

ARKANSAS DEPARTMENT OF EDUCATION
SPECIAL EDUCATION UNIT

XXXXX and XXXXXXXXXXXX)	PETITIONER
parents of)	
)	
XXXXX XXXX)	
vs.)	CASE No. H-2018-13
)	
RIVERSIDE SCHOOL DISTRICT)	RESPONDENT

DRAFT FINAL ORDER

NOW on this 14th day of February, 2018 came on for hearing Petitioner's Request for a Due Process Hearing. Petitioners, XXXXXXXX represented by Theresa Caldwell, Attorney, and Respondent, Riverside School District, represented by Donn Mixon, 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 February 14th, 15th and 16th, 2018, in this matter. Based upon the testimony of the witnesses and the evidence presented and admitted into the record of this proceeding, I make the following findings of fact and conclusions of law.

Issues Presented:

Were the educational placements and accompanying services offered by Riverside School District (hereinafter referred to as District or Respondent) from January 4th, 2016, to January 4th, 2018, reasonably calculated to provide XXXXX XXXX (hereinafter referred to as "Student") with a free, appropriate public education (hereinafter referred to as FAPE)?

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 third of three Due Process Hearing Complaints filed by the Petitioners From an incident involving a physical altercation on school property. Both the first and second requests were dismissed without prejudice by the Hearing Officer at the request of the Petitioner.

On January 4th, 2018, the Arkansas Department of Education (hereinafter referred to as "Department") received a request to initiate due process hearing procedures from XXXXX XXXX (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 an eleventh grade, female 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 February 7th, 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 January 5th, 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 7th, 8th and 9th days of February, 2018. A Pre-Hearing Brief was ordered to be due February 5th, 2018 and a Pre-Hearing Conference was held February 6th, 2018.

The respondent filed an Answer to the Complaint on January 12th, 2018 and on January 23rd, the Hearing Officer received Resolution Tracking notice. On January 26th, 2018, The Hearing Officer received an Objection to the Respondents Answers from the Petitioner. The Hearing Officer entered and Order on February 2nd, 2018, denying the Petitioners Objection finding the Answers of the Respondent sufficient. Five day disclosures and witness lists were exchanged by the Petitioner and respondent on February 1st, 2018 and February 2nd, 2018 both submitted timely.

Prior to the opening of the Due Process Hearing on February 7th, 2018 counsel for the Respondent notified both the Hearing Officer and counsel for the Petitioner of becoming acutely ill and requested a short continuance. A Continuance was granted without objection for a period of seven days and the Due Process Hearing commenced as scheduled on February 14th, 15th and 16th, 2018.

Findings Of Fact:

- 1) Student is 11th grade at the Riverside School District, Lakeview, Arkansas;
- 2) Student has been tested and identified with Dyslexia;
- 3) Student has attended school in the Riverside School District since Kindergarten;
- 4) Student was involved in a physical altercation on school property
- 5) Riverside School District is a Local Education Agency as Defined in 20 U.S.C. 1401(19);

WEDNESDAY, 14 FEBRUARY, 2018, VOL. I

WITNESS NICHOLE BREWER:

Nichole Brewer holds a B.S. in Science, a zoology degree, she taught seventh grade science two years, then high school science five years, biology, environmental science, anatomy and physiology, while attending school to work on her school psychology degree, and graduated with that from ASU, a Specialist degree in 2009. She taught seven years, then worked at Craighead County Special Ed Co-op for eight years. This is her first year at Valley View as a school psychology specialist, and part of her job while at the Co-Operative included serving this school district.¹

Ms. Brewer did evaluations for the Student.² Ms. Brewer did an evaluation report from a re-evaluation of the Student in 2016, gathering the components to help with instructional planning and programming purposes.³ Dyslexia screening was not repeated in this test since this witness had previously done that. In looking at what she did and the results of the testing, the witness said the current information starts at page four of the evaluation, the previous was the summary of the previous testing.⁴ The witness said the curriculum-based assessment was current as of 2016, it had a rating scale and different questions completed by the Student's teachers.⁵ The witness said two grades were provided, and she might use them to see if there is an adverse effect. There was a grade of 60 in one class.⁶ The witness said she had already established adverse effect prior to this, this was just to gather current information. Testing was done at the school and those results were provided to the witness, and she summarized those results.⁷ The witness said there was below basic, basic, proficient and advanced, and the results told the witness the Student was not where she needed to be in those areas.⁸ The witness did not do a classroom observation, she reported an observation

¹ Vol. I, p. 23, lines 14-25 through p. 24, lines 1-25

² Vol. I, p. 25, lines 6-8

³ Vol. I, p. 26, lines 2-8

⁴ Vol. I, p. 27, lines 1-11

⁵ Vol. I, p. 28, lines 3-8

⁶ Vol. I, p. 28, lines 9-25 through p. 29, line 1

⁷ Vol. I, p. 29, lines 8-19

⁸ Vol. I, p. 30, lines 16-23

by Ms. Mulholland, the Special Ed teacher, which is required for learning disability.⁹ As to testing the witness did, she testified she did the Reynolds, the RIAS, the RIAS-2, which looks at verbal and nonverbal intelligence, then a composite combining the two, and also did speeded processing, which tells how quickly a student processes information. This Student is average, and was given a full scale IQ of 86, accurate based on the witness' assessment.¹⁰ The witness said she discussed in other parts of her report she thought the Student had an average IQ, that the nonverbal intelligence quotient was closer to her ability, that where there is a split like that, a 22 point split, when she split them instead of looking at the overall IQ, the Student's intellectual functioning was closer to the 99 because of previous testing.¹¹ As to the VMI and Test of Auditory Processing Skills, a TAPS, the witness said the VMI looks at the Student's visual processing, her visual perception, and she had 27/30, which would have been in the average range. The TAPS was done because the witness wanted to take another look at the Student's phonological processing skills, even though they did not have to do the work up again, just to compare. 90-110 is average on the composite, the phonologic at the top, and the Student was 102, average. The individual sub-test, word discrimination, was a ten, which was average. The phonological segmentation was a six, which was below average. The phonological blending was a fifteen, which was above average.¹² When looking at dyslexia, they look at memory and rapid naming also, that this just looked at the awareness.¹³ The Student was given the Woodcock-Johnson Test of Achievement, which test looks at reading, writing, math, those things. The witness did the oral language test to pick up the listening, comprehension and oral expression, as those areas would be areas of LD also. Ninety to one hundred ten is average. On the letter word identification, the Student had 83, which this test calls low average. The witness said it depends on what descriptive terms you use, that some tests call it below average. Sentence fluency was 91, which is average. Passage comprehension was 84, which was low average. Word attack was a 92, which was average. Calculation was 64, extremely below average. Applied problems, 59, extremely below average, spelling was 82, low average. Writing samples 108, average. Basic reading skills, 86, low average, broad reading, 85, low average. Overall mathematics, 57, extremely below average. Written language, 93, average.¹⁴ The witness said the Student was given the Woodcock-Johnson Test of Oral Language because in the two areas that you can have a learning disability in are listening comprehension and oral expression. The Student was below average in both of those areas.¹⁵ The earlier evaluation done by this witness

⁹ Vol. I, p. 30, lines 24-25 through
Vol. I, p. 31, lines 1-9

¹⁰ Vol. I, p. 31, lines 23-25 through p. 32, lines 1-19

¹¹ Vol. I, p. 32, lines 20-25 through p. 33, lines 1-10

¹² Vol. I, p. 33, lines 14-25, through p. 34, lines 1-7

¹³ Vol. I, p. 34, lines 14-16

¹⁴ Vol. I, p. 35, lines 1-25

¹⁵ Vol. I, p. 39, lines 10-21

was when the Student was in the seventh grade.¹⁶ The Student's passage comprehension was 92 in 2013 and 84 in 2016, going from average to low average.¹⁷ In 2013 the Student had a 74 in calculation, confidence interval 63-85, then in 2016 she had a 64, a ten-point difference, confidence interval 57 to 70.¹⁸ When questioned about regression, the witness said in her professional opinion there was not a big enough difference to call it true regression.¹⁹ The witness said they look at more than the test, they also look at grades, information from teachers, the rating scales, and there are a lot of reasons for poor performance on any day.²⁰ The witness agreed that progress was not seen according to the scores.²¹ The witness said the Student had significant struggle in calculation and applied problems, and based on her scores would not be able to function in a normal classroom.²²

By way of background, the witness said she believed when the Student was diagnosed with dyslexia was in the school district 2008 report.²³ Discussing her recommendations for the Student, as to her dyslexia, the witness said in the 2013 evaluation she had recommended continuing under the disability category of Specific Learning Disability.²⁴ The witness said the Student needed a multi-sensory approach--using as many of her senses as she can to learn material, other than just hearing and seeing.²⁵ The witness said she did not recommend language therapy.²⁶ The witness said the school had a dyslexia interventionist, Brandi Wallace, when the witness was there.²⁷

Discussing the Student's 10th grade year, the witness said did not make any further specific recommendations as to dyslexia, that she looked at the Student's phonological processing skills

¹⁶ Vol. I, p. 46, lines 22-25

¹⁷ Vol. I, p. 49, lines 9-10

¹⁸ Vol. I, p. 50, lines 22-25 through p. 51, lines 1-6

¹⁹ Vol. I, p. 52, lines 14-24

²⁰ Vol. I, p. 53, lines 9-20

²¹ Vol. I, p. 53, lines 24-25 through p. 54, line 1

²² Vol. I, p. 57, line 25, through p. 58, line 1-4

²³ Vol. I, p. 86, lines 8-13

²⁴ Vol. I, p. 94, lines 8-15

²⁵ Vol. I, p. 97, lines 5-10

²⁶ Vol. I, p. 98, lines 20-22

²⁷ Vol. I, p. 104, lines 10-20

with the TAPS, that there was no need for the whole work up again.²⁸ The witness said oral language is separate from the dyslexia, that it was not a part of the dyslexia work up.²⁹ The witness said it was not required she attend IEP meetings, as long as someone is there to interpret the results of the school psychology specialist's report.³⁰

WITNESS RANDEE MULHOLLAN:

Randee Mulhollan is the Student's special ed teacher and designee. Ms. Mulhollan holds a B.A. in politics, and a 2003 Master's in Special Education.³¹ This is her 15th year teaching as a special ed teacher, and this is her 12th year in the Riverside high school. She spent a year at a middle school and two years prior to that at an elementary school.³² The witness said all the services she provided the Student were indirect, as that was what the Student's IEP determined to be the least restrictive environment.³³ The witness testified the Student has been identified having characteristics of dyslexia, since only a doctor can diagnose dyslexia.³⁴ Discussing the interventions used for the Student through, the witness thought, eighth grade, the witness said they were designed specifically for students with dyslexia.³⁵ The witness testified those services were stopped at the end of the Student's eighth grade year at the request of the Student's mother, who felt the Student had progressed enough and wanted more focus on math interventions.³⁶ The witness said she brings a draft of the goals and objectives to an IEP meeting, but she did not write any of the goals and objectives for the Student for seventh grade.³⁷ This witness wrote the goals and objectives for the Student's eighth grade IEP.³⁸ The goals were specific to the Student's comprehension since that

