

ARKANSAS DEPARTMENT of EDUCATION
Special Education Section

XXXXXXXXXXXX, as)	PETITIONER
Parents of XXXXXXX, Student)	
)	
v.)	Case Number H22-01
)	
Palestine-Wheatley School District)	RESPONDENT

NOW on this 8th and 9th and 10th days of September, 2021, came on for hearing Petitioner’s Request for a Due Process Hearing, Petitioners, XXXXXXXXXXX, as Parents of XXXXXXXXXXX, Student, represented by Theresa Caldwell, Attorney, and Respondent, Palestine-Wheatley 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. Based upon the testimony of the witnesses and the evidence presented and admitted into the record of this proceeding, the following findings of fact and conclusions of law are made:

ISSUES PRESENTED:

Were the educational placements and services offered by Palestine-Wheatley School District from July 2nd, 2019 to July 1st, 2021 reasonably calculated to provide Student with a free, appropriate public education (hereinafter referred to as FAPE)?

1. Did Respondent fail to evaluate Student with a known disability as required when entering Kindergarten:
2. Did Respondent fail to evaluate Student as required in first grade with obvious continuing failures in reading, spelling and math:
3. Did Respondent fail evaluate Student as required after requests for an evaluation by parent:

RELIEF REQUESTED

1. Provide Student 6000 minutes (100 hours) of Compensatory Education to address academic deficits;
2. Provide Student 2040 minutes (34 hours) of Compensatory Speech Therapy; and

3. Provide Student 3510 minutes (58.5 hours) of Compensatory Occupational Therapy.

PROCEDURAL HISTORY:

On July 2nd, 2021, the Arkansas Department of Education (hereinafter referred to as “Department”) received a request to initiate due process hearing procedures from XXXXXXXXXXXX, parents of XXXXXXXXXXXX. 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 seven-year-old, male enrolled in the Palestine-Wheatley School District.

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 2nd, 2021 and a Timeline Order was issued on July 2nd, 2021 Thereafter, August 1st, 2021 was set as the date on which a hearing would commence should the Parents and District fail reach resolution prior to that time. The Due Process Hearing was set for August 3rd, 4th and 5th, 2021 On July 8th, 2020, an Opening Order and Pre Hearing Order was issued and mailed to the Parties. On July 30th, 2021 the Hearing Officer received and unopposed written Motion to Continue from the Petitioner. The motion was granted July 30th, 2021 and the Due Process Hearing was Continued until September 8th, 9th and 10th, 2021. On September 4th, 2021 Petitioner filed a Motion For A More Appropriate Venue which was granted on September 5th, 2021.

On September 7th, 2021 the Hearing Officer received and reviewed the Petitioners and Respondents Pre Hearing Briefs. On September 7th, 2021 a Pre Hearing Conference was held using ZOOM Conference.

On September 8th, 2021 the Due Process Hearing was called and held by ZOOM conference. Witnesses were called and evidence admitted on September 8th, September 9th and September 10th, 2021. At this time both sides rested and the Hearing was concluded. The transcript was delivered on September 24th, 2021 and Post Hearing Briefs were received September 27th, 2021.

WITNESS LORI GINN

The witness Lori Ginn testified that she is the Special Education supervisor for Palestine School District, holding a Bachelors degree in speech pathology and a Master’s degree in Special Education, with hours toward certification in licensure for LEA supervisor and also for Ed examiner. The witness testified she does not have her CCC, that she changed over to the Master’s program for Special Education.¹

¹ Vol. I, p. 10, l. 18, through p. 11, l. 14

The witness testified she worked five years doing speech therapy starting in 1997 for Forrest City schools, got her Master's degree, then moved to Barton School District and taught high school Resource there for five years, then became Special Ed supervisor for Lee County School District in Marianna and was there twelve years as their Special Ed director, and that she has been with the Co-op as the Special Ed director for Palestine, Clarendon and Barton, that this is her sixth year, so twenty-six years altogether.²

When asked if there was a full individual comprehensive evaluation conducted of the Student prior to starting kindergarten at Palestine Elementary, the witness testified no, and said that the evaluation they received from the pre-school services was still in date, so they used that for the Student's eligibility.³

When asked her understanding of what takes place between the Early Childhood program the Student was in and when he came into kindergarten, her responsibilities at that point, the witness testified they are invited to the pre-school transition conference from the pre-schools and day cares in Great Rivers where they provide services, and a district representative has to be present. The witness testified that was usually her, that they look over the information given, the Due Process, and the Co-op makes a recommendation, and then they determine together with the parent if those services are wanted to be continued in the school year for the school age IEP. The witness testified that then they look at the evaluations, and if they are current, they move forward with an IEP to be ready for the start of school in August. The witness agreed that one of the purposes when children transition from the Early Childhood Special Education program is to determine whether a child at the point of entering kindergarten is a child with a disability under the IDEA.⁴

When asked if the Student received services under the Early Childhood program on an IEP from the Co-op, the witness testified after looking at the pre-school transition IEP that the Student had goals in cognition where he was counting and doing math and he had speech goals. The witness testified at the transition conference then pre-school makes recommendations on what services need to be continued for the child to be successful, and that is what the initial conference with the parents is based on.⁵

After reviewing a document, the witness testified the Student was dismissed from developmental services through Great River Educational Co-op and transitioned for speech services for the '19-'20 school year, that they consider the recommendations and place the student for what they can place him for based on the recommendations so there is no interruption of services, for instance the

² Vol. I, p.11, l. 25, through p. 11, l. 11

³ Vol. I, p. 14, l. 13, through p. 15, l. 1

⁴ Vol. I, p. 15, l. 8, through p. 16, l. 11

⁵ Vol. I, p. 16, l. 14, through p. 19, p. 7

Student's speech in this case.⁶ The witness agreed she was familiar with the ADE-suggested transition process, Section 21 of the regs., which sets out that the Early Childhood program, ages 3-5, are noncategorical, meaning their eligibility to receive Special Ed services must be determined by the time they begin kindergarten.⁷

The witness agreed that when an evaluation is given to determine if a child meets Arkansas Special Ed eligibility criteria, school-age requirements, testing must be done in all areas in which the child may have disability, any area of suspected disability. The witness testified the Student had a current speech evaluation, so they transitioned him for speech, that he entered school with an IEP for speech.⁸

Looking at an IEP for the Student reflecting pre-K, but saying age 5 for the Student, the witness testified she thought they marked out "P" and put kindergarten, since it says "Palestine" at the top instead of "Great Rivers."⁹ The witness testified there was no information on the Student's academics, as he was not transitioned for developmental services. When asked if there was an obligation when a child comes without any comprehensive evaluation into school to conduct any kind of initial evaluation, the witness testified the Student had been dismissed from developmental services, so they did not look at that since they were told the Student had met the developmental goals.¹⁰

Looking at the Student's IEP, the witness testified he was transitioned with 60 minutes weekly of speech therapy instead of the 30 minutes from Early Childhood, since they usually increase the minutes for speech as they have more access to the child. The witness testified the current evaluation dated 9-3-18 on which they based their recommendations for the school setting was less than a year old at the time of the 4-4-19 conference. The witness testified that the Student qualified as speech and language-impaired under the IDEA because of that evaluation, and no other information was needed to develop an IEP at that time. Testifying as to why a new speech evaluation was done in September, the witness said that was normal practice once they have the student present in school and the therapist knows the child, and all the pre-school transition students must be evaluated within a year, which is sometimes it is in the spring, sometimes in the fall.¹¹

As to the occupational therapy evaluation done for the Student 9-6-19, and why that evaluation was asked for, the witness testified she was not at the 11-13 evaluation conference, nor was an occupational therapist to explain the OT evaluation, but she assumed the speech pathologist present

⁶ Vol. I, p. 20, l. 4 through p. 22 l. 1

⁷ Vol. I, p. 22, l. 2-13

⁸ Vol. I, p. 22, l. 21, through p. 25, l. 6

⁹ Vol. I, p. 25, l. 20, through p. 26, l. 9

¹⁰ Vol. I, p. 26, l. 16, through p. 28, l. 23

¹¹ Vol. I, p. 28, l. 24, through p. 31, l. 11

took that role at the conference. The witness testified it is their practice to include the service providers in IEP meetings if it was felt their attendance was pertinent for something, and that although the occupational therapist was not present, there was a written report from her recommending 90 minutes of OT.¹²

The witness agreed a referral was made for the Student because he was failing and needed additional academic support. The witness testified there was a conference in January 2021 to discuss some academic concerns, but the witness was not present.¹³ The witness testified she was aware there was a conference in which the Student being retained was discussed and that the mother was told.¹⁴

When asked about the Student's math or academics, that if once eligibility is met in any of the categories, speech, hearing-impaired, visual impairment, orthopedic impairment, autism, whatever the category, whether SLD, Other Health impaired, once qualified, deficits are to be addressed under the IEP, the witness testified they are to address the whole child, based on the adverse effect of the disability, but that for information to be looked at there would need to be some data to substantiate the need. The witness testified if they pulled all students into the Resource room that have a deficit in math those rooms would be full and it would defeat the purpose of that room to have direct, small group individualized instruction, so they have to have data to substantiate a need.¹⁵

When asked about the first grade first nine weeks of school grade card showing the Student was failing spelling with a 32, had a 62 in reading and a 62 in math, and the third nine weeks' report card showing he was failing everything, and the letter dated 2-23-21 to the parent saying retention was recommended, was that not enough to trigger intervention for the Student, the witness testified that would be enough to trigger intervention and concern for academic support. The witness also testified that at the January meeting the Student was not put in Special Ed in the Resource room. The witness agreed the Student's IEP was amended 5-12-21, with ten days of school left, to include math and literacy services due to a change in the PLAAFP statement and new eligibility as an SLD student, but no services were added for ten days. The witness further agreed the Student was not given an IQ and a comprehensive evaluation until 3-29, a month after the parent received notice the Student was going to fail.¹⁶

The witness testified even though the Student was failing, the District did not give the Student any

¹² Vol. I, p. 43, l. 2-18 and p. 52, l. 16 through p.53,l. 1, and p. 54, l. 1-16 through p. 56, l. 3

