

ARKANSAS DEPARTMENT OF EDUCATION
SPECIAL EDUCATION SECTION

XXXXXXXXXXXXXXXXXXXX)	PETITIONER
as parents of)	
XXXXXXXXXXXXXXXXXXXX)	
vs.)	CASE No. H-21-01
)	
BEEBE SCHOOL DISTRICT)	RESPONDENT

ORDER

NOW on this 29th and 30th days of September, 2020 and the 1st and 2nd days of October, 2020, came on for hearing Petitioner’s Request for a Due Process Hearing, Petitioners, XXXXXXXXXXXX, as Parent of XXXXXXXXX, represented by Theresa Caldwell, Attorney, and Respondent, BEEBE SCHOOL DISTRICT, represented by Cody Kees, 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 September 29th, September 30th, October 1st and October 2nd, 2020. 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 are made:

ISSUES PRESENTED:

Were the educational placements and services offered by Beebe School District (hereinafter referred to as District or Respondent) from July 1st, 2018 to July 1st, 2020 reasonably calculated to provide XXXXXXXXX (hereinafter referred to as “Student”) with a free, appropriate public education (hereinafter referred to as FAPE)?

RELIEF REQUESTED

1. Pay Petitioners share of Students tuition at the Hannah School;
2. Provide Student transportation to and from the Hannah School at the Districts expense;
3. Continue to provide transportation and to reimburse Petitioner /or pay Students tuition at the hannah School for each subsequent school year unless and until the District proposes a necessary and appropriate IEP or the Petitioners agree otherwise.

PROCEDURAL HISTORY:

On July 1st, 2020, the Arkansas Department of Education (hereinafter referred to as

“Department”) received a request to initiate due process hearing procedures from ~~XXXXXXXXXXXXXXXXXXXX~~ (hereinafter referred to as “Parent” or “Petitioner”), the parent and legal guardian of Student. Parents requested the hearing because they 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 Parents filed a request for due processing hearing, Student was a ten-year-old, female enrolled in the Hannah School, a private, accredited school.

In response to Parents request for hearing, the Department assigned the case to this hearing officer. This request for a Due Process Hearing was filed on July 1st, 2020 and a Timeline Order was issued on July 1st, 2020 Thereafter, August 13th, 2020 was set as the date on which a hearing would commence should the Parents and District fail reach resolution prior to that time. An Order setting preliminary timelines and instructions for compliance with the Order was issued July 1st, 2020. The Due Process Hearing was set for August 13th. 14th and 15th, 2020. On July 8th, 2020, an Opening Order and Pre Hearing Order was issued and mailed to the Parties. On August 10th, 2020 the Hearing Officer received and reviewed the Petitioners and Respondents Pre Hearing Briefs. On August 11th, 2020 a Pre Hearing Conference was held using ZOOM Conference. At this conference it was discovered that the Respondent had just delivered a large number of documents to the petitioner which had not previously been disclosed. Base on this development, Petitioner Moved for a Continuance on the record. Based on the fact the numerous documents had not been disclosed and the Due Process Hearing was to begin the next day, the Motion for Continuance was granted. The Due Process Hearing was rescheduled for September 29th, 30th and October 1st, 2020. One additional day, October 2nd, was reserved if needed for additional testimony.

On September 29th, 2020 the Due Process Hearing was called and held by ZOOM conference in Beebe, Arkansas. Witnesses were called and evidence admitted on September 29th, September 30th and October 1st. The final witness was allowed a brief time to finish her testimony on October 2nd, 2020. At this time both sides rested and the Hearing was concluded.

FINDINGS OF FACT

Student is a ten-year-old, female, enrolled in the Hannah School a private accredited school;

The Due Process Hearing was set for August 13th. 14th and 15th, 2020. The Due Process Hearing was rescheduled for September 29th, 30th and October 1st, 2020. One additional day, October 2nd, was reserved if needed for additional testimony;

The dyslexia program being used by the Beebe School District was OG-ISME, the Orton-Gillingham methodology;

Areas that would be covered in the Student’s dyslexia program were basic reading, reading fluency, reading comprehension, spelling/encoding, written expression in the form of dictation, listening comprehension, oral expression;

Testimony established that an assessment done on 10-15-19, the Student's third grade year, established the Student was not into reading texts, that she was functioning at a pre-primer level;

Looking at the grade level reading the district gave the Student's parents in third grade, testimony established a Total Reading grade equivalent of 1.4.;

The 3rd Grade IEP showed no progress data or status for any reading or language arts goals except for Student's Goal ten, Language Arts, which showed a progress of 25% October 11th, 2019;

Testimony established that the statement "If students are behind in third grade, it is extremely difficult to catch up" was substantially correct and that research would support that.

The Hannah School does not receive federal funding, and they do not have to follow IDEA, Individuals With Disabilities Education Act.;

Succeed Scholarship is a funding program through the Reform Alliance and the ADE Special Education, for families who have Student's with an IEP in public schools;

Student's tuition for 20/21 school year at the Hannah School is \$10,000;

Department of Education Succeed scholarship amount changes slightly every year, but this year it was \$7,000;

WITNESS ANNITA BLAUSER

The witness Annita Blausler testified she has been in the dyslexia coordinator position and LEA and SPED supervisor. The witness testified she holds a Master's degree as a reading specialist and has a SPED specialist's license, and also an administrator's license, that all that is pre-K-12. The witness testified she received her Bachelor's degree at UALR, and started with reading programs. As to experience, the witness testified she began as a third grade teacher and has taught for over thirty years, that she started in the Little Rock School District, and since moving to Beebe she has taught nearly every grade in some form, then she was out of the classroom as a literacy specialist. The witness testified she taught the integrated third grade classroom, being the dual teacher, with the SPED license and also the General Ed. As to her Special Ed specialist's license, the witness testified she had two, one for early, one for upper level, then one for admin. for SPED and Gen. Ed. As to when she acted as a Special Ed teacher, the witness testified she did that about seven years, for the third grade, that she was the SPED teacher in a Resource classroom. The witness said she was the General Ed and SPED teacher in that position under Dr. Shook. The witness testified she taught Resource in her classroom and the students assigned to her classroom stayed with her all day. The witness testified she had been the dyslexia coordinator since around 2014. The witness testified she is still acting LEA for Special Ed referrals for their schools, and had been since the 2018-2019 school year, that she is

called in on other meetings, and the Special Programs and SPED supervisor is Dr. Dillin.¹

The witness testified she was familiar with the Student and had reviewed her records before this testimony. The witness testified she met the Student in second grade, the 2018-2019 school year.

¹ Vol. I, p. 15, l. 18, through p. 33, l. 23

The witness testified the Student received dyslexia services before that, that the witness was called in to be sure the Student was tested for dyslexia services, and after that because the Student had gotten some interventions in the classroom with Magen Edwards, the second grade teacher. Discussing the dyslexia program, the witness testified that when the Student was in kindergarten and first grade, there were initial screenings, which was called universal, but is how initial. The witness testified the Student had lots of screening throughout school, that she was screened in first grade then re-screened in second grade, that Magen Edwards had a lot of data she shared with them and with the Student's mother, that they needed to look at the Student for dyslexia for Level 2. The witness testified screeners were RAN and DIBELS, and as a team those would be looked at to decide how to intervene with students at high risk. The witness testified that by November the Student was being given CTOPP, which was only a few months of school the Student had in August and September.²

The witness testified she did not know about the Student's mother complaining of the Student's inability to read and that she was struggling prior to the second grade. Looking at the CTOPP, the witness testified that she had not given it to the Student, that it had been given by their interventionist, Amy Smith, who was trained to give Level 2, but that the witness is trained to read these. The witness testified they look at the CTOPP because that if in the area of the underlying cause, that there may be issues on the Woodcock reading, but they may not be caused necessarily by the phonological processing a being an issue, so the CTOPP is one of their crucial exams/evaluations given in Level 2, and then the sub-tests, the EL, the BW and the phoneme isolation are looked at, because if any are below average, they do not take those standard scores as a whole because each of those sub-tests is only as strong as the weakest point. The witness said the Student was average and then above average in phoneme isolation, so she had phonological awareness and good skills, but then looking at memory, which is tested by memory of digits and the non-word repetition on the CTOPP, that was a concern since they were picking up a memory issue at that point. The witness said this was mentioned by the Student's mother in a conference and Ms. Edwards had also noticed. The witness testified that looking down to rapid naming, the Student scored average in both those sections, which gives a standard score of 110, that then they did an alternative phonological processing, which has to do with blending and segmenting, and the Student did average on that. The witness testified that with the Student's SPED testing the memory issue showed up again for the Student. The witness testified they definitely wanted to provide the Student services no matter what the timeline was on getting the testing done, and that even though the parent signed consent for SPED testing, they wanted to serve the Student so no time was lost.³

² Vol. I, p. 33, l. 24, through p. 37, l. 21

³ Vol. I, p. 37, l. 22, through p. 41, l. 19

The witness testified the CTOPP was done November 1, 2018, that is under dyslexia Level 2 testing for which the parent gave permission 10/31/18, and the profile was filled out at the 15th. The witness testified the Student's parent made the referral 10/31 when she gave consent for dyslexia testing, but that she also knew at that time she wanted SPED testing, and they accepted it.⁴ The witness testified that the Student had a 504 before, that she (the witness) was not in charge of that and did not really know about it, but that immediate interventions were done, that at a referral conference you could do a temporary IEP or a 504, either way, and that at the time they thought the Student needed dyslexia interventions, but they needed the data from the psych evaluator, Misty Knighton.⁵ In looking at the trial exhibits, the witness testified she believed the Student's 504 disability was dyslexia.⁶

Looking at the 504 Accommodation Form as to the Student, the witness testified it recited "Special Considerations, Other Accommodations, OG interventions at least 90 minutes per week, so that was serving for the Student's dyslexia time, the date being 11-13, but the witness testified she was sure the dyslexia interventions began before then, and that she thought it was every day, even though the form said at least 90 minutes a week."⁷

Discussing what dyslexia program was being used, the witness testified at that time they used the OG IMSE, the Orton-Gillingham methodology, which is basically using a multi-sensory approach to phonics and phonological, all that bridging together to orchestrate, eventually, the fluency and spelling you want for decoding and encoding. The witness testified all their teachers are trained in that methodology, but in 2017 they began piloting Reading Horizons Elevate in junior high, and then in 2018 they began Reading Horizons Discovery. The witness testified that they began with the ISME OG for the Student, and then during the pandemic she offered the Discovery to the Student's parent, but the parent did not want it at that time.⁸

Looking at IMSE, started sometime around November of 2018, the Student's second grade year, the witness testified she believed the Student's teacher, Magen Edwards, used IMSE, which supported Tier 1, for the dyslexia program the entire time the Student was with her.⁹ As to the Student's progress since beginning second grade and in third grade on the ISME program, the witness testified the Student's interventionist kept a binder on the Student, but that the witness was only involved in the conference in the fall of last year as to looking at progress, and after

⁴ Vol. I, p. 42, l. 1-2, Vol. I, p. 43, l. 21-25,
Vol. I, p. 44, l. 1-23, and Vol. I, p. 45, l. 14-20

⁵ Vol. I, p. 46, l. 9-11, through Vol. I, p. 50, line 3

⁶ Vol. I, p. 50, l. 24, through Vol. I, p. 51, line 2

⁷ Vol. I, p. 52, l. 4, through p. 53, l. 14

⁸ Vol. I, p. 53, l. 19, through p. 55, l. 22

⁹ Vol. I, p. 55, l. 23, through p. 56, l. 10

things are set up, she does not really come back in unless asked to do so.¹⁰

¹⁰ Vol. I, p. 56, line 11

The witness testified that Audie Alumbaugh told her the IMSE was an inappropriate program to address the Student's dyslexia after an audit by the Department of Ed, and testified that the way it was presented to her was that the Little Rock School District was using it and their protocols were not correct. The witness testified they discussed the checklist that was used in the audit and that they should start looking at that and thinking about their own programs and how their protocols were set up, the training principals have, the knowledge, things like that, and that was actually in the spring before the witness met Audie in the Student's second year. The witness testified that they were told to share with all the admin that they might be audited, that any school could be audited, so they could look at and reflect on not just their program, but their protocols.¹¹

Looking at an email to her from Audie Alumbaugh November 4, 2019, as to her being in a meeting advocating for a child when she was surprised to find out the program being used was IMSE, the witness testified that she had said until the list from ADE they were expecting came out, then they

would make a change, as that was what she was informed by her administrators to do.¹² The witness testified the Student was making progress, but not to the extent the mother wanted. The witness testified the Student was receiving dyslexia services before she even had an IEP, and said if a student is already getting it, then you can put it on the PLAAFP, and they did for this Student, and she would continue to get her dyslexia services. The witness testified that the Dyslexia Resource Guide does not state dyslexia services need be on the Schedule of Other Services. The witness testified the Student had an IEP as of January 2019, and looking at the evaluation conference, the witness testified they would want to address the educational needs of the child, and that the Student had basic reading deficits, reading fluency skills deficits, reading comprehension deficits, as well as expressive and receptive language skills which were being addressed through speech therapy. The witness testified the phonological processing, the auditory processing, auditory and phonological processing would be addressed through the dyslexia program provided for the Student. The witness testified the five essential components of reading, in general, are reading comprehension, reading fluency, writing, which is encoding because it follows the decoding, the phonological awareness, phonics, word study and phonemic awareness. The witness testified, when asked what the State Department said about the essential components of reading the dyslexia program IMSE did not provide, that they had to supplement with Kilpatrick's phonemic awareness book, as it does not address a lot of phonemic awareness, and that the audit information was shared with the witness' Superintendent. The witness testified she obtained the Little Rock dyslexia audit from the Co-op. The witness testified that Kilpatrick was not a program, but was only a supplement used, like Heggerty or something else, that they used Kilpatrick's book for phonemic awareness since IMSE did not address that from the beginning.¹³

¹¹ Vol. I, p. 57, l. 13 through p. 59, l. 10

¹² Vol. I, p. 61, l. 5 through p. 62, l. 5

¹³ Vol. I, p. 63, l. 1, through p. 75, l. 10

When asked if the Student were present today, would she be receiving IMSE, the witness testified no, that she would get Discovery or Elevate through Reading Horizons, and that they already had those, but that the answer for that question as to a dyslexia program were there any others besides IMSE, would be no. Looking at the Present Levels of Performance, the witness testified that the academic weaknesses of the Student that would be covered in her dyslexia program were basic reading, reading fluency, reading comprehension, spelling/encoding, written expression in the form of dictation, listening comprehension, oral expression, that beside the math problem-solving, all the Student's deficits are addressed in the Student's dyslexia program.¹⁴

Looking at the Student's second grade IEP, the witness agreed that dyslexia intervention requires a structured program, that the people have to be trained and follow with fidelity, and progress monitored in any student intervention, but definitely dyslexia as determined by the law, and agreed that the IDEA requires progress monitoring. The witness testified that fidelity is to administer the program as the author intended, one-to-one up to five, but they prefer smaller groups, and she thought the Student's was two to three. Looking at the Schedule of Services, the witness confirmed there were no dyslexia services shown. The witness testified the IEP trumped the 504 plan, and she did not see the dyslexia services they were to monitor the Student for.¹⁵ When asked if the Student's parent complained about not seeing any progress in the Student, the witness testified that she remembered when the Student was in third grade there was a conference and the witness recalled the parent complaining that she was frustrated.¹⁶

The witness testified the Student did not get her dyslexia services from a Special Ed teacher in second grade or in third grade, the 2019-2020 school year. When asked her definition of Special Education, the witness testified that as she understands it, Special Ed under IDEA, if there is a discrepancy in any of the areas they do evaluations on, or if they have a disability, whether physical or mental, there are different reasons for IEP's being done, but that she could not answer then as to how she would define the term Special Education. The witness testified that neither of the IEP's have addressed the specialized services the Student gets for dyslexia, but that the Student was still getting dyslexia services as she understood it.¹⁷

The witness testified, as to the annual review done for the Student's fourth-grade IEP, held 5-7-20, for the 2020-2021 school year, that the Student's parent had concerns the IMSE was not appropriate instruction for the Student, and that the parent was concerned there was a discrepancy in what she saw at home with the Student and what the Student demonstrated on assessments, as what the parent saw the Student could do and that she had not been provided anything from the school district supporting their claim as to the Student's reading level. The

¹⁴ Vol. I, p. 81, l. 10 through p. 84, l. 18

¹⁵ Vol. I, p. 84, l. 19, through p. 92, l. 15

¹⁶ Vol. I, p. 93, l. 18, through p. 94, l. 3

¹⁷ Vol. I, p. 95, l. 19, through p. 97, l. 19

witness testified she offered the parent Discovery at that time of COVID, which is for dyslexia, which was what they were doing, not part of the IEP, and that Horizons Discovery was on the list of programs, which is for dyslexia.¹⁸

