
**UTAH STATE BOARD OF EDUCATION
SPECIAL EDUCATION SERVICES
DUE PROCESS HEARING**

In the matter of
[STUDENT], a minor child, by and through his
[PARENTS],

 Petitioners,

vs.
DAVIS SCHOOL DISTRICT,

 Respondent

DECISION AND ORDER

Case # DP-2223-09

Hearing Officer:
Frank Snowden

DECISION AND ORDER

APPEARANCES

Amy Martz, Esq., appeared on behalf of Petitioners [Student] a minor student, by and through [Parents], ("Petitioners"). Joan Andrews, Esq., appeared on behalf of Respondent Davis School District ("Respondent"). This matter was assigned to the undersigned Due Process Hearing Officer, Frank Snowden ("Hearing Officer").

PROCEDURAL HISTORY

The student, [Student], (the "Student") is a 14 year old male with multiple diagnoses, including, but not limited to, Anxiety, Depression, A.D.H.D., Disruptive Mood Dysregulation Disorder and chronic insomnia. Petitioners submitted a written Request for Expedited Due Process Hearing to the Utah State Board of Education ("USBE") dated May 8, 2023, which was received and entered of record on May 8, 2023. The Respondent filed its answer on May 18, 2023, within the time allowed. The parties waived a Resolution in lieu of mediation and engaged in what was reported to be good faith mediation without resolution. The hearing officer convened numerous Pre-Hearing Conferences via teleconference, the parties requested extensions of decision deadlines which, were granted, and by agreement, trial was subsequently set to begin on July 18, 2023, and to last for 4 days based on the number of witnesses each party expected to call. The hearing officer specifically addresses the

“expedited” nature of the original complaint. The first pre-hearing conference was set on May 10th, 2023, and the nature of the expedited request was specifically discussed at length during this pre-hearing conference. Because there were allegations of a disciplinary action taken against the student by the school district, the hearing officer did not immediately rule out the possibility of an expedited hearing. Both parties stipulated that it could possibly qualify for an expedited hearing, however because of the timing of the filing of the complaint, there simply were not enough school days left in the current school year for the expedited nature to be effective as it was intended. Going by the timelines (20 school days from May 8, 2023), the school year calendar and the preparedness of the respective parties, the expedited hearing would potentially have occurred after the beginning of the following school year. The hearing officer specifically offered to conduct the hearing before the end of the current school year but neither counsel could assure the hearing officer that she would be ready to try this matter that quickly. Thus, the parties agreed to set the hearing and bifurcate the issues between expedited and non-expedited matters during the same hearing set in July of 2023 rather than wait until August of 2023 when school resumed. This was done by agreement of both parties.

Extensions of the due process hearing timeline have been granted at the request of one or both of the parties pursuant to 34 CFR §§ 300.510(c) and 300.515(c), and USBE SER IV.R.2.

Additionally, and of note, the defendant filed a motion for clarification and bifurcation on May 10, 2023, notice of an offer of judgment on June 6, 2023, a motion to dismiss non idea claims et al on June 23, 2023.

JURISDICTION: SUBJECT MATTER

Jurisdiction properly lies over the parties and over the subject-matter (Exclusively IDEA) of this cause pursuant to 34 CFR § 300.507(a). Therefore, all claims presented by Petitioners under the IDEA are hearable and are reserved for decision by the Hearing Officer.

On the contrary, as previously stated and ordered, all other claims brought by the Petitioners, which fall outside the scope of IDEA, including but not limited to claims brought under the Americans with Disabilities Act, claims of violations of specific Utah Statutes, claims of violations of civil rights (Section 1983), claims for violations of protections under Section 504, and violations of the schools own policies are outside the scope of the jurisdiction of hearing officer in this matter. While some evidence was presented at the hearing concerning these issues, as natural consequence of the overlap that occurs between these related matters, the hearing officer lacks jurisdiction to adjudicate such complaints, and thus, those matters are hereby DISMISSED.