¹³ Vol. I, p. 58, l. 2-20 and p. 59, l. 23, through p. 60, l. 6

¹⁴ Vol. I, p. 60, l. 7-16

¹⁵ Vol. I, p. 63, l. 1 through p. 65, l. 7

¹⁶ Vol. I, p. 65, l. 8, through p.68, l. 5, and p.69, l. 18 through p. 71, l. 1-25

services through the end of the year through his IEP, but that he was placed in RTI in January. The witness agreed there was a document saying the Student was failing every subject, that he was in the 95 Percent Group intervention program but was not making progress. Looking at the document about the 95 Percent Group program saying 1-22 the Student was referred and a conference was held, the witness agreed that the parent had made several requests for academic evaluation. The witness was asked if she knew the parent was never told about whether the Student would fail or pass at the May IEP meeting, the witness testified they did not have the final grades in May. When asked if the Student was qualified for any Special Ed services he needs since he was eligible for Special Ed services as a speech-impaired child, the witness did not agree.¹⁷

The witness testified when a Special Ed student is failing that says to her a conference needs to be held to discuss why that child is failing, but there could be a number of reasons, that it could be absences, not turning in homework, a number of things. The witness agreed the IDEA requires review and revision of the IEP if a child is not making progress.¹⁸

When asked why the Student did not get services for the four-month process of being evaluated, being declared eligible, then it was too late in the school year, the witness testified the Student was in RTI in January and February and there were two conferences, and at the second one other data was brought in with the mention of ADHS diagnosis, and they had to have data to substantiate need for increased services in an IEP, that you had to have failing grades or lack of expected progress, new evaluation data. The witness testified she was not at the January meeting.¹⁹

When asked who would have been telling the parents about how the Student was doing, the witness testified it would have been the speech teacher in first grade, but when discussing academics the speech teacher usually invites Ms. Oltmann to come since she is the expert in academic instruction. The witness testified Ms. Oltmann was not at the January conference, so the speech path would have given the parent information about the Student's progress, and also for academics as the folder-holder.²⁰ The witness agreed the Student received no accommodations on his IEP in kindergarten.²¹

When asked if she knew the Student's classroom teacher told the parent, when asked about the Student being so far behind, it would be best for the Student to be held back before he received Special Ed services, the witness testified she did not know until long after the fact, and that was

¹⁷ Vol. I, p. 71, p. 1, through p. 75, l. 23

¹⁸ Vol. I, p. 75, l. 24, through p. 77, l. 7

¹⁹ Vol. I, p. 80, l. 10, through p. 82, l. 5

²⁰ Vol. I, p. 82, l. 22, through p. 84, l. 2

²¹ Vol. I, p. 84, l. 3-15

discussed for the May meeting.²²

WITNESS CODY JACKSON

The witness Cody Jackson testified she was the Student's first grade teacher. The witness testified she is in her 21st year of teaching, that she has taught third, fourth and first grades. The witness testified she graduated from Arkansas State in 2001, then got her Masters of art in teaching from Harding in 2005, that this is her seventh year at Palestine-Wheatley, that she had taught in Pulaski County, then Forrest City School District before Palestine. Asked to discuss the Student, the witness testified when he came in to her she knew he had a speech IEP, getting speech services only, but other than that she was unaware of any other disabilities, though she testified she thought he was in occupational therapy as well as speech. Discussing the daily schedule last year when she had the Student, the witness testified school began around 7:35, students would come in and out to breakfast, they would get their book bag or work on a morning activity if they had that until about 8:30, and during that time the witness would work one-on-one if anyone needed extra help or testing, then at 8:20 they would start math at their desks. The witness testified they tried to wrap that up around 9:30, 9:45, then they sometimes did read-aloud, dependent on the pull-out schedules or such, like one day they go to PE, one day to art, that her schedule changed a couple of time, but she thought the activity periods were 1:10 to 1:50 the latter part of last year, and that the children rotated through those and also library. The witness testified the read-aloud was 15-20 minutes where she would read a story with the students and talk about vocabulary, but the time was not consistent daily, and after that they went to reading groups maybe 45 minutes to an hour, that she usually tried to push for an hour, but they could not always get that far before lunch, as they started lining up for lunch at 11:30, so they had math, reading, literacy, and also phonics before lunch. The witness testified that at 12:20 they come back in from the playground and do language and writing until they go to activity time about 12:30 to 1:10, then they get out their planners and write any homework and make sure the homework gets into the homework pocket, that sometimes that is when they would switch out a book for their book bag, and at about 2:20 they went outside for last recess until 2:40. The witness testified she had 18 or 19 students in her classroom last year, and some years has had 18 and some years 25. The witness testified there were three first grade classes last year.²³

The witness testified her expectation as to what a child should know coming into the first grade as most of them are reading at least at a lower reading level, that there are different levels. The witness testified she would not always expect them to be above Beginning Reader, that she has children who come to her that are not, and that they informed parents twice last year about grade levels. The witness testified the Student, according to his first Istation, was before kindergarten level. The witness testified, as to her expectations for children coming from kindergarten reading, there is generally a wide range, but the majority of students are in right about where they should be.

²² Vol. I, p. 92, l. 11-22

²³ Vol. I, p. 97, l. 11, through p. 104, l. 24

The witness testified as far as math expectations, starting out they hope the students can add single digit, know how to count, write their numbers, and that most are adding up to 20, but they generally count beyond that.²⁴ As to her expectations for first graders, the witness testified a “G” is closer to where they push for toward the end of first grade, so coming in a lot of times they might be on a “C,” “D,” or “B,” and if she had to assign where the Student was coming in to the first grade classroom, he would be towards “A” as opposed to “G.”²⁵

Asked what kind of progress monitoring she did with her first graders, the witness testified they did some of their small group, through their 95 Percent Group intervention program, or sometimes working one-on-one, and after so many weeks they do another to see what progress is. When asked what Core curriculum is used to teach reading, the witness testified methods out of the Science of Reading, and they have Phonetic Connections from which they pull weekly spelling words and that skill they are working on in whole group phonics. The witness testified, as to the 95 Percent Group intervention program, there is a screener and they take results of that screener to decide where children have deficits and what needs to be targeted for them.²⁶

The witness testified the 95 Percent Group program was used with the Student, but it was not entirely effective. Reading from her own writing dated 3-15-2020, the witness testified she had written that the Student was in the lowest group of intervention, that his progress was minimal, then reading 4 to 6 correct words on average per minute. The witness testified that 4 to 6 words is not success, and that reading between 30 and 80 words a minute sounded about right at the beginning of second grade. The witness agreed that what she had written in March was that the Student was a really bad reader and needed really intense intervention.²⁷

The witness testified she knew the Student was in Special Ed in speech and OT, and when asked why could they not just add services for him to get reading intervention, the witness testified she did not realize that was how that worked, that you would add services to a speech IEP. The witness testified she relied on others to tell her what she needed to do when a child needs help and is not getting anywhere, that she had spoken to Ms. Oltmann, Ms. Wilson and the speech teacher Taylor Arens. The witness testified she told them her concerns the Student was missing a lot of the foundation without interventions from small group, 95 Percent Group, those sort of things, but testified she did not feel she was out of tools and options in her drawer to help the Student.²⁸

²⁴ Vol. I, p. 105, l. 1-13, through 13, and Vol. I. p. 107, l. 9 through p. 110, l. 2

²⁵ Vol. I, p. 111, l. 15, through p. 113, l. 24

²⁶ Vol. I, p. 113, l. 25, through p. 115, l. 21

²⁷ Vol. I, p. 115, l. 22, through p. 119, l. 4

²⁸ Vol. I, p. 119, l. 5, through p. 122, l. 24

As to the Student having been tested for dyslexia, the witness testified they do screening at the beginning of the year and throughout the year as well. The witness testified they do DIBELS, the PASSE, DSA, phonemics screeners. When asked if she did any of those on the Student last year the witness testified she did, that they are in the front of the Student's DIBELS somewhere, but she longer had those records in July, that she does not keep those records over the summer because she generally does not keep stuff in her classroom when she is not there, and it has not been their habit in the past to keep all of that over the summer.²⁹

When looking at the Student's First grade DIBELS scores, September and May, the witness explained the first page is letter naming fluency, and it shows the Student named 23 correct letters in one minute. Looking at the next page, phoneme segmentation, the witness testified on all three pages they do one minute on naming fluency, one on phoneme segmentation fluency and one on the nonsense word fluency. The witness testified they look at scores and the chart to see if students are above benchmark for the beginning of the year, at risk or well below, but that chart was not included in this information. The witness testified it looked like total correct letter sounds for the Student was 15, so you get a total based on how far they made it in the one minute. As to the document saying the Student's total whole words read was zero, the witness testified that was not uncommon for the beginning, as those are nonsense words. Looking at word fluency, the witness testified the document was the Student's middle of the year nonsense fluency, and also looked at the oral reading fluency tested in January, and testified the Student was not successful on the Word Knowledge Test at the beginning of the year test, that on most the Student's letters were not even close, and that would give an idea of how much the Student was not ready. The witness looked at an example of the Student's writing, and testified her thought when she looked at that was not dyslexia, but testified she was aware of the law that interventions were to be provided if a child shows markers of dyslexia. The witness agreed the Student was a tier to himself in being way behind in the beginning. The witness testified she felt there were a lot of holes in the Student's foundation that he did not gather in kindergarten, that perhaps part of it could be missing the last nine weeks of kindergarten due to the COVID quarantine, so there may have been several factors.³⁰

The witness testified she began working with Taylor as to the Student's articulation problem with speech, that Taylor knew the weekly spelling words, so would give the witness sticky notes as to substitutions because of the Student's speech, but that she could understand his speech except when he got excited and talked super fast.³¹

The witness agreed she had had students like the Student for whom she had to ask for help or make a Special Ed referral, that in the past she made a Special Ed referral where maybe the child is in first grade a second time and still not making progress. The witness testified she felt a lot of the reasons

²⁹ Vol. I, p. 122, l. 4-17, and Vol. I, p. 124, l. 8 through p. 125, l. 21

³⁰ Vol. I, p. 125, l. 22, through p.136, l. 12

³¹ Vol. I, p. 136, l. 13, through p. 137, l. 17

the Student struggled to make progress throughout the year was he was very inattentive, and that she told the Student's mother at one point it did not feel like the Student was absorbing what the witness was saying. The witness testified she did not know that inattentiveness is a referral characteristic for a child with a Specific Learning Disability.³²