¹⁸ Vol. I, p. 101, l. 2, through p. 105, l. 11

Referencing the PAST test as to the Student, the phonemic awareness in Kilpatrick's book they use to supplement for phonemic awareness, the witness testified it showed the Student was moving up the continuum, that basic reading is phonemic awareness, that you have to have the foundation, and that as to progress, it showed the Student was able to perform basic phonemes automatically and correctly, to substitute long and short vowels, substitute within an initial blend and delete within an initial blend, and she had strengths in advanced phonemes with substituting media vowels, manipulating the second sound in initial blends. The witness further testified that the Student was getting more automatic, which is fluency within the phonemes, that fluency is not just about reading whole sentences.¹⁹

Discussing the Student's school record, the witness testified the Student was, even though the Student has an IEP, getting remediation in either math or literacy outside of the IEP. The witness testified the Student goes to Ms. Gasby, who is a Special Ed teacher, for SPED reading, and the language arts teacher is the General Ed teacher. When asked if she knew when the Student received the dyslexia services, the witness testified that would be known to her certified dyslexia teacher, her interventionist, Samantha Sebourn.²⁰

The witness agreed that, after the intervention and the Student's IEP, according to the data in reading, at the end of the Student's second grade year, her reading level declined, she was still at the primer level, but said that the NWEA is not the only test they give, and that the interventionist should have the progress monitoring.²¹ Discussing the Student's third grade IEP, the witness agreed she saw no progress as to the Student's language arts goals until 3-8-19, just before school let out for COVID.²²

Looking at the Student's third grade IEP and the goals and objectives, the witness testified that Madasyn Grasby would have implemented the written expression goals, the mathematics goals would have been implemented by Ms. Grasby, that Ms. Grasby would know about the English language arts goals, and the Student's ability level would be known through assessments. The witness testified that the assessment on 10-15-19 the Student was not even into reading texts, that she was at a pre-primer level.²³

¹⁹ Vol. I, p. 107, l. 13 through 110, l. 14

²⁰ Vol. I, p. 111, l. 19, through p. 115, l. 15

²¹ Vol. I, p. 118, l. 16, through p. 120, l. 20

²² Vol. I, p. 120, l. 21, through p. 121, l. 10

²³ Vol. I, p. 130, l. 9, through p. 132, l. 16

The witness testified that April Rose is the Co-op literacy specialist, and leads them in dyslexia for the co-op as well. Looking at a 10-22-19 email from Ms. Rose to the witness, the witness testified that it reflected discussion needed to happen with Beebe leadership decision-makers, that she (Ms. Rose) did not bring IMSE to the table or recommend it for school use, that it was in place before she came on board and she was not making any recommendations until the list came out and that advocates should do the same, then when the list came out schools could begin the decision-making process. The witness testified that discussion happening with the Beebe leadership decision-makers never occurred.²⁴ The witness did recall making the statement to April Rose that she told Audie Alumbaugh with many witnesses in the room that Beebe would not make any changes to the dyslexia intervention program until the list came out.²⁵

Looking at a 5-page STAR Reading report on the Student for testing 3-13-20, which reflected the Student had extra time to complete the assessment, the witness testified she did not know how additional time would affect or impact the Student's test results.²⁶ As to the IEP developed for the current school year on Present Levels of Performance and the STAR test taken 3-13-20, the witness testified the STAR testing showed the Student's instructional reading level was 2.1, and when asked how to reconcile one testing saying the Student was possibly a third grade level and one test saying 2.1, the witness testified more than just two tests would be needed, that at least four would be needed to determine a level, but agreed a parent could be confused and doubt the district's testing is accurate if there is such a disparity between grade levels and what the Student is reading on.²⁷

The witness said dyslexia intervention is not SPED minutes, and that she relied on the Resource Guide, the Dyslexia Resource Guide, updated in 2017, saying Districts were encouraged to use appropriate terms for descriptions to address a child's unique needs, and they were encouraged to review their policies to ensure they did not prohibit use of dyslexia terms, that they should be on there somewhere that they are receiving services, but they do not have to appear on the Schedule of Services. The witness read where it recited that if students' needs could be met through the district General Ed dyslexia intervention program, they can address needs in SPED and also in your dyslexia. The witness testified she was sure there were some students getting dyslexia services that were not on a 504 plan or on an IEP in the district. The witness testified that the parent wanted certain goals changed for the Student to address her needs, and for the interventionist, and for the SPED teacher to work together on that since they were both seeing the Student. The witness testified the Student got intervention from the interventionist, who was really good at communicating with parents.²⁸

²⁴ Vol. I, p. 134, l. 17, through p. 142, l. 15

²⁵ Vol. I, p. 143, l. 16-21

²⁶ Vol. I, p. 144, l. 12, through p.146, l. 20

²⁷ Vol. I, p. 146, l. 21, through p. 148, l. 11

²⁸ Vol. I, p. 148, line 24, through p.154, l. 19

Looking at the intervention assessment for the Student, the witness testified it did not give anything about the reading level. Looking at the grade level reading the district gave the Student's parent in third grade, the witness testified on the Total Reading it showed a grade equivalent of 1.4.²⁹ When asked to explain how the Beebe School District came to begin using IMSE as one of its dyslexia programs, the witness testified that in 2015 all schools received a survey, and at that time the Co-op was going to either bring an Orton-Gillingham-based like IMSE for training that summer or Barton, not just one person in the different schools but all the people who came to literacy meetings and who had been coming to dyslexia meetings, and that the witness sent it to the curriculum people, and that is how they ended up with IMSE. The witness testified that once the program was selected for Beebe, the District staff began the training in IMSE.³⁰

The witness testified that prior to the Student's parent and the advocate Ms. Alumbaugh raising concerns about IMSE, different people had concerns because at the time they needed something that had all the components, and they did not have it at that time, so they were looking at other things, which is how they found Reading Horizons, that other vendors selling dyslexia programs were trying to get their attention, but that they had received nothing officially from ADE.³¹

Discussing the one area of the program they had to supplement, the witness testified it was phonemic awareness, which is the auditory piece, the base of our language, and that was not addressed well in IMSE OG, so they used Kilpatrick's Equipped for Reading Success, and that was shared by the Co-op. The witness testified that IMSE addresses very well, decoding and encoding and word study, and it addresses reading comprehension and dictation, but it did not address to the level they wanted phonemic awareness, so Beebe began supplementing that with Kilpatrick.³²

Looking at the past two years, the witness testified that the dyslexia programs available at Beebe were Reading Horizons Elevate and Reading Horizons Discovery, which are based on OG, but their sequence is a bit different and they have phonemic awareness in the Discovery part, and that one of the programs was for lower grade children and the other is for fourth grade and up, and they also have had IMSE.³³

²⁹ Vol. I, p. 155, l. 23, through p. 158, l. 10

³⁰ Vol. I, p. 161, l. 25, through p. 163, l. 17

³¹ Vol. I, p. 163, l. 18, through p. 165, l. 9

³² Vol. I, p. 165, l. 10, through p.166, l. 16

³³ Vol. I, p. 166, l. 17 through p. 167, l. 14

As far as Beebe continuing to use IMSE, the witness testified they understand that if they are going to choose anything that would be “new,” they need to choose from the list of dyslexia-approved programs for Tier 1, and then also there is an approved dyslexia program list, and there are a few more still going through the process. The witness testified that the ADE has recently put out a list of approved dyslexia programs, which is still evolving, and IMSE is not on the list, explaining that it is her understanding IMSE can continue to be used by Beebe until they choose something new, which has to come from the ADE SEAS list that is approved dyslexia programs. The witness testified that it is her understanding they are grandfathered in until they choose to purchase and implement a new program, and if you choose something that is not on there, then you must submit all the pieces and they have the option to approve it or not. The witness testified she did not think the Barton program is on the list, but Wilson is on the list.³⁴

The witness testified that about 5% of the District students are serviced through dyslexia intervention based on numbers from their Cycle 7 report, which is approximately 3,333 students.

The witness testified that although the Student was in private school now, based on the witness’ knowledge and understanding, she is certain there is no reason the District could not serve this Student and her needs.³⁵

Discussing offering a program for the Student after they had gotten out for COVID, the witness testified that she went in person to check, like a welfare check since they could not get any communication from the parent for about two weeks, and the witness wanted to make sure the parent was getting their emails and things.³⁶ The witness testified that the District’s website showed they had IMSE as well as Reading Horizons as dyslexia programs, and that it would have been two years ago when they reported the second program to the ADE.³⁷

When asked if the Student received dyslexia services during the entire fourth quarter when schools were out for COVID, the witness testified she did, as Samantha would send the witness the lessons and tag in her communications with the parent.³⁸ The witness agreed that children with IEP’s were getting the same services after school was out for COVID, and had the Student had dyslexia services as part of her IEP, she would have gotten those during that period.³⁹

WITNESS MADASYN GRASBY

The witness Madasyn Grasby testified that she was the Student’s Special Ed teacher last year, the

³⁴ Vol. I, p. 167, l. 15, through p. 170, l. 13

³⁵ Vol. I, p. 173, l. 17, through p.174, l. 11

³⁶ Vol. I, p. 178, l. 1-13

³⁷ Vol. I, p. 179, l. 7-19

³⁸ Vol. I, p. 181, l. 2-8

³⁹ Vol. I, p. 181, l. 14-25

Student's third grade year. The witness testified she holds a BA from UALR in criminal justice, with a minor in biology, and has a Master's of teaching with an emphasis on Special Ed from Harding University. The witness testified she taught three years in Little Rock at a junior high, dealing mostly with Special Ed children, and this is her third year at Beebe. The witness testified her classrooms were Resource and in self-contained behavior, both at Henderson, then in Resource classes at Beebe.⁴⁰ The witness testified she had the Student for reading, writing and math.⁴¹

⁴⁰ Vol. I, p. 184, l. 7, through p. 185, l. 8

⁴¹ Vol. I, p. 185, l. 9-12

When asked to discuss the IEP's for the Student the witness would have implemented, the witness agreed there was an IEP and an amended one on 12-3-19, and testified that the Student's parent expressed concerns at the IEP team meeting in October she was having with the Student and her General Education classroom, and they had set another meeting for November to go over the new draft of the IEP and discuss more in-depth about goals, more appropriate goals for the Student, and that meeting was pushed back to December 3rd, and that is where we have the amendment December 3rd on the IEP. The witness testified she understood the Student had been receiving services for the characteristics of dyslexia through an interventionist, that the Student had an SLD in reading being addressed through the dyslexia services, but they all worked together to address those needs, that the interventionist worked on lots of decoding and encoding, and the witness worked more on reading comprehension.⁴² The witness testified she saw the Student from 8:30 to 9:30 for reading and writing, then she believed from 12:30 to 1:00 for math.⁴³

The witness testified she had looked over the Student's IEP they had in place that they were working from, the amended one from December 3rd, which would be the 2019-2020 school year, and as far as goals being implemented, one of the goals was language arts, and the witness provided instruction in phonological awareness, but the Student was receiving most of this goal through Ms. Sebourn, the interventionist. As to pre-COVID and post-COVID, the witness testified that when they were in the classroom, it was more of a quick review occasionally to make sure they were on the same page with what the Student was receiving from Ms. Sebourn, and the data is filled in on the binder they kept in the building, that the witness held the binder. The witness testified all the Student's Special Ed paperwork is kept there, and when this case came up the binder was taken from her by administration, and the witness had not seen it since.⁴⁴ Looking at the Student's written expression goals, page 16, the witness agreed there was nothing on that page, and stated it should be in the purple binder. Looking at page 18, the math goals, math and English language arts, the witness testified she did implement those goals, and progress noted would be in the purple binder.⁴⁵

The witness testified she recalled the parent being shown writing samples of the Student that Ms. Ussery had, and there were reports from the STAR reports showing what the Student had tested at.

⁴² Vol. I, p. 185, l. 13, through p. 188, l. 7

⁴³ Vol. I, p. 190, l. 25, through p. 191, l. 13

⁴⁴ Vol. I, p. 193, l. 2, through p. 198, l. 6

⁴⁵ Vol. I, p. 199, l. 8, through p. 200, l. 14

The witness testified the primer level was the Student's level from the second grade STAR, May of second grade. The witness testified the Student would have had a STAR assessment at the beginning of third grade, and that she had indicated in an email to the parent that she saw the Student struggling with reading that would necessitate intervention, which would be Special Ed services. The witness testified that she was not sure why the Student was placed in Resource classes, as that can be delivered in a variety of place settings. When asked if Resource class was the least restrictive setting per the Student's IEP, the witness testified she was questioning whether or not the Recourse class was the least restrictive setting. The witness testified she was the folder holder for third grade, but she did not know who put in the folder the document setting out the Student was reading on a first grade Bridge on the Reading Strengths, was unable to read words with hard and soft sounds, was unable to identify the main idea of the story, and had difficulty answering questions from a story she read and sequencing the events, she struggled with auditory memory affecting her short-term memory, and was unable to substitute middle and ending sounds, and under Reading Weaknesses, it said "with automaticity." The witness testified she did not know who put in the math strengths either, as that was done at the end of the Student's second grade year, so she did not know who drafted that IEP.⁴⁶

The witness testified that when the Student first began coming to the witness' classroom, she was performing at a level much above the other students in their group, and the witness thought maybe her being in the inclusion setting would serve her better, which is why she said she was not sure why the Student was placed in Resource, as the witness had nothing to do with the IEP drafting.⁴⁷

WITNESS LAUREN USSERY

The witness testified she was the Student's third grade teacher. The witness testified she graduated from the University of Arkansas at Little Rock in 2014 with a Bachelors of Science in early childhood education, then went on to receive a Master's degree in reading from Arkansas State University. The witness testified she is certified to teach pre-K-4, and then her certifications that go along with her Master's degree are a dyslexia specialist K-12 and a reading interventionist K-12. The witness testified she spent the first two years of her teaching career teaching kindergarten at Indian Hills Elementary in North Little Rock, then came to Beebe, where she began teaching third grade. The witness testified she has taught third grade for three years and is actually teaching fourth grade literacy this year.⁴⁸

⁴⁶ Vol. I, p. 202, l. 20, through p. 207, l. 7

⁴⁷ Vol. I, p. 208, l. 3-16

⁴⁸ Vol. I, p. 211, l. 23, through p. 213, l. 9

The witness testified she has RTI, Response to Intervention, in her classroom. When asked to recall the Student's schedule last year, the witness said it would be to the best of her ability because of the Student's pull-outs; that when the Student came in at 7:40 a.m., it was catch up with reading a book, or they had writing time, reading time or math time, to get everyone entered in the classroom before the day began, then at 8 a.m. to 8:10 they had announcements--what they were having for lunch, attendance, all that--then the day began at 8:10 a.m., where they went straight to recess, that they came back from recess 8:30-ish, then they went straight to phonics time. The witness testified the Student came to her for the first part of phonics and then she had a pull-out with Ms. Grasby for English language arts for an hour, to 9:30 a.m.; then the Student did written expression and, the witness thought, reading. The witness testified she had the Student in her room except for pull-outs to Ms. Grasby for dyslexia or speech. The witness testified the Student was out every day for dyslexia for 30 minutes at a time to Ms. Sebourm's class, which was right next door to the witness' classroom, Ms. Sebourm being a dyslexia interventionist. The witness testified she herself has a certification for dyslexia interventionist, but is a third grade General Education teacher, or this year a fourth grade literacy teacher.⁴⁹

Testifying as to RTI, Response to Intervention, in her classroom, the witness said she pulled the Student back into a small group daily for 20 minutes and worked on phonemic awareness, writing skills, reading skills, reading strategies and vocabulary comprehension. The witness agreed that RTI is equivalent to Tier 3, that RTI is the name the school district gave it, and testified that it is based on student need, that she had individual plans for groups and had four separate groups, that everyone in the Student's group got the phonemic awareness since it is a basic foundation. The witness testified the five essential components of reading are phonemic awareness, vocabulary, comprehension, phonics, which was done more in groups, and fluency. When asked if one of those five tends to be a synthesis skill to all the others, the witness testified it would be phonemic awareness, as that can transfer over into so many different things, that fluency is reading efficiently in order to get the text read and to comprehend at the same time, that it is not just reading fast. Discussing inflection in reading, not only fast, but the rhythm, the witness testified that when she had students read to her, she often noted if they skipped a period or a comma, so they were not pausing for those moments, or if they did not have an vocal inflection where there was a question mark , so she could work with them on that in group. Discussing the Student's prosody, her fluency, the witness testified she had heard the Student read out loud multiple times, and that she began reading at 69 words per minute on a third grade level test, and by March she was reading at 99 words a minute on a third grade level text, Level 3 DIBELS, that the witness had a folder combined of their literacy folders that she handed off in the summer. The witness testified that for data purposes she entered into the spreadsheet, the Student read out loud to her once a month and where she was just listening to the Student read their book in groups, she read three times a week. Looking at the September 25, 2019 first DIBELS progress monitoring, which was a Level 3, which is a third grade level, the witness testified the Student sat in front of the witness and had a one-minute time to read as much as she could, and she made ten errors, which also included it looked like she told the Student two, the

⁴⁹ Vol. I, p. 213, l. 10, through p. 217, l. 21

document being difficult to see.⁵⁰

⁵⁰ Vol. I, p. 217, l. 22, through p. 223, l. 6

The witness testified that IMSE is what the district gave her to use for their phonics program Core curriculum. When asked the difference between a Core curriculum versus what would be called a dyslexia and reading intervention program, the witness testified that their Core program is for their basic literacy, writing, math, social studies, science, a curriculum they would use in the regular General Education classroom, while a research-based for dyslexia intervention would be used for pull-outs or for RTI purposes in small groups, and that she did use the IMSE program for her RTI program. The witness testified they gave the STAR-based testing three times a year, beginning, middle and end. The witness testified the NWEA testing was given in the General Education classroom, and she thought the Student was a pull-out for that, so the witness did not administer that test to the Student, but that all the Student's scores came to her since the Student was in the witness' classroom.⁵¹

The witness agreed the Student's lexile score declined in reading in the Spring of second grade, 2019.