Finally, as it regards jurisdiction in this matter, the undisputed evidence in this hearing reveals that the student in question was afforded the protections of, and provided accommodations from, a section 504 plan from September 22, 2021 [see Exhibit P-21] until December 19, 2022, and thus,

for purposes of this matter, jurisdiction of the hearing officer does not attach until December 19, 2022.

THE HEARING

On July 18, 2023 and each consecutive day thereafter through July 21, 2023, an impartial due process hearing was conducted at the offices of the Davis School District Offices, Farmington, Utah, in this matter. The hearing was held in accordance with the procedural requirements of the IDEA and its implementing regulations found at 34 CFR §§ 300.507-515, and the Utah State Board of Education Special Education Rules IV.I-P, (October, 2016). Petitioners and Respondents stipulated to the admission of some but not all exhibits previously exchanged and submitted. The Petitioners' witnesses included [Petitioner's Expert], who was offered as an expert in Special Education, [Parent 1], mother of the student, the Student, [School Teacher], teacher at [School], [School Counselor 1], School Counselor at [School], [LEA Investigator], Davis School District Safe Schools Committee and Investigator, [Former Assistant Principal and 504 Coordinator], Former Assistant Principal at [School] and 504 coordinator, [Director of Responsive Services], Davis School District Director of Responsive Services, [Principal], Principal of [School], [School Psychologist], Davis School District School Psychologist, [District Counsel], Davis School District Counsel, [Resource Case Manager], the student's resource case manager and [Special Education Director], Special Education Director of Davis School District. The Respondent's witnesses included [Safe School Intervention Specialist], Davis School District Safe School Intervention Specialist and [Assistant Director of Special Education], Assistant Director of Special Education, and Petitioner's Rebuttal witnesses were [Parent 2], the Student's Father, and [English Teacher], the student's English and writing teacher. Petitioners submitted 46 Exhibits that were admitted into evidence. Respondent submitted 33 exhibits admitted into evidence. The hearing transcript is in four volumes totaling 1123 pages.

BURDEN OF PROOF

Petitioners, as the party challenging the Respondent's provision of a Free Appropriate Public Education, has the burden of proof, by a preponderance of the evidence, for all issues raised in this matter. *Schaffer v. Weast*, 546 US 49; 126 S Ct 528; 163 L Ed 2d 387 (2005). The Tenth Circuit Court of Appeals has held that "the burden of proof in such a challenge rests with the party claiming a deficiency in the school district's efforts." *Thompson R2-J School Dist. v. Luke.*, 540 F.3d 1143, 1148 (10th Cir. 2008). The Hearing Officer is satisfied that the burden of proof question was made clear to counsel for the parties and the parties.

ISSUES

The following issues were presented to the Hearing Officer for decision:

- I. Procedural Issue:
 - a. Whether the transfer of the student to Renaissance Academy constitutes a change of placement; and consequently,

- b. Whether the school district failed to provide prior written notice and an IEP team meeting to discuss and possibly ratify this transfer?
- II. Substantive Issue for Hearing:
 - a. Whether the school district violated the Child Find Mandate.
 - b. Whether the school district failed to provide the Student with a Free Appropriate Public Education (FAPE) during the time the student attended the School by:
 - i. unilaterally transferring the student to Renaissance Academy at the start of the second term of the 2022-23 academic year,
 - ii. summarily refusing to consider a request for a meeting with the parents to discuss the transfer

FINDINGS OF FACT

After considering all the evidence in the form of oral testimony and admitted exhibits, as well as the oral and written arguments of the parties' and counsel, the Hearing Officer's Findings of Fact are as follows:

The student, [Student], is a [REDACTED] year-old boy, and at the times in question in this matter the Student lived with the Petitioners in [REDACTED], Utah area within the Davis School District. Petitioners are the student's parents. He has multiple diagnoses of Anxiety, Depression, A.D.H.D., Disruptive Mood Dysregulation Disorder and chronic insomnia. At the suggestion of a medical provider for the student, and documentation from the parent thereof, Davis school district placed the student on a 504 Plan on September 22, 2021. The 504 Plan lists anxiety as his impairment, that interferes with his "Thinking and Concentrating" and includes, in summary, accommodations such as chunking or breaking down large projects allowing him to have a two-minute reset either in the hallway or in a separate area of the class to practice one of his coping strategies to be allowed to use a non-distracting fidget object and to get prior permission from his teacher to draw. Based upon a review of the student's transcripts, grades and progress (or lack thereof) the 504 plan seemed to be working adequately, but not particularly well. His grades were average, but did, at times, fall short. School staff pointed out that during the period in question most of not all schools were struggling and dealing with the COVID-19 pandemic and many students, including his non-disabled peers were struggling with the new norm of having school at home. The student had some prior minor disciplinary matters that did not result in any disciplinary action being taken. The student, however, has a history of verbalizing thoughts of self-harm and or suicide. There was one incident where the student was writing a paper and mentioned causing the death or harm to an entire town, and this was not met with disciplinary action; but was considered a literary work that he may have learned from a popular form of entertainment that many children were indulging in at the time. The student has no prior history of violence or aggressive behavior at school. The student's primary "behavior" that seemed problematic at times was his tendency to withdraw at school his inclination is to wear a hoodie to school and at times he will put the hoodie on his head and put his head on his desk as if to withdraw from everyone around him. After continuing on the 504 plan for a little over a year, on November 8th, 2022, the student was in his English or literature class and was behaving in a manner that the teacher felt was in need of some counseling. The evidence revealed that he was putting his hoodie over his head, putting his head on the desk and refusing to respond to questions and prompts that the instructor was giving him to write what he knew about various subjects that he claimed he knew nothing about. At some point during this class, his instructor called the school counselor to come get

the student and take him to the counseling office to see what was troubling him. This was an apparent attempt to provide a behavior accommodation contained in the 504 plan where when the student needs more time, he would be allowed to report to the counseling department. The hearing officer uses the word apparent here because it is not clear whether this was actually in keeping with the 504 accommodations. Once the student was in the office with the school counselor, [School Counselor 1], The counselor engaged the student in some conversation about what was bothering him and the student replied that the teacher was asking him to write about subjects that he had no idea how to write about and she kept asking him over and over and he was tired of saying no and just decided to put his head on his desk and withdraw. At some point during this conversation the student stated that, some days he feels like he would like to just go kill a lot of people and then kill himself. The counselor continued engaging him in discussion about the consequences of taking such an action and the student admitted that he knew that jail would be involved and that he might never see his parents again if went to jail or he died. After some prompting by the counselor, the student additionally stated that he didn't know what group of people he would kill but that English teacher would be one of them, referring to the teacher from whose class he had just come. This concerned the counselor as a named threat to someone at the school and he later reported this incident to his superiors. After this was reported, the student was removed from the school and was placed on home study owner about November the 9th, the next day. Petitioners allege that this was a suspension and also that the suspension was more than 10 days and that a manifestation determination hearing should have been had under his 504 plan. Due to the limited jurisdiction of the hearing officer, there will be no adjudication of this allegation in this order. While the student was placed on the home study course, this matter was referred to the safe schools committee for investigation and recommendation. According to the evidence the safe schools committee conducted their typical investigation into this matter, including a visit with the parents and the student at their home to confirm that the student did not have access to weapons, among other things. At the conclusion of the investigation, the safe schools committee made a recommendation to [School], where the student was currently enrolled to have the student evaluated for specialized instruction with an individualized education plan or program and the protections of the individuals with disabilities Education Act. After evaluations were conducted and results were made available, an iep team meeting was convened on December 19th, 2022, and an IEP for this student was in fact executed. This IEP team meeting occurred just before the Christmas break and after the Christmas break, the parents were informed by the school district that a decision had been made to transfer the student, beginning with the second semester, to a new school called Renaissance Academy. To be sure, the IEP did not include language that would transfer the child to

renaissance Academy, so this was news to the parents. The petitioners alleged that this was a change of educational placement and the respondents allege that because the services would not be any different than those services that were outlined in the IEP, this was not a change of placement. Regardless, it is undisputed that no prior written notice was issued, and no IEP team meeting were held to discuss this transfer to a new school. In fact, the evidence showed that the notice that was given to the parents was a telephone call and possibly an e-mail from the school informing them of this decision. The parents did not agree with this decision and submitted a written request for a meeting or a hearing to discuss this decision and provide their input into the plan for their student and based on the evidence this request was summarily denied by the school district. At the time of this hearing, the student had been out of school since before January the 11th 2023 so he has missed at least one-half year of instruction.