When asked when the Student's parent began talking about the Student being tested, the witness first testified it was in January, but looking at text messages between herself and the Student's parent, the witness testified that in September the parent said she had concerns about the Student's reading and spelling, and wondered if he needed to be tested in those areas for Special Ed, but the witness said it was too early.³³ The witness, when asked if the Student presented like a child with an SLD to her in her classroom in first grade, testified that the big picture she saw was lack of foundation, and her first thought was not that he was a child with an SLD.³⁴

Looking at logs from when the Student was pulled out for OT, when the Student was pulled out 53 times from reading, the witness agreed that would impact foundational time, and she did not know why the Student was pulled out during Core instruction for speech or OT.³⁵ Referring back to the texts between the Student's parent and herself, the witness testified when she told the parent the witness did not see Special Ed testing at that time, that if he was tested then and did not qualify, he would not be tested any time soon, she did not understand the Student was already qualified under speech and language for those services.³⁶

Looking at the logs showing the Student was pulled out 53 times for speech and OT during reading and 17 times in language arts, and maybe 8 times in math combined through the year, the witness agreed that might not be good to help him even keep up. Looking at the 9-15-20 Istation progress monitoring, and the math one taken September 16th, between September and May on reading comprehension the Student was in the 28th percentile, in the white area, the witness testified she had nothing to show the Student went the same level of reading the whole school year other than she could only attest to what he could and could not read with her, which was not measured there. The witness agreed the Student's overall reading comprehension declined from the 28th percentile to the first percentile. Looking at a document reciting the Student was at significant risk of not meeting grade level expectations and under vocabulary said "Declining, Tier 3," the witness testified Tier 3 is the most critical in need.

³² Vol. I, p. 138, l. 24, through p. 140, l. 10

³³ Vol. I, p. 141, l. 20, through p. 145, l. 7

³⁴ Vol. I, p. 147, l. 9-19

³⁵ Vol. I, p. 150, l. 11, through p. 151, l. 7

³⁶ Vol. I, p. 151, l. 24, through p. 153, l. 3

Looking at a document of January 11th saying there was only one Tier 3 in her classroom in reading, the Student, and that his percentile in math was 17, in need of critical intervention, the witness agreed with that document.³⁷

Looking at a Priority Report Overview, the witness testified she believed it was from the Student's May testing, showing him to demonstrate significant weakness in spelling, ongoing struggles in spelling, vocabulary, reading comp and alphabet decoding, as well as ongoing difficulty in phonemic awareness, his best area.³⁸ As to what she told the Student's parents twice in the year as to what the Student's grade level reading was, the witness testified she remembered telling the IEP team the Student needed to repeat first grade, that he was not reading on grade level, but while the Student's beginning reading level was below kindergarten, in January it was at kindergarten level.³⁹ The witness admitted the Student was never on a first grade level in reading.⁴⁰

Looking at a psychological report on the Student, the witness testified she remembered some of the things in that were presented to the IEP team in May, but she did not read the entire document. The witness did not disagree with the reporting showing tests on the reading, the GORT, Gray Oral Reading Test, the Student's accuracy, fluence, oral reading and comprehension were all below first grade level. As to interpretation of the report at the May meeting, the witness testified Ms. Oltmann and Ms. Ginn were there, and she recalled they had a conversation about the report, but could not say if they were qualified to interpret it. The witnesses testified that at the end of that May meeting no one knew whether the Student was going to be retained or not. The witness testified that when grades came out, the Student had really declined in reading and math, and he was going to be retained, that she had written that on the Student's report card before it was mailed out. The witness testified she felt that would be better than a summer program or something else, that she knew the Student began taking medicine toward the end of April and she started seeing him retain, absorb more, and she wanted him to have the chance to absorb more.⁴¹

WITNESS MYRA LONG

The witness Myra Long testified Long Therapy Providers provides the therapist for therapy at Palestine school. The witness testified she has a Master's degree as a speech therapist, holds her "C," in speech pathology and has worked in speech for 38 years, this being the fifth year for providing speech therapists or speech therapy in the Palestine School District.

³⁷ Vol. I, p. 153, l. 4, through p. 154, l. 9, and p.157. L. 9, through p.160, l. 4

³⁸ Vol. I, p. 162, l. 21, through p. 163, l. 13

³⁹ Vol. I, p. 168, l. 18, through p. 169, l. 10

⁴⁰ Vol. I, p. 172, l. 13-15

⁴¹ Vol. I, p. 172, l. 22, through p. 179, l. 25

The witness testified that from time to time she comes to the school and does speech therapy, that last spring she did some.⁴²

The witness testified that the therapist who actually did the Student's therapy had a baby very recently and could not appear today, and the witness testified she had not made herself familiar with the paperwork yet, but that if the records are here, she can definitely go off Taylor's reports. The witness testified that, as to transition conferences for students coming in to the Palestine-Wheatley School District from an Early Childhood program, her group gets a list of the transitions, and they attend if they can, but if it is at the same time as their annual reviews, then they cannot attend, and added that she did not attend the Student's transition conference.⁴³

Looking at the parents' exhibit book as to the Student's transition conference held 4-4-19 and the people listed who attended, as to who she knew or recognized from that list, the witness testified Lori Ginn and Nicole, and said she did not personally know Ashley Shepherd, but that she is an SLP who had been with the Co-op working with the Early Childhood program, but the witness did not know if Ashley was still with the Co-op.⁴⁴ When asked when and how she would know she was to have a student, such as the Student here, for speech therapy, the witness testified that after conferences, if the SLP has recommended continuation of services, then they would receive a packet with the information and know they are on the list. When asked if she was familiar with the term a speech-only IEP, the witness testified that is what they say if a child does not go to Resource.⁴⁵

The witness testified that at Palestine, who the child goes to is the folder-keeper, that they have the responsibility for the students' paperwork, such as Ms. Oltmann will do for Resource, the speech therapist does for speech, so the speech therapist has to do all the Notices of Conference and carry on all the conferences. When asked how many children in the Palestine School District in the last five years have come in with a speech-only IEP, the witness testified she believed ten children they received a notice on, where they were coming out of an Early Childhood environment where they had an IEP, that half were speech-only and the other half would have been developmental and speech, or OT or a PT.⁴⁶

The witness testified that when they went to one of the conferences, the developmental person, or maybe the speech pathologist, and the parent are there, and they start their paperwork and listen to the progress and recommendations for the next school year, that they do not usually see the IEP unless

⁴² Vol. II, p. 5, l. 22, through p. 6, l. 18

⁴³ Vol. II, p. 6, l. 24, through p. 8, l. 5

⁴⁴ Vol. II, p. 8, l. 6-23

⁴⁵ Vol. II, p. 9, l. 6-24

⁴⁶ Vol. II, p. 10, l. 1 through p. 11, l. 8

the child is still exhibiting an articulation delay and they think the child needs to continue in kindergarten. The witness testified the transition conference is usually a kind of screener they do, they would go over all the data to see if the student completed all his goals, if he screened out. The witness agreed she was familiar with the district's obligation to determine that the child is eligible under the IDEA, under the school-aged regulations. The witness testified to fit the Student into one of the 13 categories, they have to understand his needs, and they would go by the pre-school recommendations to see what has improved, what scores are completed, if the objectives from the treatment plan were completed.⁴⁷

As to the Student being eligible under the IDEA, the witness testified if he was tested in the last three years, the three-year evaluation where he was placed can be used, and that usually these children are tested yearly, but she did not know about the Student.⁴⁸

Discussing that the Student did not have a parent referral for the evaluation conference since the Student was coming from an IEP, and the process if there was a parent referral, the witness testified they start the Due Process, that they hold a referral conference, get the vision and hearing, the social history and set up a conference. The witness agreed that out of the conference, there are three decisions that could be made, they could make a comprehensive evaluation, a specialized evaluation, or no evaluation. The witness testified that to get speech impaired, they would go off the other speech pathologist's recommendation and their testing, and when they go in they would request permission to test. The witness testified this was not Child Find. The witness testified when they have the first meeting they are going to get permission to test, but evidently this did not happen with the Student in this case.⁴⁹

Looking at the first evaluation done on the Student dated 10-29-19, kindergarten year, the witness testified they try to test new kindergartners coming in so they have up-to-date information and can write appropriate goals and objectives. When asked why that would not be done before they start, the witness testified it would be time restraints.⁵⁰ When asked to look at logs to see the Student's first session, the witness testified it said the Student was absent 10-1-19, and that 10-3 looked like the first session. When asked if the Student was on a speech-only IEP, why he would not start until then, the witness testified she would think the Student was not on her schedule, he did not have an IEP on her schedule to provide speech therapy.⁵¹

⁴⁷ Vol. II, p. 12, l. 6, through p. 14, l. 24

⁴⁸ Vol. II, p. 15, l. 16, through p. 16, l. 20

⁴⁹ Vol. II, p. 17, l. 4, through p. 19, l. 12

⁵⁰ Vol. II, p. 22, l. 18, through p. 23, l. 11, and p. 24, l. 16-25

⁵¹ Vol. II, p. 25, l. 13, through p. 27, l. 5

Looking at the first session of first grade year, listing a 9-2 first session, the week after school started, the witness testified that would make her assume they had it on their schedule, that the Student had an IEP, and it was on their schedule he needed speech therapy sessions.⁵²

Looking at the Student's first speech evaluation, done 10-10, and the document saying "Re-evaluation, EDR, 9-18-19," saying the purpose of the meeting was "Conduct an Existing Data Review, and under "Other" said "Consider occupational therapy evaluation," then "slash speech re-evaluation," the witness testified she would be the person sending out the Notice of Conference at Palestine, and they would receive a folder to know they needed to conduct an EDR and consider an OT therapy evaluation. When asked if she knew why the occupational therapist would not be invited if an evaluation was to be considered, the witness testified they are contract, as she is, and they travel and have several districts, and their schedules do not always coincide.⁵³

The witness testified they do IEP meetings and annual reviews only if they are speech-only, and supply their end-of-the year, all their data, what goals are going to be for next year, their achievements and our recommendation, and other things could be considered.⁵⁴ When asked how they would know what to test for, looking at the Notice of Action, the witness testified it would have been discussed during the conference, and the speech therapist would be the one responsible for implementing the decision, that what would be tested for was what was determined at the conference.⁵⁵ The witness testified, as to process on an Existing Data Review where they need additional data to be gathered, like Present Levels of Performance, and to assess a child's educational needs, if they checked "yes" in a case of speech-only IEP, everyone present would be asked how the child is doing, what was going on, what problems are they seeing, and at that conference they are pulling in data.⁵⁶

The witness testified the Student already met SLI.⁵⁷ The witness agreed that under the IDEA any time a child is not making progress, an IEP meeting is required to be held to address that lack of progress, and under the IDEA at the end of the year a conference is to be held to decide the child's progress over a year's time, that they call that the annual review.