When asked how that reconciled with the witness' testimony the Student was reading on a third grade level when she came to the witness' classroom, the witness testified that they were told they were using Level 3, and that is what the Student read to her, and that a lot of times, for all students, a computer-driven test shows a lower score than a test when you are sitting with an actual human you know. The witness agreed there is no test that is recognized as valid that she could administer personally to the Student. The witness testified the Student's parent said, before they were out for COVID, that she did not believe the Student was progressing, at the first of the year and throughout the year. When asked what the witness was giving the parent to show the Student was progressing, the witness testified they give reading scores twice a year, and they would be in written form at parent/teacher conferences, they are based on lexile levels as a reading score, and that she gave the Student's parent the lexile level and the STAR report. When asked about a test the witness gave the Student on 10-14, where the score was 94 with an instructional reading level of PP, which is pre-primer, so she would not even have been reading instructionally, the witness agreed that was what the test showed, and when asked why the curriculum was not modified based on that and the Student was still given third grade work, the witness testified that was not her decision, that it was an administration decision. The witness testified, when asked if the Student was basically a non-reader, that was not what she saw in class when the Student read to the witness. The witness testified that STAR Reading is not a progress-monitoring tool, that it is a tool to show progress, and that she gave the parent the DIBELS score as to a reading level, that she gave the fluency from the DIBELS score and gave the STAR report and the NWEA lexile level received from the testing.⁵²

The witness testified she was not teaching the Student on a third grade level for groups, that in groups they were filling gaps based on phonemic awareness, phonics skills, reading comprehension, vocabulary and fluency, so they were working at the Student's level, but the assessments are Level 3 third grade passages to see how they should be progressing. When asked if she routinely implements goals and objectives for students from their IEP's, the witness testified yes, that she had their IEP's in her classroom and abides by them, but she did not provide Special Education services. Looking at the goals for the Student, the witness testified

⁵¹ Vol. I, p. 223, l. 7, through p. 224, l. 20

⁵² Vol. I, p. 224, l. 21, through p. 226, l. 13, through p. 231, l. 9

that goal one, objectives one through five, are worked on in the General Education classroom, with every student since they are part of the standards, that speech goals are worked on with every student in the classroom, not just the Student, but with any student who may be struggling.

The witness agreed the school is accountable for provision of the services for the Student's individualized IEP, that the witness does not implement these goals in the classroom, she implements them with all her students, and ones for which she is not responsible are taken care of when the Student is pulled out, and while the witness was working on them in the classroom when the Student is pulled back in, those would be her responsibility, but they are not her main responsibility, as they would be her pull-out teacher who sits with the Student in a group working on specific skills on a daily basis. The witness testified she was not responsible for

gathering data on any of the goals and objectives on the Student's progress and implementing any, but that she did, nonetheless.⁵³

The witness testified even though she might have reinforced goals, she did not keep data on how well the Student was doing, on the Student's progress.⁵⁴ When asked to describe what a STAR test is, the witness testified they use STAR reading, where they are going through, reading questions on the computer, and answering the questions, that it should be a 30 minute test, but students can take as long as they need to, especially if they have extended time. The witness testified she never looked at the test recording the time. When asked about the test in May, during the Student's second grade year, taking 12 minutes and 42 seconds, then the next test completion time for the Student being an hour, a minute and 33 seconds, the witness testified that on a test with 30 questions, she has few students who could do it in 12 minutes, even if they read on a sixth grade level.⁵⁵

The witness testified she assisted in the development of the Student's IEP where a phone conference was held this past May over Google Meet, and that it is typical she gives input to the Special Ed teachers. Discussing the end-of-year evaluation, the witness testified as to the Student's reading skill it was the DRA instructional level of 30, which is a third-grade level. When asked about the STAR Reading saying the instructional reading level was 2.1, and the DRA being 3.0, a full grade level apart, the witness testified the Zone of Proximal Development is 2.4 to 3.4, and that she would go back to her statement that the computer-driven tests often do not show what you see in real life.⁵⁶

The witness agreed the Student's mother had told the witness the Student cried every day when she came to school before she got out of the car, but testified she never personally saw that, that she was really happy to see at school that the Student smiled and hugged everyone, and other teachers told the witness how happy the Student was. The witness testified the Student's mother also told her the Student cried about homework, and testified the only homework she gave the

⁵³ Vol. I, p. 231, l. 10, through p. 236, l. 8

⁵⁴ Vol. I, p. 236, l. 4-19

⁵⁵ Vol. I, p. 239, l. 23, through p. 242, l. 5

⁵⁶ Vol. I, p. 244, l. 9, through p. 247, l. 7

Student was reading, and that she told the mother the only thing the Student needed to be doing was reading, and that if anything ever was frustrating, to stop and let the Student go to bed.⁵⁷

⁵⁷ Vol. I, p. 247, l. 8, through p. 248, l. 5

When asked if she recalled a decision on 5-7 about the need for extended school year, the witness testified a group decision was made, and proceeded to review documents, reading that evaluation results for speech and language therapy ranged from moderate to severely delayed in some areas, that the Student mastered zero out of ten speech objectives, that the parent expressed concern about what she saw at home and what the Student demonstrated on assessments, and there was no evidence from the district supporting the reading level claim. The witness read that zero out of two reading goals were mastered, zero out of two math goals were mastered, but that two out of two phonemic awareness objectives were met and five out of six written expression objectives were met. When asked who would have given that data, the dyslexia, the witness testified she was not sure. When asked if the Student received dyslexia services during COVID, the witness testified she was not the dyslexia interventionist, but she offered the Google Classroom, which is a site the Student could join and they had all of their subjects on there so the Student could participate in grade level class work each day where she could watch videos, and worksheets were also offered if video could not be watched, but the Student's mother said Google Classroom was too much for her (the parent) so asked that she receive the worksheets. The witness testified that the Student's mother said the Google Classroom was too much because the parent had another student home, and it was too much with both of them getting on Google Classroom, so she was provided with the worksheets. When asked where the worksheets were, the witness testified that would be an administration question. When asked about grades for the Student, the witness testified the Student did not receive reading, writing or math grades from the witness, but that the Student would have received science and social studies grades, and they were told if students did anything at all, they received "A" for social studies and science.⁵⁸

The witness confirmed that she had produced the Student's third grade report card, which only had grades on it. When asked about school-directed progress monitoring about which the parent was told, the witness testified they require DIBELS and STAR, and said they give percentage grades in third grade. Discussing the two meetings held before Christmas, one that was documented as an IEP meeting and one that was not, the witness testified that at the first meeting they discussed the Student's progress, and the witness confirmed that nothing was documented that she told the parent anything about the STAR testing, but it was documented that she would have told the parent about an NWEA score, and in the winter of 2019 the Student's RIT score was 171 for mathematics, second grade. The witness testified that she showed the parent and Ms. Alumbaugh at the meeting a running record that the witness had just performed and the DIBELS Passages, then STAR testing, and testified she performed two tests dates in October, the 14th and the 16th. The witness testified there were five STAR testing dates in third grade, only two before the 12-3 IEP meeting. When asked why, two days apart, one scaled score was 94 and the other one was 195, the witness testified that she does this for all her students, that when a student takes a STAR test, she reports the score to the student, they talk one-to-one about their score, that she thought they were old enough, responsible enough to know what is going on, and that when she reported the Student's score to her, the Student looked disappointed, and the witness asked if the Student would like to try again and the Student said she would, so she was given a second opportunity, and she worked really hard and her score grew.

⁵⁸ Vol. I, p. 253, l. 11, through p. 260, l. 8

The witness agreed that according to the STAR Growth Report, when she went to the 12-3 meeting she would have had the Student's reading level at pre-primer, PP, before reading, which is the second percentile, but that is not what she reported to the parent. The witness testified she shared the one taken October 16th, even though there was no indication she gave any report to the parent. The witness testified she did not keep reports, they were online and she has no access to last year's reports, and said if the parent didn't have it she would not know where it went. When asked if maybe it never existed, the witness testified it could be a possibility, that it would be their word against the parent's or the parent's against the witness.⁵⁹

⁵⁹ Vol. II, p. 9, l. 20, through p. 23, l. 21

The witness testified, as to reading, that when the Student came to her, she was reading on Level 18, just as she was in the fourth quarter of second grade, so she did not go down any. The witness testified that Level 18 is first grade, eighth month, and denied she said the Student came to her with a third grade level.⁶⁰ The witness testified that even though the Student was not on third grade reading level, she was required to give the Student third grade testing. The witness testified she told the parent the Student was not independent, that she was instructional third grade level in March, that was sent out at the end-of-year IEP meeting, that was where they ended in February/March when they got out of school. The witness testified the Student would have been independent on a 28, but she was on a Level 30, which was still below grade level. The witness testified at the beginning of the year they should be reading 97 words per minute, so the Student was on the low end. The witness testified that on the last assessment in March before the pandemic, the Student had 100 total words on a third grade reading level passage, that she had one error and got 99 words correct in one minute.⁶¹

The witness testified that to keep reading from being stressful for the Student, she (the witness) was really cheerful and joyful and told the Student how much she looked forward to hearing her read, that she could not wait to see how much she had grown, what a great job she was doing, and then the Student reads to her. The witness testified that the 99 words correct out of a hundred is a growth from when the Student started the year with the witness of 30 words per minute, which is pretty incredible, that they do not expect students to grow that much, that the expectation is 20 words a minute growth for the entire school year, and this was in March, so the Student actually had that growth when they did not even have the last nine weeks.⁶²

The witness testified she put more value in the total words correct rather than the total words read.

The witness testified this is because when some of the words are missed, they need to go back and look at the phonics skills, which matters since even though some readers are really fast, they are not comprehending, so she still looked even where the numbers were high. The witness testified that her observation for the Student as related to the DIBELS progress monitoring she did not with the Student was that the Student had incredible growth. As to being out for COVID in March and her participation in the May IEP over Zoom and phone as to the Student, the witness testified that she did share the score with the parent the 99 words a minute on Level 3, as well as the witness' running record where the Student was reading instructionally on a Level 30. The witness testified that her running record is the witness progressing how the Student is reading on her independent reading level of book, that she will hand the Student an actual book, not a passage, which the Student reads to the witness, so the witness is looking to see, do they need to move up a reading level or stay here because she is not ready for the next level yet, while the DIBELS assessment is based on the standard passage given the Student. The witness said the running record helps her determine where students should

⁶⁰ Vol. II, p. 36, l. 7-22

⁶¹ Vol. II, p. 41, l. 1, through p. 49, l. 22

⁶² Vol. II, p. 50, l. 7, through p. 53, l. 8

be. The witness testified that the Student was excited to read to the witness, that any time she was asked to read, she would be very forthcoming and smile and say she would love to read to her.⁶³

When asked if she changed her style or what she did in the classroom with the Student after indications the parent was not seeing at home what the witness saw at school, the witness testified that she was seeing so much growth she kept on the same path and worked with the Student's phonemic awareness, her phonics skills, writing, reading, comprehension, vocabulary, but that if she had not seen growth she would have changed what she was doing.⁶⁴ The witness testified the STAR testing is computerized, taken on a Chrombook which all students have.⁶⁵ The witness agreed comprehension only measures fluency.⁶⁶

WITNESS SAMANTHA SEBOURN

The witness testified she was the Student's dyslexia interventionist last year, that she holds a Bachelors degree in P-4 in 2008, early childhood education, from Arkansas State University, and a Masters degree in Special Education from Harding University, being licensed as a Special Ed teacher⁶⁷ three years later, around 2011. The witness testified this is her 13th year teaching in Beebe, that she taught 10 years in fourth grade in an integrated classroom, indirect services, where she carried folders for 5-7 students. The witness testified that her first four or five years she provided everything other than speech or OT, like related services, that she did reading, writing and math, then they departmentalized and she did literacy only beginning in approximately 2008. The witness testified that Arkansas State University is a Balanced Literacy school, but now Arkansas has become a Science of Reading state. The witness testified she has been through RISE training, which is a Department of Ed initiative, and she started training two or three years ago.⁶⁸

⁶³ Vol. II, p. 53, l. 15, through p. 56, l. 23

⁶⁴ Vol. II, p. 56, l. 24, through p. 57, l. 25

⁶⁵ Vol. II, p. 58, l. 6-13

⁶⁶ Vol. II, p. 62, l. 22-7

⁶⁷ Vol. II, p. 81, l. 20, through p. 85, l. 23

When asked to talk about the dyslexia piece she did for the Student in the third grade, the witness testified she was sent to training, the OG IMSE training, the comprehensive, and this is her third year to do intervention, so it was approximately a year before that, that she was trained at the Co-op, and the IMSE is the only program she has worked with as a dyslexia program. The witness testified this year she has been instructed to do Elevate, or Reading Horizons and Elevate, that they are doing that and doing direct teaching, supplementing direct teaching, as well, as that is what she has been told to do, and that she supplements phonemic awareness using a Kilpatrick book, Equipped for Reading Success. The witness testified they use the OG Interactive Lesson Plan site, and she had the Recipe for Reading book she used for the scope and sequence. The witness testified that she used the IMSE program with the Student, and also used Decodable Test ordered from the OG, the website, for decoding and comprehension. The witness testified that when she had the Student for dyslexia services, it was for 30 minutes, five days a week, right before the Student's lunch time, 11:00 to 11:30, and when they finished the Student went right to lunch. The witness testified there were three children total in the group. When asked about dyslexia law requiring fidelity, the witness testified the fidelity required for IMSE requires consistent instruction for 90 minutes per week with under five in the group. The witness testified she did recall the parent being worried about lack of progress. When asked how she knew where to start with the Student, the witness testified that in the program they use they have testing, an initial, Level 1 initial, Mid-term and Final, then a Level 2 Initial, Mid-Term and Final, then a Level 3 Initial, Mid-term and Final, and they start out at the beginning. The witness testified that she does fourth grade also, and if they have been in the program a while, she might not start at Level 1 initial with them, but typically, just to see where they are. The witness testified her understanding was that she was to help implement the phonemic awareness piece of the Student's IEP.⁶⁹

When asked why specialized instruction for the Student was not in her IEP, the witness testified it was her understanding that the Student's IEP had in it that she would be receiving dyslexia intervention services, but agreed there was no way to progress monitor that.⁷⁰

⁶⁹ Vol. II, p. 91, l. 15, through p. 93, l. 12

⁷⁰ Vol. II, p. 94, l. 14, through p. 95, l. 4

The witness testified that dyslexia services are specialized, it starts with being in a small group, a separate area away from all other distractions, and implementing the program she had with fidelity based on the resources she was given, and the OG, the Orton-Gillingham, that is a methodology, a multi-sensory program which requires systematic implementation and contains the five essential components of reading, phonics, phonemic awareness, vocabulary, comprehension and fluency. The witness testified that in addition to supplementing the phonemic awareness with the Kilpatrick book “Equipped for Reading Success” book, she supplements with the Decodable Text, and for reading comprehension they have comprehension questions at the back. Talking about the Orton-Gillingham approach to teaching being very structured, the witness testified that they do a three-part drill weekly, at least three times weekly, and they kind of know what to expect as far as every component of it, and she has the ability to look at where a student is, and if they were struggling with that component for that day or that area, she has leeway and ability to continue on with that skill or review old skills or move on if needed. When asked how progress was documented to the parents if there are not goals and objects in the IEP, the witness testified it was her job to follow the scope and sequence of the Recipe for Reading book and those skills in that order. When asked why she was using Recipe for Reading instead of the IMSE program for dyslexia, the witness testified she was, that she was using the program and the resources, but was given the Recipe for Reading book for the scope and sequence to follow, that was what she was told to follow. The witness testified that it appeared to be the same as the IMSE program as to scope and sequence.⁷¹ The witness testified that the Student’s Level 1 initial Assessment was done 8-28-19, and her percentage for the Level 1 initial Assessment for the sounds was 97, and for the words 73.⁷² Looking at the IMSE records for 2018, titled “IMSE Records, 2018-19,” concerning dyslexia instruction in second grade, the witness testified she thought they were in her binder when she got the Student in third grade, showing Level 1 initial Assessment, 93% words and 94% sounds, and agreed that a year later, with her, the Student did 20 points better on words and changed 3 points when the witness tested her on sounds.⁷³

