. 109, lines 1-5

¹⁷⁷Vol. III, P. 113, lines 10-25, through Vol. III, P. 115, lines 1-8

¹⁷⁸Vol. III, P. 117, lines 13-25, through Vol. III, P. 118, lines 1-4

individual.¹⁷⁹

Looking at the Schedule of Services page from the IEP meeting April 21, 2017, and what services it lists for the Student for the remainder of the 2016-2017 school year, and the beginning of the 2017-2018 school year, the witness testified there was a reduction in minutes for reading and writing as the Student transitioned between the two grades. The witness testified that was to line up with what they run at the intermediate school for the Resource blocks, since at the elementary school they have more minutes, as they are moved up, they try to reduce those, and then, once they get to the secondary level, they go with whole blocks. The students are pulled out for a period of time so they are still accessing information in the General Education setting, and is really an age range targeted to continue to serve the students in the General Ed setting as much as possible to try and prepare the students for a time when they will possibly earn credits if they are going to be college-bound. The witness testified there was a consensus among the IEP team members, including the parents, at that meeting regarding the change, and the parents participated to follow that.¹⁸⁰

Identifying district page 151, the witness testified it was the Notice of Action from the Feb. 21st conference held at Frank Mitchell Intermediate School to look at a CIRCUIT referral, and also to add a behavior goal to the Student's IEP. The witness testified the conference was also to review outside evaluation results, outside occupational therapy, speech therapy and the psycho-educational evaluation that was done. Those reports were obtained the day before the conference, and the parents were contacted to try and reschedule so the district could have more time to review the educational impact of those evaluations on the Student's progress and education. The witness testified the parents requested the conference be held to address the other areas that the conference was going to be held for at that time. The witness it is his handwriting in the Other Factors Relevant to the Action section specifically noting that discussion. The witness testified the annual review conference to allow for the outside psycho educational report to be completed, was scheduled for, he though, the week school resumed from Spring Break , but it was held of because of the Due Process filing.¹⁸¹

The witness testified he was not the one doing all the testing during the last three years for the District, that there were two other psych examiners.¹⁸² The witness testified as far as he knew, he was the only one who tested the Student concerning ruling out dyslexia.¹⁸³ Discussing the parents bringing him a testing summary from Dr. Horton, the witness testified they did not receive the comprehensive psycho educational evaluation, dated 04-09-18, until it was submitted with the

¹⁷⁹Vol. III, P. 118, lines 8-25, through Vol. III, P. 121, lines 1-22

¹⁸⁰Vol. III, P. 122, lines 3-25, through Vol. III, P. 123, line 1

¹⁸¹Vol. III, P. 123, lines 18-25, through Vol. III, P. 124, lines 1-23

¹⁸²Vol. III, P. 125, lines 10-16

¹⁸³Vol. III, P. 131, lines 3-5

parents' counsel's evidence in this case nearly a month later, after the Due Process was filed.¹⁸⁴ When questioned about Dr. Horton's summary submitted to the District on February 20th from the parents, the witness testified many of the recommendations in there to several areas were already a part of the Student's programming. The witness testified he was aware of Dr. Horton's diagnosis of a specific learning disorder with impairment in reading, moderate, but the witness was very skeptical.¹⁸⁵ The witness testified he was familiar with the levels when it comes to Autism Spectrum Disorder, and level one would be similar to mild, level two moderate and level three profound, but the witness testified he does not diagnose autism in that way, that they do educational disability diagnoses. The witness testified based on the Schedule of Services, the Student went from 110 minutes to 90 minutes.¹⁸⁶

When asked where the Student's reading level is, the witness testified the best indicator of that would be his goal progress via his IEP to look at, as you have measurements over time done multiple times instead of a one-time setting where, in both evaluations, you have the evaluator specifically talking about noncompliance, inattentive behavior.¹⁸⁷ When he was asked if he was aware the Student was spending about 45 minutes daily in the Refocus Room, the witness testified he was not aware of the number of minutes the Student was spending there.¹⁸⁸ When asked about the number of students Ms. Nyssa had for the Student's class, the witness testified the max is two, so sometimes the Student individually. The witness testified he knew that on occasions the Student missed his Special Ed class to go to the Refocus Room, and it was becoming more frequent as the year has gone on. The witness testified they have held multiple IEP meetings to try to address behavior, and obtained consent for a Functional Behavior Assessment through CIRCUIT.¹⁸⁹ The witness testified the CIRCUIT referral was made in February.¹⁹⁰

Discussing the Student's decline in behavior and things put into place that have been effective, the witness testified the Student has had a positive reinforcement system for the past two years that at times has been effective. The witness testified Ms. Nyssa's instruction throughout the year has been effective with the Student based on his rate of progress, the way she tailored instruction to the Student, and use of the Refocus Room has been effective up until recently, and still tends to be

¹⁸⁴Vol. III, P. 145, lines 7-25, through Vol. III, P. 146, lines 1-16

¹⁸⁵Vol. III, P. 146, lines 6-25, Vol. III, P. 147, lines 1-25, and Vol. III, P. 148, lines 1-13

¹⁸⁶Vol. III, P. 149, lines 7-15, through Vol. III, P. 150, lines 1-20

¹⁸⁷Vol. III, P. 152, lines 6-13

¹⁸⁸Vol. III, P. 160, lines 7-16

¹⁸⁹Vol. III, P. 161, lines 18-25, through Vol. III, P. 163, line 1

¹⁹⁰Vol. III, P. 163, lines 14-25 and Vol. III, P. 164, lines 1-8

effective even despite the issues of late.¹⁹¹ The witness testified he had conversations with Ms. Standridge, Ms. Kelley and Mr. Pennington, as to data and making changes to the Behavior Plan, but he did not see the data.¹⁹²

The witness testified there was an incident before or after break where the Student was upset in the hallway, and the witness stepped in and talked with the Student and he was able to integrate back into the classroom. Discussing the February incident where the Student was getting agitated in Ms. Nyssa's classroom, so the witness testified he went there to see if he could help, as he has a rapport with the Student, and sometimes someone who is not a part of the situation can step in and talk to the Student and be successful in calming him down. There was a book fair going on, and the Student was tearing up his school supplies, and the witness testified the Student kicked him in the shin multiple times when he was standing at the door. The Student's parents were called by Ms. Goers, and he was suspended for the rest of the day.¹⁹³

The witness testified he did not have the ability, as one of the psycho educational examiners of the District, to go back and look at raw data gathered in previous evaluations to assure himself that scaled scores are correct based on raw data interpretation. The witness testified he had not had the opportunity to go back and look at actual assessment protocols from previous assessments of the Student. When questioned as to whether that might be something an examiner would want to look at given the complexity of a child like this Student, the witness testified they would take into account heavily the testing observations when determining those things, and also the consistent pattern, if there are multiple assessments, is there a pattern. So, in the instance of the Student, he has been evaluated by two outside and two school evaluators, and then had a recent evaluation. None of the previous four ever indicated a specific learning disability because they were taking into account the impact of all of the other behavioral attention issues. The witness testified that until you get to the Arkansas Families First, there is a consistency in the Student's behavior, there is not a consistency with the diagnostic impressions.¹⁹⁴

Witness JENNIFER McMAHAN

The witness Jennifer McMahan is the Student's school speech pathologist. The witness obtained her Master's degree in speech/language pathology at UCA. She has been at Vilonia for eight years, and before that she worked two years at the Russellville School District. This is her first year having the Student.¹⁹⁵ Identifying her speech logs, progress notes of therapies she had done, the witness explained she keeps daily logs with just the date and time she sees the Student, and then the accuracy, his data for every speech session on the goals they addressed during that day. Like the goals

¹⁹¹Vol. III, P. 164, line 25, through Vol. III, P. 165, lines 1-25

¹⁹²Vol. III, P. 169, lines 4-11

¹⁹³Vol. III, P. 172, line 16-25, through Vol. III, P. 178, lines 1-13

¹⁹⁴Vol. III, P. 182, lines 13-25, through Vol. III, P. 185, lines 1-3

¹⁹⁵Vol. III, P. 188, lines 13-25 through Vol. III, P. 189, lines 1-11

addressed, scores are the percentages the Student did on a particular goal. 8-28 was the first speech session with the Student. The notes reflected the Student was in the Refocus Room 9-20, the Student went home suspended 12-20, he was in the Refocus Room 2-26, 1-22 the Student was absent, and the witness identified several dates when the Student went home early, went home early due to behavior, times when there was no school or the therapist was absent or in conference. The witness testified on 4-24 the Student took the Aspire test and had extra recess for reward for the test.¹⁹⁶ When asked why she could not go get the Student if he was in the Refocus Room, the witness testified she sees the Student in a group session, so that would possibly take away from other students' speech time.¹⁹⁷ When asked about the Student's behavior in speech, the witness testified he has always done fine with her, no behavior issues, and that neither his behavior nor his absences interfered with his speech.¹⁹⁸

When asked about the Student's progress as far as his first goal of demonstrating appropriate conversational skills, the witness testified third quarter was not reflected on the sheet, but on her data, the Student has 65 percent accuracy third quarter in March, that on the second goal, stating multiple interpretations from the picture, the Student was at 65 at third quarter, that on the third goal, stating solutions to problems, the Student had 60 percent, that on the fourth goal, using interpersonal negotiation skills to problem solve, that was not yet initiated, that on the fifth goal, stating the meaning of vocabulary, that was not yet initiated, and that on the sixth goal, being able to demonstrate correct usage of morphemes, third quarter the Student was at 75 percent. The witness testified the Student's speech therapy sessions last thirty minutes, with the Student and one other student. When asked what she does when the Student misses therapy sessions, the witness testified she document on her sheets and then they can make them up.¹⁹⁹

When asked, in spite of sessions missed, whether by the Student's absences or the witness', she believed the Student was able to appropriately access her services and was making progress, she testified yes. Explaining her answer, the witness testified just looking at the data, the Student did not regress in any of the skills, that he maintained and showed consistent progress. She testified, as an example, on 4-16 the Student had 70 percent accuracy, he missed a session, but on 4-30 the Student went from 70 to 75 percent accuracy during the period from April 16 to April 30th.²⁰⁰ Discussing how she tailors therapy to the Student, the witness testified the Student enjoys reinforcements, so they will do a couple of trials and he will get a turn on a game, then they do a couple more trials, then

¹⁹⁶Vol. III, P. 189, lines 11-25 through Vol. III, P. 194, line 25

¹⁹⁷Vol. III, P. 193, lines 12-17

¹⁹⁸Vol. III, P. 195, lines 3-12

¹⁹⁹Vol. III, P. 195, lines 21-25, Vol. III, P. 196, lines 1-11 and lines 19-25, through Vol. III, P. 197, lines 2-25, and Vol. III, P. 198, lines 1-16

²⁰⁰Vol. III, P. 199, lines 1-24

he will get a turn on the game, so just going like that has helped the Student.²⁰¹ When asked to look at an evaluation of the Student obtained by the parents, titled "Clinical Observations," the last two sentences of which stated "Student refused," what was meant by a speech/language pathologist using that sort of verbiage on a clinical observation note in a report or an evaluation, the witness read "Due to his refusal to complete all tasks and his reduced effort, today's language scores may be a lower representation than his actual abilities. Language scores should be interpreted with caution." To explain that in layman's terms, the witness testified he examiner stated the Student refused on some of the test items and maybe the Student did not use his best effort, so that would reflect in the scores obtained, and the Student might have received a lower score than his actual abilities because of the refusal and reduced effort. The witness testified she had never had similar observations with the Student, he was very cooperative and gave full effort.²⁰²

The witness testified she had read the speech evaluation by Pediatrics Plus as to the Student, which reflected the Student presented with some delays in the area of pragmatics, but it appeared they stemmed from problem behaviors more than underlying global language delay, and the witness testified that was why she is doing something with a group. The witness testified the recommendation in the document that the Student receive 60 minutes of speech therapy during the summer months for remediation of "R" would mean articulation, production of the "R" sound by the Student. The witness testified she does not serve the Student for articulation, she does more the social language, and since she sees him in the educational setting, the "R" sound is not impacting the Student's education, per se, that he participates in class and does not appear frustrated or embarrassed because he cannot produce the "R" sound. In addition, the witness testified the Student's school testing was age-appropriate for the "R" sound. The witness testified the Student can produce it, he has been able to do so in speech sessions.²⁰³ The witness testified she does not recommend speech therapy like in pragmatics for her students for summer programs.²⁰⁴ The witness testified she had never heard the Student's parents express articulation concerns as to the Student.²⁰⁵

Witness XXXXXXXX XXXXX

The witness XXXXXXX XXXX is the Student's father. The witness holds an Associates degree in computer information systems and an Associates in air frame avionics technologies. He has been in the Air National Guard full time for 19 and a half years, working on aircraft. There have been short temporary duty unit deployments since the Student's birth, three months being the longest. Vol. III, P. 205, lines 18-25, through Vol. III, P. 206, lines 1-10 The witness, describing his son, the Student, testified they enjoy doing things together, but his autism, the father guessed, holds the Student back