The witness testified in this case they did not wait until the annual review, that the Student had already been declared speech/language-impaired and came over with an IEP, so she would say from looking

⁵² Vol. II, p. 27, l. 6, through p. 28, l. 4

⁵³ Vol. II, p. 28, l. 5, through p. 31, l. 3

⁵⁴ Vol. II, p. 32, l. 20, through p. 33, l. 15

⁵⁵ Vol. I, p. 34, l. 6, through p. 35, l. 5

⁵⁶ Vol. II, p. 38, l. 14, through p. 39, l. 12

⁵⁷ Vol. II, p. 42, l. 24, through p. 43, l. 1

at the Notice of Action they were looking for the OT.⁵⁸ The witness testified they cannot place a child in OT without the paperwork, that they must have the parents' permission.⁵⁹ The witness testified that speech therapy is not a related service, that it is a stand-alone Special Education service.⁶⁰ Looking at background information on the Student reflecting he was in regular kindergarten classroom and was referred for a speech and language evaluation to determine if speech and language services were warranted, the witness agreed that sounded like a false statement if the Student was transferred.⁶¹

The witness testified as to the components of language being speech, voice, articulation, fluency and pragmatics, and when asked how it is decided what tests to give to show a deficit, the witness testified they do one test to see how a student qualifies, and if they drop low on those, then they do a second. The witness testified the therapist checked on oral articulation, and did an OWLS on the Student for receptive and expressive, voice, fluency. When asked if she considered this a comprehensive speech evaluation, the witness testified it was a specialty as opposed to a comprehensive, as they just put in the components for the speech evaluation, what they were looking for for the Student's language, his articulation, his ability to communicate. When asked what she would have needed to add to make it a comprehensive, the witness testified at this time, at his age, that is it.⁶²

The witness testified after the OWLS-II test was given the Student, a TOLD one was not given because the Student's scores did not warrant it. Looking at where the Student was tested in first grade in April, the witness testified normally they do not test this quickly, and they usually do not test every year. When asked about the Student's scores having dropped significantly, the witness testified it could be in the standard scoring where children are scored, that it is compared by age of the child's peers, that the Student's age was 5.8 years earlier and then 7.2, that he had been at the top end of a five-year-old compared to five-year-olds, then he was at the bottom end of seven-year-olds, or it could have been a bad day or he could have had a drop in vocabulary.⁶³

When asked about the Student going from in oral expression the 30th percentile to the first percentile, the witness testified they do see that occasionally, and it does not have to be dyslexic kids, and they usually go back and look at their ages, what experiences they have had from the time of the testing to the drop, that it does not have to be SLD.⁶⁴

⁵⁸ Vol. II, p. 43, l. 21, through p. 44, l. 18

⁵⁹ Vol. II, p. 44, l. 22, through p. 45, l. 6

⁶⁰, Vol. II, p. 45, l. 20, through p. 46, l. 2

⁶¹ Vol. II, p. 47, l. 16, through P. 48, l. 3

⁶² Vol. II, p. 52, l. 25, through p.55, l. 4

⁶³ Vol. II, p. 55, l. 7-24, and p. 56, l. 14 through p. 58, l. 16

⁶⁴ Vol. II, p. 59, l. 7, through p. 61, l. 4

The witness testified progress is recorded and there was a folder-holder, and best practice is that you would put this in each nine weeks, but that that does not always get done. The witness testified that at the end of the year when you are going through, that at each nine weeks you can run a report and it will tell you the percentages for each of them off their desktop the Co-op provides, and that is attached to the IEP's since it gives the percentages already. The witness testified this was the COVID year, and there were packets sent home for all speech kids to pick up at each of the two weeks, then when the Governor shut it down, they did a month thing.⁶⁵

The witness testified Palestine did not do telephonic speech sessions toward the time of COVID, that Mr. Estes, the Superintendent, opted out.⁶⁶ Looking at the Student's speech therapy minutes, and there being 2,160 on the Student's IEP but it looking like the Student had only received 870 out of that 2,160, counting the therapy minutes of the fourth quarter as well, that he did not get any beginning on 3-16, the witness testified she thought that to say the Student missed 50 percent of his therapy or more seemed a little high. Looking at the speech therapy records for the '20-'21 school year, when asked if the Student having gotten 1,410 was still much less than the Student needed, the witness testified the chart did not look correct, that she did not know if they are taking in holiday breaks or teacher or child absences.⁶⁷

The witness testified an evaluation is not mandatory when a student transitions from pre-k to kindergarten and the school knows they are impaired.⁶⁸ The witness testified when there is existing data on a student coming in from pre-k into kindergarten, that would be a circumstance where they would not test.⁶⁹ The witness testified as to there being a referral for speech and language, it is word they use for the reason they are doing it, it could possibly be used as a reference to Medicaid, an insurance reference, not that there was a referral, that sometimes it might say there was a referral, but it could be just the reason.⁷⁰

WITNESS MARY MICHELE CONNAUGHTON OLTMANN:

The witness Mary Michele Connaughton Oltmann testified she is the Student's teacher this year for second grade. The witness testified she holds a Bachelors of Education from Arkansas State University, Special Education and Regular Education, that she has had the Special Ed degree for approximately 40 years, and has taught for approximately 20 years. The witness testified she taught

⁶⁵ Vol. II, p. 73, l. 1, through p. 74, l. 11

⁶⁶ Vol. II, p. 74, l. 25, through p. 75, l. 13

⁶⁷ Vol. II, p. 77, l. 1-23, through p. 80, l. 20

⁶⁸ Vol. II, p. 85, l. 5-11 and p. 86, l. 1

⁶⁹ Vol. II, p. 87, l. 25, through p. 88, l. 4

⁷⁰ Vol. II, p. 88, l. 11-23

adults in Augusta, she taught an adult who had not learned how to read in Brinkley, she was a long-term sub in Brinkley, and has taught maybe 17 years in Palestine-Wheatley in the elementary school there, with the last couple of years being the Resource teacher there for K through fourth.⁷¹

The witness testified her day in Resource starts at 8 a.m., she has kindergarten students first period, whatever time slot the student would fit. The witness testified that last year when the Student was in first grade, she had him nine days, that it was nine days he had left when he came in to her classroom, and no goal could have been accomplished in nine days. The witness testified the Student came into her class as need from his teacher, but she did not implement any of the goals. The witness testified the Student was supposed to have come in the last two periods, and last year she had no SLD first graders and no SLD kindergartners.⁷²

The witness testified she had no concrete answer why there are no Special Ed students with Specific Learning Disabilities in kindergarten or first grade in her class, but she has children who have needs come to her classroom, usually transitioning from a Pre-K.⁷³ The witness admitted she was contacted by the Student's mother at some point asking that the Student be tested, testifying maybe it was second semester in February. The witness testified her phone was at school so she could not give a date, but her response would have been she would get it done, and that she did make a referral but did not know when that was.⁷⁴

When asked why she would have to make a referral for a child already on an IEP and received Special Education, the witness testified because Special Ed is academics, he would need to be tested. The witness agreed Special Ed was specialized service to meet a child's needs. When asked if a child were eligible under any category whatever the deficits are would be addressed, the witness testified that was kind of true, that the Student was under a speech IEP, meaning the speech teacher should have handled that beforehand. When asked why, instead of making a referral, she didn't just schedule an IEP meeting, that there was a problem with that because she could not say why he was failing, that it could be a number of reasons, but they did eventually change the IEP.⁷⁵

When asked if anyone told her the parent was told by the first grade teacher the Student needed to repeat first grade before he could come to the witness' class, the witness testified she knew that was a possibility, as the teacher had told the witness previously that the Student was failing, but through

⁷¹ Vol. II, p. 91, l. 10, through p. 92, l. 1, and p. 93, l. 14 through p. 94, l. 10

⁷² Vol. II, p. 94, l. 13, through p. 95, l. 1, and p. 96, l. 4, through p. 97, l. 13

⁷³ Vol. II, p. 99, l. 16-23

⁷⁴ Vol. II, p. 100, l. 6, through p. 101, l. 14

⁷⁵ Vol. II, p. 101, l. 13, through p. 104, l. 6

the end of the nine weeks when COVID was so bad and the schools were closed, the Student's grades popped up and he passed. The witness testified that after the Student began to take ADHD medication, everything changed, that he began to understand, apply and actually do and understand the work, and this year in her second grade class he has shown he knows more than what he did in first grade.⁷⁶

When asked if she would agree that if the Student has a Specific Learning Disability in reading, it would not help him to repeat first grade, the witness testified she had mixed feelings, as she has seen some children flourish and some not. When asked if she thought the Student would have developed that Specific Learning Disability in reading and math as a result of not being in Special Ed, or if she thought he would have had it all along, in kindergarten and first grade, the witness testified she would imagine he would have had it all along. The witness testified she saw that in her first to fourth grade, SLD's that develop early on and if not addressed the child does not get better.⁷⁷

The witness testified a child with an SLD in reading is not going to make much progress in reading if they do not get intensive instruction, and that the Student was receiving intensive help with the RTI program he was on with Becky Todd, a first grade teacher with a Masters degree. When asked why the Student would be getting RTI if he was a Special Ed student, the witness testified because the way it is set up, it was teaching basic phonics, teaching information that would have been taught in the witness' classroom eventually if he came in, but it was something they need to know and understand, and an SLD child needs the same information taught a few different ways before they begin to understand it. The witness testified she found out over the summer that the Student was in Becky Todd's class.⁷⁸

The witness testified the Student never came into her class for Special Education services during his first grade year.⁷⁹ The witness testified she has no interaction with a child or the child's folder when they are a speech-only IEP until the child becomes her student, so for the Student it would be the end of last year or the first of this year, and she is not the holder of all IEP's.⁸⁰ The witness testified there is not a Special Ed teacher from the elementary school, any Special Ed teacher, who goes to the transition conferences.⁸¹