²⁸ Vol. I, p. 105, lines 23-25,
Vol. I, p. 106, lines 4-9

²⁹ Vol. I, p. 107, lines 10-11

³⁰ Vol. I, p. 112, lines 14-20

³¹ Vol. I, P. 122, lines 17-24 and Vol. I, P. 123, line 2

³² Vol. I, P. 123, lines 3-11

³³ Vol. I, P. 124, lines 12-22

³⁴ Vol. I, P. 125, lines 17-21

³⁵ Vol. I, P. 129, lines 2-11

³⁶ Vol. I, P. 132, lines 15-20

³⁷ Vol. I, P. 132, lines 21-25, through
Vol. I, P. 133, lines 1-2, and
Vol. I, P. 134, lines 12-14

³⁸ Vol. I, P. 135, lines 12-21

was an eighth grade standard at the time.³⁹ The witness said she and the Student's teachers implemented those goals, as the Student was indirect. The witness said she made weekly checks with the teacher about the Student's struggles and checking in on the Student's grades. The witness said the Student made progress.⁴⁰

Discussing the current IEP, the 11th grade one, the witness said the Student had reduced assignments, so she did not have to do as many as everyone else, she could see or prepare ahead of time, and she had accommodations of reading assistance, small group, extended time, plus calculator.⁴¹ When asked about instructional approaches to dyslexia, the witness said at the first of the Student's ninth grade year, there was a separate programming conference, in which the witness again offered the Barton program to the Student's mother after they stopped it at the end of the eighth grade year, and the Student's parent again said the Student had progressed enough that they would not be continuing on.⁴²

The witness said she had offered the parents Special Ed services, Resource room services, since ninth grade, which the witness did not know whether or not they were specifically documented, after the Student's struggles all year in geometry, and asked about considering more carefully a Resource room setting, since they were looking at the least restrictive environment, but both the Student and her mother said they did not wish to pursue that yet.⁴³ In tenth grade the Student's transcript showed "D" in both semesters.⁴⁴ The witness said several conferences were held to address the Student's struggles in math and different ways to help.⁴⁵

When asked if there was any mental health concern going on in the tenth grade, the witness said not that she knew of.⁴⁶ The witness said the Student was seeing a school-based mental health counselor, and because it was a school based mental health, it was therefore on the eighth grade IEP, but the witness only knew there was counseling.⁴⁷ The witness said there was no speech and

³⁹ Vol. I, P. 137, lines 11-22

⁴⁰ Vol. I, P. 137, lines 24-25, through
Vol. I, P. 138, lines 1-13

⁴¹ Vol. I, P. 146, lines 29-25

⁴² Vol. I, P. 164, lines 10-21, and
Vol. I, P. 166, lines 10-15

⁴³ Vol. I, P. 167, lines 9-20

⁴⁴ Vol. I, P. 168, lines 14-16

⁴⁵ Vol. I, P. 169, lines 8-13

⁴⁶ Vol. I, P. 169, lines 16-18

⁴⁷ Vol. I, P. 170, lines 6-15

language evaluation done in 2013 or 2016 because the Student would have passed it at a previous time.⁴⁸ The witness said the Student's grades would point toward progress.⁴⁹ Looking at the Student's tenth grade evaluation, the witness said the Student met three of three in reading and comprehension, at least fifth grade text.⁵⁰ The witness said the Student's academics have affected her self-esteem, but did not know if self-esteem affected her academics.⁵¹ Discussing assistance for the Student, the witness said this year the Student has a teacher who is attempting a flipped classroom, which means they watch the instruction or get whatever instruction during the night, then all homework is done during class. The students in Ms. Couch's class do everything on an individual white board at their desk, so the Student can get immediate feedback and the teacher has spent a lot of time one on one with the Student.⁵² One of the IEP accommodations since the Student came to the witness has been she would not be asked to read aloud in class because of her dyslexia, and for the oral communications class, which is a graduation requirement, the oral comm teacher came up with the accommodation the Student was able to pick her selected audience to give those to.⁵³ The witness said, when asked if the Student's dyslexia, the math issues, impacted across the board on all academics, definitely in testing situations, but not necessarily with classroom performance. The witness said the Student was able to express her thoughts in a coherent manner, and the witness had not noticed any problems with misinterpretation of communication.⁵⁴ The witness said she had a good relationship with the Student, that the Student participated in IEP meetings, and understood how behind she was. The witness said she gave the Student access to programs, one being Moby Max, that she worked on one summer and improved her math scores for a while, the other being Khan Academy, with a bit higher level math. The witness also set up auditing a second math class so the Student could hear instructions twice, and a teacher gave up his lunch breaks two days a week to tutor the Student when she needed it.⁵⁵ The witness said she generally has people wanting to get into her class, Resource room, but when she brought it up last

⁴⁸ Vol. I, P. 171, lines 2-8

⁴⁹ Vol. I, P. 174, lines 21-23

⁵⁰ Vol. I, P. 176, lines 1-2, and
Vol. I, P. 177, lines 1-2

⁵¹ Vol. I, P. 180, lines 10-12

⁵² Vol. I, P. 181, lines 1 4-25, through
Vol. I, P. 182, lines 1-2

⁵³ Vol. I, P. 182, lines 11-25 through
Vol. I, P. 183, line 1

⁵⁴ Vol. I, P. 183, line 25, through
Vol. I, P. 184, lines 1-13

⁵⁵ Vol. I, P. 185, lines, 8-25, through
Vol. I, P. 186, lines 1-8

year, the Student did not want to try it, that she wasn't ready to give up on regular ed class yet.⁵⁶ Also discussing this, the witness said she did not think socially the Student would like coming to the Resource room because her friends are in the regular classroom.⁵⁷ When discussing the Student's two "D's" from this semester, the witness said she would attribute that to the work the Student missed while out, and said those are not necessarily final grades, that all the teachers were told the Student has until the end of this semester to make up missing work, so those grades could potentially come up.

WITNESS JAMIE LONG:

The witness Jamie Long is the Student's English teacher. This witness holds a Bachelor's in 2000 and a Master's in reading in 2013. She is in her 17th year of teaching, her 14th year at Riverside. This is her second year teaching the Student.⁵⁸ This witness is a reading specialist, which is being able to, with reading assessments, diagnose any reading difficulties a student has, then write an Intervention plan to assist the teachers to help students improve their reading.⁵⁹ She said she had not seen any evidence of dyslexia as to the Student.⁶⁰ The witness said the Student does her work, she writes essays, she does research, and she completes them.⁶¹ The witness said the Student is not able to do presentations, that there had not been many, but that when the witness adjusted for the Student and had her give the presentation just to her, that the Student was nervous of being in front of the class, but is not normally really nervous in class.⁶²

The witness said the Student has always performed below grade level as to reading comprehension on grade level text, which the witness assessed through observation and experience.⁶³ The witness said the Student has modifications that help, she was given extra time and attention, the IEP was followed, and the Student performs mostly on grade level, that she is usually in the middle.⁶⁴ Discussing the goals of this year's IEP for the Student, the witness said the first two goals apply to

⁵⁶ Vol. I, P. 186, lines 12-22, and
Vol. I, P. 190, lines 3-4

⁵⁷ Vol. I, P. 190, lines 8-11

⁵⁸ Vol. I, P. 192, lines 9-22

⁵⁹ Vol. I, P. 193, lines 1-11

⁶⁰ Vol. I, P. 194, lines 11-24

⁶¹ Vol. I, P. 196, line 13, and
Vol. I, P. 197, lines 9, 11 and 14

⁶² Vol. I, P. 198, lines 5-24

⁶³ Vol. I, P. 199, lines 10-16

⁶⁴ Vol. I, P. 200, lines 3-17

her and she has been implementing them for the Student.⁶⁵ Discussing an IEP team agreement, the witness verified her signature as well as those of the Student and the Student's parents.⁶⁶ The witness said she completes a progress report for every student who has an IEP, and forwards that classroom information to Ms. Mulholland, who deals with the Special Ed component and the paperwork.⁶⁷

WITNESS MELODY COUCH:

The witness Melody Couch is the math facilitator as well as the Student's math teacher. As a math facilitator, the witness said she works with students' testing and end-of-year testing, she pulls students when they are struggling. The witness is the Student's Bridge to Algebra II teacher. That is a class for students who struggled a little bit with Algebra I to help them before Algebra II, but that students do not have to take Algebra II.⁶⁸ Ms. Couch holds a Bachelors in math and just received her Masters in mathematics. She is a national board certified teacher, she has taught nine years in math, four years in the classroom and five years as a facilitator and teacher. As a facilitator, she has less classroom sessions than a normal teacher might teach.⁶⁹ This is the first year this witness has taught the Student, and had never been asked to help the Student before having her in class.⁷⁰ The witness said based on her classroom experience with the Student, the Student works hard. The witness said she set up her class a little different. She likes her students to work problems with her, she does not give homework, and most of the time they go to the board. However, she asked about the Student and knew she had some anxieties, so instead of going to the board the witness allowed the students to use mini whiteboards in class instead of going to the big board standing up in front of everyone. She said the Student does every problem she is asked to work, that she struggles when there are a lot of steps, but the witness gives the Student steps, step one, step two, step three, and she does better, that the Student is willing to do the work, is willing to be

⁶⁵ Vol. I, P. 203, lines 14-22,
Vol. I, P. 205, lines 5-13

⁶⁶ Vol. I, P. 219, lines 1-2 and 23-23, and
Vol. I, P. 220, lines 1-7

⁶⁷ Vol. I, P. 226, lines 16-23, and
Vol. I, P. 227, lines 1-2

⁶⁸ Vol. I, P. 228, lines 18-25, and
Vol. I, P. 229, lines 2-11

⁶⁹ Vol. I, P. 229, lines 15-24

⁷⁰ Vol. I, P. 230, lines 24-25, through
Vol. I, P. 231, lines 1-4

assisted, and is capable, though she does struggle.⁷¹ The witness said the Student is absolutely capable of doing Bridge to Algebra II, her class, at least being able to make a "D"⁷² The witness said she had mentioned to the Student about pulling her outside class if she felt uncomfortable inside when she did not understand something, but the Student said she did not want to do it that, she was fine with doing it in the classroom. The witness said the Student is not embarrassed about one on one help in the classroom, as the witness also works with other students one on one during the day, that is not only the Student with whom the witness works one on one.⁷³ The witness said her one on one instruction was helping the Student.⁷⁴

WITNESS LORI HOGGARD:

The witness Lori Hoggard works for Families, Inc. As a mental health therapist. She holds a Bachelors in social work and a Masters in social work. She is a Licensed Master Social Worker. She has worked for Families, Inc. for ten years. The school provides a room to meet children at school.⁷⁵ This witness has been the Student's therapist since April 10, 2017, almost a year.⁷⁶ Families, Inc. has a contract with the school to provide mental health services, and referrals come in various ways.⁷⁷ The witness said the Student has had therapy since January 18, 2011, and the witness assumed it was the parent who made the referral, or discussed it with the school, as parents have to be notified and have to sign consent during intake.⁷⁸

The witness said she tries to see the Student fourth period every Tuesday, but sometimes on a Saturday when the witness has not been able to fit the Student in. The witness said it would not be out of the normal to see a child at home. The witness said her diagnosis of the Student is General Anxiety Disorder and Other Unspecified Depression Disorder.⁷⁹ Usually the witness said she does rule-out and sends the students for psychological testing, but this Student already had that. The