²⁰¹Vol. III, P. 199, line 25, through Vol. III, P. 200, lines 1-7

²⁰²Vol. III, P. 200, lines 8-25, through Vol. III, P. 201, lines 1-20

²⁰³Vol. III, P. 202, lines 4-25, through Vol. III, P. 203, lines 1-25

²⁰⁴Vol. III, P. 204, lines 7-12

²⁰⁵Vol. III, P. 204, lines 18-20

a little bit, like he does not understand social cues, he blurts into a conversation, he is easily frustrated, he wants to learn or be able to figure it out fairly quickly, and if he doesn't he gets frustrated with it. He exhibits that frustration by saying "I can't do it," or he just pushes away and is done with it. The witness testified when it comes to that, the witness will tell the Student they are going to refocus, we are going to do one at a time. He sees a whole sheet of paper, and we are going to do one question, but he will say "I can't do 20 questions." The witness testified he tells the Student okay, they will do one at a time, and he covers up some of the others. The witness testified once that one line is done, he asks if the Student wants to take a break, walk around the house, or do something, and when they get that done, there is always a positive incentive, which always helps. The witness testified they take short breaks, come back to it, do a line, and near the end when the Student sees the reward coming really fast, he does not want to take as much of a break, he wants to work until it is completed so he can get the reward, so he is reward goal driven.²⁰⁶

When asked about the Student's behaviors at home, the witness testified they do not see any of the stuff the school does, that he does not rip stuff off the walls, he does not scream and holler. He will say "I'm upset with you," or he might yell a couple of times. The witness testified the Student is told to go to his room if he does not like what is happening, and he will go to his room, and sometimes they hear him talking to himself, talking it out. The witness testified he goes to the Student's room and sits down with him to ask if the Student is done and ready to talk about it. The witness testified at eye level, you can negotiate with the Student so you are not overpowering him. The witness testified he asks the Student what he is thinking and tells the Student what he is thinking, and a lot of times they work things out, and sometimes before they even go to the Student's room he will ask to come out of his room and says yes he wants to talk. The witness testified they talk and explain what was wrong or was not right, why they asked the Student to do something, and he will say he understands. And they just go on about their day until the next crisis. The witness testified the most difficult thing to learn about dealing with the Student, a child with autism, is acceptance. The witness testified he initially thought it was just behavior and the Student needed a more strict regimen at the house, that maybe the witness was not strict enough, so he got really strict. Then, no matter how much he was disciplined, even though the Student promised he would not mess up again, he would go to school the next day and do the exact same thing. The witness testified his wife, the Student's mother, testified something is wrong, so for the witness, he has to accept there is nothing wrong with the Student.²⁰⁷

Discussing the Student in social situations, the witness testified the Student is normally good around his parents, that the Student always wants to interrupt the conversation with adults, he does not understand not to blurt in, but he is getting better, as the witness thinks he has to raise his hand at school, as he will be in the car raising his hand, and when the witness asks what he has, the Student will speak. The witness testified when they are out and the Student sees a teacher or the bus driver, or one of the counselors, he thinks, from the old school, the Student runs to them and grabs them and asks how they are doing, he just loves all over them. The witness testified he has told the Student

²⁰⁶Vol. III, P. 206, lines 11-25, through Vol. III, P. 207, lines 1-25, and Vol. III, P. 208, lines 1-8

²⁰⁷Vol. III, P. 208, lines 9-25, through Vol. III, P. 210, line 5

he needs to let them know he is coming, as he goes at you full blast, so he will run into you pretty hard, but he always hugs and is inquisitive about what is going on. He is always looking around.²⁰⁸

The witness testified the Student tries to participate in extracurricular activities, he wants, he plays for a few days and is on to something else he likes, that he is more into computers, but will play chase, hide and seek with a couple of neighborhood kids, but his main focus is inside on the video game.²⁰⁹

The witness testified as an antecedent, they go back, whenever the Student would get in trouble at school, they always try to figure out what started it, what the antecedent was that caused the change in behavior, from compliant to noncompliant behavior, and they would always figure out what started it. The witness also testified he knows the word trigger, and how to handle that with the Student, that not explaining to him, like if the game is over, transitioning is a trigger, and if the Student does not understand why something is happening, that is a big trigger for the Student.²¹⁰

The witness testified they pretty much have the Student's routine down so well he does not have any meltdowns at home.²¹¹ The witness also testified they have learned how to let the Student talk to them, like when he got in trouble at school, and he is picked up he would say "You are mad at me," and the witness testified no, he was not, not to worry about it, they would not talk about anything, and then later on, maybe an hour or so later, he would ask the Student if he wanted to talk about what happened, and the Student would talk about it to himself, and he will try to recall in his head what happened at school.²¹²

Looking at pages 252 through 394 of the school papers today, the witness testified he had seen before the physical restraints, but did not recall the smiley faces, and he was never told that they were keeping data, that they were told there was no data during the December 20th IEP meeting, when they requested multiple times to have a CIRCUIT evaluation, they were told there was no data to support one. The witness testified they wanted it because they thought the Student was pinned to the floor and that was all the data they needed, as if something is going on that caused school staff to feel they needed to pin him to the floor, something was going on, so the parents testified there needed to be another evaluation now.²¹³

²⁰⁸Vol. III, P. 210, lines 6-25, through Vol. III, P. 211, lines 1-7

²⁰⁹ Vol. III, P. 211, lines 8-24

²¹⁰Vol. III, P. 212, lines 1-25, through Vol. III, P. 213, lines 1-10

²¹¹Vol. III, P. 213, lines 12-25

²¹²Vol. III, P. 213, lines 12-25 through Vol. III, P. 214, lines 2-25 and Vol. III, P. 215, lines 1-4

²¹³Vol. III, P. 215, lines 5-25, through Vol. III, P. 216, lines 2-8

Discussing this school year and the Student's behavior, the witness testified it was important what happened at school because the Student sometimes brings home with him what happened there. If the Student has a good day, he will come home and is super excited. As to information they get from the school, the witness testified he got the occasional call from Ms. Kelley or Mr. Pennington that the Student had a rough day, or the Student was not doing so well and might need a word of encouragement from the witness. If he got no call at all, the witness testified he assumed everything was great. If the parents can find out what upset or triggered the Student at school, the witness testified

they could use that. The witness testified a lot of times he talked to the principal, Mr. Pennington, with whom the witness has a pretty good rapport, and they could talk, and Mr. Pennington likes to use the words "throw him a curve ball," as a lot of times if the Student starts trying to have a meltdown at school, apparently redirection gets him off the idea, because he just focuses, he is completely focused at that point. So, if you can make him lose that focus on what is getting him frustrated, he will just come right back around and go to class and everything is fine. You throw a question totally off the wall.²¹⁴

When asked if the parents have any kind of rule at home that if the Student gets in trouble at school, he gets in trouble when he gets home, the witness testified he does the same thing the school does, work off the rewards and the points, points being like tokens, as the Student can buy things with the points. The Student is allowed to pick what it is, so he has immediate rewards when he gets home, and a larger reward for the end of the week so he has something to work for.²¹⁵

Discussing what has happened behaviorally this school year, the witness testified the Student was fine except he was restrained twice, a couple of restraints, for meltdowns, and they had an IEP meeting. The witness testified they asked for an IEP meeting that was held December 7th, where the Student was applauded for his behavior, how well he was doing in school, how he has progressed in all his classes, everybody loves him, the perfect student, basically. Everything the school has in place was working great. Then, a few days later, they pin him to the floor for a meltdown, and the phone call the witness had with Liz Kelley was something different had to be done because what was in place then was not working at all, and there needed to be a meeting really quick.²¹⁶

Discussing the videos today, the witness testified he had not seen those before. The first video was the Student crying in the Cleared Room, and the other was the Student in the hallway, and that was the day Mr. Pennington called for the Student to be picked up because he was suspended. The witness testified no one at the school had permission to video the Student, and on the day the Student was pinned to the floor, December 12th, Ms. Kelley asked permission to video the Student, but the witness testified no, he did not think that a good idea, but Ms. Kelley testified she didn't think she

²¹⁴Vol. III, P. 218, lines 5-25, through Vol. III, P. 219, lines 1-19

²¹⁵Vol. III, P. 220, lines 7-25, through Vol. III, P. 221, lines 1-4

²¹⁶Vol. III, P. 221, lines 5-25, through Vol. III, P. 222, lines 1-24, and Vol. III, P. 223, lines 1-2

needed his permission anyway.²¹⁷ The witness testified at the December 20th meeting he specifically asked Ms. Kelley if she ever found out if she could legally record the Student with cell phones, and she testified they weren't going to do it, but could if they wanted to. The witness testified that did not hold true, as he sees they are still videotaping the Student with cell phones.²¹⁸

The witness testified what the school told him the Student had done wrong to get to the point that led to the incident in the hallway was that the Student was noncompliant and would not continue doing his school work, and Rhonda was with him, and he wanted to call his parents, and they went to the office to call the witness, but something the parents did not know was in effect was that if the Student is noncompliant, he cannot call his parents without a principal present. The witness testified the parents found that out probably mid-March, when the witness got it out of Mr. Pennington. The witness testified if that was a protocol or a practice, they should have discussed it in the last meeting, as the witness testified if the Student is getting worked up or being noncompliant, calling them helps calm the Student, and not allowing the Student to call can only escalate the situation.²¹⁹

The witness testified February 21st the Student's IEP was changed where the Student is going to transition from something he likes to something he does not want to do, and be able to transition in 3-5 minutes.²²⁰ The witness testified they did not know about the timer, that takes away minutes, because the Student was not allowed to phone, and the witness testified he believed if the Student had been able to call, none of this would have happened.²²¹ The witness testified he did not know about how much time the Student was missing from school to do tasks, paying back minutes.²²² The witness testified he did not know the Student was being made to use noncompliance minutes to do chores around the school, nor did the parents know there were hundreds of minutes of noncompliance time tallied up.²²³

The witness testified everything started going super bad after Christmas, or after the Student was pinned.²²⁴ Discussing the incident where there was physical restraint, the witness did not know the exact time, and testified he was on the floor until he did not give any more resistance and testified he was hungry, so he was let up and went to eat. The witness testified he was told that was for the

²¹⁷Vol. III, P. 223, lines 3-20, through Vol. III, P. 224, lines 2-14

²¹⁸Vol. III, P. 224, lines 17-23, and Vol. III, P. 225, lines 1-2

²¹⁹Vol. III, P. 227, lines 7-25, through Vol. III, P. 228, lines 1-13

²²⁰Vol. III, P. 229, lines 9-13

²²¹Vol. III, P. 229, lines 23-25, through Vol. III, P. 230, lines 1-5

²²²Vol. III, P. 230, lines 6-10

²²³Vol. III, P. 231, lines 2-5

²²⁴Vol. III, P. 232, lines 1-2

Student's safety, and testified he got different stories as to what happened.²²⁵

The witness testified the Student was in ALE in first grade, and after that, mid-second grade, at one point had a meltdown and a statement of self harm, and the school notified the parents. So, the parents took the Student to the Base, their clinic the witness thought, and they didn't see anything wrong with the Student. The witness testified they did that twice in the third grade. The witness testified the Student told him he testified that because he had heard someone else say it. The witness testified when the Student had another meltdown and testified self harm in third grade, the witness told the teachers, the principal, he thought, that the Student had picked up the statement from another student at ALE because he knows it will get him out of the situation. Sometime this school year, September or October, the Student had a meltdown and he must have testified it again, as the witness testified the parents were notified, and the parents testified the Student did not know how to say what he really felt, he only knew he had to get out of the situation.²²⁶

The witness testified at that point they started taking the Student to counseling in October of 2017, the fourth grade school year, and he has been in therapy since. The witness testified the Student's therapist says she sees no cause for alarm, that the Student uses that as a means to escape, and she is helping him find the words to use or be able to use his voice instead of being nonverbal.²²⁷ Looking at page 142 talking about protocols to address the Student's behaviors, with "Draft" on it, the witness testified what the parents were told about documents 142 and 143 was when Ms. Kelley brought those in for the meeting on the 15th and testified this was going to be the new policy because we stated they could no longer restrain the Student. Ms. Kelley went down a list, showing a lot of things of which the parents were not aware, like apology notes. The witness testified the Student was still going to have to write letters, and they learned about him hugging a girl and asking each other out on dates, and the parents knew nothing of that.²²⁸

The witness testified they did not sign anything the 20th of December because they did not agree with it. The witness testified their only input was the school might have added the Student gets to call his parents. The witness testified they felt the Student was being retaliated against for the parents taking away the restraint rights.²²⁹

After that, the witness testified, the Student's behavior got worse; he has never been suspended from school, the parents didn't sign anything, the Student was suspended one day for body slamming a teacher, on February 21st he was suspended. And the witness did sign that one, the IEP meeting, as

²²⁵Vol. III, P. 234, lines 3-25, through Vol. III, P. 235, lines 1-24

²²⁶Vol. III, P. 236, lines 2-25, through Vol. III, P. 237, lines 1-20

²²⁷Vol. III, P. 237, lines 22-25, through Vol. III, P. 238, lines 1-25, and Vol. III, P. 239, lines 1-4

²²⁸Vol. III, P. 239, lines 12-25, Vol. III, P. 240, lines 1-25, and Vol. III, P. 241, lines 1-11

²²⁹Vol. III, P. 244, lines 16-25, through Vol. III, P. 245, lines 1-6

he felt the FBA was part of it. After the 21st the witness signed that, he got a phone call every single day from the Student until the resolution meeting in March. The calls were about noncompliance, work avoidance the main one. It was Ms. Nyssa's class, every day he could expect a call from 9:30 to 9:50 from Mr. Pennington, except a couple of times Liz called and Josh called during that time frame. If the witness got a phone call for noncompliance, work avoidance, he needed to go escort the Student to the Cleared Room so he would complete his work.²³⁰