The witness agreed that an SLD student like the Student who had SLD's in written expression and

⁷⁶ Vol. II, p. 104, l. 9, through p. 107, l. 2

⁷⁷ Vol. II, p. 108, l. 8, through p. 109, l. 2

⁷⁸ Vol. II, p. 109, l. 3, through p. 110, l. 24

⁷⁹ Vol. II, p. 111, l. 14-19

⁸⁰ Vol. II, p. 115, l. 1-12

⁸¹ Vol. II, p. 117, l. 21, through p. 118, l. 1

reading and math, that he probably had SLD's in kindergarten as well as first grade, that they did not just start in kindergarten. The witness testified she had talked to the Student's kindergarten teacher, who said the Student was failing.⁸²

The witness testified she had knowledge of how to read Lexile scores, that her knowledge on that comes from Arkansas State University, from Reading RASZ, that there is more than one chart, but it can be adapted. The witness testified she does not use the chart daily, and does not use all the headings, and she has no expectations of students in first grade, that she allows them to grow as required. The witness testified she does not send the reading level home.⁸³ The witness testified she had no specifics on how far behind she thought the Student is in reading.⁸⁴

The witness testified a child in the first percentile of reading comprehension is very low in reading comprehension. The witness testified the Student declined in reading to Christmas, and began to apply higher level learning then, but agreed the tests show he made no progress in reading comprehension.⁸⁵ When asked what intensive services the Student is receiving currently, the witness testified he is working on sight word recognition, and will begin a Scott Foresman text series book probably as soon as he learns a page of sight words, that he is almost there because he can read sentences.⁸⁶

The witness testified she remembered being on the Student's IEP team that last met in May, and the Student's parent asking if the Student would need to repeat the first grade, and testified she believed the answer was they would wait and see until they found out the Student's final grades. When asked her opinion on a reason to have the Student repeat first grade, the witness testified she would have been conflicted, in that some SLD students do much better having a more intense area of phonics, while on the other hand the Student would have gotten more small group instruction, so if he could have gotten both, that would be helpful. When asked why leave the decision open and just look at grades, and how the Student making good grades vs. making bad grades would impact his ability to do what he needs to do in second grade, the witness testified the Student would be fine socially, but he is going to get further and further behind, that she would attempt to close that gap through intensive instruction, but it was not just up to her, that it was also up to the Student.⁸⁷

⁸² Vol. II, p. 120, l. 17-23, and p. 121, l. 17-21

⁸³ Vol. II, p. 129, l. 11, through p. 132, l. 5

⁸⁴ Vol. II, p. 134, l. 1-3

⁸⁵ Vol. II, p. 135, l. 19, through p. 137, l. 10

⁸⁶ Vol. II, p. 139, l. 17, through p. 140, l. 6

⁸⁷ Vol. II, p. 142, l. 7, through p. 143, l. 11, and Vol. II, p. 144, l. 15, through p. 145, l. 12

When asked about her knowledge of the Student during his first grade year, the witness testified she got that from both the Student's teachers and her observations, but mostly from the teacher.⁸⁸ When asked when the District became aware the Student had ADHD, the witness testified probably after the second referral, which was in March or maybe late April.⁸⁹

When asked about procedure when a student is held back, the witness testified that would be a General Ed teacher's and the principal's decision, but if they are being held back because they are low, the teacher would come to the witness and say they think there is a problem, and in this case it was discussed to her. The witness testified based on the evaluation, the Student would have received Special Ed whether he was retained or not. When asked if, in her experience, ADHD children have more inconsistent testing than non-ADHD students, the witness testified yes.⁹⁰

The witness testified she observed the Student in the classroom five times unofficially, probably in May or late April, which was after the referral was made and during the referral process. The witness testified the counselor, Don Waldrip, was to officially observe, that it is required to have an observation, and in this case, by a school personnel other than the classroom teacher, who could write an observation.⁹¹ As to the Student's ADHD testing, the witness testified the parent just had to pick it up at her doctor's office and bring it to Ms. Jackson.⁹²

WITNESS NICOLE MOORE:

The witness Nicole Moore testified she is the Student's mother. The witness testified that in the ABC Palestine-Wheatley pre-K in Palestine, which was right behind the elementary school, the Student's speech was a little behind, and the teachers went through Great Rivers, the educational cooperative for services. The witness testified that the pre-K was a year. Looking at the Student's IEP from ABC Palestine for the '18-'19 pre-K year, which reflected there was a conference where the parent targeted areas of articulation, cognition and communication, problems with baby talking, problems with words, pronouncing words. As to the cognition and communication, the witness testified the Student's speech was delayed, it was hard to understand his wants and needs. Looking at the goals and objectives, the witness said she was never told the Student was slow at learning or that he was way behind, it was mainly the speech at that time they were discussing. The witness testified she knew they were working with the Student on how to count objects, to point at pictures of common objects and classify those, but she thought it was for every pre-schooler, and she did not know, did not understand he was getting an individualized IEP except for the articulation. The witness testified she did not

⁸⁸ Vol. II, p. 149, l. 25, through p. 150, l. 6

⁸⁹ Vol. II, p. 150, l. 19-23

⁹⁰ Vol. II, p. 150, l. 24, through p. 151, l. 23, and p. 155, l. 18-23 and p. 156, l. 21

⁹¹ Vol. II, p. 158, l. 6, through p. 159, l. 16

⁹² Vol. II, p. 159, l. 17-21

realize that “Using newly learned language arts skills to communicate was when the Student was answering when, where and who questions and going to be asking questions about different situations, what do you do, that they were doing that goal with the Student, but she did know they were working on his communication, tell us what he wants. As an example, the witness testified that instead of “bite,” saying “I want something to eat,” as he was not talking in whole sentences where he should have been.⁹³ The witness testified the Student could count when he went to pre-K, to 10, then it got higher as he progressed.⁹⁴

The witness testified when the Student went to kindergarten from pre-K, the only help she thought he was getting was speech, and she did not understand anything about any testing done to determine the Student’s needs before entering kindergarten.⁹⁵ The witness testified after the Student went into kindergarten, after school had started, in September and October, the Student had a speech evaluation, and she was told he could not hold his scissors right so he might need a little OT.⁹⁶

When asked if she understood the Student had an IEP in place the day school started, or if it was after, the witness testified she thought it was after the conferences. As to what she was told in conference the witness testified she was told the Student was not holding his pencil right, he needed a little bit of OT, and let’s get him evaluated, and they got him some OT. The witness testified in November at that conference was when she understood the Student started getting services. When asked what she was being told about the Student’s skills, the witness testified she thought the words were very hard for kindergarten, but other than that area being a little hard, everything else was fine from her understanding.⁹⁷

As to the annual review, looking at a document for the 2019-2020 school year, the COVID time, when on April 3, 2020 a phone conference was held to discuss the Student’s progress, the witness testified she knew the Student was to get speech and OT the following year. The witness testified that the Student received no services during COVID, no speech or OT, that she thought because everything was shut down, they were too. The witness testified that at that annual review conference the Student was still just a little behind and he would catch up and be fine. When asked if the Student was behind in math, reading and all the subjects, the witness testified she thought it was just his speech, as no other concerns were expressed to her. The witness testified she did not receive periodic updates on the Student’s speech goals, and she did not even know what the OT goals were.⁹⁸

⁹³ Vol. II, p. 162, l. 9, through p. 167, l. 2

⁹⁴ Vol. II, p. 167, l. 1-14

⁹⁵ Vol. II, p. 167, l. 25, through p. 168, l. 12

⁹⁶ Vol. II, p. 169, l. 3

⁹⁷ When Vol. II, p. 169, l. 4-22, and p. 171, l. 8-15

⁹⁸ Vol. II, p. 171, l. 16, through p. 174, l. 11

Still looking at documentation for the '19-'20 school year, the witness testified she did not remember being told by anyone about any testing that was done, nor was she told how the Student was doing overall. The witness testified she did not know anything about dyslexia testing that was required every year, in kindergarten, first grade and second grade. The witness testified she was never told about any screening done for the Student, and she was sure she would remember if she had consented to testing for something, and if she was told the Student showed signs of dyslexia she was sure she would have remembered.⁹⁹

When asked if she had been given the Student's reading levels, the witness testified she received one last year, and the Student was at a kindergarten .5 level is what she was told at the first or second parent/teacher conference, but she was told he could probably catch up. The witness testified she had no concerns about the Student passing kindergarten, that from what she saw being sent home weekly nothing looked like he was failing, and his teacher never said he was.¹⁰⁰

When asked when she began getting concerned about failure in first grade, the witness testified within the first month of school, and from the papers she received she was saying from September basically all year that he needed some extra help, that he was struggling, that this was her concern, but she was told "Let's wait and see." The witness testified in January she messaged Ms. Oltmann directly, as the first grade teacher told her she needed to ask Ms. Oltmann, and she texted Ms. Oltmann but got no response. The witness testified she knew to ask for testing because of her other son.¹⁰¹

The witness testified she also did a lot of research, and her mother-in-law, who is a school teacher in Brinkley, asked why they were not doing this, why were they not testing the Student for this, since she knows what is supposed to be done. The witness testified she was voicing her concerns in to the teacher in September of first grade, asking did the Student need Special Ed to have more one-on-one help, as she had no idea he was in Special Ed. The witness testified that within the first month the Student was not bringing home good grades, and in the first nine weeks he had a 32 in spelling, 62 in reading and 62 in math, so he was failing from the beginning.¹⁰²

The witness testified that until about two weeks ago when she was told the Student started going to Ms. Oltmann's room, she had no idea the Student was getting Special Education. The witness testified she did not understand the Student was getting Special Ed services when he was getting speech services, she thought they were two different things.

⁹⁹ Vol. II, p. 174, l. 16, through p. 175, l. 21

¹⁰⁰ Vol. II, p. 175, l. 22, through p. 176, l. 22

¹⁰¹ Vol. I, p. 176, l. 23, through p.