The witness testified she did not move on with the Student, she redid the skills with her that she missed on her testing on words, that scope and sequence have to be followed, and that the Student made 97 on sounds but only 73 on words, 80 being where they would move on.⁷⁴ When asked what IMSE does if a Final test is failed, wouldn’t the student have to start back at the beginning, the witness testified the student would need to be re-taught the skills that were in that level that you would need to go back to the beginning of the Final Assessment, Level 1 Final, since the Student had already mastered what was above it.⁷⁵ The witness testified that as far as words and sounds, the Student had 80% on words on the Level 1 Final Assessment, and

⁷¹ Vol. II, p. 95, l. 22, through p. 99, l. 10

⁷² Vol. II, p. 112, l. 21, through p. 113, l. 4

⁷³ Vol. II, p. 113, l. 12, through p. 114, l. 25

⁷⁴ Vol. II, p. 119, l. 25, through p. 119, l. 22

⁷⁵ Vol. II, p. 125, l. 21, through p. 126, l. 7

since the Student was not missing the sounds, the witness did not want to waste time on that, that there would be mid-year testing and they could check that then.⁷⁶

⁷⁶ Vol. II, p. 127, l. 2, through p. 128, l. 6

When asked about nothing to show progress or regression on the Student's sounds until December, and how she would know whether to move forward, the witness testified she taught her lessons based on the order of the scope and sequence.⁷⁷ When asked if she had any evidence she went back after 10-21 to teach any of the sounds portion of the skills that the Student did not pass on, the witness testified she did not.⁷⁸ As to the 12-3-19 IEP meeting, the witness testified the Student's Special Ed teacher would be responsible for the progress on the Student's IEP goals and objectives, which was Ms. Grasby, and that the goals added were all ones she did with her dyslexia services, and it was her understanding the Special Ed teacher would be responsible for progress data.⁷⁹ When asked if the English language arts goal, number seven, to be able to read grade level text and put the story events in proper sequence, was done in the dyslexia services, the witness said they were not. When asked if she would be working on the goals like words per minute, phonics and other word skills, goals eight, nine or ten, in her dyslexia class, the witness testified they did decodable text and comprehension with that.⁸⁰ The witness testified she did not know the Student's grade reading level at the IEP meeting in December, as it did not really apply to what the witness was doing. The witness testified that after the meeting she knew the Student was below grade level in reading. The witness testified that the Student would not have been in her dyslexia class if she was not behind on reading, and the CTOPP told the witness the Student was below grade level. The witness recalled the parent saying at the December meeting that the Student had not made progress.⁸¹

The witness testified she knew the STAR test results showed the Student's instructional reading level as 2.1 on 3-13-20. The witness testified the Student's PAST assessment was presented at the December meeting to show progress, which is Phonological Awareness Screening Test. The witness agreed that the point of dyslexia intervention is to get a student back on grade level reading, and that children progress at different paces. The witness testified the Student was grouped with ability level. The witness testified that when they stopped, the Student was halfway through the Level 3 Mid-term.⁸² The witness testified she was familiar with running records, which is a Balanced Literacy tool. When asked if she had decodable text she used to test fluency, the witness testified she did not necessarily test for it, but did use decodable texts, off the OG website, and there are comprehension questions in the back, and they do those, which is part of what the witness was told to do by Ms. Blauser. The witness testified she did a running record when she was in the classroom using Balanced Literacy, and they have used many programs.⁸³

⁷⁷ Vol. II, p. 130, l. 13-21

⁷⁸ Vol. II, p. 133, l. 22, thorough p. 134, l. 7

⁷⁹ Vol. II, p. 145, l. 25, through p. 146, l. 10, through p. 147, l. 7

⁸⁰ Vol. II, p. 152, l. 13, through p.153, l. 15

⁸¹ Vol. II, p. 153, l. 21, through p. 155, l. 10

⁸² Vol. II, p. 158, l. 20, through p. 178, l. 7

⁸³ Vol. II, p. 178, l. 24, through p. 191, l. 14

The witness testified the PAST test consists of one-minute activities from the Kilpatrick book to address phonemic awareness, and she did that testing at the beginning and mid-year last year. When asked what the PAST test gauges, the witness testified it shows the growth in specific areas, like basic syllable, onset rime, basic phoneme, and advanced phoneme of phonemic awareness, which she believed to be a progress monitoring tool.⁸⁴ The witness testified that in the eight months she had the Student, the Student did make progress.⁸⁵

WITNESS ALLISON RAPER

⁸⁴ Vol. II, p. 183, l. 1, through p. 185, l. 19

⁸⁵ Vol. II, p. 186, l. 18-23

The witness testified she was the Student's speech therapist for last school year. When asked about the Student's deficits in speech and language, the witness testified she was not the one who did the evaluation in 2018, but they were working on similarities and differences between words and ideas, they worked on some reading comprehension, which was the witness reading one or two sentences and asking the Student a question, they worked on figurative language and some analogies, they worked on antonyms, synonyms and basic grammar concepts. The witness testified that most of the Student's deficits lay in the way sentences and phrases are made up and comprehension of that, so she had auditory and receptive deficits, both ways, and it was more of the understanding what she hears and then having to respond was her main disconnect. The witness also testified there was a deficit with formulating the response to what was being asked, and all this would impact her ability to read.⁸⁶

The witness testified the Student was in her class speech therapy with two other children. The witness testified she had the Student twice weekly for 30 minutes each time, an hour total per week, and that it was always in the group unless they were trying to make up a session or something like that. The witness testified she agreed that 60 minutes a week for 36 weeks would be 2,160 minutes of speech, and per the speech logs she provided 1,200 actual minutes, the last date being around 3-10, that there might have been some sessions that were missed.⁸⁷

The witness testified she did the annual review for the Student, which set out the Student achieved mastery of zero of ten objectives set for her at her last annual review conference, which were picked by another speech therapist. Discussing objectives, the witness testified they typically write them in a hierarchy, they work on the lowest four at the first to master those, then they will add on from the rest of the objectives as ones are mastered. The witness testified she did keep data in December in the third nine weeks, that it must not have translated over. The witness testified the Student had almost mastered one of the goals, which was the similarities and differences, that she had mastered the part of similarities, but had not yet mastered the differences.⁸⁸

⁸⁶ Vol. II, p. 193, l. 10, through p. 195, l. 9

⁸⁷ Vol. II, p. 196, l. 1, through p. 198, l. 16

⁸⁸ Vol. II, p. 198, l. 17, through p. 205, l. 21

The witness testified she recommended at the annual review conference that the Student continue twice a week for the next upcoming school year, and she did not change the goals, she only took off similarities. The witness testified she was not the one to make the determination on ESY. The witness testified that during COVID when school was out, she received a list of everyone who did not have internet, and made individualized paper packets for all those students and sent those out, then she contacted all the parents and asked if they wanted tele-therapy, and also created a Google Classroom and posted assignments there weekly for each student, and assigned them for each student so the parents could choose, and the ones who had internet could choose to get tele-therapy over Google Meet, which she did with some, or they could do the Google Classroom and get assignments there. The witness testified she added the Student to her Google Classroom, but never received anything from the Student. The witness testified she also created a Google voice phone number to communicate with families since she did not have her office phone number, and she sent everyone a text message asking which they would prefer, if they wanted the tele-therapy or Google Classroom for the ones with internet, and she would check in with the ones who did not have internet and sent them a paper packet, and everyone with internet got the witness' link to their school email for the Google Classroom. The witness testified she had an individualized assignment for each student, whatever their time was, if they were twice a week, she assigned two assignments, and if they were three times a week, she did three, that Google Meet is virtual tele-therapy. The witness testified she never heard back from the Student's parents. The witness said she reached out three times to the parents without explanation to her. The witness testified that she did get a reply from the Student's mother once apologizing for relying late, but even after the witness reached out again, there was no response from the parents.⁸⁹

Discussing the annual review conference that was a video conference held on Google Meet, the witness testified that she had no data for the fourth nine weeks, so she was going on the third nine weeks' data. When asked why that was not a reason to recommend extended year services, the witness testified the Student's parent had everything for the Student on the Google Classroom, she only needed to log on to that, so the witness had provided the assignments and the parent could have done those at any time, that there was no deadline. The witness testified she met with the Student during the regular school year Tuesdays and Thursdays typically, usually at 2:00 to 2:30.⁹⁰

WITNESS VICKI KING

The witness testified she is and has been the Dyslexia Specialist and Program Advisor for the Department of Education, Division of Elementary and Secondary Education for six years, since the dyslexia law passed in 2014. The witness testified she holds a Masters degree in reading, and a reading specialist certification, and has an undergraduate degree in Special Ed and reading. The witness testified she had 22 years in public education, serving anywhere from kindergarten through 12th grade Special Education, dyslexia/reading intervention, and literacy coach. The witness testified her duties as they relate to both maybe parents or children with dyslexia and

⁸⁹ Vol. II, p. 206, l. 7, through p. 214, l. 15

⁹⁰ Vol. II, p. 215, l. 7, through p. 216, l. 2

districts and Cooperatives as it relates to implementing dyslexia law, are to inform all stakeholders in the implementation of dyslexia legislation, and that she provides training to Co-op specialists and districts through the Co-Ops as well.⁹¹

⁹¹ Vol. III, p. 8, l. 11, through p. 10, l. 9

The witness testified in her position she has provided several sessions regarding implementation of the law at the Co-op, where she was sure the schools have accessed that training, and as far as the Beebe School District and assisting them with their implementation of the dyslexia law, she would have if they reached out and requested, had emails or phone calls. The witness testified she has fielded questions from schools since 2014. Discussing teaching reading, the witness testified there are multiple theories, models, and in response to a question about a theory based on Science of Reading in Arkansas, the witness testified that it is that education is implementing instructional strategies that are based on current research in the field, including neurologists, psychologists and educators. The witness testified that dyslexia falls under the category of SLD, and the approach to children with markers of dyslexia is to incorporate the Science of Reading, the elements of Science of Reading, the essential elements including phonemic awareness, phonics, vocabulary, comprehension and fluency. The witness testified that the dyslexia legislation requires that a school have a dyslexia interventionist, and that is defined as a person who is trained in the dyslexia program, and the dyslexia program is also defined in the law. When asked how the law defines that, the witness referred to Section 602, which says “‘Dyslexia program’ means explicit, direct instruction that is systematic, sequential, and cumulative, and follows a logical plan of presenting the alphabetic principle that targets the specific needs of students without presuming prior skills or knowledge of the student.” The witness further read where it goes on to list “Systematic, multi-sensory, and research-based, offered in a small group setting to teach students the components of reading,” and that it then listed the components. The witness read the meaning of fidelity, that “‘Fidelity’ means the intervention is done as the author of the program intended,” and testified that author means the developers or people who have written the program, and that to find that out you check with the program, institution. The witness testified she is familiar with the IMSE program, and that she helped conduct the Little Rock audit. The witness testified that she was on the committee that wrote the Resource Guide in the Parents’ book. When asked what she knew about what the IMSE program says about fidelity, the witness testified she thought it varied, depended on some of the training you attend, that she did not keep those on file, necessarily, specifically of the programs or program. The witness agreed most programs would have a number of minutes per week, or a number of sessions that would have a number of minutes. When asked if most of them are based on how many children they have in a group, the witness testified some give that in their fidelity guidelines, but if it is not there, they have to go back to the program to see what the guidance is.⁹²

⁹² Vol. III, p. 10, l. 13, through p.15, l. 22

Looking at an email from Audie Alumbaugh about the research associated with IMSE, the witness testified she did recall that email. When asked if she gave out a report that she had information on about the IMSE program and the science behind it to both Audie Alumbaugh and the Beebe School District, the witness testified if they had it available, she probably discussed it. The witness confirmed there was an attachment to her email discussing an IMSE Data Project Report. Looking at a chart saying “IMSE Growth versus Average Growth 25th percentile,” the witness testified there is a slowing in growth on both, and one factor could be the grade. When asked if the chart meant the children not getting IMSE actually progressed higher than the ones who were, the witness testified that, without looking in more detail, it appears that is the typical growth rate of a typically learning first grader to second grade, but it is not talking about grade, but rather skill level and is depends on the disability and how severely it impacts their learning. Referring to the Grade Level Breakdown Findings saying “In second grade and above, IMSE’s OG instruction seems to have moderate or little confirmed effect,” the witness testified it shows there is a difference of roughly ten percent higher for grades two through five when compared to average growth, and in second grade and above there was moderate or little growth. Looking at the Conclusions section, the witness read where it said “These findings are especially important because students who fall behind early on tend to grow slower than average, and they continue to fall further and further behind,” and “This is particularly true at the third grade mark because students learn to read through second grade, but they read to learn in third grade.” The witness testified that historically with reading instruction, it was thought that foundational skills were primarily mastered in K-2, so that is the focus of instruction for kindergarten, first and second grade, would be the foundational skills, and at about third grade the shift becomes from the focus being on foundational skills to apply those skills to develop reading comprehension. The witness testified that there is research substantiating students not reading on grade level are less likely to graduate from high school. The witness agreed that the statement “If students are behind in third grade, it is extremely difficult to catch up” was substantially correct and that research would support that.⁹³

The witness testified she put together the team that went in and conducted the Little Rock Dyslexia Audit. The witness testified the Little Rock School District was using IMSE. The witness testified that during the audit they saw lessons that did not include phonemic awareness, and that they did not review the program in its entirety. When asked about the importance of phonemic awareness, the witness testified the importance of phonemic awareness is, usually that is the underlying cause of the word level reading and spelling difficulties. The witness testified a phoneme is the sound, a sound, a spoken sound, and a pinnacle skill is that they learn to manipulate phonemes in language. The witness testified that for students to become efficient at mapping words or storing words permanently, they have to have the underlying skill of phonemic awareness to the manipulation level, and it is phonics when you add letters.⁹⁴

Looking at some of her recommendations, the witness testified that, under “Instructional Approaches,” where it says “Adopt a comprehensive dyslexia program that is systematic and explicit” meant it was a recommendation that, as a district, they (Little Rock) needed to have

⁹³ Vol. III, p. 16, l. 23, through p. 29, l. 14

⁹⁴ Vol. III, p. 30, l. 25, through p. 34, l. 12

some consistency so they could deliver instruction to the students.⁹⁵

The witness testified yes as to if she agreed, speaking for the ADE, that Arkansas was committed to the Science and Reading and dyslexia. The witness testified she had conversations with the Beebe School District and from time to time helped them with dealing with children with characteristics of dyslexia if they asked questions. The witness testified that a fragmented approach would be pulling from multiple different methodologies, and there are sometimes inconsistencies from one approach to the other in how to have a student attack a skill being targeted. The witness testified she had conversations with Beebe about other programs for dyslexia, but she did not know what they implemented. When asked what her expectation would be if a child was getting mixed strategies, the witness testified it would depend on the child and the deficit levels and specific information about them.