The witness testified the Student turned 10 January 19th, there were two events, one in January and one in February, one where the school referred the Student to the juvenile officer for charges, and they did not for the other one, and went on to describe what he had been told occurred.²³¹ The witness testified the Student had been suspended this year 9 days total, but that he had grossly miscalculated the amount of hours, so went back and came up with 60 hours missed from the nine days of suspension.²³²

Discussing the times the Student leaves early, the witness testified normally that was just for counseling every other week, but since December he goes every week, as the counselor testified the Student's anxiety and depression have gotten way up and he does not know how to deal with it. He is very frustrated, to the point that when they took a family vacation in December, the Student was not being himself.²³³

The witness testified the occupational therapy evaluation for the Student says he needs 60 minutes to address that, but the school wasn't going to implement that until they met again. Like the last IEP o the year, they were going to go over the two, the OT and the ST, and the psycho educational evaluation to make a game plan for the Student next year.²³⁴ The witness testified the Student has been having OT two months now, he goes 30 minutes Mondays and 30 minutes Wednesdays, and the witness takes him there to Pediatrics Plus in Conway, Arkansas, probably 15 miles. When asked if the school reimburses the witness at all, the witness testified he did not know if the school even knows the Student is being taken.²³⁵

The witness testified he emailed the Testing Summary on page 89 dated February 20, 2018, which

²³⁰Vol. III, P. 245, lines 7-25, through Vol. III, P. 246, lines 1-9

²³¹Vol. III, P. 246, lines 10-25, through Vol. III, P. 248, lines 1-25, and Vol. III, P. 249, lines 1-7

²³²Vol. III, P. 253, lines 3-19

²³³Vol. III, P. 254, lines 19-25, through Vol. III, P. 255, lines 1-13

²³⁴Vol. III, P. 257, lines 18-25, through Vol. III, P., 258, lines 1-7

²³⁵Vol. III, P. 258, lines 24-25, through Vol. III, P. 259, lines 1-18

he has received the day before the meeting, to he thought, Liz and Josh, or one or the other.²³⁶ The witness testified the summary was not discussed during the February meeting at all.²³⁷ The witness testified the school blamed them for the Student's behaviors and things he testified, and turned the parents in to DHS for abuse in January 2015, when the witness was out of town.²³⁸ The witness testified on February 22nd he was called at work about the incident on the 21st, and told charges were going to be pressed against the Student for third degree battery.²³⁹

The witness testified he did give the school permission for the Cleared Out room, and it was to be a part of the modified Behavior Plan for the Student, but not in the IEP itself. The time to stay there would be until the Student calmed down.²⁴⁰

Witness CRYSTAL McCHRISTIAN

The witness Dr. Chrystal McChristian appeared by telephone for the hearing. She is a licensed psychologist, in private practice at Restored Life Counseling in Conway, AR. She has a Bachelor of Science degree in psychology from ASU, a Master of Science degree in psychology from Auburn University Montgomery, and a Master of Science degree and doctorate in school psychology from UCA. She has been practicing since 2009.²⁴¹ The witness evaluated the Student in 2016 after he was brought to her by his parents with a myriad of concerns, including emotional difficulty, social functioning, she believed some sensory disorders, and came with some current diagnoses. The witness testified she tested the Student specifically for an Autism Spectrum Disorder, and did diagnose him with that at that time, level one, without intellectual impairment and without language impairment.²⁴²

The witness testified the parents brought the Student back in November because of some behavioral difficulties at school, then the witness testified she believed she saw the Student twice a month for November through January, and then weekly starting the end of February for sessions.²⁴³ The witness testified they have been working a lot on emotional regulation and expression of emotions, as the Student has a lot of outbursts, and the pat couple of months they have been working voicing what

²³⁶Vol. III, P. 259, lines 19-15

²³⁷Vol. III, P. 267, lines 4-8

²³⁸Vol. III, P. 277, lines 17-25, through Vol. III, P. 278, lines 1-21

²³⁹Vol. III, P. 280, lines 24-25, through Vol. III, P. 281, lines 1-3

²⁴⁰Vol. III, P. 283, lines 10-25, through Vol. III, P. 284, line 1

²⁴¹Vol. IV, P. 8, lines 16-25, through Vol. IV, P. 9, lines 1-2

²⁴²Vol. IV, P. 8, lines 5-22

²⁴³Vol. IV, P. 8, lines 23-25, through Vol. IV, P. 9, lines 1-8

is going on in the Student's head instead of acting out, and he has a lot of difficulty with that. So, it is a lot of repetition, a lot of practice, a lot of scenario situations, trying to guess how he would react in those situations. The witness testified it is slow going, and they have also been working on coping skills, some way for him to calm down when he is getting, in his words, overwhelmed, nervous or upset. They talked a lot about how some of the situations in which he has been made him feel, and the one word he uses often is "overwhelmed."²⁴⁴ The witness testified she had never met parents' counsel, had never even talked to her before today.²⁴⁵

The witness testified she did receive from the parents some information from the school about various data they collected and some videotapes. She looked at a couple of the videos, some of them did not come through. She looked at but did not read several hundred pages sent to her, but read some of the reports from various staff as to the Student's behavior, as much as she could get through. When asked if she saw anything about the videos or other tapes she saw, was there anything that stood out to her that might have caused the Student to become overwhelmed, the witness testified the Student told her himself that many of them caused him to be overwhelmed. She testified she believed the Student has also been diagnosed with a Sensory Processing Disorder by an occupational therapist, that she might be wrong, but was pretty sure that was correct. The witness testified she knew the Student did not like to be touched, that is a big trigger, and she is careful not to touch him. The witness testified the Student testified that causes him to feel scared, and he tries to do everything he can to get people to stay away from him, so she knows some of those interventions likely won't be effective with him, the holds and things like that, holds and physical restraint and transports. The witness testified the Student doesn't like doing things he does not want to do, and they had a lot of discussion about that, that he has to do his schoolwork and it is not an option just not to do it. She testified the Student takes it home sometimes and completes it, but when somebody around him starts getting emotional or maybe frustrated or upset with him, he feeds off that and does also as well. The witness testified being calm will help calm the Student, but obviously it is difficult in certain situations. The witness agreed demands on the Student can be triggers, as he will get worked up and overwhelmed as well, and typically reacts behaviorally with outbursts or tantrums.²⁴⁶

Discussing reinforcers at school, the witness testified she testified the Student told her he is able to get a little toy or knickknack or something. The witness testified the Student will work towards what he wants, short term, but is going to have difficulty remembering things in the long term, due to age and attention level and remembering things.²⁴⁷ As to ABA techniques being used by the school in addressing the Student's behavior that what the witness saw from the videos she was able to see, the witness testified one thing she saw was, not a chart, but had different levels of, she believed, anger, and the woman was trying to get the Student to tell her where on that he felt anger at that moment, but the Student was pretty worked up so she did not think he responded well to that at that time, and

²⁴⁴Vol. IV, P. 9, lines 9-25, through Vol. IV, P. 10, lines 1-3

²⁴⁵Vol. IV, P. 10, lines 4-7

²⁴⁶Vol. IV, P. 10, lines 8-25, through Vol. IV, P. 13, line 8

²⁴⁷Vol. IV, P. 13, lines 1-16

she did not know what happened after.²⁴⁸

The witness testified the Student's therapy was increased from every two weeks to weekly because the Student was getting multiple suspensions at school and his behavior for a while was escalating at school, and so she and the parents felt it best for weekly visits to have more repetition and opportunities to get him to a better level of functioning.²⁴⁹ As to the differences in the Student's behavior at school versus at home, the witness it is not uncommon for children to behave differently at home versus at school versus in public, that there are different things required in each of those locations, so children will respond better or worse to different ones, and the Student certainly does. The witness testified there is not the frequency or intensity, it seems, of behaviors at home as when at school. As far as coping skills, the witness testified they talked a lot about what he needs to tell whoever he is with what exactly he is feeling. She testified they worked on describing what behaviors the Student shows and what does that look like a person is feeling if they are doing those things, if they are throwing things or hitting or yelling, etc., and the Student agreed that looks like a person who is feeling angry, but testified that was not what he was feeling a lot of the time. So, the witness testified they talked a lot about the Student getting the words to actually express what he is feeling, but he is not doing good at that, he is not good with understanding emotional expression, even understanding it in other people. That is part of an autism diagnosis. The witness testified they have worked on calming techniques, visual imagery, a lot of trying to redirect and get the Student's mind on something else when he is feeling overwhelmed, upset or angry, or nervous or whatever, a lot of repetition, as he is not going to remember to use them in the moment if they do not go over them every week.²⁵⁰

The witness testified she knew the Student has made statements at school about wanting to die, but each time the Student has told her flat out he does not want to harm himself, he was just saying it to get out of the situation, because he does not know what else to say to get out of the situation. The witness testified she knew those statements had to be addressed and everything else has to be put to the side, and they have had many conversations that he just cannot say those things, that it is not the appropriate way to deal with situations. The witness testified she thought the Student was brought in to her straight from school two or three times because of those type statements, and each time he showed no suicidal traits or tendencies to her in terms of every actually wanting to harm himself.²⁵¹

When asked to contrast the diagnosis she gave the Student since the first time she diagnosed him with autism in 2016 and his mental health picture today, the witness testified back in 2016 when he came in to be evaluated for autism, he had already been diagnosed with ADHD, Oppositional Defiant Disorder, and a Disruptive Mood Disregulation Disorder, and she believed he was also being evaluated at that time for occupational therapy, so he already carried those diagnoses, so she did not

²⁴⁸Vol. IV, P. 13, lines 17-25, through Vol. IV, P. 14, lines 1-8

²⁴⁹Vol. IV, P. 14, lines 9-18

²⁵⁰Vol. IV, P. 14, lines 19-25, through Vol. IV, P. 16, line 15

²⁵¹Vol. IV, P. 16, lines 24-25, through Vol. IV, P. 18, line 15

address those. Since then, he still exhibits signs of all of those, as well as anxiety, and she has seen an increase in anxiety.²⁵²

When asked if she diagnosed the Student with Anxiety Disorder, she testified it falls in Other Specified Anxiety Disorder, that if you look at the spectrum of Anxiety Disorders, it is kind of the one where he got anxiety. It may be cause of intimate anxiety, it may be because of a reaction to the environment, but there is anxiety present, even though he does not necessarily meet the criteria for something such as a generalized anxiety disorder. The witness also testified the Student has a lot of mood type things, his thought processes have been very negative, so that lends itself to a higher anxiety and perhaps depression at some point. She testified she is not necessarily seeing something that would make her diagnose the Student with a depressive disorder, but he could at some point. The witness testified most of what she sees is probably the result of the Student's Autism Spectrum Disorder, and anxiety goes into that as well, that children with autism tend to have high anxiety, and just from misunderstanding or not understanding at all social cues. She believes the Student has a lot of difficulty relating and understanding and getting along with his peers. She testified the Student has a very negative way of thinking, scenarios of "what if," she did not know if it was typical for the Student over the past couple of years or if it is something new.²⁵³

When asked if she shares with the Student's parents what she is told, she testified no, they usually meet, and she has kind of a plan what they will be doing in each session. Then, once they are done, sometimes the parents are in there and sometimes not. If not, they talk after the witness has her session with the Student, while the Student stays in the waiting room where there is a TV and children's videos showing, which he actually enjoys, or he can play his Nintendo Switch that they bring sometimes. Then, while the Student is doing that, she goes over with the parent who brings the Student what was learned, some of the coping, what she wants them to work on at home, that kind of thing. The witness testified she can usually get about 30 minutes of good work out of the Student, then spends the rest of the session reviewing that and any homework she wants them to work on.²⁵⁴

When asked if she thought taking the sessions to weekly has helped the Student, the witness testified she hopes so, that he is good at remembering what they talk about and can tell her, and she knows he is utilizing that in the moment when he is feeling whatever he is feeling is difficult. She testified it seems the past few weeks the Student has had fewer, or less intense behavior episodes at school, or a fewer number of them.²⁵⁵

The witness testified the evaluation she did was done in April of 2016, and she recommended the school receive a copy so they could have the extra input and that additional diagnosis and make

²⁵³Vol. IV, P. 18, lines 16-25, through Vol. IV, P. 21, line 8

²⁵⁴Vol. IV, P. 21, lines 9-23

²⁵⁵Vol. IV, P. 22, lines 24-25, through Vol. IV, P. 23, line 9c

appropriate accommodations based on that. She testified she also gave the parent different information and website that could be helpful geared toward certain diagnoses to have access to at home and for them to be able to do at home. When asked if she recommended therapy services as a part of that evaluation, the witness testified she typically does, so probably did, to work on the specific deficits in functioning with social communication or emotional regulation or behavior.²⁵⁶ The witness testified the next time she saw the Student was November 2, 2017. When asked if the parents provided explanation as to what happened in the ensuing year and a half between her evaluation and the first therapy session with the Student, in terms of overall functioning, whether the Student had received any kind of therapeutic services from someone other than her, the witness testified she did not know if he received any therapy services, but thought maybe he was receiving some OT therapy for sensory issues²⁵⁷

The witness testified the parents did provide her with mental health history for the Student before she began therapy sessions with the Student in November 2017, that this year his behavior had gotten worse in school, that it seems to be progressively escalating, but she did not have any information about the previous year. The witness testified the parents history about the Student's behavior at home was that his behavior was not as escalated there as at school, that he would have tantrums now and then, but it did not seem to escalate there like at school.²⁵⁸ The witness testified it is important for appropriate behavior to be modeled to the Student, and that it was possible inappropriate behavior being modeled to him could cause him to have anxiety or confusion.²⁵⁹