¹⁰² Vol. II, p. 177, l. 23, through p. 180, l. 14

The witness testified she texted Ms. Oltmann, but associated her with Special Ed since she is a Special Ed teacher and she did not have the Student, so the witness thought the Student was not getting Special Education.¹⁰³

When asked the point she determined the Student needed to be tested, the witness testified that she saw him a whole year getting more and more behind and she was constantly asking for him to get help but was basically ignored, and she messaged everyone at the same time that the Student had to be tested. The witness testified she took the Student to his PCP and let her know what was going on and was given a paper to take to the school to fill out and she was to fill out and bring them both back to the PCP. The witness testified she went back a week or two later to discuss the results, and then found out the Student had ADHD and he was put on medication the end of April or early May.¹⁰⁴

Discussing the Student's evaluation of April 4th by Jason Bell, that said the Student was referred for an initial evaluation to aid in determining strengths and weaknesses on which to base program planning, the witness testified she asked Ms. Oltmann in January, and asked her two or three more times, and the witness was told that from then on she had to refer all questions to the principal, Kristi Wilson.¹⁰⁵

The witness remembered the Student Snapshot Ms. Oltmann filled out after the referral that said the Student was struggling academically in all areas and his grades in reading were failing even more since they had to read the test on their own, and testified that after Christmas the teachers quit helping with the reading parts of the tests in first grade. The witness testified she saw the Student struggling herself, and they could not do virtual because they did not have internet, which resulted in a lot of zeros for his work. When asked if that was why the Student was failing, the witness testified that, and obviously he needed extra help in reading and spelling. The witness testified she bought a series of Bob books she knew the Student should have been able to read, but even those in some ways were a struggle, that Bob books are sight word books. The witness also testified they read every night, like a Bible story a day, and they are trying to get through that now. The witness testified the spelling words got harder, that the Student learns differently, so she had no idea how to try to get him to learn it.¹⁰⁶

The witness testified she recalled the phone meeting and talk about the Student struggling in multiple areas and struggling to retain information. The witness testified the teacher said the Student was like a sponge, not absorbing anything. The witness testified that was when her flags went up, that maybe it was ADHD. The witness testified she was not being told that the Student was the lowest in class, but she was told his reading and spelling were the main concerns, and he was failing there. The

¹⁰³ Vol. II, p. 181, l. 20, through p. 183, l. 2

¹⁰⁴ Vol. II, p. 183, l. 6, through p. 184, l. 4

¹⁰⁵ Vol. II, p. 184, l. 5, through p. 185, l. 6

¹⁰⁶ Vol. II, p. 185, l. 18, through p. 189, l. 5

witness testified she was not told anything about RTI and did not know what it is. The witness testified the teacher told her they started a little reading group where some children go to other classrooms and try to work on their reading, but the witness said she did not see that was helping.¹⁰⁷

The witness testified that at the beginning of first grade they had a four-day week, and the hotspot she bought on her phone did not do well and they do not have internet offered where they live. The witness testified that at the referral conference she was told they would wait to test the Student until after they had a diagnosis, but she was not told why they would need to wait. The witness testified that in her opinion it was until she had an ADHD diagnosis for the Student, so she had to wait on failure. Vol. II, p. 191, l. 4, through p. 192, l. 10

Looking at the letter to her to inform her the Student was recommended by his teacher as a possible candidate for retention, the witness testified she was never told that once they started testing the Student, they have 60 days to test him and comeback to an evaluation conference. The witness testified she did not know it would be May before she got back with a conference. The witness testified the teacher told her if there was not some improvement, he probably would have to do first grade again, and at that point the witness had a tutor for the Student for spelling and reading, but obviously she did not know either that the Student was showing dyslexia signs and such. As to possible ADHD, the witness testified it was not necessarily attention problems, it was mainly he could not absorb the information as he should, and he wrote some letters backward, that sometimes letters were written as numbers, and he could not tell the difference in some letters.¹⁰⁸

The witness testified that the first grade teacher told the witness the Student had to fail, or be held back, before he could get Special Ed services, that it was the witness' understanding the Student would need to be held back to get help. The witness could not recall exactly when that was, but testified it was before she talked to the Special Ed teacher about making the referral, and she made the referral January 7th, so it was sometime in December.¹⁰⁹

The witness testified she started working with the Student's doctor trying to get the Student services, and sent the information back to the teachers in the Student's backpack, the doctor's note, the Student's 4-20-21 diagnosis of ADHD and a 504 plan, and that neither the doctor nor she knew the Student was already getting Special Education services.¹¹⁰ When going back to the January referral conference, the witness testified she did not want to wait, but thought that was her only option, that she thought it would take time, but did not think it would take that long.¹¹¹

¹⁰⁷ Vol. II, p. 189, l. 6, through p. 190, l. 4

¹⁰⁸ Vol. II, p. 192, l. 16, through p. 194, l. 12

¹⁰⁹ Vol. II, p. 194, l. 13, through p. 195, l. 17

¹¹⁰ Vol. II, p. 195, l. 18, through p. 196, l. 13

¹¹¹ Vol. II, p. 196, l. 18-25

Discussing the second referral made, which said the Student was failing every subject and was in the 95 Percent Group intervention program and not making progress, the witness testified that she asked in January, nothing was done, so she thought she would try every month until something was done. The witness testified she never saw or heard about the counselor's observations, nor did Ms. Oltmann ever tell her that she had been in the Student's classroom five times to observe, nor did Ms. Oltmann ever say anything to the witness in the meeting when there was discussion about having the Student go to Ms. Oltmann's room. As to the observations about trouble sounding out words and short attention span, the witness testified she had also noticed that, but that she had not seen the Student rocking back and forth as was listed. Looking at the counselor's observations during math, not counting, not listening to the teacher, day-dreaming and could not count past 29, the witness testified the Student could count over a hundred and does listen, but said she really does not know what the Student having a Specific Learning Disability in math means.¹¹²

Looking at the 3-15 referral, and the document showing some 15 days later there was a conference held, with the decision being the Student would be given an evaluation, IQ testing, a comprehensive evaluation, saying that retention was discussed and the committee agreed retention was best and would give the Student time to catch up before moving on to second grade, the witness testified the committee liked to make a lot of decisions on their own, as she never agreed to the Student being retained even though she was a part of that committee.¹¹³

The witness testified she expressed concerns and opposition about holding the Student back at every conference. The witness testified that she was told at the May conference that the principal, Kristi Wilson, would be the one to make the decision. The witness testified she also talked to the Student about possibly being held back, and it ended with the Student in tears, as he did not understand why he did not understand, and that the Student was a social butterfly, that all his friends were in the same class with him and up, that they had been together since pre-school, so he did not understand what he was not getting, why he was not learning the way everyone else was.¹¹⁴

The witness testified she first learned the Student was to be retained from the letter she got in the mail in June, while everyone else got theirs sent home in their child's backpack May 26th. The witness testified that the Student never knew, as he was not retained since an informal agreement was reached with the school.¹¹⁵ As to the psychological evaluation of the child dated 4-14-21, and the May meeting, the witness testified that all of a sudden meetings were to be over the phone as to the Student, and that the evaluation was supposed to be mailed to her, that she did not recall if she got it, and did not recall any conversation about it, nor did anyone ever explain it to her.

¹¹² Vol. II, p. 197, l. 1, through p. 200, l. 4

¹¹³ Vol. II, p. 200, l. 5, through p. 201, l. 2

¹¹⁴ Vol. II, p. 201, l. 12, through p. 203, l. 21

¹¹⁵ Vol. II, p. 203, l. 22, through p. 205, l. 12

Looking at present levels of the IEP amended around 4-12, the witness testified it was her understanding the Student was not going to get any services in first grade to help him.¹¹⁶ When asked if she was told anything this year by the school about the Student's first-grade reading level, the witness testified she was told it was just a little below, kindergarten .5, and she thought he would catch up, but she thought he was a year and a half behind instead of two whole years.¹¹⁷

As to the Student's speech, the witness testified as time went along in first grade, she did notice an improvement in the Student's being able to speak in short sentences, but said he is still struggling with sounds. As far as speech goals and objectives for next year, and recommendations in the May conference, the witness testified she did not believe the speech therapist was present, that it was a phone conference, and from her understanding it was just Lori, Ms. Oltmann, Kristi Wilson and Cody Jackson in the office, then they called the witness. The witness testified she never saw the speech therapist at any meeting.¹¹⁸

The witness testified, as to an occupational therapy evaluation in one of the meetings, no one ever explained that to her. The witness testified she never met the occupational therapist as to the OT evaluations done in kindergarten and first grade in either of those conferences. The witness testified she did not think she was given the March 30th OT evaluation, nor did anyone explain to her that the Student was not going to get OT anymore, that they just said he was not going to have it anymore, so she thought he passed it. The witness testified she did not know that she had the right to an independent education evaluation if she was told an occupational therapist is done and she disagreed with that. Looking at documents, the witness agreed it looked like the Student stopped receiving services around the week of May 21st and the week of May 24th, that the Student got no services for speech or OT during the fourth nine weeks.¹¹⁹ The witness testified she did not ever remember extended school year services being discussed for the Student during kindergarten or first grade, and said she did not know it was an option.¹²⁰

Looking at the amended IEP of 5-12-21, indicating a change in present levels of functioning as to speech and language, saying the Student struggled often to be understood by teachers and peers, the witness testified she understood him, but that she was his mother, and other would have more difficulty. The witness testified that the speech therapist was not at the May conference to talk about needs and accomplishments, but agreed it was her understanding the Student was to attend the Special Ed classroom the following year for reading, language/spelling, math and speech, with a total of 810 minutes per week of Special Ed. Looking at the Student's second grade IEP, the witness agreed

¹¹⁶ Vol. I, p. 205, l. 13, through p. 208, l. 19, and p. 208, l. 14, through p. 209, l. 2

¹¹⁷ Vol. II, p. 209, l. 5-21

¹¹⁸ Vol. II, p. 210, l. 8, through p. 213, l. 10

¹¹⁹ Vol. II, p. 213, l. 11, through p. 15, l. 24

¹²⁰ Vol. II, p. 215, l. 25, through p. 216, l. 13

reading instruction is to be 50 minutes, language and spelling for 50 minutes, math for 50 minutes, and 30 minutes twice weekly for articulation, and that 150 minutes daily times five plus 60 totals 810 minutes per week. The witness agreed that the Student was to be in Ms. Oltmann's three periods a day, but testified she did not know until recently it had started, as she never received the Student's IEP and there has not been one yet this year.¹²¹ The witness testified that when the Student entered kindergarten, she did not know he was on an IEP then.¹²²