WITNESS MADASYN GRASBY

The witness testified she was the Student's third grade Special Ed teacher, and she (the witness) missed ten days, November 7-29, but testified the Student would not have missed Special Ed services, as it was planned for the Student to go see another Special Ed teacher to make up. The witness reviewed a document she was told contained parent notes about no class, no Special Ed class, and testified she had not seen the document before and did not know if the Student got Special Ed on the days the witness was out, but administration would know.⁹⁶

⁹⁵ Vol. III, p. 55, l. 6-15

⁹⁶ Vol. III, p. 63, l. 3, through p. 65, l. 11

The witness agreed that on the IEP is some place to document progress, and that they are required to send goal pages home, filled in with goal progress on the four dates listed. Looking at the language arts page, the witness testified there is progress reported on 141. Looking at 142, 145, 146 and 147, the witness confirmed no progress was shown. The witness testified that she would have been the one doing the goals. As to math goals, the witness testified on goal five, to determine which operation to use, it reflects “62%, continue,” on 10-11-19. The witness testified that other than goal five, no other progress is shown on math. As to language arts goals, seven through ten, the witness testified that there was progress listed as to goal ten, that the Student would answer/recall who, what, when, where, why and how questions, referring explicitly to the text as the basis for answers, and part of that was comprehension, and it says 25%. The witness testified that progress for the Student would be in the purple binder, and that the parent did receive periodic progress printed out from TAC. The witness testified the Student’s grades came from the goals.⁹⁷

The witness confirmed she taught the Student math and written expression. The witness testified she also had the Student for literacy, that she was teaching the Student reading, that in the Student’s IEP it was broken down into reading, writing and math. The witness testified that encoding in writing, under which spelling falls, and decoding is reading. The witness testified punctuation is written expression falling under writing. The witness testified the Student could not read grade level texts in her Special Ed class, but the witness read to the Student and the goal was to read to her on grade level and then have her answer who, what, when, where and why questions, which was progress on goal number two. The witness testified she implemented goal number nine, as to Phonics skills and other word analysis skills to decide unfamiliar words, and testified they reviewed phonics skills Ms. Sebourn had taught the Student. The witness testified she implemented the goal of “With a baseline of 55 words, she will show a hundred percent increase in words per minute as evidenced through assessments.” The witness testified there was progress shown as to SPED Reading on the assignments.⁹⁸

The witness testified she recalled the December 3rd meeting where Ms. Alumbaugh was present and that certain goals for the Student being revised at the request of the parent and Ms. Alumbaugh, and that she supplied information as to the Present Levels of Performance, that there was progress with the Student’s strengths.⁹⁹ Looking at the Student’s third grade IEP goal for phonemic awareness, the witness testified as to the goals implemented being goal three, English language arts, phonemic awareness was implemented, goal three, with the instruction in phonemic awareness, that was implemented by Ms. Sebourn, and the witness received the goal progress from Ms. Sebourn since the witness was the folder holder.¹⁰⁰

⁹⁷ Vol. III, p. 68, l. 16, through p. 77, l. 7

⁹⁸ Vol. III, p. 77, l. 12, through p. 86, l. 16

⁹⁹ Vol. III, p. 89, l. 15, through p. 91, l. 13

¹⁰⁰ Vol. III, p. 92, l. 9, through p. 95, l. 25

The witness testified there was new progress of the Student in the purple folder, the Student's Special Ed binder, and as the Student's third grade teacher the witness was the one to make updates to the folder. The witness testified there was more recent goal progress as to goal number three, English language arts, that it was updated during the school year, but she did not know why it was not there.¹⁰¹

WITNESS MELISSA HANNAH

The witness testified she is a licensed speech/language pathologist, a certified academic language therapist, that she does comprehensive evaluations and runs a school called Hannah School for children with dyslexia. The witness testified the Student attends her school, being one of their new students this school year. When asked to talk about how the school began and what it provides as far as services the Student would need, the witness testified it is an accredited kindergarten through 12th grade private school, the only school in Arkansas dedicated solely to educating children with language-based learning differences, like dyslexia and dysgraphia, that it is a therapeutic program. The witness testified they used to refer to it as a preventative intervention model, meaning they integrate and provide intensive intervention and remediation throughout the school day, and they use the DuBard Association Method as our main intervention program for reading and writing. The witness testified that they started the school due to a need in the community, that the nonprofit organization is Here 4 Kids, and they began in 2015 with a therapeutic educational program in the witness' garage. The witness testified that at that time she continued to do intervention privately and evaluations at that time and traveled to private schools and saw children individually for dyslexia intervention. The witness testified the need for those services grew, and they relocated, then after a year or so the need was so great that they applied for accreditation and decided to have a fully accredited private school. The witness testified their initial intention was not to have a school, but to partner with already established schools to assist them with developing these programs for having classrooms within their schools. The witness testified that was not something there was a lot of interest in, and more parents requested an educational choice specifically designed for dyslexics, and the Hannah School grew from that. The witness testified they went from four children in her garage to over a hundred in their building, that they provide occupational and physical therapy for the students who need it, but those two services are dictated by whether they qualify based on insurance standards. The witness testified there are lots of children who need these services, which is why they integrate them into the school curriculum and the school day, not just pull-outs. The witness testified they currently have enrolled kindergarten through tenth or eleventh grade, she thought a tenth grader this year is their highest grade.¹⁰²

The witness testified there are lots of dyslexia programs available, and the one they use, the

¹⁰¹ Vol. III, p. 96, l. 10, through p. 97, l. 15

¹⁰² Vol. III, p. 106, l. 20, through p. 109, l. 10

DuBard Association Method, is one of the only ones that is very language friendly. The witness testified dyslexia is a language processing impairment, and some children have more impaired language processing skills than others, even though they may share the same dyslexia diagnosis, so this program specifically targets working memory and processing, in addition to just teaching them how to read, it also develops oral and written language skills.¹⁰³

¹⁰³ Vol. III, p. 109, l. 11, through p. 110, l. 2

The witness testified the first step in applying for their school is they do a shadow day. The witness testified they administer an achievement test, review any records the parent can provide, and that gives them a good idea of whether their program is a good fit for the child based on their academic skill level. The witness testified it also gave them a chance to see if the child needs additional services, like speech/language therapy or occupational therapy, so they can begin the process of getting those evaluations should they be needed. The witness testified all those things interfere with academic progress, so once they have a baseline and an idea of the child's strengths and weaknesses and how they may proceed with a possible treatment plan, the child typically spends a little bit of time in the classroom, though with COVID they haven't been able to do that this year. The witness testified a lot of children are nervous about school since they've not been successful, so they like to see them interact with the curriculum, the teacher and the students to see if any social, emotional supports need to be in place. The witness testified that after that, they meet with the parent.¹⁰⁴

When asked why social and emotional supports would be needed, the witness testified many children do not understand why they are not performing like their peers they see how their peers perform, and kids know when they are different, and sometimes that results in increased anxiety and sometimes resistance to help. The witness said even those children who are nice and sweet do not want to fail, and they are not confident in how someone is going to help them. The witness testified many of their students have attempted other programs unsuccessfully, and they do not know what to do with their feeling, and they need to make sure they can take care of whatever a student needs.¹⁰⁵

The witness testified the younger a child is, the earlier you identify these characteristics and begin to intervene, the better the prognosis can be. The witness testified there are varying degrees of dyslexia, that there is really no such thing as just dyslexia. The witness testified once dyslexic, always dyslexic, but the goal is to set them up to be successful academically, and the older they are, the more difficult it becomes. The witness testified that the later they get a child, later in age, later in grade level, the more delicate the balance has to be between academic demands and therapeutic intervention, so once children hit about third, fourth, fifth grade, they are really starting to run out of a lot of time. The witness testified that research tells that at about fourth grade, you really need four hours of intervention a day to close the gap in their reading and writing skills. The witness testified they start very heavy intervention and therapy so as students progress academically they can have the supports weaned away and they can be academically successful, that they may still need some accommodations, but accommodating is giving a tool, not watering down expectations.¹⁰⁶

¹⁰⁴ Vol. III, p. 110, l. 3, through p.111, l. 11

¹⁰⁵ Vol. III, p. 111, l. 12, through p. 113, p. 3

¹⁰⁶ Vol. III, p. 113, l. 4, through p. 115, l. 19

The witness testified about children coming to the Hannah School, that there are several children in sixth, seventh and eighth grade who have been there several years, and a few of them have been ready and able to transition to other schools, but based on their prior experiences, their families and those students do not want to change, and it is because they are not different there, that everyone is the same, dyslexic. The witness testified their students come from all over the central Arkansas area, that they have one student bused from a school district, but many are placed there per parent requests. The witness testified the gap she was talking about being closed is their reading level and the level they would expect them to be performing at academically, which is usually aligned to a grade level expectation, but sometimes they have to give accommodations to offset any skill maybe they did not have the chance or they will run out of time to remediate, so the first priority when they are still fairly young is to remediate it so the student can perform independently and successfully, both academically and in the community.¹⁰⁷

The witness testified she would like to think they could close a gap, maybe not the main gap, at any point, but as children reach junior high and high school, other expectations come into play and it becomes more challenging to dedicate the amount of time to the type of intervention that is going to result in remediation. The witness testified their summer program is so successful because students have to come every day for two and a half hours, four days a week for four weeks, and they cannot help but learn the basics because they are inundated with it.¹⁰⁸

Discussing the Student, the witness testified that the Student is a different kid than when she came for her shadow day, or screening day, until who she is now. The witness testified the Student had some anxiety, fear and frustration, but once she started to get the slightest taste of success, she was hungry for more, and actually started writing cursive on her own and progressing to where she was only at the school for a few weeks before they had to move her to a different classroom to make sure they were continuing to challenge her to the level she wanted. The witness testified the Student's confidence and demeanor are completely different, that she can easily slip back into some insecurities, but she wants to know the whys and is doing remarkably well.¹⁰⁹

When asked to talk about the pre-testing done at her school, the witness testified they have a pre-testing packet and a sound test, and that kids get sound tests all the time in their time at the school, that it does not matter if you have mastered the program, you are still going to have a sound test from time to time, as they want the students to be able to write any way that sound can be represented, that there are approximately 40 sounds in the English language, but over 100 ways to write those using only 26 letters in the English language. The witness testified that sometimes due to processing and retrieval demands, sometimes they might teach a child a new skill, a new sound, and when they sound test them, they forget something they thought was mastered, as it takes them a while to maintain that same level of success and automaticity with previous mastered skills. The witness testified that for the Student, that is the first thing the

¹⁰⁷ Vol. III, p. 116, l. 4, through p. 117, l. 24

¹⁰⁸ Vol. III, p. 121, l. 3-9, and Vol. III, p. 123, l. 3-7

¹⁰⁹ Vol. III, p. 124, l., 13, through p. 125, l. 4

witness wants to know, if she says a sound and the Student can write it, then the witness wants to know the Student can do that, because that is going to let her (the witness) know where to begin to tailor her instruction.¹¹⁰

¹¹⁰ Vol. III, p. 125, l. 5, through p. 127, l. 19

The witness testified they use cursive because it takes a lot of the ambiguity and uncertainty out of some of the symbols, that some dyslexics have visual perceptual strengths, and with cursive dyslexics only pick up their pencil when the word is over, so there are no spacing issues, and it cuts down on reversals. The witness testified for the Student, they are not going to penalize her for not knowing cursive, they are going to take what she already knows and teach her the cursive for those first lessons, and she specifically latched onto that and really began to teach herself more cursive because she could feel the benefit. The witness testified the Student was able to spell correctly 15 out of 31 group one words, 36 out of 40 group two words, 11 out of 22 group three, and 8 out of 36 group four. The witness testified the fact the Student could do group two words but did not do well on group three lets the witness know the Student does not know digraphs.¹¹¹

The witness testified they do use the five essential components of reading in the Hannah School program. The witness testified the Student does not know the basic short vowels and long vowels are represented by different letters, so they needed to make sure she can differentiate between those. When asked how to write a short or a long vowel, the witness testified that in most dyslexia programs they will use what is called breve and macron, either the straight line above the vowel or the curvy line, but that at Hannah School they do not use those, as you do not see them in a book, so the method they use is called North Hampton symbols, they visually make them look different. The witness testified that is where they start, teaching individual sounds, they have a baseline for the Student's sound test and her group word test, and that automaticity, 90% accuracy, is important, which is how quickly the Student retrieves it when shown a symbol.¹¹²

The witness testified that the fact the Student cannot spell almost every single word in every single one of the groups tells the witness she needs to spend more time addressing the Student's reading and spelling and processing deficit than anything else, which takes the majority of the Student's morning, about two and a half to three hours, all dyslexia intervention instruction, and once she gets to a certain point of success and automaticity with her reading and spelling, and math is an area of some weakness, then they would add in some curriculum components, like science, social studies, things like that, but a whole hour daily of instruction for traditional science or social studies at this point is not going to be designated since the Student cannot read. The witness testified she would integrate information in, but would not ask the Student to do academic tasks that do not have a therapeutic productive outcome at this point based on how weak her reading, spelling and math is. The witness testified the majority of the Student's day should be focused on those skills so there is time to close the gap and then integrate back in. The witness testified for most kids, that is typically a year, maybe a year and a half, depending on

¹¹¹ Vol. III, p. 127, l. 23, through p. 131, p. 24

¹¹² Vol. III, p. 132, l. 15, through p. 136, l. 10

the level of their language and processing demands.¹¹³

¹¹³ Vol. III, p. 141, l. 2, through p. 143, l. 15

When asked how large a gap the Student had when she came to the Hannah School, the witness testified she mastered a lot of her sounds very, very quickly, that vowel teams is where she is working at present, but has made a huge jump in her phonological processing skills and nonsense word decoding, and that phonological processing is where you have to see the first step in remediation, which is how your brain processes individual sounds in our language. The witness testified every word is a nonsense word until you know how to read it. The witness testified that another area of specific growth for the student was applying new symbol/sound knowledge. The witness testified the Student did a little better with the letter and word recognition, but she has not been there long enough to see a tremendous measurable improvement in that skill yet. The witness testified that fluency is not just how well you read, but how fast, that you teach a child a skill, make them practice reading it, then you measure how quickly they read it.¹¹⁴

When asked why the Student needs to be taught at Hannah School, what it has provided so far and what the Student continued to need there, the witness testified that with the Student's profile, she is not just dyslexic, but also has receptive and expressive language impairment, and the DuBard Association Method is one of the only dyslexia intervention programs specifically tailored to children with receptive and expressive language impairment, that the program is therapeutic and scaffolds instruction that align with receptive and expressive language skills and how they develop and how they need to be remediated. The witness testified this is not just addressing the Student's dyslexia, but also addresses her receptive and expressive language impairment. The witness testified the intensity for which they can provide these services will allow the Student the chance to close the gap in both skills as much as possible to be prepared to handle academic demands, which jumps up in later junior high and then high school. The witness testified they will continue to design the Student's daily instruction and her individual classroom instruction and her programming based around the progress she is making, adding in components as the Student is ready for them, as opposed to the limitations and restrictions that other school settings have to function in. The witness testified that if she feels the Student is struggling with a specific skill and want to pull her for additional work in the afternoon, she has the flexibility to do that without having a lot of disruption in the Student's day or problem or ask permission, that if the Student needs it, they are going to do what they need to do to make sure the Student masters it.¹¹⁵

When asked her expectation as far as the program the witness designed for the Student, the witness testified that the expectation for every student is to be a successful reader and writer and be competent in math, that those are critical life skills, and have the skills needed to participate in any academic setting successfully, that junior high and high school you have to learn to take notes, you have to read a lot more independently, and if a student is not a successful reader or writer, they are already set up to fail those classes because they cannot do some of the basics

¹¹⁴ Vol. III, p. 143, l. 16, through p. 145, l. 14

¹¹⁵ Vol. III, p. 146, l. 8, through p.147, l. 20

needed to get access to accurate information. The witness testified the goal is to make sure the Student has the skills needed in order to be successful in any academic setting, regardless of where the academic instruction takes place.¹¹⁶

Asked to contrast where the Student was versus where she is now as far as her skills toward reading, the witness testified the Student is beginning to learn and apply new skills, or new words, but has a lot of information left to learn. The witness testified that for the Student they have to monitor what they are teaching so they do not overload her language processing and her receptive and expressive

¹¹⁶ Vol. III, p. 147, l. 21, through p. 148, l. 13

language impairment, and they need to make sure she is prepared for the academic demands coming.¹¹⁷

When asked how long the Student had been at the Hannah School, the witness testified they went back to school in mid-July, then they began instruction later in July she thought the week of the 13th, and did some basic testing, that it usually takes a week or so since they were bringing the students back in smaller groups due to COVID, but by the last week of July, the first week of August, the Student was well into instruction at the phoneme level, and it was maybe late August they moved her to a different classroom because she was making such progress. The witness testified the Student is not in a fourth grade classroom, per se, that she is grouped with children who are learning and working on that skill level, so she is not in a classroom with only fourth grade students.¹¹⁸

When asked what they use for progress monitoring, the witness testified they use a packet of the group words and the sound test to make sure they have mastered and are holding onto the information that is being taught, and they also administer the KTEA, a national norm-referenced achievement test, at a minimum once a year to measure progress and compare it to same-age peers, so if the child needs updated speech and language testing or an occupational therapy evaluation, they provide those assessments as well, that those are the basic ones. The witness testified they also have passages for the students to read, that right now, where the Student is, other than the fluency passages that are norm-referenced test, that is not something they do regularly at this point until she has mastered more of the group words, as you want to control the text the Student is being exposed to and make sure she has actually been taught the words you want her to try to sound out. Looking at documents produced, the witness testified that based on the progress for the short time the Student has been there, she had a lot of growth in her sound/symbol knowledge, which is the first level of instruction on which they focus, that the Student's decoding is still below average, and there is a mild impairment in letter and word recognition for more of the high frequency words. The witness testified it is not uncommon that you see growth in the sound/symbol composite, phonological composite and nonsense word decoding, as that is foundation, and fluency scores is one of the last skills to develop, that you have to know what you are reading, master it, then develop automaticity. The witness testified the Student still has a bit of struggle with silent reading fluency, as is the word recognition fluency, but she did much better with the decoding fluency. The witness testified the Student has made tremendous growth in spelling. The witness testified there have been two KTEAs administered, and what that does is the computer does an analysis to see how much growth has been experienced between each administration.¹¹⁹