The evidence also clearly suggests that the Davis school district took this potential threat very seriously and considered the safety of not only this student but other students in his school system as a priority. The evidence would show that the removal from the school was not intended to be a disciplinary action against the student, the school district defended its actions by saying this was not disciplinary against the student but an action to ensure the safety of all students as is their normal protocol. The investigation into the incident and the subsequent recommendations from the safe schools committee did not seem to be out of line or done in bad faith. The hearing officer did take issue with the frequent use of the word “terroristic threat,” as this was referred to repeatedly in the correspondence. I think it is public policy that all schools take the possibility of threats seriously regardless of the circumstances, so their actions in a thorough investigation are to their credit. Upon reviewing the child's records completely and investigating thoroughly his family background and his behaviors, the committee recommended that he be evaluated for specialized instruction and, that without some intervention, he may continue to make similar threats.

EVIDENCE: TESTIMONY

Evidence offered in the form of testimony follows:

SUMMARY OF [PETITIONER’S EXPERT]’S TESTIMONY

The witness testified in pertinent part as follows: The witness, [Petitioner’s Expert], having been offered by the Petitioner as an expert in special education, testifies that she has reviewed educational records, prior evaluations, and behavioral incident reports related to the student in question to assess his needs for a free and appropriate public education. Her responses are based on her review of the documents and her expertise as a board-certified clinical behavior analyst.

She testifies that she is aware of the requirement for schools to conduct evaluations if they suspect or know that a child has a disability, and this applies to children from birth to 21 years of age.

The witness explains that a history of educational failure, whether social, emotional, or academic, should prompt the school to initiate an evaluation. Other triggers include the presence of prior medical records indicating a disability or behavioral issues that could indicate a disability.

Regarding the specific case under discussion, the witness mentions that the student in question has had academic difficulties since elementary school. He has received counseling and has been diagnosed with ADHD, DMDD, anxiety, and possibly other conditions in later elementary years. The witness points out evidence of academic failure, with multiple Ds and Fs in different subjects during [REDACTED] grade.

[Petitioner's Expert] confirms that the Plan recommended by [Mental Health Counselor], a licensed clinical mental health counselor, was not implemented at the time his treatment summary was written. The witness explains that the student has been diagnosed with disruptive mood dysregulation disorder, major depression, generalized anxiety disorder, and attention hyperactivity disorder with an attentive type. She then explains, in detail, each diagnosis. The witness also mentions the student's proficiency scores in glueyness (RISE testing), language arts, and math.

The witness testifies that a note written by the student's mother indicates that she was concerned about his internalizing concerns and wanted to discuss providing school supports for him. [Petitioner's Expert] also testifies that another note highlights concerns over the COVID pandemic, mentioning the student's struggle with online learning. The student was participating in remote learning, and there were concerns about the use of software. The witness provides information about the relevance of medical personnel information, the use of software concerns during remote learning, and the criteria for a comprehensive evaluation of a child during an IEP evaluation process, based on the Utah Special Education Rules.

The witness confirms that she reviewed the student's records before the trial and points out that there were some deficiencies in the evaluation process used by the school district in evaluating the student in this case, mentioning examples such as the lack of a functional assessment of behavior for a student with a history of behavior issues and the incomplete utilization of teacher ratings in the assessment process. Some assessments had multiple versions, such as teacher and caregiver ratings, but not all versions were utilized. The teacher ratings were notably absent in the evaluations, and the classroom observations were limited as they focused on testing contexts rather than observing the student's behavior in a regular classroom setting.

[Petitioner's Expert] highlights the need for a more comprehensive evaluation to fully understand and address the student's academic, social, emotional, and behavioral needs. The testimony suggests that there were shortcomings in the evaluation process and the use of recommended evaluative techniques for the student in question.