When asked what impact the Student's behavior has on his academic progress, or his ability to receive benefit of his education, the witness testified if the Student is having a tantrum, then he is not completing his work during that time, so it definitely has ability to impact his academic skills and functioning. The more his behavior is at a higher level, then he is not going to be attending to what he needs to be or taking in the information and understanding his school work as he should.²⁶⁰ The witness testified the school communicating directly with her about the Student's behavior issues, programming that could help de-escalate behavior issues, that she has seen it personally be helpful, and she has seen it not make a difference at all, that it is really on a case-by-case basis. She testified because she is in private practice and has no privileges at any of the schools, she does not go to them to provide services or meetings, but in the past she has had communication with different schools or teachers or specific teachers as to a client.²⁶¹

²⁵⁶Vol. IV, P. 24, lines 8-25, through Vol. IV, P. 25, line 4

²⁵⁷Vol. IV, P. 25, lines 5-25, through Vol. IV, P. 26, line 27

²⁵⁸Vol. IV, P. 26, lines 10-25, through Vol. IV, P. 27, line 5

²⁵⁹Vol. IV, P. 27, lines 6-12

²⁶⁰Vol. IV, P. 27, lines 20-25, through Vol. IV, P. 28, lines 1-6

²⁶¹Vol. IV, P. 28, lines 7-22

The witness testified she did not have in her notes why the parents has not started any mental health therapy or counseling services before November of 2017.²⁶² When asked if she had any suggestions or recommendations to the District about what staff should do when the Student is out of control or having a meltdown because of his confusion or feeling overwhelmed, the witness testified her primary recommendation, just because the Student has always had difficulties, and she has stated this to the parents a few times, is to have some kind of Functional Behavior Assessment or something to find out exactly what is not just triggering the behavior, but what could be helpful in some instances, and what may be escalating it. She testified because she is not there to see those things, to have someone actually be able to see the incidences and what may be both before and after that could help and then what makes it worse.²⁶³

When asked if the parents told her an FBA and Behavior Plan was developed for the Student by a BCBA, board-certified behavior analyst, the witness testified she was told the person who was going to do the FBA had come in and observed the Student, and that while she did not know the results of that, she did know that recently one had come in to observe the Student at least once, but she did not know how many times. The witness testified she thought the recommendations of the behavior analyst would be a good place for the school staff to start.²⁶⁴

When asked what the school staff should do to try to help the Student become compliant if he cannot be touched, the witness testified remaining calm, but that she is not there to see reactions, so she was making a generalization, she was not saying someone was doing these. The witness testified staff being calm themselves, breaking up the Student's work into smaller chunks so he can complete something, take a small break if that is what the Student wants, then complete another part of it, those kinds of things. The witness testified the Student responds well to rewards, bu they have to be short term, and she thought those kinds of things are preventative strategies. The witness testified if those things are implemented, but the Student still ends up being out of control or in a meltdown, as much as possible the staff should get out of the way, because trying to talk to the Student and reason with him during that time does not work, that she has just seen that, and, in fact, it makes it worse. She testified ideally, clear the room, as getting the Student to the Cleared Room is most likely going to make it worse.²⁶⁵

The witness testified making demands on the Student during that time is most likely to escalate the behavior, that it typically does in a lot of kids she sees, and that if the Student was held down, it wold most likely make him worse, his brain will go into the fight or flight mode, and with the Student is typically fighting. The witness testified trying to physically take a laptop or something that tends to be a reinforcer from the Student probably would not be the best way to get it from him, and that she was sure the Student would have a behavioral reaction. The witness testified autistic children could

²⁶²Vol. IV, P. 28, lines 23-25, through Vol. IV, P. 29, lines 4

²⁶³Vol. IV, P. 29, lines 5-21

²⁶⁴Vol. IV, P. 30, lines 7-20

²⁶⁵Vol. IV, P. 30, lines 21-25, through Vol. IV, P. 32, line 16

mimic, model behaviors of other children, more often when they are younger.²⁶⁶

The witness testified she tries to do as much cognitive work for the Student as she can for him, because that is more difficult, wrapping his mind around emotions is not easy, but a lot of it is more behavioral because of the Student's behavior.²⁶⁷ The witness testified she made a referral for ABA therapy for the Student to an insurance company, that when the Student initially came in November she and the parents talked about seeing if an ABA therapist could come to the school and work with the Student in the environment where he is having the most difficulties. The witness testified she believed the way the parents' insurance works, they had to have a formal request for that, and it probably took several weeks to get a response. She testified she believed it was to be at school, but thought to depends on the school and the ABA therapist, that some prefer it in the school and some in the clinic.²⁶⁸ The witness testified she initially recommending the ABA therapy because it is one of the evidence-based interventions shown to be effective with autistic children. As to followup evaluations between April 2016 and November 2017, the witness testified there were no formal assessments as in terms of psychological testing, just the normal intake she does the first time a client comes, or returns, just a routine intake any competent mental health professional would do.²⁶⁹

Witness XXXXXXXX XXXXX

When asked why they took the Student to Dr. McChristian in November if things seemed to be going well at school, the witness testified at some point either Kelley or Pennington called saying the Student had a meltdown and was stating something of self-harm. The witness testified they were always called whenever the Student testified that, maybe five times total over a couple of years, the parents testified they had to figure out if there is really something there or he is saying it to get out of something, as he had told the parents, like the second time, he heard a kid at school, or at ALE, say it. The witness testified they wanted to have a counselor verify it and make the Student was taken care of.²⁷⁰ The witness testified the parents had no issue with the District's use of the regular Refocus Room, but he thought at one point, probably after the second restraint, they started having concerns the Student might be getting confused because he was being taken to the Refocus Room in a negative aspect as well, that it was supposed to be positive, but he was also taken there for a meltdown.²⁷¹ The witness testified he read in the ABA guidelines on restraints that after the first, or if a restraint is used, an FBA should be performed, and he brought it up in one of the December

²⁶⁶Vol. IV, P. 35, lines 1-11

²⁶⁷Vol. IV, P. 35, lines 14-25, through Vol. IV, P. 36, line 2

²⁶⁸Vol. IV, P. 35, lines 1-11

²⁶⁹Vol. IV, P. 36, lines 3-25, through Vol. IV. P. 37, line 4, and Vol. IV, P. 38, lines 9-25 through Vol. IV, P. 39, lines 1-9

²⁷⁰Vol. IV, P. 43, lines 1-22

²⁷¹Vol. IV, P. 45, lines 4-22

meetings.²⁷²

The witness testified he did not recall telling the Student he did not have to go to the Refocus Room for recess, and that if anything happens, like during tag, chasing, football, basketball, etc., and the Student is involved, he gets the blame, so the witness and Mr. Pennington agreed the witness would rather the Student go to the Refocus Room instead of the playground during early recess, and during cafeteria time, as the witness did not want the Student going outside, since during this time frame, in February, the Student was getting suspended for everything and the witness was getting daily phone calls the Student was noncompliant for not doing his work and to come escort him to the Cleared Room.²⁷³ The witness testified he believed the Student was probably making or misunderstood it up when he testified "Dad testified."²⁷⁴

The witness testified there were many times the parents had conversations and disagreed where the Student might have overheard them, but they were not calling the school people idiots, that every time the witness discussed anything with the Student, especially on the phone, it was that the school is there to help the Student whenever he had a meltdown. The witness testified they had phone calls where the protocol was on speaker phone so everyone could hear their private conversation, and the witness consistently tried to give the Student reinforcement the personnel wanted to help him, just to listen to them and what they are asking and follow instructions, that he would get through the day and make it.²⁷⁵

The witness testified he was aware that on at least one occasion the Student's mother had gotten very angry on speaker phone toward staff, and testified he was told she cursed at school staff in front of the Student, but he did not know that. He testified it was his understanding she was upset with Josh because he would not allow her to talk to the Student until he knew someone was on the way to pick him up, so that made the Student's mother angry, that would have made the witness upset too.²⁷⁶ The witness testified the parents have the child in private OT, but when asked if he knew the Student is being seen for OT on a consultation basis at school, the witness testified he did not know the Student was seeing anyone but a speech teacher and Ms. Nyssa.²⁷⁷

The witness testified the parents really objected to the new Behavior Plan the school came up with during the December 20 meeting, so they declined to sign any of the information, and that Josh testified basically after seven days the school district has the right to implement it anyway, so at that time the parents felt their input was not even worth it, that if they showed up and trying to participate

²⁷²Vol. IV, P. 46, lines 17-25, through Vol. IV, P. 47, line 9

²⁷³Vol. IV, P. 48, lines 6-25, through Vol. IV, P. 49, lines 1-8

²⁷⁴Vol. IV, P. 49, lines 23-25, through Vol. IV, P. 50, line 2

²⁷⁵Vol. IV, P. 50, lines 12-25, through Vol. IV, P. 51, line 17

²⁷⁶Vol. IV, P. 51, lines 18-25, through Vol. 52, line 18

²⁷⁷Vol. IV, P. 54, lines 6-16

in a meeting but the school gets to implement whether the parents agree or not, it made no sense.²⁷⁸ The witness testified he understood the difference between mental health therapy and OT, that OT is with your hands.²⁷⁹

The witness testified the district never requested a mobile assessment until December 15, when Ms. Kelley brought out the new Behavior Plan and testified they were going to have to start implementing this, to call for a mobile assessment or things like that.²⁸⁰ Reviewing the January 22, 2016 IEP, under Related Services, the witness testified it says school-based mental health as a related service, but the school did not stress it at any meeting, and never called for a mobile assessment at any time the Student made a statement of self-harm until December 20th, but the parents never received any of the paperwork for acute assessment at the school district that Josh testified was required by law.

The witness testified though they were being told the Student was making great progress, the more they looked into where the Student's progress was compared to a Fourth Grader, that is when they never could get an explanation of where he was grade level wise, that they got no explanation of the Student's grade level until Ms. Nyssa testified a few weeks ago she felt he was in second grade in English and third grade in math.²⁸¹

The witness testified, as they do not want the District to use the wrist/triceps physical escort anymore, when the Student walks out of a class or is physically aggressive with staff or other students, the witness' suggestion was a Behavior Plan that keeps the Student from getting to that point, not every to let him get to that point or redirect or throw the curve ball, and that if the meltdown cannot be prevented, to do whatever the professionals suggest, such as Ms. McChristian saying to leave the Student alone for a second, clear others out of the room.²⁸² The witness testified the Student was never physically aggressive with other students, but when staff starts to grab him, the witness understood they say the Student kicks their legs, so someone he trusts should talk to him, talk him down, like Ms. Nyssa.²⁸³ The witness testified if the Student was going to run into the street or actually do something that could cause him bodily harm, there would have to be intervention at that point, that was only common sense. The witness testified that, from the tape, the Student has tried to run out of school, but in his mind it was to get away from the situation, just escape and evade, fight or flight, and that was the only time the witness knows of the Student ever tries to really be aggressive with people or staff is when they actually have their hands on him.²⁸⁴

²⁷⁸Vol. IV, P. 56, lines 11-25, through Vol. IV, P. 57, line 15

²⁷⁹ Vol. IV, P. 58, lines 21-23

²⁸⁰Vol. IV, P. 60, lines 1-16

²⁸¹Vol. IV, P. 67, lines 17-25, through Vol. IV, P. 68, line 12

²⁸²Vol. IV, P. 69, lines 1-25, through Vol. IV, P. 70, line 3

²⁸³Vol. IV, P. 70, lines 4-25

²⁸⁴Vol. IV, P. 71, lines 1-25, through Vol. IV, P. 72, line 5

When asked what about when the Student jumped on Ms. Simpson's back, the witness testified he did not see those videos, but the Student was in a worked up state, that the parents never saw the Student act that way at home or anywhere else. Discussing Josh's statement it was protocol to put the Student on speaker phone when talking to his parents, the witness testified he had emailed Mr. Stephens, the superintendent, about that, who testified there was no protocol and staff had been directed to stop that practice immediately.²⁸⁵ The witness agreed that based on what he heard from the school district or was given on the form, the Student has been physically restrained, and physically escorted, but the witness was not told.