¹¹⁷ Vol. III, p. 148, l. 14, through p. 149, l. 14

¹¹⁸ Vol. III, p. 149, l. 15, through p. 150, l. 16

¹¹⁹ Vol. III, p. 151, l. 1, through p. 155, l. 11

When asked if any testing showed improvement in the Student's expressive or receptive language, the witness testified they did not do any specific assessments for those other than the Student's participation in the more informal assessments, how well is her participation, is she asking for help, does she know how to ask for help, is she following directions correctly, those kind of things, and they are going to be embedded in the DuBard Association Method because they are building foundational language skills.¹²⁰

The witness testified, as to scope and sequence followed in the DuBard program, that the official is what they call the language ladder, and it builds language in a developmental progression, sounds to words to sentences to stories, which is how we develop language, but the speed at which a child will travel to each level is dependent upon their need and skill set and how they are learning. The witness testified there are three to four major units in the language ladder, with lots of individual skills in between. The witness testified the Student is in the second unit on the language ladder, that when she started she was on the first unit. The witness testified the Student was very, very motivated and worked very, very hard, and progressed through that a lot faster than some children. The witness testified the Student was on the second level four or five weeks, and that was when she was moved to a different classroom.¹²¹

The witness testified the Student is expected to read, but not in a reading group round robin where nobody knows half the words, which is a painful experience, and she reads to herself, to a teacher, or in a group, reads her class drills, which is nonsense words decoding exercises. The witness testified there is also a memory component, so the Student has to read the line and then turns and says it from memory, that is something the Student's entire group, which could include one or two other children, is doing. The witness said she does judge fluency when a child reads, but it will change as they progress, so that cannot be used as your sole measure of progress.¹²²

The witness testified she did see a video the Student's mother had taken of the Student reading a passage aloud, and said the Student was not on grade level. The witness testified she could not say the Student is on grade level right now either, but she is a much more proficient and confident reader than she was a few weeks ago, that now she has a foundation from which to attack unfamiliar words that she did not have before. When asked how far the Student was behind when she started Hannah School, the witness testified many of the group words, many of the skills the group words measure are first and second grade skills, and she was not able to consistently do that.¹²³

¹²⁰ Vol. III, p. 162, l. 15, through p. 163, l. 2

¹²¹ Vol. III, p. 164, l. 2, through p. 166, l. 21

¹²² Vol. III, 166, l., 24, through p. 168, l. 23

¹²³ Vol. III, p. 168, l. 24, through p. 170, l. 23

The witness testified there are about 103 students in the full program at the Hannah School, and four or five in the intervention program, that there is a waiting list for both programs, the fully enrolled and those just enrolled in the intervention program. The witness testified the Student is one of the fully enrolled in the whole program students. The witness testified they have different levels, kids who are onsite, and kids that will virtually participate and are on a rotation, and most of those are kids who have been in the program longer, that the rotation is mainly due to limited space and making sure they keep numbers to a minimum on campus every day. The witness testified that as of right now, they have 60-65 students on campus, fewer on Fridays as that is when most of the high school kids choose to come. The witness testified the Student has some virtual days, that she believed that when they moved her to the other classroom, they increased her number of days on campus. The witness testified most of the children who are newer, they try to get a minimum of 3-4 days on campus, that some of them they have already been able to adjust that, and said she would need to ask the Student's teacher to be accurate on her, but she thought it is at minimum three days. The witness testified the hybrid of virtual and onsite was not being done there prior to COVID, that almost every student has a hybrid, which means one day at home right now of virtual instruction, that it can be live or recorded, that it depends on the age of the student, and it can be recorded lessons, but for most of the kids it is review work or supplemental work from other classes and things like that. The witness said that is paper packets or a Google Classroom, it depends on the child.¹²⁴

The witness testified when the Student is on campus, she is in class all day, that they limit the amount of possibilities for children to switch classrooms, that she is pretty much self-contained in one particular classroom, and if she needs instruction from someone else, they will either come into the classroom or they have a couple of areas that are smaller rooms that someone may pull for one-on-one instruction. The witness testified the Student has two teachers in her classroom right now who are the primary lead teachers for her course work, Ms. Hannah Frazier and Ms. Karen Minnie. The witness testified that is also the classroom they have two speech therapists, one has a room off the classroom and one has an area in that classroom, and they are often assisting in there, but they are not necessarily just providing services in that classroom. When asked about Ms. Minnie's level of education, the witness testified she does not have a specific degree, but has been trained in the DuBard Association Method three years ago and has sat through the course two additional times and provided instruction at that level. The witness testified she believed Ms. Hannah has an Associates degree, and is currently pursuing a degree in education, but she was hired as a teaching assistant and is someone who has done in-house training and will be participating in the DuBard training as soon as one is available. The witness responded no, when asked if they did not require their teachers to have a college degree, testifying that not all their teachers are required to have it, that it depends on what they are teaching and what training they need and what their skill level is. The witness testified it is not a specific requirement, but they do have some teachers who have a Bachelors degree, but neither of the Student's for his year have a college degree, neither has an educator's license, neither has an educator's license from the State of Arkansas, and neither is Special Education certified. The witness testified that Karen Minnie is DuBard trained and has a certificate for which to be able to provide that intervention and has also taken the course an additional two times. The witness testified Ms. Minnie has not officially

¹²⁴ Vol. III, p. 172, l. 16, through p. 176, l. 8

taken the practicum component, that all staff have to have a practicum component as far as their accountability, but the way certifications are set up for many of the dyslexia programs, you have to have a Bachelors degree, that it does not matter what it is in, but you must have a Bachelors degree to be eligible to participate in their official practicum. The witness testified that in their school the process is they all have to participate and provide intervention in the summer intervention program under supervision of someone else, and then they monitor and collaborate together over all treatment plans and progress monitoring.¹²⁵

¹²⁵ Vol. III, p. 177, l. 2, through p. 180, l. 9

The witness testified the DuBard is the dyslexia program being provided for the Student. The witness agreed DuBard is certified through the International Multi-sensory Structured Language Education Counsel, IMSLEC for short. When asked about neither Ms. Minnie nor Ms. Frazier having the complete certification through IMSLEC for DuBard, the witness testified those are actually two different certifications and two different entities, that IMSLEC accredits training programs, and the one that received their accreditation, then that makes that participant eligible to take the ALTA test, which is not mutually inclusive to the DuBard Association Method training program. The witness testified that neither Ms. Minnie nor Ms. Frazier have certification through IMSLEC, that they are not eligible to because they do not have a college degree. The witness testified that as to DuBard, basic training is called the basic course, that it is a basic course and seminar course, that Ms. Minnie has the basic course, that another basic course has not yet been offered due to COVID, and Ms. Hannah is on the list to be trained in that. The witness testified she has done some training with Ms. Hannah and other in-house staff training and supervision, but the first official training does not start until week after next. The witness testified neither Ms. Minnie nor Ms. Frazier have the seminar training, but the seminar is another level of the program that neither of them provide that level of instruction. The witness testified Ms. Minnie is going to be taking that, as well, now that DuBard is able to do training, that they haven't had any training due to COVID.¹²⁶

When asked about social studies, science, those other areas, the witness testified they are focusing heavily on the Student's language impairment and her dyslexia, that academic content is addressed through class activities and language enrichment, but they do not have a set time period for social studies due to intervention being the priority for the Student right now. The witness testified the Student is being introduced to social studies content and required benchmark content for those skills at the Hannah School, but there is not a designated class, that is integrated into the intervention and language curriculum, and it is the same for science. The witness testified the Student has math every day. When asked who teaches the Student math, the witness testified Ms. Hannah and Ms. Minnie are both the Student's math teachers, and one of the speech therapists pushes in to assist with math for the Student because of the difficulties she has language-wise, and that therapist is trained at both the basic and the seminar level.¹²⁷

When asked if they received a copy of the Student's most recent IEP at Beebe School District, the witness testified that it may have been in her file, but since they provide all the accommodations in a therapeutic environment, an IEP is not really as useful for them, as they accommodate throughout and are always providing remediation intervention, so usually how IEPs are written, they do not provide a lot of useful information for them, because the instructional environments are different.¹²⁸

¹²⁶ Vol. III, p. 180, l. 10, through p. 182, l. 22

¹²⁷ Vol. III, p. 182, l. 23, through p. 184, l. 4

¹²⁸ Vol. III, p. 184, l. 5-16

Discussing the Hannah School's employees, the witness testified that, as to there being 15 employees listed on their website, they have some other employees who are in the process of being hired, so she was going to say not every single employee is listed. The witness testified she would assume some employees are purely administrative, but their administrative staff even goes through the DuBard Association Method training so as to be available should they need assistance, or at least familiar with the program. The witness testified she did not really have a title other than Melissa Hannah, Founder, and she has full authority to hire new employees. The witness testified Hannah School is part of Here 4 Kids, their non-profit, and it has a board, that she would not say the board oversees the school, as it is its own educational entity. The witness testified that as far as the business financial aspect of the organization, then yes, Here 4 Kids is more of a governing body, and if they are wanting to make decisions, for instance, about training that are coming up, if they are going to make a substantial purchase, that is something they may discuss as a board based on what the school needs, but day-to-day functioning and running of the school and the academic programs falls under the witness' leadership. The witness testified she is a member of the board, she is the president, and major decisions related to the Hannah School go through the board. The witness testified that the board members are herself, Audie Alumbaugh (who is here today as advocate for the parent) and Theresa Caldwell (the attorney representing the parent in this Due Process proceeding) right now, temporarily, for the past couple of weeks. The witness testified she is paid, but neither Ms. Alumbaugh nor Ms. Caldwell are paid as board members. The witness testified her salary was set two years ago by another former board member. The witness testified that because of recent events and the need for two new board members, there are a variety of different business-related decisions that need to be made, but her salary or compensation is not a priority at this time, so there is nothing that is on the agenda to do with that.¹²⁹

The witness testified her salary was determined based on when she quit her second job as an instructor at UCA and went to work full time for Hannah School, so the finance person at that time took what the witness made at UCA and increased it slightly. The witness agreed students have to pay tuition to attend Hannah School, and that they also generate revenue through providing speech and language therapy and occupational therapy services which is billed through insurance, the comprehensive evaluations and screening that they do, training that she provides, private donations, fund-raisers, that there is a variety of ways they try to create revenue.¹³⁰

¹²⁹ Vol. III, p. 184, l. 20, through p. 188, l. 5

¹³⁰ Vol. III, p. 188, l. 6, through p. 189, l. 5

The witness testified as to the Student's pre-testing July 8, 2020, that pre-testing is done at the beginning of the year, but this year they had to do it a little bit differently because of COVID, so that was why the Student's pre-testing was in early July, as they were keeping the number of students on campus less than ten individuals in the room, so to accomplish that and be sure all children got the necessary pre-testing completed, they started bringing kids in relatively early. The witness testified they have someone who requests records when they have a new student. The witness testified a lot of their records requests went unanswered, as they started back so much sooner than everyone else that they are just now getting some of those, so she did not know where the Student's would fall in that. The witness testified she was familiar with the records request document they have. The witness testified the Student did come for a shadow day, and typically they determine at that time whether they are a fit, and that for this Student, because she lived so far away, last November what they discussed was that Hannah School would be a good fit for the Student, but was this the appropriate time, as that is quite a drive for a family to commit to. The witness testified they advised the parents to try and provide this information and work with the school to see if they could create a program that was conducive to promoting success for the Student. The witness testified that one of the concerns about the Student coming for a pre-testing day at the beginning of July was that the mother had stated they applied for the Succeed Scholarship, which many families do, and then it is a roll of the dice to see who gets in, and the point of the pre-testing day that was not known. The witness testified that they had many families that they asked them to go ahead and come for the pre-testing, and even enroll in the school so they could gather the information they needed until they learned if they had received the Succeed scholarship. The witness testified the Student was one of those families that ended up getting that scholarship, which then afforded them more of an opportunity to come. The witness testified they had several families who were apprehensive to begin in July as they were not 100% certain they could afford the tuition or they would get the financial assistance from the Succeed scholarship, so they waived that and said "Come on, let us get started, and if something happens where you don't get that scholarship or you can't afford it, we will revisit that."¹³¹

When asked the enrollment date for the Student, the witness testified she would have to go back and look, that their first official day was supposed to be July 27th, she thought, and they began having children come back for pre-testing shortly after July 4th weekend to ensure they were able to get all the students' pre-testing and things like that done, which was very important since so many kids had been out of face-to-face school for so many months, and they needed to see what they were dealing with. The witness testified the Student would not necessarily have needed to be accepted to the school to pre-test, as June and July were such different times due to COVID, that they were more interested in making sure they had accurate baseline data on any student who wanted to enroll in the school to make appropriate classroom groupings, appropriate recommendations about the amount of time on campus versus virtual, things like that, so it was a requirement.¹³²

¹³¹ Vol. III, p. 192, l. 19, through p. 196, l. 16

¹³² Vol. III, p. 202, l. 3, through p. 203, l. 21

Discussing transportation to the school, the witness testified there was one student who is transported on the bus, and she did not know of any other transportation arrangements except a family member or friend. The witness testified the pre-testing was typically a whole day and the classroom teachers typically do that. When asked which teachers did that testing on the Student, if it was Ms. Minnie or Ms., Frazier, her current teachers, the witness testified this year they had to do things a little bit differently, so each teacher was assigned a different classroom, and the classrooms were set up to have between five and eight students so they did not have over ten people in any room, and all the teachers who have been Method trained and have their certificate that they have completed the Method training were assigned a specific classroom. The teachers said they had three or four teachers who did not have a classroom, so for efficiency's sake some of the testing was scored by the teachers administering the test and some by teachers who were helping, so the witness testified she was not really sure. The witness testified the Student had both certified teachers and teachers who are not certified teachers, that when she was in Ms. Olivia's room, she was with a certified teacher, then when she changed classrooms because of the level of Method she was in and the training level of the teacher in that room, she did not have a teacher with a teaching certificate. The witness testified Ms. Olivia Opitz has a teaching certificate, but she is not a Special Education teacher.¹³³

When asked if the Student gets speech/language therapy at the Hannah School, the witness testified they are in the process, that they have to abide by different guidelines, that they cannot accept the school district testing because it is two years old, so they have to update all the testing and make sure it meets the compliance of the insurance requirements, so that has not been completed on the Student's to-date. The witness testified that because of COVID and the restrictions with tele-therapy and you cannot do assessments virtually, their speech/language therapists have been behind trying to catch up on evaluations from March, that this is something that is a little bit different for them as a private entity, they have to have comprehensive speech and occupational therapy evaluations yearly to determine if the child is still eligible for services. The witness testified they cannot use the testing from the school district, but they know since the Student has language needs, they have her in the room where there are therapists available to assist and push in to help as needed.¹³⁴

The witness testified the Hannah School does not receive federal funding, and they do not have to follow IDEA, Individuals With Disabilities Education Act.¹³⁵ The witness testified the Succeed scholarship is a funding program through the Reform Alliance and the ADE Special Education, it is for families who have an IEP in public schools can apply to use the scholarship at an accredited private school that meets a specific requirement. The witness testified the Hannah School is a fully accredited private school and meets criteria for which the school is eligible for the Succeed scholarship, that it is a priority system, that a set number of scholarships are available each year,

¹³³ Vol. III, p. 205, l. 1, through p. 210, l. 10

¹³⁴ Vol. III, p. 210, l. 11, through p. 211, l. 7

¹³⁵ Vol. III, p. 211, l. 8-20

and with an IEP and an acceptance letter from Hannah School, parents can apply. The witness testified it comes on a first come first serve basis on the amount of scholarships available, then those scholarships follow that child to that particular private school. The witness testified the Succeed scholarship has been going on three to four years. The witness testified it is a multi-step process, that you have to apply to become an accredited private school, then after you meet a certain point from that, then you can apply to be eligible for the program, so she would say for them it would be maybe around 2017.¹³⁶

¹³⁶ Vol. III, p. 212, l. 13, through p. 214, l. 2

When asked did the scholarships come directly to her from the ADE or whoever administers the Succeed scholarships the witness testified they have to send in a list of who is enrolled and in attendance each month, and she thought they bill the ADE, and they cross-reference that with who they know where the scholarships are, and then based on that information they send the school a check for whatever that month's portion is. The witness testified the whole amount is not disbursed per month, that the parents have to sign a form and the check, and then it is deposited into their file record for the tuition. The witness testified, as to the Student's tuition for this year, that tuition is \$10,000, then they have a \$250 building fee and a \$750 curriculum and materials fee that covers textbooks and materials, that they make a lot of their own materials, especially in the beginning, so it covers the cost of that, their math textbooks, anything like that, and the total is \$11,000. The witness testified that the scholarship given out to Special Education children to the Hannah School from the Department of Education Succeed scholarship amount changes slightly every year, but she thought this year it was \$7,000 and some change, so the Student's parents would owe roughly \$4,000 if fees and everything were included. Asked what percentage or number of students of the Succeed scholarship come to her private school, the witness testified she would have to double check, but last she looked it was about 50 to 60 percent, that some families will come whether or not they get the scholarship, then attempt to reapply during the spring semester or the next school year if they are still eligible.¹³⁷