⁷¹ Vol. I, P. 231, lines 5-25, and
Vol. I, P. 232, lines 1-3

⁷² Vol. I, P. 233, lines 18-25

⁷³ Vol. I, P. 234, lines 13-25

⁷⁴ Vol. I, P. 246, lines 22-25

⁷⁵ Vol. II, P. 6, line 21, through
Vol. II, P. 7, lines 4-25

⁷⁶ Vol. II, P. 8, lines 1-4

⁷⁷ Vol. II, P. 8, lines 10-25

⁷⁸ Vol. II, P. 9, lines 11-23

⁷⁹ Vol. II, P. 10, lines 21-25, and
Vol. II, P. 11, lines 1-9

Student is undergoing neurological testing.⁸⁰ The witness said the Student does have panic attacks. The witness said that with generalized anxiety, what you usually see is worry, you can't control the worry. There may be some irritability, difficulty sleeping, or with appetite, difficulty like making decisions or concentrating.⁸¹ In discussing therapy being on the Student's IEP and how that helps the Student at school, the witness said she does cognitive behavioral therapy, working on the present, what the facts are behind the worry, since sometimes worry is very unrealistic, and how do we manage it, ways to control anxiety. In the past the Student journaled, lots of times they listen to music, trying to keep them active with friends.⁸² If there is a problem, the witness said she can go to the school and talk to the school counselor. She has been called at times from Mr. Ziegler or Ms. Shey, a counselor, about a panic attack or she is having to leave class, and also thought the Student's mother had called the witness to go to the school because the mother was called and let them know the Student was struggling.⁸³ The witness said until recently, she had dealt more with the Student's anxiety than depression, but she did see some depression in August, and irritability after her breakup with her boyfriend is there the witness said she really saw the Student's struggle.⁸⁴ The witness said the Student had not attempted suicide that the witness knew of. The witness said she did know the Student had thoughts, and thought it was in December the parents took the Student to the ER. After being contacted by the parents and the school with concerns, they set up a safety plan, a "no harm" agreement. The witness said in the past the Student had cut herself. The witness said cutting is a maladaptive way of coping with what is going on with feelings and symptoms, that feeling that physical pain they feel releases the emotional pain, that sometimes people cut when they are anxious, sometimes when they are angry.⁸⁵ The witness said when the Student cut, it was just anxiety, as she has a lot of anxiety.⁸⁶ The witness said she practices deep breathing with the kids and encourages them to use it when they get into a situation.⁸⁷ As far as how the Student's disabilities impact her at school in the classroom, the witness said the Student worries about her academic performance and wants to achieve.⁸⁸ As far as this witness' knowledge about what occurred this school year when the Student had to be out of school and return to school, the witness said she knew

⁸⁰ Vol. II, P. 11, lines 11-22

⁸¹ Vol. II, P. 12, lines 6-12

⁸² Vol. II, P. 12, lines 13-25, and
Vol. II, P. 13, lines 1-3

⁸³ Vol. II, P. 13, lines 16-25, through
Vol. II, P. 14, lines 1-10

⁸⁴ Vol. II, P. 14, lines 11-25

⁸⁵ Vol. II, P. 15, lines 1-24

⁸⁶ Vol. II, P. 16, lines 1-9

⁸⁷ Vol. II, P. 17, lines 18-23

⁸⁸ Vol. II, P. 18, lines 8-12

the Student had a conflict with a peer, that the Student became aggressive, went into the principal's office and was hitting a peer, and that she had to be pulled off.

The witness said the Student has taken responsibility for her action, which is what you want to see happen, what to do next time, as that is what therapy is about.⁸⁹ When asked if the event that happened involved any of the Student's triggers, the witness said when you look at anxiety or depression, you don't see a lot of, you hear a lot of anger or aggression, what we saw here, and as a therapist it was difficult for her to make a correlation between a diagnosis and a behavior, because it is hard to predict that. She said you can't really predict it either way. She said you can say that based on a diagnosis you will have certain symptoms, it is how they categorize it from anxiety to depression to a behavioral disorder.⁹⁰ The witness knew the incident involved some posts or something like that involving the Student's former boyfriend.⁹¹ The witness said the Student had learned from the consequences of her behavior and has expressed how she would deal with that situation in the future, and to this witness' knowledge the Student had never been in trouble before.⁹² The witness said anger, irritability, anxiety is very physical feelings.⁹³ When asked if the witness had discussed with the Student the possible way her disabilities would be exhibited, the witness said she thought just in general, when she works with children, they talk about choices, what is expected behavior, and even if they have a disability, it may be harder for them to make the right choice, but they are expected to do so.⁹⁴ The witness said until this situation with the Student, the witness did not deal a lot with the Student about anger. It was more about scaling anxiety, had she had a panic attack, as those were more of the diagnoses the witness was working with the Student on, generalized anxiety and depression disorder. The witness said they scale it and let the students figure out on a daily basis or two or three times week, you want to be at a five or below on a 1-10 anxiety scale, so they can monitor and measure where they are, and then discuss it.⁹⁵ Discussing the Student's depression, the witness said the Student expressed recent thoughts, suicidal thoughts, but said she was not going to follow through with it. The witness said a safety plan was made and they

⁸⁹ Vol. II, P. 19, lines 10-16 through
Vol. II, P. 20, lines 1-3

⁹⁰ Vol. II, P. 21, lines 19-25, through
Vol. II, P. 22, lines 1-7

⁹¹ Vol. II, P. 22, lines 15-24

⁹² Vol. II, P. 24, lines 3-14

⁹³ Vol. II, P. 24, line 25 through
Vol. II, P. 25, line 1

⁹⁴ Vol. II, P. 26, lines 8-17

⁹⁵ Vol. II, P. 27, lines 9-25 through
Vol. II, P. 28, lines 1-3

talked about risk factors and supportive factors.⁹⁶ The witness said she had dealt more with the depression side of things this school year as opposed to before, and attributed that to the breakup with the boyfriend, and said being a teenager is hard.⁹⁷ The witness said this year the Student's therapy is usually 50 minutes, 40 to 50 minute sessions, that it depended, like sometimes the bell rings when the Student gets there, that type of thing, that it had increased from three to five times a month so the witness can see her based on her Treatment Plan, three up to five times. The witness is now seeing the Student weekly now.⁹⁸ The witness said she doesn't always recommend therapy be placed in an IEP because of Medicaid and what they can provide, and you don't want something placed in an IEP if it can't be provided.⁹⁹ The witness said she is providing the most intensive services she can on an outpatient basis to the Student, and it is based on her need. The witness said the Student last week reported a low anxiety level, and as to the depression stated she was trying to stay busy. The witness was contacted once by the school about suicide concerns this semester, and the Student's mother contacted this witness before Christmas.¹⁰⁰ Discussing the Manifestation Determination Review, where it says on the disciplinary action three days out of school, 20 days at SUCCESS, the witness said she would not express an opinion whether or not the Student's behavior had any relationship to her disability because that could not be predicted. The witness said she may say you may have a more emotional state you are having to cope and deal with.¹⁰¹ The witness said any child with a disorder would have an increased emotional state, but said she would not say they could not be held responsible for their actions, as that is what they want to work on, whatever the situation, that is what they try to work on in therapy, with options and things.¹⁰² This witness thought the Manifestation Review meeting was because the Student's parents did not agree with the consequences and wanted to discuss that, and that the witness was coming to the meeting to discuss should the Student have these consequences based on her IEP.¹⁰³ Discussing a facilitated IEP, the witness said at that one she thought it was where choices were given, there would have been 4 or 5 choices, asking the Student and parents if home schooling would have been more appropriate,

⁹⁶ Vol. II, P. 28, lines 4-12

⁹⁷ Vol. II, P. 28, lines 19-25 through
Vol. II, P. 29, lines 1-2

⁹⁸ Vol. II, P. 30, lines 7-18

⁹⁹ Vol. II, P. 36, lines 19-24

¹⁰⁰ Vol. II, P. 37, lines 23-25 through
Vol. II, P. 38, lines 1-17

¹⁰¹ Vol. II, P. 39, lines 8-10,
Vol. II, P. 40, lines 8-25, and
Vol. II, P. 41, lines 1-11

¹⁰² Vol. II, P. 41, lines 19-25

¹⁰³ Vol. II, P. 42, lines 1-10

would she feel more comfortable due to her anxiety rather than going to SUCCESS school.¹⁰⁴ The witness said since the Student returned, she had not suggested to the teachers or know of anything being done with the Student now that maybe was not done before, besides increase therapy.¹⁰⁵ The witness said the Student was with the boyfriend two years, and they did not see any suicidal thoughts until after that, but thinks the Student has made a lot of progress, that at the last session she had with the Student, the Student expressed that she could basically move on from the failed relationship with the boyfriend and was not having so much emotions and sadness over that.¹⁰⁶ The witness said at the Manifestation Determination Review meeting the parents did not agree with the choices provided, based on consequences, they just wanted the Student to return to school, that the parents felt they were not making any progress so opted to end the meeting.¹⁰⁷ The witness said there was no report of presence of suicidal tendencies before the breakup, and recalled one emotional breakdown in a classroom, which was also after the breakup, which was where the Student was sitting in a classroom closet tearful and upset.¹⁰⁸ The witness said while she supplies information about what she thinks is the appropriate diagnosis, the actual labeling of that for purposes of the diagnosis comes from the medical professional, not this witness.¹⁰⁹

The witness said the event with the Student's boyfriend was about mid-August.¹¹⁰ The witness said the Student is making progress, growing and maturing, and learned from the situation as to the attack on the other student.¹¹¹ Discussing dates for the Student's mental health through Families and different therapists, the witness said therapy for the Student was from January 18, 2010 until when terminated by the Student's mother September 26, 2016, and again resumed at the mother's request on April 10, 2017, and continuing on to the present.¹¹²

¹⁰⁴ Vol. II, P. 42, lines 22-25, though
Vol. II, P. 43, lines 1-6

¹⁰⁵ Vol. II, P. 43, lines 10-14

¹⁰⁶ Vol. II, P. 44, lines 7-25, through
Vol. II, P. 45, lines 1-6

¹⁰⁷ Vol. II, P. 46, lines 16-25, through
Vol. II, P. 47, line 1

¹⁰⁸ Vol. II, P. 47, lines 6-25 through
Vol. II, P. 48, lines 1-6

¹⁰⁹ Vol. II, P. 50, lines 16-21

¹¹⁰ Vol. II, P. 51, lines 11-22

¹¹¹ Vol. II, P. 52, lines 21-23, and
Vol. II, P. 54, lines 9-12

¹¹² Vol. II, P. 52, lines 24-25, through
Vol. II, P. 53, lines 1-24

Discussing a conference in November where the witness was present and a facilitator was present the first part, the witness said the Student and her parents were at the conference, and that the Student's statement was she was "ready to get it over with", which would be a typical teenager response.¹¹³ The witness said the Student is reporting decreased anxiety, but the witness did not know if the Student had made up all the assignments due by the end of the year.¹¹⁴ The witness said the school has been cooperative about making sure the witness' relationship with the Student could continue.¹¹⁵ The witness said she did advise the school, at the IEP team meeting, about the diagnosis of general anxiety. The witness said it was the school who informed her about depression and maybe even suicide after the Student had reported it to some of her friends.¹¹⁶ The witness said the Student will sometimes say she is angry, and they are working on her recognizing her anger.¹¹⁷

WITNESS BEN HOGARD:

The witness Ben Hogard is the Student's history teacher, holds a BSE as of 2014, and this is his fifth year teaching and second year to have the Student in his class.¹¹⁸ The witness is a member of the Student's IEP team.¹¹⁹ The witness recalled the Student has modifications. The witness said in his classroom the Student is always positive with good behavior, that she liked to discuss things and was very interested in politics and other things.¹²⁰ The witness said the Student does not struggle in his class and has been very successful.¹²¹ The witness said he did attend a Manifestation Determination Review meeting this year.¹²² The witness said he is the general education teacher and was called in to sit and listen.¹²³ At the meeting that day, it was about discipline, not the witness' job as he is the