The witness also testified to his understanding the Student was restrained in a face-up position on his back on the floor or other surface and physical pressure was applied to his body to keep him in the supine position.²⁸⁶

When asked about when the speaker phone calls stopped, the witness testified it was not after they filed for Due Process.²⁸⁷ The witness testified the Student called almost every day after the witness signed the February 21st IEP.²⁸⁸ The witness testified he whipped the Student once with a belt this year, one lick, which was the first spanking he had by him since December 2014 probably, because the witness was made to think the Student actually might have done something wrong because that was the day he hit a boy playing tag, and the Student was suspended. The witness testified he Student testified okay, but later, the more they talked to the Student, the witness realized the Student felt he was under attack and was defending himself.²⁸⁹

Witness JODY BREWER

The witness Jody Brewer is the Assistant Principal of Vilonia Primary School, and is in his third year in that position. Prior to this, he was three years at Vilonia Middle School as alternate education teacher. He graduated college in 2001, University of Arkansas, taught high school Agriculture for one year, then got out of the educational field for several years and did a variety of things. His certifications are Agricultural education, as well as certified P-12 administrator.²⁹⁰

The witness has worked with the Student two years, his second and third grade year. As far as his background or experience in behavior management, the witness testified he is a certified PCM instructor, as well as through his work in alternative classroom. He attended multiple workshops,

²⁸⁵Vol. IV, P. 78, line 10-25, through Vol. IV, P. 79, line 10

²⁸⁶Vol. IV, P. 80, lines 11-17

²⁸⁷Vol. IV, P. 85, lines 13-25, through Vol. IV, P. 86, lines 1-7

²⁸⁸Vol. IV, P. 86, lines 8-25

²⁸⁹Vol. IV, P. 89, lines 9-25, through Vol. IV, P. 90, line 14

²⁹⁰Vol. IV, P. 103, lines 3-25, through Vol. IV, P. 104, line7

conferences, as well as doing research on his own as different behavior techniques and management.²⁹¹

Describing the Student's behavior last year, the witness testified there could be days everything was great, or he would throw chairs, kick, yell, scream, have outbursts.²⁹² Looking at a Google doc he typed up February 17, 2017, he summarized it saying Ms. Murray was their Special Ed teacher last year, and was pregnant during that time, that Ms. Murray had contacted this witness to come to her room to help calm down the Student, and when the witness got there, the Student was being confrontational with Ms. Murray, refusing to do work, refusing to follow her directives. The witness testified he tried to transport the Student to help him calm down and he was trying to calm down so she let him out of the deal. He testified the Student was threatening to kill himself, so at that point the school counselor was called and the Student's father was called. The witness testified a lot of times he would call the father or mother and have them talk to the Student, but this time he couldn't recall exactly, but thought there were chairs strewn across the room, tables turned over, stuff like that. The witness testified he used a transport procedure, the wrist/triceps, and there is actually a one-arm wrap-around, she could not recall exactly what the Student was doing, but one-arm wrap-around is basically a transport procedure there to keep the Student from harming himself or others. The witness testified he felt a legitimate reason to use that, as Ms. Murray was pregnant.²⁹³

The witness testified there were other incidents with the Student throughout the year, and they had built into the schedule break times and he had opportunity to cool down in the Refocus Room as well as a place in the classroom. The witness testified the Student had a Behavior Plan that was followed to his knowledge, especially after the direction of Dr. Sheila Smith, the BCBA, with her input and help.²⁹⁴

The witness testified he did not notify the parents every time there was a behavior incident last year, as if that were the case, he would have notified them almost every day, some days multiple times throughout the day. And, due to the Student's age and background, they just handled it in-house as they had just come off a Due Process hearing and did not want to end up in another one as a building, and as building level leaders that is what they were afraid of. So, the witness testified they were using redirection and de-escalation techniques, sometimes it worked, but a lot of it, in his opinion, came back to if that's what the Student wanted to do, that's what he did. The witness testified some days he had a good rapport with the Student, other days not, that he had a pretty good rapport with him because he spent time with him daily over two years and talked to him.²⁹⁵

The witness testified the day he described in the Incident Report where the Student was having a

²⁹¹Vol. IV, P. 104, lines 11-21

²⁹²Vol. IV, P. 104, lines 22-25, through Vol. IV, P. 105, line 7

²⁹³Vol. IV, P. 104, lines 22-25, through Vol. IV, P. 107, line 5

²⁹⁴Vol. IV, P. 107, lines 6-21

²⁹⁵Vol. IV, P. 107, lines 22-25, through Vol. IV, P. 109, line 21

meltdown, the witness testified to the best of his knowledge there was a refusal to do work, and was either a writing or a reading assignment because he had seen Ms. Murray for literacy.²⁹⁶ The witness testified the Student had hurt him in private before, he had kicked him, that PCMI techniques were taught in blocking, but not on your shins, that he was 6'2" and the Student is three-foot whatever.²⁹⁷

Witness STACY SIMPSON

The witness Stacy Simpson has been employed as a paraprofessional with the Vilonia School District since February of last year.²⁹⁸

As to her work assignments since that time, the witness testified she started in February as a para at the primary in the Refocus Room, then through the rest of the school year. In August she went full-time as a para in the Refocus Room. The witness testified she has worked with the Student in the Refocus Room since February of 2017 at the primary school. He came to there three times daily, first thing in the morning, then after his special class, about 12:40-ish, then at the end of the school day. With this new school year, she could not recall how many times at the beginning of the year, but he came to the Refocus Room a few visits. Then, other times, she would go in the classroom with the Student or to Ms. Nyssa's in the classroom with the Student, or go to Ms. Nyssa's in the Student's Resource with him to check in on him and take him for walks with Honey, the dog, or do his jobs with him. The witness testified the jobs or chores, delivering mail, walking the dog, those are for the Student to help him, such as when he needs time away for a moment, they will step away just to give him time to refocus and then get back where he needs to be, or, if he asks for time away, they can do that for him.²⁹⁹

When asked to summarize the supports, modifications and interventions she helped provide the Student this year for him to benefit from his education and program, the witness testified they came up with jobs, the Student worked with them choosing whatever jobs he wanted to do. There were times he had specific jobs Monday through Friday he would do, and times he did not want to do, so sometimes he would switch, but not often because he did really good with repetition. The witness testified sometimes she does jobs with the Student when the Student asked. The witness testified other times, the thing she learned in training that she called Yelling Appointments. She would ask the Student if he wanted one, and if the Student wanted one, they scheduled one, that they would go in back of the building, the Student at one end and he would tell the witness to go where they could yell things like "Can you hear me," and "Yes, I can," that the Student really liked that. There was a place they would find and pick up frogs, and then go to research on them, or go pet or water

²⁹⁶Vol. IV, P. 111, lines 22-25, through Vol. IV, P. 112, line 4

²⁹⁷Vol. IV, P. 117, lines 2-9

²⁹⁸Vol. IV, P. 119, lines 12-19, through Vol. IV, P. 120, line 1

²⁹⁹Vol. IV, P. 120, lines 2-25, through Vol. IV, P. 121, line 9

Honey, things like that.³⁰⁰

The witness testified she went to classes with the Student also. She went to Ms. Bullock's class and Ms. Nyssa's class, the Student's math class, and she went with the Student to help make sure he was staying focused, see if he needed extra help on something. Sometimes the class did projects together, and if they had a worksheet or something the Student has questions on, the witness testified she would help the Student. The witness testified sometimes the Student had a day he didn't want to write, so they would make a deal, the witness would write a word, the Student would write a word. The witness testified the Student was doing better raising his hand instead of just getting out of his seat, and sometimes the witness testified she would try to get the teacher's attention to look at the Student, so they would look at the Student and ask him a question if he had a question.³⁰¹

When asked what techniques the witness used that seemed to be effective to redirect or de-escalate during the day, the witness testified sometimes it was as simple as saying "Let's go for a walk" or other such statements, just to get the Student back out for just a moment, and then say "Okay, let's go back in, and let's get back to work." Most of the time the Student would be okay with that.³⁰²

As far as narrating some videos from an incident December 12th, the witness testified as a preview that the Student was going up and down, he had flipped a table and was saying some different things. There was an egg crate under the table, and if the table would have flipped, the Student could have gotten hurt, so the witness was asking the Student to get off the table, and the witness testified she thought she put her hand out if the Student needed the witness' hand to keep from falling. The witness testified she asked the Student if he needed help, the Student testified he did, and just kind of stopped, they fixed the table, they fixed the tablecloth, got it all nice and neat, and the Student was great. Then he just went back up, just went back into a yelling spiel. This took place in the Refocus Room December 12th. The witness, Ms. Standridge and the Student were the only ones present.³⁰³

Looking at the video, the witness narrated it, he was asking the Student to please hop down, and the witness put out her hand. The Student was trying to hang on, trying to walk back up. The witness testified you can see as it slipped down, so the witness wanted him to get down so he would be safe. The witness pulled the crate out and put it outside the door so it would not be a distraction again. It was a meltdown. The witness asked if the Student needed help, and was asking the Student to put it back on, and the Student is still yelling but is doing it, putting the tablecloth back where it was. That was the table the Student flipped over. There were items on the floor, there was a piece of paper, it's a little thermometer, and the Student pointed, it has red and green. He can show where he is feeling at that moment, and the witness was asking him if he wanted one of his calming cards

³⁰⁰Vol. IV, P. 121, lines 10-25, through Vol. IV, P. 123, line 3

³⁰¹Vol. IV, P. 123, lines 4-25, through Vol. IV, P. 124, line 5

³⁰²Vol. IV, P. 124, lines 6-19

³⁰³Vol. IV, P. 124, lines 20-25, and Vol. IV, P. 125, lines 20-25, through Vol. IV, P. 126, line 22

to choose that have different activities for calming. Then the Student chose to do his yoga exercises, he created several last year, and he is throwing them at the witness. The witness tossed the ball over to Ms. Standridge so she could get it out of the classroom. At the end of the last video, the Student had thrown the ball at the witness' face twice. Ms. Standridge put the ball out the door. The witness was still on her hands and knees, and the Student pushed and bumped into the witness. Then the Student got back over kind of beside the witness and testified "Let's do that" as to the witness' having asked about doing one of his calming yoga things. Then, out of the blue, the Student just jumped, his full body weight, his belly, right on the witness' back as she was doing the yoga, trying to do the calming techniques the Student does with his yoga. The witness testified she knew right there, and she looked at Ms. Standridge and gave her the "I'm hurt" kind of look, and the Student had no idea, so the witness testified she got up and walked around a little bit after that. As to the extent of her injuries, the witness testified she has gone to the doctor a few times, has been through 12 sessions of PT, has had x-rays, has had an MRI, and she has a bulging disc that is on her nerve that runs all the way down her leg. The witness testified, like right now as she sits here, she can feel it in her leg. She goes next Tuesday for a pain shot in her spine to try to alleviate some of that pain that was caused by the Student jumping on her back.³⁰⁴

The witness testified he and Ms. Standridge videoed the Student for purposes of documenting, so that way they would not miss something when writing up the documentation for the day, and also for the safety of everyone.³⁰⁵ Saying there were four videos at the hearing, the witness was asked if there were lots of other videos taken, and he testified not lots, just the times he was there, very little, as most of the time the Student does well. The witness testified videos taken were normally deleted, removed. The witness testified Ms. Kelley asked them to video just so they could have the documentation and everything.³⁰⁶

The witness testified he was present on March 7th when the Student, his mother and an attorney came to the Special Services office, and they came in and sat in the back break room. The witness testified when the Student saw him, he testified "Josh Hart is a liar, he is a liar." And then testified "Do you want to know why," and the witness testified he replied "Okay." The Student testified "My mom testified that Josh is a liar," he testified I wasn't at school, but "Josh lied to my mom," and the witness testified he did not remember exactly what the Student testified after that, that the requested records were furnished, and the witness was just in and out at that point.³⁰⁷

The witness testified she had definitely seen progress with the Student's behavior since last year when the witness started, that since February of this last year, in his classroom, the Student was out of his seat quite a bit, then sitting with him in the classroom this year, the witness testified the Student would get up, and the witness would raise her hand, and the Student would raise his hand, which the witness testified was a big score for the Student. The witness agreed that showed some control, some

³⁰⁴Vol. IV, P. 126, line 25, through Vol. IV, P. 129, line 25

³⁰⁵Vol. IV, P. 130, lines 1-6

³⁰⁶Vol. IV, P. 130, lines 7-24

³⁰⁷Vol IV, P. 130, line 25, through Vol. IV, P. 133, line 1

judgment, thinking. And, the witness testified in Mr. Bullock's class, they had the Dojo system, and when the Student was doing as the other kids, they got points. The witness testified she believed the Student got to go up to the board and touch it, and it would bloop, and he would get a point. The witness testified that point system is what Mr. Bullock and Ms. Turner do, and she believed other teachers use it also. Students get to choose a little emoji guy, and when they are doing things good in class, they get a point. Or, if they are talking too much in class or anything like that, they can also get a point taken away, and parents can check that on their phones, that there is a Dojo app you can have too.³⁰⁸

The witness testified she was involved with other staff at the school this year, or last year, in recording data of the Student's behaviors during the school day. The witness testified when she was with the Student, the witness carried a little smiley face chart, and the witness put her initials, SS, sometimes on the charts. The witness testified there are some references there, for example, on page 267, saying "Great job," and the Student would see those charts. The witness testified the purpose of the Student seeing those he would know how many he had where it testified "Total Happy" and "Total Sad," and he would know where he was for the day on those choices. If the Student made 13 happy choices of the day, that was great, and if he had two sad choices, they would talk about it and what he could do instead of yelling, for instance. The witness testified she did have involvement in developing the charts used to chronicle compliant versus noncompliant minutes, that she went through the daily sheets and they would gather the data and there are formulas put into a spreadsheet that calculates everything. The witness testified she did input some of the data into the Excel spreadsheet. The witness testified if the Student had a lot, say 150, of noncompliant minutes, it would be teacher's choice on things the Student would have to do to work that off. With that, the witness testified there was always a choice in there for the Student also, so that way he felt he is getting a choice as well. There might be things like "Let's go," "Let's go ask Ms. Geisler if there is anything we can do for her," as her classroom was right across the hall. So, they would go there and she might have the Student move a chair or wipe a desk for her.³⁰⁹