Asked about the procedure they use to notify the old school telling them a student is enrolled at Hannah School, the witness testified that their procedure is once a student starts there, they will request the Student's records from the old school, that they have a lot of students who may not un-enroll in their schools unless they get the Succeed scholarship, so if that is the case, then they usually will not send a records request until after school has started and they are sure the child is actually going to attend Hannah School, and that especially for those who travel far, there is a lot of additional variables going into their decision to enroll. The witness testified that for them in particular, starting in July and everything with COVID, they are just now starting to get some of the records and some schools are requesting records from them to verify their students.¹³⁸

When asked if Hannah School had sometime during the summer this year lost its certification for the Succeed scholarship or from whatever place certifies them, the witness testified no, they had not lost any certification or funds. The witness testified that she received an email from Rhonda Saunders in August explaining there was a parent complaint and they were obligated to research any complaint, and requesting answers to each bullet point in the email. The witness testified that when she called Ms. Saunders to make sure there was not something she was supposed to be doing to update information prior to that, the witness testified she was told no, that their application was fine, they just needed to have updated information as to those specific topics to determine if anything had changed since the school's initial application. The witness testified she provided all those, and to her knowledge today, there is not an issue.¹³⁹

¹³⁷ Vol. III, p. 214, l. 3, through p. 216, l. 12

¹³⁸ Vol. III, p. 216, l. 13, through p. 217, l. 14

¹³⁹ Vol. III, p. 217, l. 15, through p. 219, l. 5

The witness testified that she had not been retained as an expert or paid any money to come and testify today, that she did it because she loves kids, that she worked for ten years in public schools, and found it very frustrating to sometimes meet the needs of some of her students, which led her on a quest for more training, which eventually led her to create a school. The witness testified that not every child can come to the Hannah School, not every child needs to, but that a lot of children need her expertise and her assistance to make sure their needs are met, and she provides for that for a variety of children across, now, multiple states through training teachers, collaborating with teachers so they have the needed support, that she will work with anyone who is interested in helping students. The witness testified she does a lot of consulting and testifying without any monetary compensation.¹⁴⁰ The witness testified that for full-time enrollment, they have a minimum of ten to fifteen on awaiting list, and for their intervention program they have approximately five to ten.¹⁴¹

When asked to explain what occurred at the Hannah School that resulted in Audie Alumbaugh and the parent's attorney, Ms. Caldwell, to be board members of Here 4 Kids, the witness testified that she is excellent at what she does for kids as to education, teaching, training and diagnosing, she is not excellent at recognizing the true intentions of other adults, and had trusted some people on their board, that has changed in the past couple of years, and there was an attempt to take over the school and discredit the witness professionally, which resulted in her having to hire personal attorneys to assist in rectifying that, and it took some time. The witness testify that on the advice of counsel, as the board that was created in her short absence was created without following proper procedure and protocol, it dissolved abruptly, and she needed to name two people immediately to assist her in rebuilding a board and making sure that, in her absence of those two weeks, nothing had been done that was going to require business and legal expertise the witness does not have, so she asked Ms. Alumbaugh and Ms. Caldwell if they would temporarily serve on the board until those matters could get worked out and a new board reappointed. The witness said Ms. Alumbaugh and Ms. Caldwell have served on the board about two weeks, and there has been one meeting.¹⁴²

¹⁴⁰ Vol. III, p. 219, l. 8, through p. 220, l. 6

¹⁴¹ Vol. III, p. 220, l. 10-14

¹⁴² Vol. III, p. 220, l. 15, through p. 221, l. 25

When asked if anything had changed about the way of the school's accreditation or certification, the witness testified some of those words are used interchangeably and not necessarily correctly, that agencies are accredited, so their school is accredited, is an accredited school meaning it meets "x" criteria under this accrediting agency. The witness testified that the IMSLEC accredits training programs to train individuals on how to implement a specific dyslexia intervention program, so those training programs must meet specific criteria to be considered accredited. The witness testified that individuals who participate in that accredited program are then eligible, if they choose, to pursue additional certification through a separate agency, but that does not mean they have to pursue that certification to provide the instruction, it depends on certain degrees, whether they have a Masters or a Bachelors or whatever, what is outlined in that program determines eligibility for that certification. The witness testified that licensure, which she has a license as a speech/language pathologist, that is different in that there is a licensing board that oversees her specific license. The witness testified requirements for different programs and teaching, having your teaching certificate, you must meet a criteria through the Department of Education, that she has one highly qualified teacher who has her certificate from North Carolina, but cannot transfer that to Arkansas because of a snafu, that she paid the \$75, but cannot get the piece of paper in Arkansas even though she is a highly qualified licensed educator. The witness testified there are a lot of variables that go into who can provide what kind of instruction, and at their school, you have to be trained in-house minimum and supervised, and then go through the official training to the extent that any degree you have would allow you to, but they have built in additional training, mentoring and practicum requirements to maintain your employment here, but she did not have a specific agency that authorizes a piece of paper to give them, she can give them one, but it is not to an agency.¹⁴³

When asked what the ADE requires of her as a private school to participate in the Succeed scholarships program, the witness testified that they have to have progress monitoring annually, they have to communicate with parents the student's progress through report cards, things like that, they have to either have employed a person with a Special Education licensure or contract with one, and they contract with two Special Education licensed teachers, they have to have some teachers with a Bachelors, but it is not required for all to have a Bachelors, they have to have a program that is tailored to the children's special needs, you have to prove your program or the program you are providing is tailored to the Special Education need of that student; the witness testified that is why their population consists of children with a primary diagnosis of dyslexia, and they do not have a lot of students with other diagnoses.¹⁴⁴

The witness testified the DuBard program is not on the list of approved programs by the State Department of Education for dyslexia services because they chose not to apply to it. When asked how she had the ability to use that for dyslexia services if it is not on the list, the witness testified she goes based on what is nationally recognized as an appropriate accredited program, which means it has met the rigor and expectations that is universally accepted in the world of dyslexia intervention and research. When the witness was asked was she not required to use a dyslexia program on the approved ADE list because it is a private school, the witness testified that they do

¹⁴³ Vol. III, p. 222, l. 1, through p. 223, l. 23

¹⁴⁴ Vol. III, p. 223, l. 24, through p. 224, l. 18

use other programs that are on the list, but this specific program they chose to use is designed specifically for the population and is research-based as well, that you can only be on the ADE's list if you choose to apply. The witness testified this program is out of Mississippi, out of the University of Southern Mississippi, that is where the DuBard school is located, on that campus, and the witness said applying to the Arkansas Department of Ed may not have been on their list of priorities this year.¹⁴⁵

When asked if they are prepping their students to return to local school districts, the witness testified yes, their intention was never to have a full-blown school, but to be more of an intensive intervention program. The witness testified they encourage parents to research and identify schools they would like their students to return to so that six months prior to their transition they can begin to use and prepare the child to use any program that they might have available there. The witness testified that, for instance, the Barton reading and spelling program is one that a lot of school districts use, so if they know a student is returning to a specific school district that uses that, then they try to use some of the same verbiage so if they are not finished with the complete intervention program, they can seamlessly integrate back into the intervention program if they need to continue.¹⁴⁶

¹⁴⁵ Vol. III, p., 225, l. 13, through p. 226, l. 25

¹⁴⁶ Vol. III, p. 227, l. 1, through p. 227, l. 25

When asked how many children have transitioned in the four years experience she has with this program back into public school, not because they lost scholarship money or did not get the money, but because they actually progressed to the point they were able to go back into the public school setting, the witness testified she has used this program and approach for about ten years where she provided the intervention to children who were already in established schools, people who were home schooled trying to integrate back in, so if she looks at that whole number of years children have received this kind of intervention and then been able to successfully participate in a public or private school, it is a much larger number. When asked for a percentage, the witness testified she would say probably half the students who desire to can. The witness testified the number they have each year would average five or six that choose to leave or move away or whatever and have all been able to transition back to a traditional setting, that the success of that depends on when they can get the students and intervene.¹⁴⁷

When asked if the Succeed scholarship is an ongoing scholarship, once it is awarded to a family, the witness testified yes, that if you have a scholarship now and you stay in the program and you are going to be there next semester and the following semester after that, you do not have to reapply through the lottery system, once it is awarded to you, it is awarded to you, that if a student chooses to move from their school and go to another accredited private school, that scholarship would go with them. The witness testified that if they choose not to go to an approved private school or they go back to public school, that scholarship is released back into the pot, or lottery, or whatever you want to call it.¹⁴⁸

When asked about showing the Department of Education they have a program that is tailored to the Special Education needs, and do they have to show what dyslexia program they are using, the witness testified you do not have to specify, but that is something they do specify in all of their accreditation and paperwork to the Department of Ed. The witness testified they are not IMSLEC accredited because they do not have a training program, that they are accredited through COGNIA, but that they use a nationally accredited dyslexia program, they require their staff to go through that training, which is equivalent to a graduate level course, that it is 45 hours of graduate level course work, directed practicum and individual competencies and things like that you must pass in order to say you have completed the training program effectively, and that it is very, very rigorous. The witness testified the IMSLEC is out of Texas and is one of the first and longest dyslexia accrediting program, accrediting agency, so most of them are Texas-based programs with the exception of the DuBard Association. The witness testified she was talking about they are accredited by where they have a school that does not have a teaching program. The witness testified there are others, they are all over the country, there is one on the east coast that is academy of Orton-Gillingham something, but none are in Arkansas.¹⁴⁹

The witness testified that the training for DuBard she described as graduate level training is not the seminar she testified about earlier, and said that any IMSLEC accredited course for any accredited program is equivalent to a graduate level course, that you do not have to pursue

¹⁴⁷ Vol. III, p. 228, l. 1, through p. 230, l. 4

¹⁴⁸ Vol. III, p. 230, l. 5, through p. 231, l. 6

¹⁴⁹ Vol. III, p. 231, l. 15, through p. 233, l. 19

graduate level credit unless you choose to do so, it is just an additional fee to whatever university that program has partnered with.

When asked who she was referencing at Hannah when she said someone or some entity has had that graduate level training, the witness testified all of the teachers that have gone through the DuBard basic course, or DuBard seminar course.¹⁵⁰

PARENT

The Student's mother testified she graduated from Beebe in 2009, went to a vo-tech and got a massage therapy license, then married had a baby and has been a stay-at-home mom, she has three children, the oldest being the Student.¹⁵¹ The witness testified the Student developed normally until about age three, three and a half, when they noticed she had some speech issues, how she pronounced things. The witness testified that when the Student started pre-K, that was really when they noticed a lot of her speech issues, and she received services through Wilbur D. Mills through the Co-op at the school. The witness testified that when the Student finished pre-K, she received notification the Student had met all their speech goals and would no longer be in speech therapy. The witness testified she was unable to make the transition conference in February or March before the Student entered kindergarten, so they just sent the witness all the paperwork home and they never rescheduled a meeting.¹⁵²

The witness testified that in kindergarten the Student had a hard time getting things out on paper, and the way she talked, she could not think about a story and then just write it on paper. The witness testified that in kindergarten the Student reversed her "B's" and her "D's," she mispronounced a lot of things, she did not know certain letters, certain sounds, and when she tried to read baggy books—three words in a picture book—she read from right to left, that everything was always backwards. The witness testified that before she got allergy shots starting in the second grade, the Student was sick weekly with what was diagnosed as croup, and missed 12 days in kindergarten, but kindergarten was a pretty good year.¹⁵³

¹⁵⁰ Vol. III, p. 234, l. 3-25

¹⁵¹ Vol. III, p. 237, l. 8-22

¹⁵² Vol. III, p. 239, l. 14-21

¹⁵³ Vol. III, p. 240, l. 4, through p. 243, l. 20

The witness testified the Student's first grade year was where they really saw her starting to struggle and saw major regression, and the parent voiced that to the teacher through DoJo. The witness testified that whatever the Student learned in kindergarten, whatever sounds, whatever letters she already knew, and even things she knew back in pre-K, she had completely forgotten. As an example, the witness testified the Student could not tell the difference between an addition and a subtraction sign by the time she got back into school, that she was still frustrated with writing and could not get anything out on paper. The witness testified the Student was having spelling tests and doing poorly, that she could not spell. The witness testified the Student started to get very upset and would cry a lot. The teacher had spelling games, math problems, and would call on the Student, and if the Student got them wrong she would not get a piece of gum. The witness testified that was giving the Student such anxiety that she called and got that stopped. The witness testified that at the end of the fourth quarter, the Student was 6-8 points behind what was expected. The witness testified the Student had the baggy books again in first grade, and the Student would have to read them every night, that she was not reading right to left as much, but it was a real struggle, so the witness starting texting the teacher through Class DoJo asking if the Student could be dyslexic from her own research. The witness testified she was told they would check with the building literacy coach, which was Nancy Fancyboy. The witness testified she would never hear back, but she kept texting, asking about screening or testing. The witness testified that as the year ended she never received anything back about screening or testing. The witness testified that at one point the Student's teacher, Tiffany Camp, sent the witness a message that she did not know or understand why the Student was crying in class, that the Student should know how to do the work and the teacher was not going to help the Student. The witness testified that was when she called a meeting about that text message. The witness testified the meeting was the last part of the year, a few months before summer, that present at that meeting besides herself were the literacy coach for that building at the time, Allison Shuttleworth, the principal, Ms. Jenkins, and the Student's teacher, Ms. Camp. The witness testified that at that meeting they discussed the Student's regression, that she had marked on progress reports she received in conferences where the Student regressed, and she brought all the Student's progress reports, previous reports, to that meeting. The witness testified they also discussed her request for testing, but it was never decided whether or not the Student would be screened for dyslexia, that instead, they placed the Student in RTI, which is Response to Intervention, for two days weekly, 30 minutes a day, where they worked on reading. The witness testified she never received any progress monitoring, so she did not know exactly how that went in first grade. The witness testified the Student told the witness that she did not go to most of her sessions, and her reading was terrible. The witness testified the Student was getting ones, unsatisfactory, in math, ones in her operations, a lot of twos (which means needs improvement) in writing and language. The witness testified that she spent an hour and a half every night with the Student to read, to do her homework, and the Student was so frustrated she would have to walk off and then come back to it.¹⁵⁴

The witness testified that the Student's second grade year, the witness went to Open House and told the Student's teacher, Magen Edwards at the time, that first grade had been horrible, frightening, and they were not going to have another year like that. The witness testified she gave the teacher a brief background and told her she felt the Student had some dyslexic markers and

¹⁵⁴ Vol. III, p. 243, l. 21, through p. 252, l. 1

tendencies, and asked that the teacher keep an eye on it to let her know if there was more regression. The witness testified that a few weeks after Open House she messaged the teacher on DoJo, asking about setting up the Student with the dyslexia screener, that she wanted to move forward with that, but the teacher told her the district recommendation was to wait nine weeks to see if the Student regressed more. The witness testified a few weeks later she messaged the teacher again, and that is when they wanted to get the ball rolling. The witness testified she signed a consent for testing, and the test was 11-5-18. The witness testified when she voiced she wanted the Student tested for dyslexia, she also wanted a comprehensive evaluation done. The witness testified there was a Special Education referral dated 10-31. The witness testified she noticed the problem the first quarter of first grade, which was notes in the Student's records.¹⁵⁵

¹⁵⁵ Vol. III, p. 252, l. 2, through p. 254, l. 20

The witness testified the Student started allergy shots in second grade, she got braces that year, and she got glasses that year. Looking at the classroom-based assessment, the witness said it was correct that the Student struggled to apply new and previously learned concepts when faced with new skills, tasks, concepts, she required one-on-one assistance on most assignments, her academic skills were a minus, she did not comprehend what was read, she did not understand and follow directions, she did not identify the main idea of the story and did not retain new information, she did not use appropriate or expanded vocabulary, she did not write in complete or concisely, and underlined was the note that the Student required excessive assistance in class. The witness testified she was seeing all this at home also. The witness testified the Student's teacher had reached out to the witness saying the Student was struggling, so she was obviously giving her extra support, she got front row in class, and more one-on-one time with the teacher in class, and then the school had the Student back in RTI.¹⁵⁶

The witness testified the Student was placed with Ms. Dillard for dyslexia services after the referral was made, and she would see worksheets come home, but there was never home work in second grade because she could not read, except for one reading math program every night, but it did not matter if the Student read it, if the witness read it, or how it was presented, the Student just could not do it.¹⁵⁷

The witness agreed that in December there was an IEP. The witness testified that to have gotten the comprehensive evaluation, as she still had not heard back, once the dyslexia screen started, she had to type up a formal letter and present it to the central office and put it on everyone's desk for the comprehensive evaluation. The witness testified she was told the Student would be tested, but that was not done, that once the dyslexia screener was started, they never started the paperwork for it.¹⁵⁸