¹¹³ Vol. II, P. 54, lines 21-25, through
Vol. II, P. 55, lines 1-16

¹¹⁴ Vol. II, P. 56, lines 6-16

¹¹⁵ Vol. II, P. 58, lines 3-5

¹¹⁶ Vol. II, P. 59, lines 8-24

¹¹⁷ Vol. II, P. 61, lines 1-12

¹¹⁸ Vol. II, P. 63, lines 21-21 through
Vol. II, P. 64, lines 1-17

¹¹⁹ Vol. II, P. 64, lines 24-25 through
Vol. II, P. 65, line 1

¹²⁰ Vol. II, P. 65, lines 14-24

¹²¹ Vol. II, P. 66, lines 8-11

¹²² Vol. II, P. 66, lines 12-15

¹²³ Vol. II, P. 67, lines 22-23

general ed teacher and does not handle discipline. He thought he talked to the parents when they first came in, but that was about it.¹²⁴ The witness said he knew nothing personally about an emotional outburst by the Student like shutting herself in some closet.¹²⁵ The witness said at the meeting there was discussion that the punishment was in the handbook, three days suspension then twenty days at SUCCESS.¹²⁶ The witness said the parents left the meeting early.¹²⁷ The witness said the Student returned her work for the witness, and the Student's semester grade is an 82, she made a 78 for the nine weeks.¹²⁸ The witness said the Student's grade in American history for the first semester of this 11th grade year she had a "B," and in tenth grade she had "A," and that she earned her grades.¹²⁹

WITNESS BRANDI WALLACE:

The witness Brandi Wallace is in her first year as the curriculum director for the district. Before this, she was an elementary school principal six years, a literacy coach for three years, she taught first grade for three years, kindergarten for three years, third grade for a year, and was an EPC for a year for fourth grade.¹³⁰ The witness has a Bachelors in early childhood, elementary, a Masters for gifted and talented, she has a program of study for building level administration, she has a Specialist for district administration, and is in her last semester for her doctorate, working on the dissertation.¹³¹

This witness is the dyslexia specialist at this school district.¹³² The witness said she is not the interventionist at the high school, that is Diane Davis who does some interventions, and Linda Campbell does some. They are trained in the Barton to meet the Dyslexia Resource Guide.¹³³ The

¹²⁴ Vol. II, P. 68, lines 2-10

¹²⁵ Vol. II, P. 69, lines 8-12

¹²⁶ Vol. II, P. 70, lines 11-14

¹²⁷ Vol. II, P. 70, lines 1-3

¹²⁸ Vol. II, P. 72, lines 6-12 and
Vol. II, P. 73, lines 16-18

¹²⁹ Vol. II, P. 74, lines 20-25 through
Vol. II, P. 75, lines 1-6

¹³⁰ Vol. II, P. 76, line 23-25 through
Vol. II, P. 77, lines 1-12

¹³¹ Vol. II, P. 77, lines 19-24

¹³² Vol. II, P. 78, lines 23-25 through
Vol. II, P. 79, line 1

¹³³ Vol. II, P. 79, lines 2-13

witness said she is aware the Student has dyslexia.¹³⁴ In describing dyslexia, the witness said usually it is a phonological issue, a lot of times there are some memory issues, word retrieval, so with a dyslexic student they will have some reading issues, some spelling issues and some writing issues, they may need some extra time.¹³⁵ Discussing instructional approaches, the witness said the first is explicit, direct instruction that is systematic and sequential and cumulative, which is done in Barton, and in the classroom that would be something beneficial for the dyslexic student, second is individualized instruction to meet the specific needs of the student in a small group setting that is intensive, highly concentrated, which would also be Barton. The witness said they do it one on one, and that is the way the program was designed, that it is better one on one. Third, meaning-based instruction directed at purposeful reading and writing, with an emphasis on comprehension and composition, and it is directed at what the student specifically needs.¹³⁶ When asked what, besides the Barton program would a child need to be included in their program to have a well-rounded program addressing their dyslexia, the witness said she knew the Student has an IEP, but the witness said she was thinking like a lot of the dyslexic students who are 504, they do extended time, they are not asked to read aloud unless they want to, the teachers will maybe shorten and repeat directions, sometimes shortened assignments, it depends on the particular student's need, usually extended time, maybe Text to Speech where it reads to them math and portions that are not specifically reading, just different modifications in the classroom.¹³⁷ The last time this witness worked with the Student was in elementary school, and the witness said she had not been contacted for her expertise in helping design a program for the Student.¹³⁸

WITNESS CHRISY YOUNG:

The witness Chrisy Young is Special Education supervisor for the district, employed by Crowley's Ridge Cooperative, serving this and two other districts. She has a BSE, a Masters in Special Education, and currently has eighteen hours toward her Specialist degree. She has 22 years of teaching, 11 or 12 of that in Special Ed., and has taught from pre-school to 12th grade. She was hired by the Co-op as the Special Ed supervisor in July.¹³⁹

¹³⁴ Vol. II, P. 81, lines 16-18

¹³⁵ Vol. II, P. 83, lines 5-15

¹³⁶ Vol. II, P. 84, lines 24-25, and
Vol. II, P. 85, lines 2-25, through
Vol. II, P. 86, lines 1-18

¹³⁷ Vol. II, P. 87, lines 24-25, through
Vol. II, P. 88, lines 1-17

¹³⁸ Vol. II, P. 91, lines 12-16 and
Vol. II, P. 92, lines 1-4

¹³⁹ Vol. II, P. 93, lines 23-24,
Vol. II, P. 94, lines 2-24, and
Vol. II, P. 95, lines 1-24

The witness said that on November 6th the Student's IEP was amended, that before that was an indirect student, and based on the conference decision November 6th, the committee and team decided homebound services were more appropriate.¹⁴⁰ Discussing the November 6, 2017 facilitated IEP, the witness said a meeting was necessitated because the Student's parents requested it and got in contact with the Bowen law school and asked for a facilitated IEP meeting.¹⁴¹ The witness said the Student's mother had contacted Mr. Ziegler and said she wanted to meet ASAP, so the witness guessed Mr. Ziegler told Ms. Mulholland, the Special Ed teacher, to set up the meeting since this witness is not on campus every day. Somewhere in between, this witness received a phone call about the parents wanting to meet, and was actually informed of the incident.¹⁴² Discussing how the parents wanting to meet going to a Manifestation Determination Review conference, the witness said she thought they were talking about discipline, but that morning, before the meeting, the Student's mother sent an email to Mr. Priest saying the Student was at the end of her rope and suicidal. When the witness got the email from Mr. Priest, she called Ms. Mulholland and said if the Student was really suicidal, they needed to get Lori Hoggard involved, as instead of a discipline situation, it might be an intake type, three-day type situation. In the witness' role of Special Ed supervisor, she has been involved in that before, where children are taken from the school to a facility. During the meeting, the Student's mother asked if the Student could be there, and that she has asked Mr. Ziegler that. The witness said she was in Mr. Ziegler's office when the Student's mother sent that text, and the witness told Mr. Ziegler "no," that they were talking about the child's mental health, so she should not be there. The witness said at the meeting they went all through the Student's mental health, and it was determined that she just said that, but did not mean any physical harm to herself.¹⁴³

Discussing the October 17 notice to conduct a Manifestation Determination conference, consider and conduct a Functional Behavior Assessment, and revise the IEP, the witness said they did all that during the conference.¹⁴⁴ As to holding a Manifestation Determination Review, the witness said they started talking about the Student's disability category as applied to Special Education placement, and when they determined that was when the Student's mother said the Student's disability had caused her to it (the assault and battery-MLM, my words-R). The witness said she explained to the Student's mother that under Arkansas Guidelines, the Student was under Specific Learning Disability, so at that point the witness had Ms. Mulholland get her laptop and the witness said let's go through the manifestation. The witness said she explained that as a team, as a committee, they would answer questions, and the Student's category could be changed if decided by the team. The

¹⁴⁰ Vol. II, P. 97, lines 17-25, through
Vol. I, P. 98, lines 1-4

¹⁴¹ Vol. II, P. 100, line 2,
Vol. II, P. 102, lines 20-25, and
Vol. II, P. 103, lines 1-8

¹⁴² Vol. II, P. 105, lines 10-23

¹⁴³ Vol. II, P. 106, lines 1-25 through
Vol. II, P. 107, lines 1-9

¹⁴⁴ Vol. II, P. 107, lines 10-17

witness said they knew there would be a Manifestation Review at the October 20 meeting, as the Student's mother said in an earlier email that the Student's disability caused her to do what she did.¹⁴⁵

The witness said SUCCESS is an alternative learning environment, but is not considered a change of placement when a student is there for short-term status. All the IEP components and everything that has to do with that Special Ed child is handled on campus—their IEP is being met, even though they are physically in another spot. An out of school suspension is different than the short-term twenty days at SUCCESS.¹⁴⁶ The witness said the Student is considered a Specific Learning Disability child under IDEA, which is how they have her placed in Special Ed. They conducted the manifestation to determine if the Student's SLD criteria was a manifestation of that behavior.¹⁴⁷ When asked if she assumed the social worker's testimony to be true, the witness said yes. The witness agreed the Student has disabilities, specific learning disabilities and also disabilities in anxiety and depression.¹⁴⁸ As to related services, such as providing occupational therapy if a child has issues with fine motor skills, the witness said she did not know if it can be said the Student's anxiety and depression have an adverse effect on her educational performance, that such would be something to be determined in a committee meeting. The witness said most of the time related services are on the IEP if there is a condition that has an adverse effect on a child's education, and if the district and the team decide it is not an adverse effect to their being able to learn, then it is not necessary to provide that related service.¹⁴⁹ The Student has a related service of school-based therapy on her IEP this year, and this witness knew that at the time the Manifestation Determination was held.¹⁵⁰ Discussing notice of manifestation review conference and the parents' claim of no proper notice, the witness said typically it is pretty acute, so it could be done over the phone and it might be a day, since it involves a behavior that has happened and they need to have the conference pretty quick with the parent, that while typically you are to give two-week notices on a conference, parents can choose to come before those two weeks, and here the Student's parents requested the conference.¹⁵¹ The witness said she already knew the Student's discipline before holding the

¹⁴⁵ Vol. II, P. 107, lines 18-25,
Vol. II, P. 108, lines 1-25, through
Vol. II, P. 109, lines 1-5