The witness testified there was also a time when she had some audio books for use with other students and with the Student also if he chose to, and she asked him to test them for her, so if they did not have batteries he went and got some and loaded them for her and wiped down the ear phones for her, got them plugged in, tested the volume to make sure it worked good, followed along with the words in the book, made sure it followed the pages and everything. The witness testified that was kind of a testing activity they could do. As the Student did things, they would get to a five-minute increment, she would let him know, and they would have a chart on the dry erase board, and a lot of times the Student would help with that chart. He could see his minutes on what he needed to do on his noncompliance. Even creating that chart was part of the Student's time, so the witness would say the Student could mark off five minutes. The witness testified they used it as math tool also, such as asking how many fives were needed to mark off ten minutes, and the Student testified two and would mark off two. The witness testified the Student never had any trouble working off the

³⁰⁸Vol. IV, P. 133, lines 2-25, through Vol. IV, P. 134, line 5

³⁰⁹Vol. IV, P. 134, lines 6-25, through Vol. IV, P. 136, line 25

noncompliant minutes, and seemed to enjoy the system. It worked very well for the Student, he knew exactly what was expected. The witness testified sometimes he might yell, but most of the time he was very compliant working off his minutes. The witness testified if the Student saw he had a lot of noncompliant minutes it would upset him, but he would know about all the compliant ones, that they always made sure to throw in the positive also.³¹⁰

The witness testified she thought the December 12th video was the first one she was in with the Student, and that Ms. Standridge did the video on her phone.³¹¹ When asked where the Student was before that tape, the witness testified the Student had walked into the Refocus Room and she was with another student. The Student was walking with an open Chrome book, and she asked why he had it and testified it needed to be closed. The Student did close it and handed it to the witness, but started yelling. The Student was supposed to be in Mr. Bullock's class, but the witness believed the Student had earned some Chrome book time and was coming out to the Refocus Room.³¹² The witness testified she has not been working since December 12th, 2017.³¹³ The witness testified before December 12th the Student could have gotten out of any class to go to the Refocus Room if he asked.³¹⁴ The witness testified there was a Chrome book cart in either Turner or Bullock's classroom, which they share, and that students can take a Chrome book off the cart when they have teacher permission, but she knew there was an issue because they established for the Student that whenever he is on a Chrome book, he would need to have supervision, but he had it open, it was on, and he was clicking away, playing with it. The witness testified the Student told her he had earned a 15 minute computer reward, but she found later on he had not because Mr. Bullock or Ms. Turner told them that.³¹⁵

The witness testified there was actually a Chrome book in the Refocus Room, and the Student had never walked in with one before. The witness testified she did not let the Student sit down at the table and work on the Chrome book because it belonged to Turner and Bullock.³¹⁶ The witness testified she had another student at that time, and she asked Ms. Standridge to come assist, and she got the Student and walked him down to the Refocus Room since the witness was with another student. The Student was not in the Refocus Room, he had just walked in the building back door, and the witness was already in the hallway. (CONFLICTING TESTIMONY).³¹⁷

³¹⁰Vol. IV, P. 137, lines 2-25, through Vol. IV, P. 138, line 21

³¹¹Vol. IV, P. 139, lines 3-22

³¹²Vol. IV, P. 141, lines 1-25, through Vol. IV, P. 143, line 15

³¹³Vol. IV, P. 143, lines 16-20

³¹⁴Vol. IV, P. 143, lines 21-25

³¹⁵Vol. IV, P. 143, P. 25, through Vol. IV, P. 145, line 24

³¹⁶Vol. IV, P. 146, lines 3-25, through Vol. IV, P. 147, lines 1-8

³¹⁷Vol. II, P. 147, lines 16-25, through Vol. IV, P. 148, line 18

The witness testified the Student went to the Refocus Room with Ms. Standridge, and the witness could hear the Student yelling but could not hear what he was saying, and she had another teacher take the student she had so she could go assist Ms. Standridge.³¹⁸ The witness testified the filming started to make sure the Student and they were safe.³¹⁹ The witness testified no one was making demand son the Student, but he ran out of the room to the office, which is at the front of the building and they are at the back.³²⁰ The witness testified she was there when physical restraint of the Student occurred, that Ms. Kelley asked her to assist her and Ms. Standridge, the Student's feet were flying everywhere, and the witness was asked to get his feet, and asked him to please stop kicking.³²¹

Discussing the incident where she held the Student's feet, the witness testified they did not hold the Student down, that she was holding his feet because he was trying to kick Ms. Kelley in the head and trying to kick the witness in the stomach. The witness testified they took the Student to the mat because it was the safest place at the time, and he was wrist/triceps escorted there.³²² The witness testified after that incident the Student eventually relaxed and asked to go to a desk and eat lunch and had a calm conversation with staff.³²³

The witness disagreed with the assertion by parents' counsel the Student was restrained in a supine restraint, saying there was no pressure bing applied, that the Student was still in the wrist/triceps on the floor. The witness testified she was holding the Student's legs, but not applying pressure.³²⁴ The witness testified the Student was on the mat five to ten minutes.³²⁵ The witness testified Ms. Kelley showed her some calming things, and the witness believed the OT showed them where you can massage an arm gently, not a pressure point, it is like a deep massage, then always talking calmly to a student who needs it, going for a walk, having them take a note to someone, those kind of things.³²⁶ When asked if she thought the Student intentionally jumped on her, the witness testified yes. When asked if she thought the Student intended to jump on her to hurt her, the witness testified she did not know what the Student thought, and was not sure he was even thinking about any intentions, he just

³¹⁸Vol. IV, P. 149, lines 12-19

³¹⁹Vol. IV, P. 152, lines 21-24

³²⁰ Vol. IV, P. 154, lines 14-24

³²¹Vol. IV, P. 157, lines 1-25

³²²Vol. IV, P. 158, lines 24-25, through Vol. IV, P. 159, lines 1-21

³²³Vol. IV, P. 160, lines 15-18

³²⁴Vol. IV, P. 160, line 25, through Vol. IV, P. 162, line 1

³²⁵Vol. IV, P. 164, lines 10-14

³²⁶Vol. IV, P. 167, lines 9-24

did it. When asked about the Student throwing the ball in the witness' face twice, screaming at her, did she think he meant to do that, she testified yes, he was upset. The witness testified the Student has never been left alone.³²⁷

Witness CATHY SHOURD

The witness Cathy Shourd is the occupational therapist for and employed by the Vilonia School District. She obtained her Bachelors in 1996 from UCA, and received her post-professional Masters in, she believed, 2010. She has been doing this for almost 20 years, and has six years in public schools. Prior to that, she had ten years in preschool. She took her state license board, so has a license with the Arkansas State Medical Board, and is registered with the National Board Certification for occupational therapy.³²⁸

The witness testified she was asked to observe the Student in kindergarten, and observed him more in first grade. A lot of that was indirectly, as she worked in the Student's classroom weekly with another child. She spoke to the principal and the team a few times about the Student, and if we felt the Student's behavioral problems were behavior or sensory related. She testified the team would ask if there were any recommendations to help for the classroom, and all that was pretty indirect, just consultation. The witness testified she did a full evaluation in second grade, she thought. It was in 2016 when the Student was in Ms. McCain's class, and that was when they wrote they basically felt like the Student did not qualify, he did not need pull-out services, he needed to work on the things with which he had problems in the classroom, which were sensory needs. He needed movement breaks, he had fidget toys, things like that.

The team as a whole felt OT would best be served on a consultative basis, they did not feel pull-out was best for him. That was when the team wrote goals for things like copying skills, self-monitoring, learning to gauge his behavior, some of the Zones of Regulation was a program they had used, some of the sticker charts, and just the behavior program that was developed.³²⁹ The witness agreed that from reviewing her evaluation, it was clear there was not a need for direct OT services because the Student's performance on her testing was within the normal range, and that her recommendation was to provide consultative services to staff to provide modifications and interventions.³³⁰

The witness testified in the ensuing two years, she did more for the Student last year when he was at the primary, that she worked really close with that Resource classroom, and they had a whole quiet area set up for the Student. They had sensory strategies, things that the Student utilized in there, the yoga ball, rocking chair, tilt board, fidget toys, things like that. Those were typically used in the Resource classroom because it was felt when the Student tried to incorporate them in the regular classroom, they would become a distraction. The Student had a little dog tag necklace and a yo-yo

³²⁷Vol. IV, P. 168, lines 9-25, through Vol. IV, P. 169, line 10

³²⁸Vol. IV, P. 184, lines 10-25, through Vol. IV, P. 185, line 6

³²⁹Vol. IV, P. 185, lines 7-25, through Vol. IV, P. 186, lines 1-13

³³⁰Vol. IV, P. 186, lines 14-10

that he wrapped around his finger. Those things the Student used there often became a distraction in the big classroom with lots of children, so they used them more in the Resource classroom, so that was what the witness did last year when he was at the primary. The witness testified since then, this year, since being at the Intermediate school, she has not done as much consultative service because the team has not requested it, as they set up that Refocus Room for the Student to attend several times a day, and it had all those things in there, lots of sensory things. The witness testified it has the yoga ball, the wiggle seats on the floor, a kind of tent area to get under, but the main thing was the things they worked on such as the refocus with the Student, which is the big thing. Whether that was a room to calm down or a room to take a break, just the calming music, the behavior gauge on the wall, learning to identify when his behavior is escalating and letting them know before it escalates, the things the team has been working on as a whole.³³¹

The witness confirmed that at the annual review last year, April 21, 2017, the record reflects she was not able to attend the IEP meeting and were excused, although she did verbally inform Ms. Murray, one of the teachers, that the Student's Sensory Diet is still appropriate and should be continued.³³² Looking at page 87, some OT therapy goals and objectives developed by an occupational therapist who evaluated the Student in January of this year, and looking at page 81, the actual Pediatrics Plus evaluation, the witness testified she did know Morgan Henry. Looking over those objectives, the witness testified some of the things are super important, and they are things that the team is already addressing in school, and obviously are things that benefit the Student, and things he needs to work on, that the first talks about completing a project from start to finish.

The witness testified that evaluation by Ms. Henry talked about the Student's need to work on his executive function skills, which is huge. It is the Student's ability to self-monitor, and those are things on which the Student works now in Resource. He works on a lot of Minecraft things, one of his favorite things in class. So, they work on math, as he likes math, they made a Minecraft craft the other day, they had to cut it out, 3-D, fold it, glue it, so some of the things are projects and the Student talks about 3-D models and things. The witness testified the second goal talks about money management skills, which the Student does work on that at school all the time, as that is actually in his reward system in Resource Math and Literacy with Ms. Shuetter, the Student works on earning money and turning it in for things. The Student can identify bills and coins, but still needs to work on simulated payments. So, the witness testified these are the things the Student is working on, and they are appropriate.³³³

The witness testified the next thing done, one of the sub-tests of the Visual Motor Assessment was where the Student had trouble drawing within mazes. The witness testified in math the Student does do dot to dot, mazes, color by number, a lot of those things. It is not as much about the maze itself as the finishing the project and maintaining, not having frustration and being cooperative, and learning

³³¹Vol. IV, P. 187, lines 11-25, through Vol. IV, P. 189, line 4

³³²Vol. IV, P. 189, lines 5-20

³³³Vol. IV, P. 190, lines 1-25, through Vol. IV, P. 191, line 25

to start and stop, the reward of finishing something that is pretty and colored. The next one, the functional writing activities, the Student works on those all the time. That is one of his big triggers. He does not like writing, but they do those, and again finishing and starting a task. They will have a graphic organizer, if you are going to write a story, they have to write in this bubble who the people are, what happened. They try to help the Student organize and plan it out. Those are the functional activities for writing. His writing is legible, and they do a lot of modifications for that, like the Chrome book, he does text to speech and different ways to try to avoid that being a trigger because he dislikes writing so much. But as far as functional activities with writing, he does work on that already. The next one, the witness testified, is working with peers. Obstacle course, those type of things, that is very much a clinical goal that would be in an outpatient setting. The witness testified the Student does a lot of things with peers at school, his peers in the Resource class, they go outside, they do relay races, bingo game with words, activities with chalk outside, and run back and forth. The witness testified the Student works on those things, such as running and relay races, he does some of those type things in PE class also. The witness testified that, in speaking with the PE coach, the Student does great in PE without difficulty. Again, it comes from his emotional control and not getting upset. The witness testified the Student will usually get upset if he perceives he is not winning or he is losing in PE, but as far as motor skill to participate in throwing the balls or jump roping or whatever, he is able to do that. The witness testified the next is ILS program, a listening system program. That is not something they have in the school, and it is something Peds Plus has, which is supposed to help with mood and calming. That's something they have access to that the district does not have access to, but they could do head phones with music or something if they felt it helpful. The witness testified the next one, the obstacle course, that would be worked on in PE, and the Resource class does that outside activity. The next two are coping skills and identifying when he becomes frustrated. The witness testified those are definitely good goals for the Student and something the team is still working on with identifying with the little behavior gauge and learning to ask for breaks before they are needed and behavior escalates. The next one goes back to that multi-component shapes and 3-D construction, and those are more about planning and organizing and finishing a task. The witness testified the Student has the physical capability of doing it. The witness testified she was aware a meeting was scheduled where Ms. Henry's evaluation was to be reviewed by the team, and then the parents filed for Due Process, so the meeting was canceled or postponed.³³⁴

When asked if she had any kind of contact with the Student's teachers this school year, the witness testified not as much with the Student's regular ed teachers, but yes with Ms. Shuetter, who is the Resource teacher who does his Literacy and Math, then the witness was corrected to say it was Ms. Nyssa. The witness testified she just heard the Student did pretty well in the fall, and heard he had been having more difficulty this semester, she thought.³³⁵