[Petitioner's Expert] testifies that when eligibility results from an assessment are usually presented to parents, typically there would be an IEP team meeting, during which each member who conducted specific evaluations would present the results of their assessments.

She also confirms that outside information should be considered in the evaluation process.

The witness acknowledges that there is a report from a medical professional endorsing the diagnoses of ADHD, DMDD, generalized anxiety, and primary insomnia in the developmental history section of the eligibility document, indicating that outside information was considered.

[Petitioner's Expert] states that she is uncertain whether she is licensed to administer certain tests, specifically the WISC-V (Wechsler Intelligence Scale for Children, Fifth Edition), and that she needs to check her credentials to confirm if she is licensed to administer the WISC-V, but she does work in tandem with licensed psychologists to administer and analyze assessments.

The witness explains that the ABAS test provides information about the student's functioning, including externalizing and internalizing behaviors, and it assesses the student's functioning across different environments. She explains that excluding the teacher's input from the ABAS assessment neglects a critical environment where the student spends a lot of time, and the classroom functioning is essential for determining eligibility for special education services. She then discusses the problematic nature of the observations made during the evaluation, especially for a student with anxiety, as the test setting may not accurately represent the student's true behavior. The absence of a functional behavior assessment is brought up, and [Petitioner's Expert] explains that it helps identify motivations for problematic behavior and skill deficits in communication. She further describes the behavioral issues the student struggles with based on her review of the documents, including shutting down, being unresponsive, and using inappropriate language in written contexts. The witness clarifies that her observations are based on her review of documents and reports, not personal observations of the student. She mentions instances of punitive measures following the student's failure to respond to teacher instructions or questions.

[Petitioner's Expert] further testifies about various aspects of the evaluation and eligibility process for special education services. She mentions multiple instances where the student did not respond to adults, and parents were called to pick the student up, which she perceives as a reward for the behavior. The concept of a motivation assessment scale is discussed, and [Petitioner's Expert] explains that it identifies motivators for certain behaviors and helps in promoting desired behaviors. She further testifies that she did not recall seeing any motivation assessment scale in the school's evaluation. She goes on to define adaptive behaviors as behaviors that enable an individual to complete activities of daily living. The witness mentions some adaptive behavior deficits observed in the student, such as organization, planning, and difficulty with multiple-step tasks. She testifies that she did not see evidence of grades or RISE testing results being considered during the student's evaluation.

The absence of a functional behavior assessment is discussed, and [Petitioner's Expert] confirms that she did not see any reference to such an assessment in the documents. She further testifies that Section H of the special education rules does require the consideration of certain data during initial evaluations. The witness points out that the creation of the evaluation was done online and not through a classroom-based observation, which she views as problematic.

The IEP category under which the child was eligible is mentioned as "Other Health Impairments," and [Petitioner's Expert] explains that it could encompass conditions like ADHD or medical diagnoses. [Petitioner's Expert] believes that the "Other Health Impairments" classification is appropriate based on her review of the child's records, and she indicates that the school had information about the child's other health impairments as there were releases of information that allowed them to communicate with private service providers and indications that treatment records and diagnostic evaluations were provided to the school.

[Petitioner's Expert] acknowledges reviewing emails between the parents and school personnel discussing concerns about the student, and testifies that in her opinion, she does not believe they were timely addressed.

[Petitioner's Expert] next testifies about the student's Individualized Education Program (IEP) and various goals related to his behavior and self-regulation. She mentions that her priority would be to work on the student's effective communication of needs, followed by promoting prosocial behaviors and coping strategies for managing frustration. The witness discusses the importance of building a strong therapeutic rapport and having trusted adults in the school setting to help the school cope with a student who has suicidal ideations. She notes that the student had difficulty developing trust initially, but he eventually formed a relationship with the school counselor, which was damaged due to an investigation. The witness reads one of the goals related to effective communication with peers and adults, but she believes it does not adequately address the student's need to take breaks and deescalate when he becomes upset and clarifies that there is no requirement to start with a single goal, and she would consider multiple goals to address the student's communication and coping needs.