¹⁴⁶ Vol. II, P. 112, lines 1-15

¹⁴⁷ Vol. II, P. 112, lines 20-25

¹⁴⁸ Vol. II, P. 115, lines 24-25, through
Vol. II, P. 116, lines 1-1-20

¹⁴⁹ Vol. II, P. 117, line 25, through
Vol. II, P. 118, lines 1-23

¹⁵⁰ Vol. II, P. 118, lines 16-25, and
Vol. II, P. 119, line 1

¹⁵¹ Vol. II, P. 121, lines 7-25, through
Vol. II, P. 122, lines 1-4

Manifestation Determination meeting.¹⁵² When asked what was the rush in holding a Manifestation Determination Review conference, the witness said during the meeting they were talking about the Student's specific learning disability versus her anxiety and depression, and they needed to determine, under the Student's current category, was it a result of her specific learning disability.¹⁵³ The parents brought a notebook for taking notes and a recording device to the meeting, but nothing from a doctor to the meeting.¹⁵⁴ The witness reviewed the IEP as to the parents later bringing information from a doctor, Dr. Sumner Cullom, dated October 24, 2017 relaying the Student was diagnosed with pseudo seizures, atypical seizures, passing out without warning, that the patient was undergoing counseling for emotional stress related to condition and was on Valium as needed for stress and anxiety. The Dr. also relayed the Student has had a personality change, lack of rage control and mood swings. The witness agreed someone typed that in the Student's IEP, and there was another statement October 30th.¹⁵⁵ The witness agreed those two statements were not available, so not discussed, at the MDR conference October 20th.¹⁵⁶ The witness said at some point the incident was discussed, but the Student having had a personality change, mood swings or lack of rage control was never discussed in the meeting by the parents of the Student.¹⁵⁷ The witness recalled the parents discussing the boyfriend breakup being difficult, that they were sorry the Student attacked the other student. The witness went on to say she called it an attack rather than a fight because her understanding of what occurred was that the Student hit the other girl over and over and the girl being hit never hit the Student back, and that the witness defined a fight would have been where they were both hitting, which was not the case.¹⁵⁸ As to what precipitated the attack, the witness said her understanding was that a few months before, another student sent a text message to someone saying the Student was acting like a ho, and someone had screen shot it and had sent it back to her several months later.¹⁵⁹

When asked if the Student was to be changed and her related services of school-based mental health

¹⁵² Vol. II, P. 122, lines 22-25 through
Vol. II, P. 123, lines 1-8

¹⁵³ Vol. II, P. 123, lines 9-17

¹⁵⁴ Vol. II, P. 124, lines 21-25, through
Vol. II, P. 125, lines 1-9

¹⁵⁵ Vol. II, P. 126, lines 9-25, and
Vol. II, p. 128, lines 1-21

¹⁵⁶ Vol. II, P. 129, 10-18

¹⁵⁷ Vol. II, P. 130, lines 11-23

¹⁵⁸ Vol. II, P. 131, lines 2-14

¹⁵⁹ Vol. II, P. 132, lines 2-16

stopped, would that be a change of placement, the witness said no.¹⁶⁰ When asked to define educational placement as an array of services, looking at the Student's IEP, having indirect Special Ed services, and General Ed classes provided where she had instruction in different places, the witness said when the Student went to SUCCESS she would have those same subjects and provisions, she would have instruction and accommodations, and non-disabled peers.¹⁶¹

The witness said the therapist was at the meeting as part of the team, but the witness did not recall the therapist ever mentioning depression. The witness agreed they focused on the Specific Learning Disability category under the IDEA.¹⁶² As to the Explanation of Actions, the witness said the Student's mother stated she did not feel the team could make decisions concerning the Student's discipline actions she was facing unless the Student was there. The witness said they tried to break for lunch and let the Student have time to come in, but the Student's mother declined.¹⁶³ Earlier when the witness was testifying as to the doctor statements being put into the IEP, it should be added. The witness said she did not get that until November 6th.¹⁶⁴

WITNESS JEFF PRIEST:

The witness Jeff Priest is superintendent at Riverside Schools. This is his second year as superintendent here. He has a BSE, a Masters in Ed Leadership, and a Specialist degree in Ed Leadership. He was a high school principal three years, this is his fifth year in the district. This is his 16th year in education.¹⁶⁵ This witness has known the Student for the last five years.¹⁶⁶ Discussing the letter from the Student's attorney requesting the Student be returned to her current educational placement and allowed to return to her classes, the witness said he immediately contacted their attorney for guidance, and that was not to allow the Student to return.¹⁶⁷ When asked about prior to the attorney letter and Due Process Complaint, was he told the Student's parents wanted to ask for a hearing because they disagreed with the discipline imposed by the district, did he know what the

¹⁶⁰ Vol. II, P. 137, lines 14-18

¹⁶¹ Vol. II, P. 137, lines 19-25 through
Vol. II, P. 138, lines 1-12

¹⁶² Vol. II, P. 152, lines 12-24, and
Vol. II, P. 153, lines 1-2

¹⁶³ Vol. II, P. 155, lines 14-23

¹⁶⁴ Vol. II, P. 164, lines 4-22.

¹⁶⁵ Vol. II, P. 170, lines 7-25, through
Vol. II, P. 171, lines 1-11

¹⁶⁶ Vol. II, lines 12-16

¹⁶⁷ Vol. II, P. 172, lines 13-25

disagreement was, the witness said the disagreement he was informed of was the Student's mother did not want the Student going to SUCCESS.¹⁶⁸ As to the manifestation meeting, the witness said he was told the parents walked out before it was complete.¹⁶⁹ The witness said he knew that through all that, the parents were given different options of what the discipline could be besides going to SUCCESS, and one option was that homebound services would be provided if that was something they wanted.¹⁷⁰ The witness said when it did not seem like SUCCESS was going to happen, that is when the homebound services were to be set up and were set up, but they (the parents) never set up a time for us to do those homebound services.¹⁷¹ The witness said if the Student is enrolled in the ALE (SUCCESS), she is still enrolled in their school.¹⁷² So, even if at SUCCESS, the school would still be in charge of implementing the Student's IEP there since 20 days is a short-term student.¹⁷³ The witness said when he received the letter November 7th, the team had determined the Student would receive homebound services for 20 days instead of the originally assigned 20 days at SUCCESS.¹⁷⁴ The witness said after the parents disagreed with SUCCESS, that is when they went to the 20 days homebound. The witness said he did not understand the parents wanted the Student to return to high school at the meeting the parents walked out on. The witness said eventually he understood the parents disagreed with discipline altogether, but not on the front end because they had the text messages stating the Student's mother agreed totally with it.¹⁷⁵ The witness said the Student was out of school from the date of the incident, October 17th, until the Monday or Tuesday after Thanksgiving break.¹⁷⁶ The Student was not out of school all that time due to the discipline—the Student's mother sent various doctors' excuses and things like that, that she was sick or they were going to appointments.¹⁷⁷ The Student was not allowed to attend Homecoming or participate in Homecoming activities as an elected part of the homecoming court, because when a Student is under

¹⁶⁸ Vol. II, P. 176, lines 23-25, through
Vol. II, P. 177, lines 1-9

¹⁶⁹ Vol. II, P. 178, lines 9-15

¹⁷⁰ Vol. II, P. 178, lines 19-25

¹⁷¹ Vol. II, P. 179, lines 18-22

¹⁷² Vol. II, P. 180, lines 23-25, through
Vol. II, P. 181, line 1

¹⁷³ Vol. II, P. 181, lines 2-25, through
Vol. II, P. 182, lines 1-13

¹⁷⁴ Vol. II, P. 182, lines 22-25, through
Vol. II, P. 183, lines 1-12

¹⁷⁵ Vol. II, P. 184, lines 3-19

¹⁷⁶ Vol. II, P. 185, lines 9-16

¹⁷⁷ Vol. II, P. 186, lines 5-14

disciplinary action they cannot participate in extracurricular activities.¹⁷⁸ The witness said SUCCESS is run by a consortium of all eight Craighead County school districts' superintendents, and is an additional campus for Riverside.¹⁷⁹ For long term students, SUCCESS has a Special Ed staff, they have mental health therapists, they have all the facilities that would be offered at Riverside. In this case, the Student would have been short term.¹⁸⁰ When asked the consequences of either fighting or an assault or anything like that, the witness said the typical consequence at Riverside High School is three days suspension and 20 days at SUCCESS. He said that at the time this took place, there were two other Regular Ed students at SUCCESS for fighting, and neither of those students were allowed to participate in homecoming, as they cannot be involved in any extracurricular activities.¹⁸¹ The witness said the main reason for SUCCESS is a cool-down period, and for the punishment. Before there was placement at SUCCESS, the school averaged between 10 to 15 fights a year, but since the placement at SUCCESS, last year there were two, and this current year there were two.¹⁸² The witness said that in this case the Special Ed services or mental health services would be provided at Riverside.¹⁸³ Testifying as to the November 6th conference where homebound was mentioned, the witness said it was his impression the Student would be receiving the homebound services in lieu of going to SUCCESS, and the next day, November 7th, he received the complaint.¹⁸⁴

When asked whether students qualify to be placed in SUCCESS, the witness said all the students qualify to be at SUCCESS, as they are represented by eight schools there. The witness said they do not get extra money for every student placed in the ALE, that it costs some \$68 daily for a student to be there.¹⁸⁵ The witness said they do have in-school suspension at the high school. Explaining the difference between in-school suspension and the ALE, as far as the short-term, 20-day stay, the witness said the ISS is run by the school's staff members on-site, and he could not say what goes on in the classrooms out there (the ALE) since he has not been there to observe a class during the school day. The witness said on short-term placement, students are placed in a room and there is work sent for them. However, as far as Special Ed, as the witness stated earlier, the Student would have

¹⁷⁸ Vol. II, P. 187, lines 6-11

¹⁷⁹ Vol. II, P. 188, lines 6-21

¹⁸⁰ Vol. II, P. 189, lines 1-16

¹⁸¹ Vol. II, P. 191, lines 12-25

¹⁸² Vol. II, P. 192, lines 1-8

¹⁸³ Vol. II, P. 192, lines 9-19

¹⁸⁴ Vol. II, P. 192, lines 20-25, through
Vol. II, P. 193, lines 1-7

¹⁸⁵ Vol. II, P. 194, lines 11-23

received her Special Ed services at Riverside.¹⁸⁶ The witness said he went to SUCCESS fairly regularly, that he was there the very day of this testimony; he said he tries to get out there monthly or, if not, quarterly, to meet for lunch.¹⁸⁷ The witness said students at SUCCESS are counted in his ADA, as they come to the school and the school provided shuttle services, so they know who is there.¹⁸⁸ The witness was asked if the people on the ALE campus have access to the student records and IEP information from the Riverside campus—do they know exactly what is going on to have a seamless transfer of teaching there which would dovetail at Riverside, and said the Principal or Assistant Principal shares that information with the people at SUCCESS. They share information on how long the student is going to be there, then the information on whether they are Regular Ed, Special Ed, all that. The witness said to the best of his knowledge, that is the same way it is handled today.¹⁸⁹ The witness said any student sent to SUCCESS is always a Riverside student, and since the work will be done at Riverside, he would expect that either the assistant principal or Special Ed people would also be transferring information.¹⁹⁰

WITNESS

The witness ~~XXXXXXXXXX~~ is the Student's mother. She has a Bachelors in political science and kept going, having an additional 214 hours on top of that, divided out between psychology, sociology, criminology, interdisciplinary studies, and French. She is a bail bondsman.¹⁹¹ This witness said the Student was abused by her first grade teacher at Riverside, which made her withdrawn and shy, and she is really nervous and anxious. Aside from that, the witness said the Student is really outgoing, very outspoken.¹⁹² The witness said the Student also has nerve problem, she has pseudo seizures, which are based on her anxieties and her nervous conditions.¹⁹³ The witness said the dyslexia makes the Student feel behind others, makes her self-conscious, it affects who she is, it affects her posture, the way she feels about herself, her self-esteem. As the Student has gotten older, she has most of her anxieties and struggles if she is in a learning environment.¹⁹⁴ The Student also has atypical seizures,