The witness testified she had seen the occupational therapy evaluation that was done by Ms. Henry, that she received a copy prior to the meeting that was scheduled, that she wanted to go over and compare it from the witness' testing in 2016. When asked if the witness agreed the Student's visual motor integration skills had declined significantly, the witness testified she would and would not, as

³³⁴Vol. IV, P. 192, lines 1-25, through Vol. IV, P. 195, line 11

³³⁵Vol. IV, P. 196, lines 1-19

the raw scores on her test were the same as the raw scores on theirs, but it also mentioned it looks more behind because the Student is older, and it also talked about the Student having a lot of avoidance and times of noncompliance. So, the witness testified you would have to take into account that he could have done better.³³⁶ The witness agreed the Student was one standard deviation, or one and a half standard deviations below the mean, and he has gone from that to two, more than two standard deviations below.³³⁷

The witness agreed it is statistically significant the Student is in the first percentile rankings now, and he was in the sixth or tenth percentile rankings in his VMI and his motor sub-test. The witness testified as far as the other testing she did that was the same as theirs, she did the sensory and behavior checklist, and knew she did a sensory profile also. The witness testified the difference between the those, there are several out there, several kind, that there is a sensory processing measure, a classroom form, the one they use now is a sensory processing measure, and there is a classroom form that would be the one a family would fill out, so the kind that they would fill out would be classroom form. She testified she believed the time she tested the Student before, they just did a few checklists and kind of compared, because they really wanted to know how he is performing in a smaller environment Resource class versus in the larger class. Which, of course, he had a little more trouble in the larger classroom setting.³³⁸

The witness testified the Student's trigger is typically writing tasks, when they transition from a least preferred activity to a more preferred activity, such as going from math to writing or writing to math, that she did not feel it is because the room is too loud of the Student is over-stimulated, and that what she is being told is outbursts are usually triggered by work avoidance. The witness testified she had heard about the Student's poor coping or calming skills, that it is all through the plan they are working on as a team, but that she had not given input to the IEP team meeting or sent any kind of documentation this year.³³⁹

The witness testified they wrote up recommendations concerning use of sensory items while the Student was at the primary, and at his annual review last year it was determined those things were still appropriate and could be continued as part of the Student's plan. The witness testified the list they made of sensory strategies in the Student's Behavior Plan, movement breaks when needed, having access to sensory strategies, things like the yoga ball, rocking chair, those things that are in the Refocus Room. The witness testified when the Student has a meltdown, from her knowledge this year when she visited the Refocus Room, it can be used several ways, that if the Student is upset, the person in charge of the Room chooses what is to be done, that the Student is not allowed to go in there and run around the room, and the person in charge chooses things like sitting in the tent area, sitting the bean bag area, or if the Student is calm and the Refocus Room is used, he can choose an

³³⁶Vol. IV, P. 197, lines 6-9, through Vol. IV, P. 198, line 7

³³⁷Vol. IV, P. 198, lines 8-14

³³⁸Vol. IV, P. 198, lines 15-25, through Vol. IV, P. 199, line 20

³³⁹Vol. IV, P. 200, lines 21-25, through Vol. IV, P 202, line 8

activity.³⁴⁰

The witness testified the Student's handwriting is legible, and that what she was shown at the hearing was not as good quality as what she received in the last few weeks, but agreed it does not have the spacing needed.³⁴¹ The witness agreed that therapy will effectively treat the areas of delay utilizing sensory integration strategies, to teach coping and calming techniques to equip the Student and facilitate executive functioning skills for higher independence within the Student's daily living skills.³⁴²

The witness agreed as an occupational therapist she is called on to teach coping and calming techniques, but testified they work as a team to make sure all strategies are put in place, and for best practice it is done daily, that the District's teachers are well versed in many children with ADHD and autism, it is part of any Special Ed program, and one of the most important things they work on a daily basis, is coping skills and regulation, but OT is a part of the team.³⁴³ The witness agreed Ms. Nyssa's class was the one in which the Student was most comfortable, because of the lack of noise and small group.³⁴⁴

The witness testified she did not have an ILS program, which is different kinds of therapeutic listening systems, that there is not a lot of research base to it, that there are four or five different kinds by different doctors and companies, it is like classical music, used to affect mood and calming. The witness testified she was not familiar with the ILS, but one she recalled hearing about was called Tabotus or something, therapeutic listening system, part of a calming technique.³⁴⁵

The witness testified, questioned as to what, outside standard scores, determined if a student should receive direct therapy in the school setting, that it is always a team decision in a school setting, which is a big difference between the clinical setting. The witness testified the clinical therapist can make their own decision based on their own input, they can work on anything they find a need for, but in the school setting, under IDEA, it is all about access to education and what is causing an adverse effect on their education. The witness testified the Student's scores that are a little bit behind on the VMI are not a huge concern when one of those is just drawing shapes, that they are not going to worry about shapes as much as handwriting, and that handwriting is a trigger for the Student. The witness testified it has not been something that they have worked hard on, they just tried to accommodate the Student by using the Chrome book and the Text to Speech, but as a team, they determined the Student does need pull-out services and what is the best way to meet his need. The witness testified she looks at is there anything as an OT she can bring, that skilled OT, that is not

³⁴⁰ Vol. IV, P. 202, lines 9-25, through Vol. IV, P. 203, line 12

³⁴¹ Vol. IV, P. 203, lines 21-25, through Vol. IV, P. 204, line 19

³⁴² Vol. IV, P. 204, line 25, through Vol. IV, P. 205, line 7

³⁴³ Vol. IV, P. 205, lines 8-21

³⁴⁴ Vol. IV, P. 205, lines 22-25, through Vol. IV, P. 206, line 5

³⁴⁵ Vol. IV, P. 206, lines 6-25

already being utilized. ³⁴⁶When asked about saying “access” the standard now being benefit, not whether the Student needs OT to benefit, the witness agreed you could use benefit.³⁴⁷

Witness ELIZABETH KELLEY

The witness Elizabeth Kelly is the Special Ed Director at Vilonia School District. She has been there three years, has a MEd in educational leadership with a certification as a principal, she has a curriculum administrator’s license in Special Ed, and has been in a school building for the last 39 years in varied positions. She has been a Special Ed coordinator, a district coordinator over programming for ten schools, a case study committed chair over assessment teams, both hospital and educational. She has created model programs in three states for Special Ed programming, and has written \$100,000.00 grants that created a training and dissemination center for Special Ed best practices in North Carolina, has worked in two therapeutic schools for students who had emotional difficulties, she has been a conference speaker for the speech program in North Carolina for, name about everything Special Ed, brain engagement, co-teaching, social skills, and in this district has developed behavioral programs.³⁴⁸

The witness testified she absolutely has experience in working with students like the Student who have been diagnosed with autism and have behavior issues that need to be dealt with in the school setting, that she has been a behavior management specialist, so has worked with all different disabilities in terms of setting up behavioral programs within the schools. She was trained by Randy Sprick, who is probably the international guru for behavior, as well as Kathy Morris, who is a national speaker consultant who is a consultant both in autism and in behavior. The witness testified in the therapeutic schools she has worked, they come up with innovative programming you do not see in most states, that it is kind of what they model some of the things at for Vilonia because they do not have any type of behavioral program there.³⁴⁹

When asked to give an overview of after the settlement of the first Due Process case nearly two years ago, of the behavior programming put into place, who did it or who collaborated, what it was, the witness testified the Student’s parents were very concerned because the Student had to be in an alternative school setting, and when the witness first arrived here, she went to the alternative school setting to look at placement there and spent a couple of days there. The witness testified she felt it was not appropriate for any of their students, that she was not a fan of alternative settings that are not therapeutic, and in the first year they started working on bringing those kids back from the alternative school. The witness testified the Student was already back and was in it, but they knew they needed to come up with a program that was specialized, not just for the Student, that they had several other students who had behavioral issues. They wanted to come up with a positive behavior support system within the school so the students could integrate back into their classroom as quickly

³⁴⁶Vol. IV, P. 207, lines 8-25, through Vol. IV, P. 208, line 7

³⁴⁷Vol. IV, P. 208, lines 13-18

³⁴⁸Vol. IV, P. 209, lines 19-25, through Vol. IV, P. 211, line 3

³⁴⁹Vol. IV, P. 211, line 4-22

as possible, yet still have those supports for them to come out and be successful. That was started during the 2016-2017 school year, which was last year, and with some assistance from the BCBA, Dr. Smith.³⁵⁰

The witness testified as part of the settlement of the Student's first Due Process, Sheila Smith came in and they did an FBA, then did a BIP with her. They looked at things the Student would need for support, then put those things into place. The witness testified they did autism training, which the parents participated in, that they have one of the only parent support groups in central Arkansas, just recently started since she came here, so they bring in people to train parents about autism and about behavior and those kind of things, and the parents have been involved in that. The witness testified last year seemed like a really good year in terms of everyone coming together to work out plans, and even in the summer between last year and this year, she was called in to assist because the Student was having difficulties at his summer child care, so she went there and had the parents come and helped design a program for the Student so he would be successful, and he successfully went through summer school from 7 a.m. to 5 p.m. every day, at Eagle's Landing, on one of their school campuses, but it is not part of the school program.³⁵¹

Discussing the colored charts or graphs, the witness testified in equipping the Refocus Room it was really important to hire the best people possible, so they did verbal interviews, then the applicants had to pass a performance interview applying for the position of basically behavioral paraprofessionals. The witness testified Ms. Simpson and Ms. Standridge and two others were a part of that, and they would actually go into the classroom and it could be seen how they worked with escalating students. The witness testified a lot did not make the cut, but Ms. Standridge and Ms. Simpson were the top two. The witness testified she did the smiley chart, because data is not important, to her, if students cannot see where they are, it was a minute by minute data taking so the students know that for every positive, they are going to be rewarded, that every minute counts for them, and then for every negative. The witness testified unfortunately they have in schools the system of, if you make a mistake, all of a sudden you have a half day suspension or something, and to her, that could not teach students systematically about behavior, but if the students know for every minute they are on target and focused they get to make choices, it is kind of how life works, that all the positive things you do, you get to choose, more freedom. The witness testified the smiley chart has worked incredibly.³⁵² The witness testified the parents can quickly see how their students are doing on an ongoing basis, and on the color-coded charts red is out of compliance and blue is in compliance, just started this year, and the Student so clearly understood the refocus system that when they built a new Refocus Room he was actually part of the designing of that room to help determine what areas needed to be set up.³⁵³ The witness agreed the para with the student most of the day takes charge for inputting

³⁵⁰Vol. IV, P. 211, lines 23-25, through Vol. IV, P. 213, line 4

³⁵¹Vol. IV, P. 213, lines 1-25, through Vol. IV, P. 214, line 11

³⁵²Vol. IV, P. 214, lines 15-25, through Vol. IV, P. 216, line 6

³⁵³Vol. IV, P. 216, lines 19-25, through Vol. IV, P. 217, line 11

data into an Excel spreadsheet, the compliant vs. noncompliant minute data.³⁵⁴

Discussing a component of the behavioral system made up of chores, the witness testified that is based on Harvard's Doctor Brooks, who has testified students cannot learn without being able to develop islands of competency, so feeling like they are a contributing member of the team, that the school needs them, is an amazing way to learn social skills, that they develop self-esteem and a sense of belonging, that they are trying to teach the students to be life successful.³⁵⁵ When asked about the use of physical escorts during this school year, the did not read the ADE regs, as she is from Texas, that she thought you had to document everything, and she knew the Student's parents did not like a lot of contact with their child, so she kind of went overboard on ths, so on August 30th, that was a physical escort, and the Student was rolling up against the doors and screaming "Help" with no one around him, trying to bite the ankles of anyone that came by, and the Student held the entire fourth grade at bay because no one could get out the door as the Student was rolling in front of it. The witness testified that was when the called the Student's father and told him she knew they did not want them to touch his child, but they had to move him in the hall because the buses were waiting, so she and Mr. Hart did a wrist/triceps, and that as soon as he cleared the door and knew there was no audience, the Student swung at her twice, she got out of the way, and the Student was fine, it was like he had nothing without an audience.³⁵⁶

The witness testified she has seen an improvement in the Student over the past two years, both from a behavior and an academic standpoint. She testified last year there were some very disruptive moments, a lot of teacher complaints from home room, and some parent concerns because the Student did not like the assistant principal, could be very disruptive, screaming and throwing chairs at teachers, and some students were afraid of the Student, but once they set up the three refocus times, the Student had the opportunity to go there and have his own time and 15 minutes of personal attention from an adult, which is very important to him, and the witness described other incidences of the Student being disruptive.³⁵⁷

The witness testified this year she thinks the Student is much happier, more progressive, more verbal. The witness testified the first nine weeks there was the 8-31 blowup because the father testified at that point a wrist/triceps appropriate, then they had the December 7th meeting, where the parents were fabulous, saying the wrist/triceps was more than appropriate to use with the Student, but five days later, 12-12-2017, she did not know why the Student did not have a good day, except he didn't get to use the computer, but he never had to be escorted in a way he was kicking at them. The witness testified because autistic students love structure, they love to be supported and have boundaries and know they are consistent, but on that day when she did the wrist/triceps to transport him as an escort, she made a huge mistake when she put "restraint" on there, because it was not restraint. The witness