The witness testified that to her knowledge there was never a discussion in a meeting involving the Student about him being tested to look at his academics, to look at his achievement and his needs before she requested that be done.¹²³

The witness testified that IEP meetings were anywhere from 30 minutes to an hour normally, but she had left meetings without paperwork in the past. When asked if she was engaged in the IEP meetings, if she asked a lot of questions, the witness testified she was more engaged as she learned more, that at first she had no idea what IEP meetings were, and now that she understands more she knows she does not need to be so quiet and needs to ask questions, and that she always took her mom with her to meetings. When asked if that understanding coincided with this lawsuit, the witness testified the lawsuit was because she knew what was being done was not right.¹²⁴

When asked if it was possible she was given documents or information she forgot about, the witness testified she keeps everything, that each of her children has their own plastic folder with everything, that with three children sometimes things can get lost, but she does better for the important stuff, such as if she had been told the Student was dyslexic, she would know that.¹²⁵ Talking about not receiving kindergarten grades, the witness testified she got a little folder they returned to the school after she had signed it, but she did not have a copy, that it would say like if the knew 13 out of 15 colors, or knows 15 of 20 shapes, there was a list of sight words he did not know and a little section they had not even done for the next nine weeks, that was all.¹²⁶

As to her signature on the document reflecting the parent was working on an ADHD diagnosis from a doctor, that retention was discussed and the parent and the committee agreed retention was best to give the Student time to catch up before moving on to second grade, the witness testified that she ever agreed to retention. The witness testified that she said from the very beginning she did not want the

¹²¹ Vol. II, p. 216, l. 14, through p. 219, l. 20

¹²² Vol. I, p. 226, l. 15-20

¹²³ Vol. II, p. 228, l. 11-15

¹²⁴ Vol. II, p. 228, l. 22, through p. 229, l. 25

¹²⁵ Vol. I, p. 231, l. 6-20

¹²⁶ Vol. II, p. 232, l. 1-11

Student held back and she wanted him to get help and services, that just because the committee makes a decision she does not always agree with it, and she now knows she does not have to sign anything with which she does not agree.¹²⁷ The witness testified that the Student no longer qualifying under the Federal Guidelines for OT being the reason those services were terminated was never explained to her.¹²⁸

WITNESS LORI GINN:

The witness Lori Ginn was recalled for examination, and testified that, as to the witness Myra Long's testimony that the witness had told Ms. Long she had been told by the superintendent that during COVID she was opting out of speech and OT services, that was only partially accurate, in that they had a couple of weeks of AMI packets, then had the approval of teletherapy through services for OT, PT and speech to be carried out at home while still on the COVID shut-down, and to do all those things they had some regulatory information that had to be reviewed, and one requirement was a signed letter from a parent to be able to provide that teletherapy at home. The witness testified that during that time there was the AMI packets, and they could no longer use them, then teletherapy was approved, and this was a process over a month or so, and Jon Estes, the superintendent, said just don't do it until they had everything in place. The witness testified she had to run all the expenditures from Special Ed through Mr. Estes, that all expenditures are coded out to the VI-B money or Medicaid or ARMAC or whatever, that they all have to have the final approval of the superintendent at all three of her districts, not just in Palestine. The witness testified that Myra Long's office, Long Therapy, provides speech services to all the witness' districts, and Taylor only provided services at Palestine. The witness testified she did not like the term opted out as to services, that it was just a slower process for Palestine, that the superintendent wanted to make sure everything was in place before they went in the home, as physical therapy on certain students is not safe to be done. When asked about the Student getting articulation by phone, the witness testified they could not have one parent saying their child was getting it, and another saying their child was not, so it was a hard time for everyone.¹²⁹

The witness testified, when asked about the direction from the Department of Ed during the time of COVID still saying they had to provide what was on the IEP, that they had to do their best to provide what was on the IEP. The witness agreed from the logs that no OT or speech therapy the fourth nine-week period was provided for the Student. The witness testified there was also an internet issue with the parent as well, and in that whole area, not just the Student's parent, a lot of people in that area did not have access to internet, so that was another problem with teletherapy. The witness agreed that some schools brought kids to parking lots to have therapy, but testified they did not try that in Palestine.

¹²⁷ Vol. II, p. 233, l. 23, through p. 234, l. 23

¹²⁸ Vol. II, p. 237, l. 10-24

¹²⁹ Vol. II, p. 239, l. 12, through p. 243, l. 5

The witness testified they made hotspots available, and parents knew they could come to the parking lot if they wanted, but to her, not for OT, PT or speech, no, that she would not have approved of that.¹³⁰

WITNESS KRISTI WILSON

The witness Kristi Wilson testified she is the Student's principal. The witness testified she has been in education 20 years, teaching 12 of those years, federal coordinator, regional coordinator and principal, and has a specialist degree, has a Master's in Educational Leadership and a Bachelor's in Early Childhood. The witness testified this is her third year as principal at Palestine-Wheatley. The witness testified she was a reading recovery teacher/interventionist for 8 years, which was a program working one-on-one with a few students in the morning, and while that was basically phased out, now it is called RTI, it was teaching children how to read who were deficient in reading.¹³¹

As to her role as curriculum coordinator, the witness testified that when the Student was in kindergarten, first grade and even now, the reading curriculum is basically the same, but some things have been added, that everything they use and purchase is on the Department list.¹³² When asked about the Core curriculum used in their RTI program, the witness testified they use the 95 Percent Group, that is approved by the Department of Ed.¹³³

When asked if the Student was tested for dyslexia, the witness testified the dyslexia specialist and reading specialist can testify on that. When asked where the data on that was, some interpretation of the data and what then scores show, the witness testified they have RTI data on the Student, but the dyslexia specialist last year left, and she had the data, but it was in a Google document only in her name so they lost that, that they are doing another spread sheet and the interventionist takes care of that, the reading specialist.¹³⁴

When asked about the Student's kindergarten grades not showing up on the TRIAND and there having been no grade report or information furnished even though grades had been specifically asked for by parents' counsel, the witness testified she was not aware they were needed, that they were supposed to have been entered into TRIAND, that the counselor, Mr. Waldrip, would be the one making the entries, but she did not know why they were not entered.¹³⁵

¹³⁰ Vol. II, p. 243, l. 9, through p. 244, l. 22

¹³¹ Vol. III, p. 5, l. 25, through p. 8, l. 19

¹³² Vol. III, p. 8, l. 20, through p. 9, l. 11

¹³³ Vol. III, p. 9, l. 23 through p. 10, l. 8

¹³⁴ Vol. III, p. 15, l. 3-19

¹³⁵ Vol. III, p. 16, l. 6, through p. 17, l. 6

Looking at Istation scores for the Student, as to his progress in kindergarten in reading, the witness testified the Student should have been in RTI, but the witness was not sure where data was to show there was a committee meeting, how it went and if the Student was referred out.¹³⁶

The witness testified the Student could have other than speech services if he is on a speech IEP.¹³⁷ The witness testified she knew a meeting just needed to be held and the Student could have other services, that she was told of the Student's failures, that she looks at the academic progress all the children make in her school, and she sent out a letter to the Student's parent that the witness thought the Student would need to be possibly retained. As to the Student's failure in reading, when asked why there would be a referral conference for a child already in Special Ed, the witness testified she did not know. The witness testified the Student received no services in reading, math or spelling as a result of the January meeting because they needed to do RTI first, but had nothing to say that. The witness testified she did not know why, instead of giving the Student, who was already in Special Ed, services in the Resource room while evaluating him.¹³⁸

Looking at a Special Ed referral saying the Student was failing every subject and was not making progress in the 95 Percent Group, showed his January Istation performance and talked about interventions and showed all his grades were failing, the witness testified she did not know why the Student was not provided services.¹³⁹

The witness testified the Student received no Special Ed services to address his reading deficits in first grade. The witness testified the Student received no services in Special Ed to address his math deficits. The witness testified the Student received no services to address his written expression deficits. The witness testified her decision at the end of the school year was to retain the Student, that to make that decision the Student's grades were averaged at the end of the year, and they were all failing. The witness testified the Regular Ed teacher felt the Student was not ready for second grade, but no decision on retention was made at the meeting in May, even though the Student's education was the responsibility of the IEP team.¹⁴⁰

As to the IEP team talking in May about putting the Student in Resource for 50 minutes for reading, 50 minutes for math and 50 minutes for written expression, before they knew anything about whether the Student was going to be held back or not, the Student was going to get Resource services, the

¹³⁶ Vol. III, p. 17, l. 7, through p. 18, l. 6

¹³⁷ Vol. III, p. 19, l. 18-20

¹³⁸ Vol. III, p. 21, l. 10, through p. 25, l. 15, and p. 31, l. 9-16

¹³⁹ Vol. III, p. 32, l. 9, through p. 33, l. 2

¹⁴⁰ Vol. III, p. 34, l. 3-24, and p. 38, l. 22, through p. 39, l. 24

witness testified those were meant to remediate, to bring the Student up to grade level.¹⁴¹ Discussing the foundations from first grade, the witness agreed the Student would be getting those foundational skills in the Resource room on one-on-one instruction.¹⁴² The witness testified the Student had not been given the dyslexia screener.¹⁴³

The witness agreed the law requires use of a research-based program to teach a child that has an SLD in reading. When asked what research-based program off the list the school uses and what was being used or will be used with the Student, since the witness testified she did not know, the witness was told Ms. Oltmann had testified she uses the Saxon book, which is not a research-based program.¹⁴⁴ The witness testified she was the one who ultimately made the decision to retain the Student, and it would not surprise her if her letter to the parents telling them the Student would be retained went out in June.¹⁴⁵

The witness testified the Student's mother was present via phone, Ms. Oltmann was present, and the Student's teacher, Ms. Jackson, was present at the meeting of January 22, 2021. The witness testified there was a lack of clarity when it came to determining why children were struggling, due to the COVID year. When asked how the parent's mention she was going to get an ADHD diagnosis played into the decision about services and programs then or waiting, the witness testified if such a diagnosis came back, that would aid in deciding what services the Student would need in the future, and the witness thought that diagnosis would be shortly after the meeting.¹⁴⁶

Looking at a document from the annual review meeting March 29, 2021, the witness agreed it said the Student did not have an ADHD diagnosis, but it was decided then a comprehensive evaluation would be done. The witness testified a comprehensive evaluation was done sometime between March and the date of this hearing. The witness testified to her counsel that the retention decision was not hers alone but rather a committee decision.¹⁴⁷ When asked about evidence of what the district did to try to address the Student's deficits, if she had information to see what the Tier 2 interventions with Ms. Jackson in the classroom were, or Tier 3, or any of that information, the witness testified they did not keep that.