¹⁸⁶ Vol. II, P. 194, lines 24-25, through
Vol. II, P. 195, lines 4-24

¹⁸⁷ Vol. II, P. 197, lines 12-18

¹⁸⁸ Vol. II, P. 198, lines 1-25

¹⁸⁹ Vol. II, P. 199, lines 9-17, and
Vol. II, P. 200, lines 1-16

¹⁹⁰ Vol. II, P. 203, lines 2-16

¹⁹¹ Vol. II, P. 204, lines 21-25, and
Vol. II, P. 205, lines 1-7

¹⁹² Vol. II, P. 205, lines 12-25

¹⁹³ Vol. II, P. 206, lines 4-6

¹⁹⁴ Vol. II, P. 206, lines 19-25

mood disorders and depression.¹⁹⁵ The witness said the school is not addressing the Student's dyslexia, they ran out of the program when the Student was in eighth grade and did not have the book she would need to go further. That is the Barton program, which the Student completed the last one they had. Then the teacher broke her leg and wouldn't be returning, so the witness said that is when she said instead of doing nothing, let's use this time to get the Student caught up in math, get her some math tutoring or help. The Student sat in on another class, which did not help, as the Student did not understand it the first time or second time.¹⁹⁶ Asked to give examples of how her dyslexia impacts doing certain things, the witness said it has made her very nervous, shy, anxious, she could not write a paper without lots of errors in it, she cannot write the essay she has to do to get into college, she could not read and comprehend at the level they are even at now, that she could hear it and comprehend it, but she has to be there, to see the action, she has to have a feel for the entire environment to absorb it, rather than just hear or read it.¹⁹⁷ The Student's mother said she herself is dyslexic and has ADHD, so cannot assist the Student as much as needed in the tutoring and such. The witness attributed her own success to age and having learned to deal and cope better, while the Student has coping issues.¹⁹⁸

The witness said she was shocked as to the Student's achievement in the last three years, as she was led to believe the Student was catching up and progressing.¹⁹⁹ The witness said she thought the Student's lack of ability in math was her anxiety, her insecurities coming out, until the Student went to work for the family, and it was then they realized the Student cannot make change.²⁰⁰ The witness said the Student does drive, but one of her insecurities is she feels she won't have enough money to eat if she does not have \$100, that she does not understand the difference between that and \$20. The Student uses her mother's debit card to shop.²⁰¹ The witness said pseudo seizures are brought on by PTSD, typically, anxiety-related. The Student might pass out and be out for a few hours, then wakes up, real lethargic, unable to function for the rest of the day, and she is still having these. However, now she has notice of two to three minutes and feels them coming on, so she would be able to pull

¹⁹⁵ Vol. II, P. 207, lines 8-9

¹⁹⁶ Vol. II, P. 207, lines 17-25, through
Vol. II, P. 208, lines 20

¹⁹⁷ Vol. II, P. 208, lines 21-25,
Vol. II, P. 209, lines 1-25, and
Vol. II, P. 210, lines 1-3

¹⁹⁸ Vol. II, P. 210, lines 10-22

¹⁹⁹ Vol. II, P. 211, lines 1-6

²⁰⁰ Vol. II, P. 211, lines 17-25

²⁰¹ Vol. II, P. 212, lines 18-25, and
Vol. II, P. 213, lines 1-6

over and have one there, wherever she was (when asked about her driving).²⁰² witness said the Student has had two pseudo seizures since the incident of October 17th.²⁰³ The witness said the Student had a lot at school last year, that the school would call her, and she would go to the school and get the Student and take her to the ER, as the were trying to see if it was heart-related.²⁰⁴ The witness said she obtained the notes from the neurology clinic and from Cullom Clinic to show that the Student had these issues, that she could not go to SUCCESS because if something happened, that placement would cause the Student to start having seizures again, as she had stopped for about ten months. The witness also said she was afraid the children there are typically not good children, and if the Student had a seizure there, she could have been raped or killed. The witness said she knew the school sent a few that brought weapons to school there, that are there permanently because they have threatened to do something to the school.²⁰⁵ Discussing mood disorder and depression, the witness said the Student would change--be talking to you fine one minute and the next be very angry--like a different person.²⁰⁶

The witness was asked what she attributed the Student's threats of suicide to, and said the Student had a boyfriend and was in a bad relationship, over two years, that was a big part of it, and another part was politics, the election and them discussing it at school. She is sensitive, real passionate about politics. The witness said the Student is not a cutter as you hear is typically a cutter, that the Student attempted to cut herself two times when she was depressed and sad, but she is not one of those people who feel release.²⁰⁷ The witness said she was not the one who took the Student to the ER, that it was the Student's dad, and the witness slept with the Student after the boyfriend broke a restraining order and contacted her, and that was part of it, and the witness was afraid the Student would commit suicide during the fight period, probably from the end of October until the beginning of December.²⁰⁸ In recounting what she understood happened that resulted in the suspension and ALE placement, the witness said this girl was calling the Student names and bad-talking the Student, and had pretended to be the Student's friend and the Student had confided in her. She was supposed to be helping the Student with her suicidal thoughts, but was using that to talk to the Student's ex-boyfriend. Because of the restraining order, the Student could not talk to the boy, but the girl was playing a third party

²⁰² Vol. II, P. 213, lines 7-25, through
Vol. II, P. 214, lines 1-6 The

²⁰³ Vol. II, P. 214, lines 10-13

²⁰⁴ Vol. II, P. 215, lines 1-11

²⁰⁵ Vol. II, P. 215, lines 17-25, and
Vol. II, P. 216, lines 1-16

²⁰⁶ Vol. II, p. 216, lines 17-25

²⁰⁷ Vol. II, P. 217, lines 1-25, through
Vol. II, P. 218, lines 1-8

²⁰⁸ Vol. II, P. 218, lines 12-25, through
Vol. II, P. 219, line 1

so no one could find out. Then he sent the Student a snapshot of what the friend said about the Student. The snapshot said the Student was just a whore, just like Hannah.²⁰⁹ That was the friend that the Student got into the fight with.²¹⁰ The witness said she was told the Student went crazy at school and attacked somebody and to come get her. The witness did not go to the school to pick up the Student. The witness said she was frustrated thinking the Student had attacked somebody at school.²¹¹ The witness said she did not talk to the Student about it until two days later, that the witness did not want to discuss it, and told the Student's dad to handle it.²¹² The witness said the Student got frustrated, and it caused a fight, that she was in the lunch line and the principal found her and told her to go to his office, that the girl had come to him and the witness guessed the principal explained to the Student, and the witness said the Student thought the principal was mad. The witness said the Student misinterprets a lot of what she is told.²¹³ Later the witness said the Student told the witness what happened, about the letters, and the witness was not told at first about the Student being bullied by the girl. The witness said this was not the first time this happened, that the girl had called the Student names and bullied her on several occasions, on social media and through friends. The girl had done that in the past when they were little, but the witness said the Student never told the witness that she was doing it then.²¹⁴ The witness said she was told by the Student that when she walked into the office, the girl looked at the Student and rolled her eyes, so the Student hit her. The witness said to her knowledge the girl was not hurt, and that the mother apologized to the witness and said it was her daughter's fault.²¹⁵

The witness said her husband, the Student's dad, came home with a sheet that said 3 days suspension and 20 days SUCCESS, so she asked for a meeting as soon as she found out the Student was going to be out of school, as she needed to know how they were going to accommodate the IEP. She sent a text to Mr. Ziegler saying they needed an IEP meeting and how everything would be addressed.²¹⁶

²⁰⁹ Vol. II, P. 219, lines 5-25, through
Vol. II, P. 220, line 1

²¹⁰ Vol. II, P. 220, lines 2-4

²¹¹ Vol. II, P. 220, lines 13-23

²¹² Vol. II, P. 220, lines 24-25, through
Vol. II, P. 221, lines 1-4

²¹³ Vol. II, P. 221, lines 14-25, through
Vol. II, P. 222, lines 1-20

²¹⁴ Vol. II, P. 222, lines 21-25, and
Vol. II, P. 223, lines 2-13

²¹⁵ Vol. II, P. 223, lines 14-25, through
Vol. II, P. 224, lines 1-2

²¹⁶ Vol. II, P. 224, lines 8-24

The witness said she did not get a Notice of Conference until after they filed for Due Process.²¹⁷ The witness said the night before she told Mr. Ziegler some of the issues she wanted to discuss, that she felt like, were related really close to the Student's disability because of the pseudo seizures, which the girl had also been making fun of, and that they needed to discuss that before anything was done.²¹⁸ When asked about testimony earlier that the witness was on board with the punishment, then all of a sudden disagreed with it, the witness said when the incident first happened the witness was in shock that the Student would have assaulted anyone out of the blue for no reason.²¹⁹ The witness said she was not told about a Manifestation Determination Review meeting, and has never been to one before.²²⁰

The witness said that at that meeting the therapist was there, and was asked if this could have been related, and she said it could have been related to her disability.²²¹ The witness said she told Jeff Durham it really wasn't unprovoked, because he kept saying it was unprovoked. The witness said she asked Jeff Durham why he didn't deal with the girl instead of go find the Student and send her to a fight, why did he set her up for a fight.²²² The witness said Mr. Durham said the girl was sorry and wanted to work things out, and the report said when she entered the office the Student yelled a curse word at the student, the witness thought bitch was the curse word.²²³ The witness said the Student's best friend texted the witness that it was not on the Student, it was on the other student.²²⁴ The witness said the Student told her she did not start it.²²⁵ The witness was not sure an email about suicidal thoughts related at all, other than the Student had told the other girl about those feelings.²²⁶

²¹⁷ Vol. II, P. 225, lines 8-20

²¹⁸ Vol. II, P. 225, lines 24-25, through
Vol. II, P. 226, lines 1-8

²¹⁹ Vol. II, P. 226, lines 9-25, and
Vol. II, P. 227, line 1

²²⁰ Vol. II, P. 227, lines 21-25

²²¹ Vol. II, P. 228, lines 7-13

²²² Vol. II, P. 228, lines 22-25, through
Vol. II, P. 229, lines 1-9

²²³ Vol. II, P. 229, lines 13-24

²²⁴ Vol. II, P. 230, lines 14-25

²²⁵ Vol. II, P. 231, lines 16-18

²²⁶ Vol. II, P. 232, lines 4-8

The witness said the Student did serve the three days out of school suspension.²²⁷ The witness said she, the Student and the Student's father went to the ALE before the manifestation meeting, and were told by a lady at intake they did not have the Student's IEP there, there were no teachers there, all students did their work by computer, and it was for punishment. The witness also said she told intake there were health issues with the Student that needed to be discussed. The witness said by the end of the conversation, the intake lady said they couldn't take anyone like Student there.²²⁸

The witness said she took that information to the IEP meeting, but they said seizures were not listed in the Student's IEP as a disability, that she was SLD only, so unless the witness filled out the OHI form, that also had to be filled out by the doctor, they could not even consider seizures or those issues in the Student's IEP meeting.²²⁹ The witness said the therapist present called it, the pseudo seizures, under Conversion Disorders, but Ms. Young said the Student was a regular student because she had indirect services, so punishment had to be that.²³⁰

The witness said Ms. Young said health issues were not addressed in the Student's IEP. The witness did not know if the IEP changed at that meeting, and said they were given choices of punishments at that MDR conference. The witness said she thought it was a discipline hearing, and said the Student needed to be there because she would be the best determiner of how it would impact her.²³¹ The witness also said before the meeting she was told the Student could not be there because she was not supposed to be on campus.²³² The witness said she was told she could not just ask for a hearing and have one, that there had to be mediation first, and it was a long process, but the witness said they had to something right then.²³³ The witness said she said she thought it had everything to do with the Student's disability, and the therapist said it could have.²³⁴ The witness said the choices she remembered were homebound with no teaching or no assistance or she could become permanent at