The witness agreed it was her understanding the IMSE program was started by November 26th, and she remembered seeing a few worksheets, but said she was never contacted. The witness testified Magen Edwards, the Student's second grade teacher, was telling the witness that the Student was having a lot of difficulty and was frustrated. The witness agreed that around December there was a speech and language evaluation done. The witness testified it was explained to her the Student had moderate receptive language delay, but that she did not fully even understand about the test given to determine language deficits, that they vaguely went over things. The witness testified she did understand the descriptions saying below average and that the lower the percentile ranks went down, the worse the child will be. The witness testified she understood the Student had a lot of weaknesses in her expressive and receptive language, and moderate to severe language deficits, and understood how the language delay interfered with the way the Student learned, and understood it was to be addressed in speech therapy.¹⁵⁹

¹⁵⁶ Vol. III, p. 255, l. 9, through p. 256, l. 21

¹⁵⁷ Vol. III, p. 256, l. 22, through p. 257, l. 19

¹⁵⁸ Vol. III, p. 257, l. 20, through p. 258, l. 17

¹⁵⁹ Vol. III, p. 259, l. 2, through p. 263, l. 9

As to the annual IEP review conference at the end of the Student's second grade year, the witness agreed it called for 30 minutes of instruction in reading, writing, five times a week, and three times a week for 30 minutes in math. The witness testified she was told the Student had characteristics of dyslexia, and then she had an SLD in short-term memory delay, an SLD in processing delay, and she thought they mentioned one other SLD. The witness testified the evaluation conference notes as to the Student having a severe discrepancy in oral expression, listening comprehension, reading comprehension and math problem-solving, that she was not achieving, made her heartbroken. When asked if she understood how the dyslexia services were being delivered, the witness testified she did not, but that she had since discovered how things were not done with fidelity, and that she had no idea what fidelity really was until this hearing. The witness testified she was not being told about progress in dyslexia services and never received anything showing dyslexia progress except the little worksheets she got from the dyslexia intervention teacher.¹⁶⁰

The witness testified, as to the annual review conference at the end of the year, with a DRA level of 18 and a "P" level on STAR reading, she knew the Student was behind, and it was basically explained to her that the Student was not on grade level, that she was not reading on second grade level, that she did not know the Student was two years behind.¹⁶¹

Looking at the Student's second grade report card, the witness testified she was told the Student was on a PP level for reading, and when she asked about that, she was told by Ms. Edwards that it was not grade level and that the Student was behind in reading, and was told the same thing as to the Student's independent reading level.¹⁶²

As to the Student's third grade year, the witness testified that in Ussery's class the Student's reading was like a roller coaster, and on the STAR level tests the Student was never getting a good grade. The witness testified the Student's attitude about school changed from second grade, that the witness felt they had a good support system in second grade compared to third grade, and in third grade that the Student would beg the witness not to be dropped off at school. The witness testified the Student was not as happy as normal, she had anxiety, stomach aches, headaches, she was just not herself in third grade, that she hated school. The witness said the Student had little homework in third grade because it was hard for her to read. The witness testified the Student went to the library weekly, but would come home with books that were way above the Student's reading level, and the witness would ask was the Student being helped in the library to pick out reading, so they were not really monitoring her.¹⁶³

¹⁶⁰ Vol. III, p. 263, l. 14, through p.266, l 8

¹⁶¹ Vol. III, p. 266, l. 19, through p. 267, l. 12

¹⁶² Vol. IV, p. 6, l. 15, through p. 7, l. 23

¹⁶³ Vol. IV, p. 10, l. 2, through p.15, l. 2

As to the Alternative Method of Instruction when COVID hit, the witness testified the Student got packets, that Sebourn sent slides in the mail for the Student to do, but the Student received no one-on-one instruction. The witness testified third grade work was being sent for the Student to do, and she could not do it and the witness was reaching out via emails as to how horrible it was. The witness said she was told the Student could do the packets or load her lessons onto Google Classroom, and the witness was reaching out asking how it was that the Student had an IEP and was not getting the extra support she needed as far as a pre-loaded lesson so the witness could teach the Student from the packet. The witness testified the direction she was giving the Student was not the same the Student was getting on the one-on-one intervention, that they were only offered two days a week, 15 minutes Google Meet, but she did not think that was even to go over what was in the AMI packet they were given for the Student's work.¹⁶⁴ The witness testified that during the time after COVID the Student did not get speech, nor did the witness remember the speech teacher ever calling.¹⁶⁵

The witness testified that as far as she knew, the Student was never provided dyslexia intervention during COVID, that the only thing provided was what Ms. Sebourn sent in the mail, the slides and some pieces of paper to go over, decode, and that was it, that there was no one-on-one instruction, no videos loaded for the Student to see instruction from the teachers. As to a program called Reading Horizons, the witness testified they talked about a seat, but she did not understand what a seat was, but the only thing offered was a seat and videos.¹⁶⁶

The witness testified she had discussed with Ms. Sebourn in emails that the witness felt the Student needed more support than them just sending packets home, and there was a welfare check at 6 p.m. one night, to see how the witness was doing since she had not replied to some emails, which was very odd to the witness. The witness testified they did not discuss Reading Horizons, and when she inquired about the Student not receiving her regular intervention, then the Reading Horizons was thrown at her.¹⁶⁷

As to what she was being told about the Student's progress or lack thereof in third grade, the witness testified she was just told the Student was below grade level reading, but that Ussery would say the Student was reading far above that in her classroom, so the witness never understood it. The witness said she knew the Student's ability to read at that point was very poor, she would stutter a lot in what she was trying to say, she would pronounce words wrong, and then basically just give up what she was trying to read.¹⁶⁸

When asked to give a chronology as to her efforts to get help for the Student over the years, the

¹⁶⁴ Vol. IV, p. 15, l. 6, through p. 17, l. 6

¹⁶⁵ Vol. IV, p. 17, l. 7-15

¹⁶⁶ Vol. IV, p. 17, l. 16, through p. 18, l. 22

¹⁶⁷ Vol. IV, p. 19, l. 25, through p. 21, l. 1

¹⁶⁸ Vol. IV, p. 21, l. 2-20

witness testified it started in first grade, that the witness would send messages through DoJo to the Student's teacher at the time, who was always telling the witness the teacher would get with the literacy coach and see if they could get services going, but then the witness would never hear back.

The witness testified that in second grade Ms. Edwards told the witness the district liked to wait nine weeks to see if there were any gaps or if it got better. The witness testified that in third grade the Student had an IEP, but things never got better and the gaps were getting bigger.¹⁶⁹

¹⁶⁹ Vol. IV, p. 21, l. 21, through p. 22, l. 20

As to a purple folder on the Student, the witness testified she had never seen anything out of a purple folder and she had never seen anything about the Student's progress besides what was on the IEP. The witness testified that when Audie began advocating for the Student, the witness had no idea what progress monitoring was, what was labeled as that and if it shows you anything, since she had not seen any type of progress monitoring.¹⁷⁰

When asked why she sought a private school, how she chose Hannah School and why she thought it was important for the Student to remain there, the witness testified she had heard previous experiences with parents who had their children placed there or just did research on the school, that it was absolutely life-changing for a dyslexic. The witness testified it was a process to get the Student in the school, that the Student's shadow day was in November, and you had to have an IEP to get in. The witness testified they could never have afforded to have the Student there if not for the Succeed scholarship. The witness testified the Student's first day was July 20th, that \$4,000 is due after the \$7,000 scholarship funds, and that is paid out monthly. The witness testified it would be easier if the Student could stay here, but she did not believe the Student was provided with FAPE in public school.¹⁷¹

When asked about the differences the witness has seen in the Student since being in the Hannah School, the witness testified that the first day of school the witness broke down crying when she was the Student running to the car smiling, that the Student could not get in the car quick enough to tell the witness about how good the day was. The witness testified the Student does not hate homework anymore, that she wants to do her homework, that she learned cursive after two days of being in Hannah School. The witness testified the Student's confidence is still being worked on, that she is hesitant if she gets an answer wrong, is she going to look stupid, but that her attitude has completely changed. The witness testified they are not working on reading yet since they are still working on sounds, but they are getting close to moving into that area.¹⁷²

Asked what makes the witness think the Hannah School is successful with the Student, the witness testified that the Student's grades, the progress monitoring the witness has been getting back shows growth, that the Student is on the right track, that with the right reading program, the right environment and the right teachers, the Student is going to learn how to read. The witness testified it was estimated the Student would need to stay there two to three years.¹⁷³

¹⁷⁰ Vol. IV, p. 23, l. 5-22

¹⁷¹ Vol. IV, p. 24, l. 8, through p. 27, l. 1

¹⁷² Vol. IV, p. 27, l. 11, through p. 28, l. 6

¹⁷³ Vol. IV, p. 28, l. 7-19

As to language therapy at Hannah School for the Student, the witness testified there are still a series of tests to be done, considering they cannot trust the school's IEP, so that is being worked through now. The witness testified there is a language therapist working in the Student's classroom. The witness testified that a year or two ago, it was really hard for the Student to formulate sentences and have a conversation, while now she is getting things out faster and is processing things a lot quicker.¹⁷⁴ The witness testified the Student is getting back to the same child they knew, and she was ecstatic when she was bumped up to the next class, and at a recent parent/teacher conference the witness was told they were very surprised and happy because the Student was growing so fast. The witness testified the Student is gaining confidence back every day.¹⁷⁵

The witness testified both she and her husband have college degrees. The witness testified the Student attends Hannah School Mondays through Thursdays, and then on Fridays she is virtual, that she has a binder of work to do and turns it in on Mondays. The witness testified the Student arrives at school at 8 a.m. and they start letting out at 2:30, and that the witness takes the Student. The witness testified she has not met the Student's teachers Ms. Minnie and Ms. Frazier due to COVID, and that she is aware neither of those teachers have a college degree, a teaching degree, are licensed teachers with the State of Arkansas, or have a Special Education certification. The witness testified she has not met the Student's teachers because no one is allowed in the building right now, that the students have to be dropped off at the door. As to the qualifications of the Student's teachers at Hannah School and those at Beebe, the witness testified she is confident in the reading curriculum Hannah School is using, while other teachers that have Masters and Associates degrees, they were not able to teach the Student how to read, so degrees are not relevant to the witness. The witness testified the Student's current teachers are trained in this reading curriculum and she has no doubt about them being able to teach the Student, that instead of just telling her about progress, they are showing her progress.¹⁷⁶

When asked if she was aware the Student is not getting Special Education services in reading at the Hannah School, the witness testified the Student is getting those services, that she is getting reading from a curriculum called DuBard. The witness testified the Student is getting math from Ms. Minnie and Ms. Frazier. The witness agreed that the DuBard Method the Student is receiving is not approved by the Arkansas Department of Education. The witness testified the only IEP meeting at Beebe she recalled missing was she thought back in pre-K, when the Student's speech therapy paperwork was sent home, that she believed that was noted in the book as "Parent missed meeting, and "via phone call." As to communication with Ms. Raper after COVID, the witness testified that if she had any text messages they would be on her phone, and she did not recall receiving a phone call from Ms. Raper. As to the welfare check made by Ms. Blausner, the

¹⁷⁴ Vol. IV, p. 28, l. 23, through p. 29, l. 17

¹⁷⁵ Vol. IV, p. 30, l. 16, through p. 31, l. 1

¹⁷⁶ Vol. IV, p. 32, l. 7, through p. 33, l. 21, Vol. IV, p. 39, l. 4-10, and Vol. IV, p. 39, l. 15, through p. 40, l. 10

witness testified she thought the home visit odd because she had never had a teacher show up at the witness' home just because the witness did not answer an email. As to the reason why she did not reply to emails, the witness testified they had some sickness in their house.¹⁷⁷

¹⁷⁷ Vol. IV, p. 33, l. 22, through p. 38, l. 8

When asked a hypothetical question, that the Student, in three semesters catches back up on and is on point where she should be, given a reading program that is not being used in the Beebe Public Schools, would it be the witness' desire to have the Student back in the public school system, the witness responded yes.¹⁷⁸

CONCLUSIONS OF LAW AND DISCUSSION

Current case law holds that “the burden of proof absent a state statute to the contrary in an administrative hearing challenging a denial of FAPE is properly placed upon the party seeking relief, whether that is the disabled child or the school district.”¹⁷⁹

FAPE as defined for the purposes of this part are:

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

¹⁷⁸ Vol. IV, p. 40, l. 23, through p. 41, l. 13

¹⁷⁹ Schaffer v. Weast, 44 IDELR 150 (U.S.2005)

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).¹⁸⁰ In 1982¹⁸¹ 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.¹⁸² Pursuant to *Rowley*, the first inquiry a court or hearing officer must make is whether the state, i.e., the local educational agency or district, has complied with the procedures and regulations as set out in the idea. Therefore, it must determine whether the IEP developed pursuant to the idea procedures was reasonably calculated to enable a student to make progress appropriate in the light of the student's circumstances.

Procedural violations are actionable, and an IEP should be set aside, only if (i) the procedural inadequacies compromised the pupil's right to an appropriate education, (ii) seriously hampered the parent's opportunity to participate in the formulation process, or (iii) caused a deprivation of education benefits.¹⁸³

Examining the first inquiry, that of whether the district has complied with the procedures set forth in the idea, this hearing officer hereby finds that the district did deny FAPE to the student on account of violation of procedural issues. Having analyzed the first prong of the FAPE analysis, it is now necessary to consider whether or not the district substantively denied FAPE to the student *i.e.*, whether the district failed to provide an IEP that was reasonably calculated to enable the student to make progress appropriate in the light of the student's circumstances.¹⁸⁴

In the present case there was an IEP developed for the student because the student needed specialized services. Essentially, an IEP is not required to be designed to maximize the student's potential commensurate with the opportunity provided to other children, however, the student's educational program must be appropriately ambitious in the light of his circumstances and every child should have the chance to reach a fuller potential by having challenging objectives written into their IEP. Specifically, "the IDEA requires public school districts to educate 'a wide spectrum of handicapped children,' and the benefits obtained by children at different ends of the spectrum will 'differ dramatically.'"

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

¹⁸¹ *Hendrick Hudson Dist. Bd. Of Educ. V. Rowley*,

¹⁸² 458 U.S. 176, 206-07 (1982)

¹⁸³ *Park Hill Sch. Dist. v. Dass*, 655 F.3d 762, 766 (8th Cir. 2011)

¹⁸⁴ *Andrew F. V. Douglas County School District Re-1*, 137 S. Ct. at 1000

Having determined that the district did not provide FAPE to the student it is noted that there is no requirement in the IDEA that a child shall be provided with the specific educational placement or services that his or her parents prefer.¹⁸⁵ Additionally, nothing in the IDEA requires that a school district maximize a student's potential or provide the best possible education at the expense of the public.¹⁸⁶ Pursuant to *Andrew*¹⁸⁷, a district's obligations under the IDEA are satisfied when a child receives FAPE, i.e., personalized instruction with sufficient support services appropriately ambitious, with challenging objectives, to enable the student to make progress appropriate in the light of the students circumstances. This did not occur for this Student. After hearing each witness and evaluating their credibility and reviewing the evidence presented in the transcript of the due process hearing, the Hearing Officer Finds the following:

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 relief sought by Petitioners is Ordered. The Student was not provided FAPE instruction with sufficient support services appropriately ambitious, with challenging objectives, to enable the Student to make progress appropriate in the light of the Student's circumstances within the Beebe School District. There has been no demonstration of any diminished educational performance by the Student which has been addressed adequately through the Students IEP with direct services provided by the district through trained staff, using proper instructional/teaching methods.

Therefore it is my Order that Beebe School District:

1. Reimburse the Petitioner for tuition for two semesters for the Student in Hannah School in the amount of \$1500.00 per semester, for the Fall semester of 2020 and the Spring semester of 2021, to be paid to the Petitioner within 15 days after receiving proof the student was enrolled in the Hannah School for the complete semester;
2. The Petitioner shall be responsible for providing the Students enrollment proof to the Beebe School District at the end of each semester to receive reimbursement;
3. The Beebe School District is Ordered to have in place, with fully trained staff, a Dyslexia Program that is systematic and explicit and which is fully approved by the Arkansas Department of Education no later than the beginning of the Fall 2021 semester;
4. If the Student chooses to return to the Beebe School District within twenty four months

¹⁸⁵ *Rowley*, 458 U.S. 176, at 203 (1982)

¹⁸⁶ *T. F. v. Special School District St. Louis Co.*, 449F 3rd 816, 821(8th Cir. 2006)

¹⁸⁷ *Supra*

the Beebe School District is Ordered to provide a Comprehensive Dyslexia Evaluation and develop an appropriate IEP designed to meet the deficits indicated by such an evaluation.

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, the Hearing Officer has no further jurisdiction over the parties to the hearing.

Michael McCauley

Michael McCauley
Due Process Hearing Officer
October 31st, 2020