³⁵⁴Vol. IV, P. 219, lines 1-10

³⁵⁵Vol. IV, P. 219, lines 19-25, through Vol. IV, P. 220, line 25

³⁵⁶Vol. IV, P. 221, lines 1-25, through Vol. IV, P. 222, line 1

³⁵⁷Vol. IV, P. 222, lines 15-25, through Vol. IV, P. 223, line 25

demonstrated the wrist/triceps, and testified they ran into that problem two weeks earlier, when a student was able to kick out and gave a staff member a concussion, and that she realized this was not a very obtrusive hold to move someone for a transport, that she has spent a lot of time with another transport mode from other school districts that use different ones, that it is more police-like, more obtrusive, but more effective because nobody can kick you. The witness testified they took the Student, and he is kicking all the way into the room, so she testified the only place we can take him was to the mat, which is a thick cushion mat. They lowered the Student, but his legs were not down because he was kicking at them, so he landed on his rear, and then he started slugging and hitting, pulling their hair, spitting at them, so they went back to the wrist/triceps on both sides, but the Student was still trying to kick up his leg and try to hit the witness in the head, so Ms Simpson took his ankles as he was kicking her in the stomach, and she put her hands on his knees so he would not kick at them. Then, the Student testified it was lunch and could he stop and eat lunch.³⁵⁸

The witness testified they called the Student's parents then, both parents, but no answer. The witness testified she also texted them, and thought it was the Student's mother who called her. The witness testified the mother was on speaker-phone because the Student did not want to talk to her, and then the Student started trying to jump and hit the phone out of the witness' hands, and he punched the witness. The witness testified the mother was trying to talk to the Student, and the Student was trying to shut the phone off, and did so three times. The witness testified when the Student's father called, the father was able to talk the Student down.³⁵⁹

The witness testified the other time was 8-30-2017, on the bus on the way to Eagles Landing, the Student hit her several times, but she was able to get him calmed down.³⁶⁰ The witness testified they met with the parents 12-12-2017, and 12-20-2017 they were going to finalize, and that was when the Student told everyone they could not touch him and ran around them in the rain, then chest bumped a teacher he did not even know. So, the witness testified looking at four times that were significant for the Student for the first semester, if you look at all the other times, the non-compliant numbers were low, so they were very pleased. But, the witness testified if you look at 3-30-2018, when they came back, the Student hit Ms. Standridge twice and called her an idiot. On 1-18-2018 the Student was questioned by DHS, then Ms. Standridge as told they were under investigation for child abuse because of the 12-20-2017 five-minute ankle hold. The witness testified then, on 1-23-2018, the Student punched another student when he was told to do that by another student so he did not get into trouble.³⁶¹

The witness testified the 12-15-2017 meeting was very collaborative because the parents came and brought what they wanted, and the witness was surprised that after the December 7th, 2017 meeting that was very positive, that five days later the would, on a five-minute ankle hold, wreck the entire year and a half of progress together as a team, but on 12-15-2017 they were told by the parents they

³⁵⁸Vol. IV, P. 224, lines 6-25, through Vol. IV, P. 227, line 15

³⁵⁹Vol. IV, P. 229, lines 3-17

³⁶⁰Vol. IV, P. 230, lines 1-11

³⁶¹Vol. IV, P. 231, lines 15-25, through Vol. IV, P. 232, line 15

did not want the Student touched anymore. The witness testified with a child as volatile as the Student, they needed a contingency plan, so they came up with a draft plan to discuss with the parents, as at the end of the earlier meeting the parents had no problem with the wrist/triceps hold.³⁶²

The witness testified they changed to have a Resource Officer to assist, just only to observe in case things got out of hand, and also changed that the parents would be able to call the child and talk to him, and did not go into the family support plan, as the other people lived in Cabot and it would be a 40-minute trip to get to the school.³⁶³

The witness testified during the second semester, since January, things ramped up, that it was important to have an FBA come in and look at the Student's behavior and do a new FBA, and on March 1, 2018, and March 7, 2018, there were mobile assessments offered and mobile assessments were put into place during the second semester because the witness had visited a behavioral school in Cabot, and they used that, because they testified it is just really important to document when kids are at risk.³⁶⁴ Discussing school-based mental health services and what parents need to do, the witness testified they do provide that, but since 2016 have been asking for them to do an on-campus, as there is Methodist and Counseling Associates that they can access, and they have a contract to do pro bono work if a parent does not want to pay, so they asked them to do that, and the parents signed in 2016, but without the intake meeting services are not provided, because families have to commit.³⁶⁵

When asked if she thought it a good idea the district communicate directly with the therapist to brainstorm, get ideas, work with the therapist who is actually treating the Student now, to fine tune strategies, the witness testified yes, that is the reason it is very powerful to have school-based mental health, as they can interface with each other, but to have the treating therapist for the Student be able to be a part of that, that would be great.³⁶⁶ When asked, based on all the behavior data gathered by the witness and district staff, whether the witness had a sense of the reason for the last couple of months where the Student appears to be exhibiting increased noncompliance and disrespect, the witness testified because the Student's parents have had an increased expressed amount of disrespect for school officials and the Student observed that, referring to the "F" word at school used by the Student's mother on the speaker phone, and the Student is ten years old, and the cognitive dissonance, the confusion he must have when two groups of people he respects and one is not respecting the other and not knowing who to pledge allegiance to.³⁶⁷

When talking about visual supports used as an evidence-based practice for the Student, the witness

³⁶²Vol. IV, P. 232, lines 17-25 through Vol. IV, P. 233, line 16

³⁶³Vol. IV, P. 234, lines 8-20

³⁶⁴Vol. IV, P. 237, lines 6-25

³⁶⁵Vol. IV, P. 238, lines 10-13, and Vol. IV, P. 239, lines 20-25

³⁶⁶Vol. IV, P. 241, lines 18-23, and Vol. IV, P. 242, lines 12-17

³⁶⁷Vol. IV, P. 243, lines 12-25, through Vol. IV, P. 244, 1-9

testified at the beginning of the year, Ms. Turner put together a weekly schedule so the Student could see everything expected of him and the exact schedule so when he integrated into school he was not surprised by what was expected. The witness testified a visual support is also when the Student has minutes he has to complete because of non-compliant time, and it is large grid he helps produce and then he is able to use both math and being able to count down to completion of tasks using that, and that the Student gets a great deal of accomplishment out of that. The witness testified the Refocus Room

is divided up based on Howard Gardner's Multiple Intelligences, so the Student knows what each area stands for and what is supposed to be done there. The witness testified that social modeling is an evidence-based practice recognized as effective in working with autistic children, that when there is a special social response that needs to be given, then that is practiced, that it can be shaking hands, doing eye contact, being able to respond appropriately with verbal phrases.³⁶⁸ The witness agreed a FBA is one of the evidence-based practices, and agreed the parents requested an FBA at the December meeting, and testified they had a protocol that supported the Behavior Plan in lieu of the fact they cannot do a physical escort.³⁶⁹ The witness testified it was a physical escort on 8-30-2017, which means they are still mobile and moving, they are transporting to a safe place.³⁷⁰ The witness testified there was a physical escort 11-15-2017, and that with a Double Sunday Stroll the student can still move their arms.³⁷¹

The witness testified when the Student exhibited behaviors 12-12-2017, there was already an FBA in place from two years ago.³⁷² The witness testified the district does not have a policy allowing use of physical restraint, that they don't put that in the handbook, that she thought the State Board does not recommend that placed in a handbook, it is only needed as necessary, which is why it is not written into anyone's plan.³⁷³ The witness testified there was imminent danger when the Student almost kicked her in the head when she was doing a wrist/triceps with him and he was kicking, and that, relying on what their attorney testified, they are authorized to video students without parental permission. ³⁷⁴The witness confirmed she authorized the use of video recording of the Student on individual cell phones of staff, but testified she did not advise staff those would become educational records or instruct that any of the videos be kept.³⁷⁵ The witness testified videos were not shared with

³⁶⁸Vol. IV, P. 260, lines 15-25, through Vol. IV, P. 263, line 15

³⁶⁹Vol. IV, P. 266, lines 17-25, through Vol. IV, P. 267, line 13

³⁷⁰Vol. IV, P. 268, lines 10-20

³⁷¹Vol. IV, P. 269, lines 11-25, through Vol. IV, P. 279, line 7

³⁷²Vol. IV, P. 270, lines 18-25

³⁷³Vol. IV, P. 271, lines 1-19

³⁷⁴Vol. IV, P. 272, lines 17-25, through Vol. IV, P. 273, line 17

³⁷⁵Vol. IV, P. 276, lines 14-22

the parents, as information escalates these parents.³⁷⁶

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 an IEP is properly placed upon the party seeking relief, whether that is the disabled child or the school district.”³⁷⁷

Compensatory education is a proper method to provide FAPE to children with disabilities who were entitled to, but were denied, FAPE. *Letter to Kohn v. Office of Special Education and Rehabilitative Services*, 17 LRP 1319. If an Independent Hearing Officer finds denial of FAPE which affects a student’s ability to meet objectives, even though not a willful denial, the Independent Hearing Officer may take into account equitable considerations in determining the amount of compensatory education and the type of services to be provided.³⁷⁸ FAPE as defined for the purposes of this part are:

- 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).³⁷⁹ 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

³⁷⁶Vol. IV, P. 278, lines 12-16

³⁷⁷ Schaffer v. Weast, 44 IDELR 150 (U.S.2005)

³⁷⁸ *Ipswich Public Schools v. Massachusetts State Educational Agency*, 104 LRP 29571

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

district has failed to provide FAPE as required by Federal law.³⁸⁰ The first inquiry a Court or Hearing Officer must make is that 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.³⁸¹

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 Petitioner 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 allow the Student to make appropriate progress in light of the Students circumstances when they practice removal of the Student from the classroom and placed him in a “refocus” or “clean room” for a substantial amount of time and impose “non compliant time minutes” that are to be worked off doing things totally unrelated to academic progress.

The Student is in the forth grade in Vilonia School District and is enrolled as a full time student taking some of his classes in the regular classroom setting and as a pullout in special education class for reading and math. There had been a settlement in the Student’s first Due Process Hearing which occurred two years prior. As part of that settlement a consultant came in and did an FBA, then did a BIP with staff. They looked at things the Student would need for support, then put those things into place including autism training, in which the parents participated.

While the “Refocus” room had some components that could be considered academic in nature, not all were, and there was no certified teacher or set standards as to implementation of activities. Record keeping and documenting was done on a continual basis throughout the day with “on task” minutes” and “non-compliant” minutes being documented on a daily basis, The District required all non-complaint minutes be “worked off.” Minutes have been worked off doing such activities as walking a dog, delivering mail in the building, sweeping the floor and other activities the student is not allowed to choose. These minutes have run as high as 150 minutes in one day.

Beginning in early 2018 the atmosphere, coordination, support and interaction between the Parent’s and the District has virtually dissolved and is at this point almost non-existent. Referrals have been made to the Arkansas Department of Social Services alleging abuse by the District employees, local police have been involved with allegations of assault, and the Student has been referred to Juvenile Court based on an altercation involving physical battery of another student. The Parent’s have forbidden the District from having any physical contact with the Student except in life threatening emergencies. The Student is aware of these issues, expresses his knowledge, repeats negative comments he has overheard from his parents and has escalated his non-compliant and disruptive

³⁸⁰ 458 U.S. 176, 206-07 (1982)

³⁸¹ Id

behavior knowing the only consequence he will face is that his mother or father will be contacted and most likely he will be removed from school for the rest of the day. This situation has evolved into one which the Student himself is the controlling factor. The District is powerless at this time to control his disruptive physical outbursts due to the Parent's position demanding no physical contact with the Student. The Parents are frustrated by being called on a daily basis for them to deal with non-compliant and physically aggressive behavior.

Having stated the above description of the current situation I would be remiss not to state that much of the escalated negative behavior appears to be directly related in time to the Parents position forbidding any physical contact with the Student which has had a negative impact on the District's ability to deliver FAPE.

While there has been input and direction from the CIRCUIT team from the Arkansas Department of Education in the past, current involvement was put on hold by the filing of this request for a Due Process Hearing. Outside evaluations and testing have been done at the Parents expense and should be made available to the IEP team to aid them in their planning.

After reviewing Pre and Post Hearing Briefs, 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 denied FAPE under the IEP in the Vilonia School District. While the Student's IEP was reasonably calculated to allow the Student to make appropriate progress in light of the Student's circumstances, services mandated by the IEP were only partially delivered and a lack of these services would constitute a denial of FAPE. Having determined that the District did not provide FAPE to the student 2017-2018 school the following is Ordered.

ORDER:

Regardless how and why the situation has arrived at this point and after due consideration of the record, evaluation of credibility and veracity of the witnesses, review of the evidence and the foregoing Findings of Fact and Conclusions of Law, it is hereby found that partial relief sought by Petitioner is Ordered.

1. That all outside testing, evaluations, counseling and treatment records are to be provided to the District to aid in the planning and updating of the Students IEP. All information shall be provided within thirty days or as quickly as it becomes available;
2. That the pending CIRCUIT referral shall be reinstated and all recommendations be provided to the Students IEP team to aid in planning and evaluation;
3. That compensatory services in reading totaling 1200 minutes shall be provided to the Student within twelve months of the entry of this Order;
4. That the Parents are declared to have exhausted their administrative section 504 claims as this Hearing Officer lacks the jurisdiction to hear such claims.

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

Due Process Hearing Officer

Saturday, June 23, 2018