²²⁷ Vol. II, P. 232, lines 23-25 through
Vol. II, P. 233, line 1

²²⁸ Vol. II, P. 233, lines 2-25,
Vol. II, P. 234, lines 1-25, and
Vol. II, P. 235, lines 1-24

²²⁹ Vol. II, P. 236, lines 6-24

²³⁰ Vol. II, P. 236, lines 25, through
Vol. II, P. 237, lines 1-25 and
Vol. II, P. 238, line 3

²³¹ Vol. II, P. 238, lines 2-25, and
Vol. II, P. 239, lines 1-3

²³² Vol. II, P. 239, lines 19-25

²³³ Vol. II, P. 240, lines 9-24

²³⁴ Vol. II, P. 241, lines 7-16

the ALE and stay more than 30 days and then they could provide her a teacher.²³⁵ The witness said she made recordings of the communication at the ALE facility as well as of the meeting.²³⁶ The witness said the Student was diagnosed with pseudo seizures March 30, 2017, by Dr. Wright, who is a neurologist, and that the Student had seizures at school.²³⁷ The witness said the seizures started the end of the Student's ninth grade year, and were discussed as to how to handle them because the Student was missing so much school. Dr. Cullen, the family doctor, treated the Student for the seizures and is the one who referred the Student to the neurology clinic. The witness said the student was undergoing counseling for emotional stress related to condition.²³⁸ The witness agreed she stopped the school therapy in September of 2016, saying it was because the Student had only been seen four times the previous year and none in the summer, and the Student refused to go back, telling the witness, her mother, the therapist was playing cards on her phone, so if she went back to the therapist she would not talk.²³⁹ The witness said she again requested therapy in spring of 2017, about the time of the diagnosis of pseudo seizures. The Student was started on a low dose of Valium after the incident.²⁴⁰ Discussing how the Student would change, the witness said the Student is typically caring and outgoing, but she would become angry and become different, disassociate, put up a brick wall.²⁴¹ The witness did not have diagnoses on the letters she took to the meeting. She could not recall how she got the letters to the school, but said Dr. Wright's office had to redo a letter because it did have diagnoses, and the doctor's office faxed to the school.²⁴² The witness said she was told they would not consider that pseudo seizures and atypical seizures were two different things, and they conflicted with each other, so the witness said she would get back to the doctors and get it straightened out. She never did that, as she testified the Student had both. The diagnosis given by the neurologist was pseudo seizures.²⁴³

²³⁵ Vol. II, P. 243, lines 15-25 and
Vol. II, P. 244, lines 1-6

²³⁶ Vol. II, P. 241, lines 16-24

²³⁷ Vol. II, P. 249, lines 5-7,
Vol. II, P. 250, lines 10-24

²³⁸ Vol. II, P. 251, lines 7-25

²³⁹ Vol. II, P. 252, lines 2-17

²⁴⁰ Vol. II, P. 252, lines 20-25, and
Vol. II, P. 253, lines 1-17

²⁴¹ Vol. II, P. 254, lines 6-21

²⁴² Vol. II, P. 254, lines 22-25, and
Vol. II, P. 255, lines 1-12

²⁴³ Vol. II, P. 256, lines 24-25, and
Vol. II, P. 257, lines 1-14

The witness said at the facilitated IEP meeting they discussed safety issues with the Student, the witness took in notes as to disabilities, and how to better accommodate those. In the end, the only change was they offered home with four hours a month, the witness thought, teaching, which the witness said would not work.²⁴⁴ The witness thought she was choosing between health and education.²⁴⁵ The witness said the school refused to count the time the Student had strep as part of her days missed, and wanted to start the 20 days at that date.²⁴⁶ The witness said as the Student has gotten older, it is harder for her to go with the flow and disguise it when she doesn't understand something in classes that are higher.²⁴⁷ The witness could not recall the date of the restraining order against the ex-boyfriend of the Student, but said it was maybe in September, and said he had made threats to kill the Student and her parents.²⁴⁸ The witness said the school knew about it because she took a copy to them to make sure if he showed up.²⁴⁹ When asked who applied the label of Conversion Disorder and when it was done, the witness said it was said by Lori, the therapist, in the manifestation meeting October 20th.²⁵⁰ The witness said the same teacher who abused the Student in first grade abused her also in sixth grade, that she had walked up on him losing his mind screaming at another girl, and the Student ran for help and was afraid for her life.²⁵¹

When asked if she remembered homebound services some time before Thanksgiving break, the witness said yes, they opposed that and said they did not agree with the facilitated IEP, and remembered hearing that after that time there would be a week of getting reintegrated back into school, half days, but she was not involved in it, as she was at that point looking up rules on how to appeal that and was sending an email to appeal.²⁵² The witness said she did not remember discussing way to make up the Student's work, but that she did remember the Student would be allowed to.²⁵³ When asked if she remembered at that meeting November 6th increasing therapy sessions, the witness said yes, but when asked if she remembered scheduling a time, or discussing a time to come back to change status back from homebound to indirect services, the witness said no, she did not, as she was

²⁴⁴ Vol. II, P. 264, lines 9-24

²⁴⁵ Vol. II, P. 265, line 10-12

²⁴⁶ Vol. II, P. 268, lines 2-7

²⁴⁷ Vol. II, P. 272, lines 5-9

²⁴⁸ Vol. II, P. 274, lines 3-12

²⁴⁹ Vol. II, P. 275, lines 15-24

²⁵⁰ Vol. II, P. 277, lines 4-11

²⁵¹ Vol. II, P. 278, lines 2-14,
Vol. II, P. 279, lines 1-10

²⁵² Vol. II, P. 280, lines 3-17

²⁵³ Vol. II, P. 280, lines 18-23

busy working on the appeal during that time and getting it emailed out.²⁵⁴

WITNESS XXXXX

The witness XXXXX is the Student's father. He graduated Riverside High School in 1990.²⁵⁵ The witness said the Student's mother is in charge as to the Student's educational services.²⁵⁶ The witness said his wife phoned him October 17th, and he went to the school and met with the assistant principal, who told the witness the Student had assaulted another student.²⁵⁷ The witness said he was given a piece of paper saying the Student was suspended for three days and would go 20 days to SUCCESS, and he believed the paper also had a dress code and what time the Student was supposed to be there.²⁵⁸ The witness denied being told the Student would go to Riverside for IEP's or that there would be a bus for the Student.²⁵⁹ The witness said the first meeting he was told was an IEP meeting, then they said it was going to be for punishment (what turned out to be the manifestation determination review meeting).²⁶⁰ The witness said he and his wife left that meeting and did not sign the sheet, that no one wanted to listen to background about who started the incident.²⁶¹ Asked about the second meeting, the facilitated IEP meeting before lawyers got involved, the witness said he and his wife disagreed with that from the start, that they did not agree with homebound and all the other things, that they wanted their daughter sent back to school, but were told it was not an option.²⁶² The witness said he was upset about the Student's scores, that she was not being educated, which rings home for him because although never diagnosed with a learning disability, he himself was in special education for many years.²⁶³ When asked to assume as true a written account of the incident involving the Student, that the Student had been pulled out of the Second Chance breakfast line to talk with the assistant principal, and despite being told to come back, the Student walked into his office, yelled "You fucking bitch" at another student, then used her fist to punch the other student,

²⁵⁴ Vol. II, P. 281, lines 1-10

²⁵⁵ Vol. II, lines 11-15

²⁵⁶ Vol. II, lines 21-24

²⁵⁷ Vol. II, P. 284, lines 1-13

²⁵⁸ Vol. II, P. 285, lines 1-5

²⁵⁹ Vol. II, P. 286, lines 22-25 and
Vol. II, P. 287, lines 1-3

²⁶⁰ Vol. II, P. 288, lines 1-22, and
Vol. II, P. 289, lines 1-3

²⁶¹ Vol. II, P. 289, lines 20-25, and
Vol. II, P. 290, lines 1-18

²⁶² Vol. II, P. 291, lines 1-19

²⁶³ Vol. II, p. 292, lines 2-11

who was sitting in one of the chairs, that the Student was restrained by the assistant principal, and while being restrained, the Student was kicking both the assistant principal and the other student on the way out of the office, and did that sound like the kind of conduct the Student would do, the witness said it did not.²⁶⁴ The witness agreed it sounded like conduct for which there should be a disciplinary consequence, including potentially out of school suspension.²⁶⁵ The witness said the words used to him as to what the Student called the other girl were “you fucking bitch.”²⁶⁶

FRIDAY, 16 FEBRUARY, 2018, VOL. III

WITNESS JASON DURHAM:

The witness Jason Durham is in his first year as high school assistant principal at Riverside. Before this, he worked at Nettleton School District, Jonesboro, and in his final year there, last year, he was assistant principal, or dean of students at University Heights Elementary, a kindergarten through second grade building. Before that, he taught social studies and careers and coached basketball and football at Nettleton. He was at Nettleton seven years. The three years before that, he was at Manila, teaching math and coaching. Six years before that, he was at Trumann, teaching PE. He has a Bachelors in physical education, a Masters in secondary administration from William Woods University in Missouri. He has license certifications in kindergarten through 12th grade PE, 7-12 health, middle school, fourth through eighth grade math, English, science, and history, and has secondary administration, which is five through twelve, building level. His position now is using the building level administration.²⁶⁷

When asked to recall the incident of October 17th, the witness said it was toward the end of first period, when a student came to his office from Ms. Mulholland’s room. The student had been sent to the witness because she needed to talk to the witness. They discussed the issue of girls texting her, what it was about, and they were texting from the Student’s phone. They discussed the other girls wanted to talk to her during Second Chance breakfast, which is between first and second period in the main part of the hallway where students have the opportunity to eat breakfast. There are no tables and chairs, just students standing around. It is a grab and go breakfast, not a full breakfast, and the students line up going away from the main hallway, get their breakfast, and take it back to class. The witness said he asked what the student was concerned about, trying to figure out her concern. The witness said the girl told him she received a text message of a screen shot from the Student, a conversation she had with an ex-boyfriend of the Student. The witness asked when it happened and

²⁶⁴ Vol. II, P. 294, lines 7-25 through
Vol. II, P. 295, lines 1-2

²⁶⁵ Vol. II, P. 295, lines 3-8

²⁶⁶ Vol. II, P. 296, lines 8-13

²⁶⁷ Vol. III, P. 5, lines 21-25, through
Vol. III, P. 6, lines 1-25, and
Vol. III, P. 7, lines 1-10

the girl said a while back. The witness said the girl allowed him to look at the phone, and according to the screen shot, the girl had used a derogatory term toward both the Student and a friend, saying the Student was "acting like a ho, like Hannah." The witness said the girl knew the Student and other girl were upset with her about it. The witness said he went out into the common area, or the main hallway, and left the girl in his office. He said she was sitting in the chair furthest from the door. The witness said he saw both the Student and her friend probably 75 feet from his office, and walked toward them and motioned his hand and asked them to come there. He said the Student asked if she was going to be able to eat breakfast, and he told her yes, that he needed to talk a second. The witness said the Student then said "Where is she," and he said the girl was in his office, but before he could say he just wanted to talk, the Student started walking to his office. The witness said he said several times for the Student to come to him, and at some point and turned and looked at him, but said "No" and went into his office. The witness said he went after her, that he never expected the Student to go to his office and hit a girl, but that is what she did. The Student walked into his office and yelled "You fucking bitch," he guessed that is what was said, and when he got into the office the Student was punching the girl on top of the head and the girl was trying to cover herself, and the Student was screaming "I hate you." The witness said he grabbed the Student from behind, trying to restrain her. The Student then started kicking at the girl as the Student was being pulled out of the office, and she also kicked the witness in the process, although the witness said he did not think the Student meant to kick him. The witness said he got the Student out of his office and kind of walked her, and once they got out of his office she got really calm. The witness left the Student in the SRO's office and went back to check on the girl and make sure she was okay. Then the witness called the Student's mother to let her know what happened and asked if she would come pick up the Student. The witness said the Student's mother asked if she had to come inside, that she did not want to do her hair and makeup, could he just allow the Student to walk out to the car. The witness said he told the mother no, she needed to come inside and he needed to talk to her, too. The witness said the mother said she would just let her husband come to the school.²⁶⁸