¹⁴¹ Vol. III, p. 39, l. 25, through p.40, l. 20

¹⁴² Vol. III, p. 41, l. 19-24

¹⁴³ Vol. III, p. 42, l. 18-24

¹⁴⁴ Vol. III, p. 43, l. 7, through p. 44, l. 9

¹⁴⁵ Vol. III, p. 45, l. 21, through p. 46, l. 12

¹⁴⁶ Vol. III, p. 47, l. 20, through p. 48, l. 4, through p. 50, l. 12, and p. 54, l. 3-24

¹⁴⁷ Vol. III, p. 54, l. 25, through p. 56, l. 15

The witness agreed the Student made absolutely no progress according to the Lexile in first grade year reading.¹⁴⁸ The witness testified no Special Ed services were provided to address the Student's deficits because they tried to address those in 95 Percent Group and in other interventions throughout the regular classroom with Ms. Jackson, but the witness did not know why Special Ed was not provided.¹⁴⁹

When asked how a diagnosis of ADHD would impact services when the Student was failing, how that would help the Student address deficits in reading and math, the witness agreed that if the Student did not get foundational skills in first grade, he does not have to be sent back to first grade since those skills can be addressed through a structured reading program in Special Ed.¹⁵⁰

The witness testified a student with ADHD would not have different programming than a student who does not have ADHD, that they would have accommodations.¹⁵¹ The witness produced the permanent record for the Student, testifying she was unable to locate the actual report cards for kindergarten, that the teacher is in Louisiana and the witness is unable to obtain or know if that teacher saved a copy, and there are no grades for kindergarten kept, that the students do not get letter grades in kindergarten, they get "S"s and "U"s, it is a skill-based report card not normally put on TRIAND reports.¹⁵²

The witness agreed that a lot of people call a skills-based report card a standards-based report card, which would have the standards as they related to skills, reading, math, and tell how the child was doing, and it would also tell about the grade level in reading, something required to be provided to parents twice year. When asked where that would be for the Student, the witness testified she did not know, and when asked where would the Student's first grade reading levels provided to the parent be, the witness testified they would either be with Ms. Jackson or Ms. Halbert, who was the reading specialist last year. When asked how they would have been provided since they are not on the report card, the witness testified they would have been sent home on a separate sheet of paper or sent home at parent/teacher conference, that she does not keep copies, she has it done for her. When asked if the witness knew where to access the information specifically about the Student's reading levels, the witness testified the keeper of those things was no longer employed, nor is the kindergarten teacher any longer employed that they are asking for records from. When asked if she could get the reports that went out to the parent about the first grade twice in the year, the witness testified the teacher had that, and the person no longer had the computer and no longer works for the witness. The witness

¹⁴⁸ Vol. III, p. 59, l. 22, through p. 60, l. 15

¹⁴⁹ Vol. III, p. 63, l. 1-23

¹⁵⁰ Vol. III, p. 64, l. 3, through p. 65, l. 9

¹⁵¹ Vol. III, p. 70, l. 10-15

¹⁵² Vol. III, p. 71, l. 17, through p.74, l. 4, and p. 75, l. 19, through p. 76, l. 2

testified that information stays with the teacher and the literacy coach.¹⁵³

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.”¹⁵⁴

FAPE as defined for the purposes of this part are:

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

Pursuant to part b of the IDEA, states are required to provide FAPE for all children with disabilities between the ages of three (3) and twenty-one (21).¹⁵⁵ In 1982¹⁵⁶ 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.¹⁵⁷ 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.

¹⁵³ Vol. III, p. 76, l. 9, through p. 79, l. 17

¹⁵⁴ Schaffer v. Weast, 44 IDELR 150 (U.S.2005)

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

¹⁵⁶ *Hendrick Hudson Dist. Bd. Of Educ. V. Rowley*,

¹⁵⁷ 458 U.S. 176, 206-07 (1982)

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.¹⁵⁸

Examining the first inquiry, that of whether the Respondent has complied with the procedures set forth in the IDEA, this hearing officer hereby Finds that the Respondent 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 Respondent substantively denied FAPE to the student *i.e.*, whether the Respondent 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.¹⁵⁹

In the present case there was an IEP developed for the student in Pre-School because the Student needed specialized services. This IEP was developed for developmental delays in cognition and speech services only. The Respondent conducted a referral conference on entering Kindergarten, but did not feel any additional evaluations were necessary and simply continued the Student's IEP under the category of speech or language impairment.

At that time the Respondent should have evaluated the Student to determine if he qualified for additional Special Education or related services. At that time the Respondent did have reason to suspect that the Student had a specific learning disability based on pre-school information and screening. The Respondent should have evaluated the Student to determine whether he qualified for additional services under the category of Specific Learning Disability. However, at that time the IEP team failed to do any further evaluations other than recommending a speech and occupational therapy evaluation. Because there were no additional evaluations performed during the Kindergarten year, the Student only received Speech Therapy and Occupational Therapy under the his existing IEP.

The Student's Kindergarten IEP indicated he was given modifications without stating what those modifications were or why they were being given, but did not include modifications or Special Education services to address his failing academic performance. In April of his Kindergarten year, an annual review was held by phone with the only issue being whether or not to continue with Special Education services for the Student as he transitioned to first grade. The Student's first grade IEP required 60 minutes per week of Speech Therapy and 60 minutes per week of Occupational Therapy and, for the first time, program modifications. At this point the Petitioner began to request an evaluation to determine the cause of the Student's failing academic performance. The Student's first report card of the first grade year indicated he was failing Spelling and on the very edge of failing Reading and Math. At the end of his third nine weeks he was failing every subject, Spelling, Reading, Language and Math. There was still no evaluation performed by the Respondent even though the Petitioner had requested one.

¹⁵⁸ *Park Hill Sch. Dist. v. Dass*, 655 F.3d 762, 766 (8th Cir. 2011)

¹⁵⁹ *Andrew F. V. Douglas County School District Re-1*, 137 S. Ct. at 1000

In January of 2021 the Respondent finally acknowledged the Petitioner's request for an evaluation, but after being informed the Student was being evaluated for ADHD, chose to take no action, and instead to wait for that diagnosis. In March of 2021, prior to receiving the ADHD diagnosis, the Petitioner made a second referral request because the Student was failing every subject. This was when the IEP team recommended for the first time a comprehensive evaluation. In May of 2021 the IEP team determined that the Student qualified for Special Education under the category of SLD in written expression, reading comprehension, basic reading skill, reading fluency skills and math problem solving. The IEP team then revised the Student's IEP to add 750 minutes per week of Special Education in reading and math.

The Petitioner should have conducted a comprehensive evaluation prior to transitioning the Student to Kindergarten because they had reason to suspect there was a need for Special Education based on information provided by the preschool program. There was no evaluation. Additionally there was no evaluation performed until almost the end of the Student's first grade year, even though the Petitioner had twice requested the Student be evaluated. Once the Respondent did agree to have a comprehensive evaluation performed, it chose to wait on a private diagnosis to be provided by the Petitioner before it would proceed. Additionally, the Student has never been screened for Dyslexia as required by the Arkansas Department of Education Requirements.

This Student was denied the benefit of an appropriate IEP by the Respondent for two (2) full school years due to its inaction and failure to follow IDEA and Arkansas Department of Education Regulations. Because of the Respondent's inaction, there was a denial of FAPE and this Hearing Officer Finds for the Petitioner.

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.'"

Having determined that the Respondent 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.¹⁶⁰ 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.¹⁶¹ Pursuant to *Endrew*¹⁶², a district's obligations under the IDEA are satisfied when a child receives FAPE, i.e., personalized instruction with sufficient support services appropriately ambitious,

¹⁶⁰ *Rowley*, 458 U.S. 176, at 203 (1982)

¹⁶¹ *T. F. v. Special School District St. Louis Co.*, 449F 3rd 816, 821(8th Cir. 2006)

¹⁶² *Supra*

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 Palestine-Wheatley District. There has been no demonstration of any diminished educational performance by the Student which has been addressed adequately through the Student's IEP with direct services provided by the Respondent through trained staff, using proper instructional/teaching methods.

Therefore it is my Order that Palestine-Wheatley School District:

1. Shall provide an independent, comprehensive, Educational Evaluation within forty-five (45) days of the entry of this Order, focusing in areas of written expression, reading comprehension, basic reading skills, reading fluency skills and math problem-solving, with all results being reported to the Petitioner and the Student's IEP team;
2. Shall provide an independent, comprehensive, Speech and Hearing Evaluation within forty-five (45) days of the entry of this Order, with the results being reported to the Petitioner and the Students IEP team;
3. Shall provide an independent Psychological Evaluation within forty-five (45) days of the entry of this Order, with the results being reported to the Petitioner and the Student's IEP team;
4. Shall provide an independent, comprehensive, Occupational Therapy Evaluation within forty-five (45) days of the entry of this Order, with all results being reported to the Petitioner and the Student's IEP team;
5. Shall conduct a Dyslexia Screening Examination within twenty-five (25) days of the entry of this Order, with results being reported to the Petitioner and the Student's IEP team;
6. Shall utilize the results and reports of the Ordered evaluations and screenings to develop and implement an appropriate IEP for the Student within ten (10) school days after their receipt, with written feedback to the Petitioner on the Student's progress in all areas no less than quarterly;

7. Shall provide twenty-four (24) hours of additional training for the Student's IEP team, to be provided by either the Arkansas Department of Special Education or an independent provider approved by the Department, to be completed no later than the beginning of the 2022-2023 school year, and;
8. Shall provide three-thousand (3000) minutes of Compensatory Education, at a time and a manner approved by the Petitioner, over the next twenty-four (24) months following the entry of this Order, to be divided into areas identified as needing additional services above and beyond those services provided by the Student's IEP.

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 6, 2021