When asked about the girl's injuries when he went back to his office to check on her, the witness said the girl had some knots on the top of her head, she was not bleeding, and he did not think she had anything on her face. The witness reiterated that when he walked in, the girl was covering herself up with her arms and her hands, and kind of had her head bent down toward the floor trying to cower down, cower up, or whatever, and the Student was punching the girl on top of the head.²⁶⁹ The witness confirmed his written notation about the girls' injury, that the other student had a knot on her

²⁶⁸ Vol. III, Page 7, lines 11-25,
Vol. III, P. 8, lines 1-19,
Vol. III, P. 9, lines 1-25,
Vol. III, P. 10, lines 1-25,
Vol. III, P. 11, lines 1-25,
Vol. III, P. 12, lines 1-25, and
Vol. III, P. 13, lines 1-21

²⁶⁹ Vol. III, P. 13, lines 22-25, through
Vol. III, P. 14, lines 1-7

head from the punches.²⁷⁰

The witness said when the Student's father came in that day, the witness briefly told him what had happened, and went over with him that the Student would be suspended three days, followed by 20 days at SUCCESS, which was the consequence applied to all students. In addition, the witness said he was almost certain he had called the Student's mother and given her that same information before she sent her husband to pick up the Student.²⁷¹ The witness said when he told the father about the consequences initially, the sense the witness got from him was acceptance. The witness said the father did not seem excited about it, but he did not oppose it at the time, either.²⁷² The witness said he attended a conference three days later, on the 20th, then the facilitated IEP on November 6th. The Student was present, and said essentially that she should just accept the punishment.²⁷³

The witness said because the Student has an IEP, he called the mother back that afternoon to let her know how the Student would be getting her assignments while going to SUCCESS, what to expect, that the Student would not receive instruction from the teacher there, but would still get instruction from her teachers at Riverside, and so, all modifications. He testified he that same day sent out an email to the Student's teachers at Riverside and told them what the Student would be doing going forward, that she would be suspended three days and receive zeros on any assignment during those three days, and beginning on, he thought, the 20th, whatever Friday that was, the Student would begin the 20 days at SUCCESS. The witness said he told the teachers to make sure they modified the Student's assignments according to her IEP during those twenty days, and even asked them to make sure that if there was anything given to the other students not shared on Goggle classroom, to make it was email to the student or she was given a copy. He said he asked if the teachers used power point to display to their class, make sure and get it to the Student, as it was something she would still need; the witness said he wanted to make sure the Student got everything everyone else was getting. The witness equated it with being in-school suspension, where students are not in the physical classroom, but still do all the same assignments, they still receive modifications if they are a Special Ed student or a student with an IEP.²⁷⁴

The witness said initially there was no opposition from the Student's mother, then two days later received an email forwarded to him from Mr. Priest, from the Student's mother, that after she thought

²⁷⁰ Vol. III, P. 14, lines 8-20

²⁷¹ Vol. III, P. 14, lines 21-15, and
Vol. III, P. 15, lines 1-25

²⁷² Vol. III, P. 16, lines 21-25 through
Vol. III, P. 17, lines 1-4

²⁷³ Vol. III, P. 16, lines 3-20

²⁷⁴ Vol. III, P. 17, lines 5-25 through
Vol. III, P. 18, lines 1-25 through
Vol. III, P. 19, lines 1-25 and
Vol. III, P. 20, lines 1-2

about it last night, the mother decided it was the school's fault the Student attacked the girl.²⁷⁵ The witness said the word "partially" was in the email about it being the school's fault, by not meeting the Student's IEP. The witness denied having any fault in what happened.²⁷⁶ When asked if he spoke to the girl about the text message and what she had said about the Student, the witness said he did talk to the girl about fault, and when he read through the text messages he saw the girl had apologized to both the Student and the Student's friend. The witness said the Student had no reason to think she was in trouble when he called her out of the line.²⁷⁷ The witness said he thought he had the blinds in his office shut, so did not think people walking by his office would have seen the girl there.²⁷⁸ When asked about there probably being two sides to every story as to this fight, the witness said this was not a fight, that he witnesses the entire incident, and he witnessed what the Student was being punished for.²⁷⁹ When asked if he wanted to know the Student's side of the story, the witness said he did not know that was germane, as far as in that moment, it seemed unprovoked.²⁸⁰ Reading from the handbook, the witness said "Any student who attacks another student without warning or provocation will be held to the student assault standard as defined in the student handbook," and said this meets the "without warning" standard.²⁸¹ The witness said the handbook has a minimum of counseling and a maximum of expulsion for assault, and said that three days suspension and 20 days at SUCCESS falls within that range.²⁸² The witness said he did not know prior to this about the Student's problems with maybe suicide threats, seizures where she passed out, but did know she was receiving counseling at school insofar as he would have had her name on a list. He did not know about disabilities.²⁸³ When asked his intent when he called over the Student and her friend on the day of the incident, the witness said his intent was what the girl in his office wanted to do, have the three girls talk like adults about their disagreement. He said part of his job is to keep the kids safe and keep

²⁷⁵ Vol. III, P. 20, lines 3-19

²⁷⁶ Vol. III, P. 21, lines 3-20

²⁷⁷ Vol. III, P. 22, lines 24-25 through
Vol. III, P. 23, lines 1-3 and 24-25 and
Vol. III, P. 24, lines 6-8, and
Vol. III, P. 25, lines 2-12

²⁷⁸ Vol. III, P. 26, lines 8-11

²⁷⁹ Vol. III, P. 26, lines 20-25 through
Vol. III, P. 27, lines 1-8, 11-12

²⁸⁰ Vol. III, P. 29, lines 4-10

²⁸¹ Vol. III, P. 33, lines 2-13

²⁸² Vol. III, P. 38, lines 22-25, and
Vol. III, P. 39, line 1 and lines 12-16

²⁸³ Vol. III, P. 39, line 25 through
Vol. III, P. 40, lines 1-23

the peace, so he felt if he could help end the girls' disagreement, it would be wise.²⁸⁴

At the meeting where the Student's parents said they had been to SUCCESS, and that SUCCESS would not implement the Student's IEP, the witness said he had already told the Student's mother SUCCESS would not be implementing the Student's IEP, that would be done by Riverside.²⁸⁵ As to the Manifestation Determination Review meeting on the 20th, the witness said they gave the Student's parents some alternative options, one being long-term at SUCCESS, which put the Student in their classes rather than Riverside's, where she would get instruction from teachers at SUCCESS, and the rest of the semester would have been actually not many more days than the Student would have been there anyway. He also said he thought they offered homebound services, which he pointed out to the parents would be one of the least restrictive environments to do it that way.²⁸⁶ The witness said he did at some point hear about the Student's pseudo seizures.²⁸⁷

The witness said at SUCCESS the students are put into a room with electronics, that the Student would have her computer and getting her assignments through Goggle Classroom.²⁸⁸ Looking at the Functional Behavior Assessment, the witness said he remembered Ms. Young saying they needed to do a manifestation, that the form said the Student was upset and acted out inappropriately with severe aggression, with which the witness agreed. He said the Student was upset, as that is what usually would caused someone to be aggressive, then said the Student was angry. He did not see the Student angry before the incident, but said he only saw her briefly, long enough to ask her to talk to him and her refusing and going to his office. The Student refused to talk to the witness, refused to come back, then went into his office.²⁸⁹ The witness said had the Student gone to SUCCESS, he would have sent her IEP to the ALE, even though her modifications would still be handled by Riverside.²⁹⁰

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

²⁸⁴ Vol. III, P. 41, lines 1-23

²⁸⁵ Vol. III, P. 48, lines 3-25

²⁸⁶ Vol. III, P. 50, lines 3-25 through
Vol. III, P. 51, lines 1-19 and
Vol. III, P. 52, lines 6-16

²⁸⁷ Vol. III, P. 52, lines 18-22

²⁸⁸ Vol. III, P. 53, lines 11-19

²⁸⁹ Vol. III, P. 54, lines 3-25 through
Vol. III, P. 55, lines 1-24

²⁹⁰ Vol. III, P. 56, lines 1-16

that is the disabled child or the school district.²⁹¹ It is settled that staff shortages, even unexpected ones, will not excuse a district from implementing IEPs. *Mesabi East Independent School District #2711 v. Minnesota State Educational Agency*, 110 LRP 15180.

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.²⁹² 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 and 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).²⁹³ In 1982. In *Hendrick Hudson Dist. Bd. Of Educ. V. Rowley*, the U.S. Supreme Court addressed the meaning of FAPE and set forth a two part analysis that must be made by Courts and Hearing Officers in determining whether or not a school district has failed to provide FAPE as required by Federal law.²⁹⁴ 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

²⁹¹ *Schaffer v. Weast*, 44 IDELR 150 (U.S.2005)

²⁹² *Ipswich Public Schools v. Massachusetts State Educational Agency*, 104 LRP 29571

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

²⁹⁴ 458 U.S. 176, 206-07 (1982)

the student to receive educational benefits.²⁹⁵

Regardless of the first inquiry, that of whether to 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 imposed a three day suspension and a twenty day placement at SUCCESS.²⁹⁶

The Student is in the eleventh grade at Riverside High School and is enrolled as a full time student taking all of her classes in the regular classroom setting with SLD accommodations and counseling. This Complaint arose from an assault by Student on another student, with the assault occurring in the office of and presence of the High School Assistant Principal who was also struck. The Student was given a three day suspension from school and a twenty day referral to the SUCCESS program, a countywide off campus program. This consequence is the standard one imposed for fighting by this school district. All IEP services would continue to be provided on campus at the Riverside High School while Student was receiving instruction at SUCCESS. A Manifestation Determination Review was held and determined there was no direct or substantial relationship between the Specific Learning Disability responsible for the Students' IEP and the Students attack on another student. While at first agreeable with the sanctions being imposed, the Petitioners' later withdrew their consent and objected to any consequences at all. The Petitioners indicated that they visited the SUCCESS campus and didn't feel that Student would benefit from or be safe in that short term placement. A subsequent meeting with the school administration and the IEP team resulted in Student's punishment being adjusted to homebound instruction instead of SUCCESS, but these services did not occur. During the twenty day period Student was ill and no services were provided. Student has been allowed to make up all missed work and assignments. 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 provided FAPE under the IEP in the Riverside School District. 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 delivered, whereas a lack of these services could constitute a denial of FAPE. Having determined that the District did provide FAPE to the student 2017 school year it is noted that there is no requirement in the IDEA that a child shall be provided with the specific educational placement that his or her parents' prefer.

²⁹⁵ Id

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

ORDER:

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

FINALITY OF ORDER AND RIGHT TO APPEAL :

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

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

It is so Ordered.

Michael McCauley

Due Process Hearing Officer
Monday, March 26, 2018