[Petitioner's Expert] next explains the difference between an IEP and a Section 504 Plan, stating that both can indicate supports for a student, but an IEP is for a student whose designated disability affects their access to the general education curriculum, while a Section 504 Plan might be for a student with a disability that does not directly impact academic performance. [Petitioner's Expert] testifies that academic failure and behavior that leads to school discipline could indicate the need for an IEP. She acknowledges that the student in question qualified for other areas besides health, such as math and writing.

The witness also explains the difference between location and placement regarding services. She testifies that location refers to physical space, while placement deals with the type of services and

program the student receives. The witness agrees that a manifestation determination hearing is required when a student with a disability is facing a change of placement due to disciplinary issues. She expresses her opinion that the incident resulting in the student's suspension aligns with behavior consistent with disruptive mood dysregulation disorder (DMDD), based on her review of the documentation, and explains how ADHD and anxiety could impact a student's behavior and contribute to manifestations of their disability at school.

[Petitioner's Expert] further provides testimony related to the prior written notice and the communication between the parents and the school regarding the student's placement, and their refusal to reconsider the placement despite the parents' objections. She confirms that the parties stipulate that no manifestation determination hearing was conducted. She then explains that a prior written notice is a written communication provided to parents before any proposed change of placement or evaluation for the student.

The witness reviews multiple documents and confirms that they indicate the school's refusal to reconsider the placement despite the parents' concerns. The witness further notes that one of the letters was sent after the student was assigned to Renaissance Academy in January.

She testifies that the student in question was suspended for more than ___ consecutive days, which constitutes a change of placement according to the special education rules and definitions related to changes.

The witness finds a statement suggesting the student's disability would not cause "him/her to violate school rules" problematic as it appears to be a template without considering the impact of the student's disability on their behavior. Her testimony primarily revolves around the student's placement and disciplinary issues, highlighting concerns about the handling of the student's disability in the school's decision-making process.

SUMMARY OF [PARENT 1]'S TESTIMONY

[Parent 1] testified that [Student] (Student) had attended the Davis School District since the family moved here. He has been a student at [School] since [REDACTED] grade.

[Student] Has displayed behavioral issues that concerned his family since about 8 years of age. [Parent 1] said the earliest episode she recalls was on a family trip when [Student] became upset and stated he wanted to jump out of the car. The family immediately sought out a doctor who helped [Student] Begin the evaluation process.

According to [Parent 1] [Student] suffers from bouts of depression and is easily stressed. She said he is intelligent and when he finds subjects that interest him (dinosaurs) he researches specifics of those subjects to find out all he can.

Because of his disability [Student] struggles with relationships in and outside of his family. Friends he currently has are those made at an early age “who’ve accepted him for who he is.”

He has struggled academically since approximately [REDACTED] grade. [Parent 1] said homework became a fight when assigned to the point she told teachers “homework is not going to be done. It’s not worth our family dynamic being ruined over a piece of paper.”

Teachers’ reaction to [Parent 1]’s homework decision varied and she said reduced homework did not become part of [Student]’s accommodations until IEP came into effect.

[Parent 1] could not recall any physical incidents involving her son. She said typical disciplinary issues involving [Student] Are mainly related to drawing certain type pictures or writing “swear words.” She used an example of a class study of the Holocaust. During that period [Student] Was suspended for drawing a swastika something [Parent 1] said the family addressed with him as best they could. “He did not understand the full context of what happened during that Holocaust and what the swastika represented.”

While not specific, [Parent 1] said [Student] had encountered bullying during his school years. When asked why she said “He’s different. He doesn’t socialize like other kids do.” She could not recall any incidents of retaliation by her son.

[Student] has experienced frustration with his school work. [Parent 1] said most of that revolves around steps in the learning process and her son’s inability to process what teachers are trying to teach. She said often times he becomes overwhelmed and subsequently non responsive, putting his head on his desk in class.

[Parent 1] occasionally receives emails from the school regarding [Student]’s grades posted on DSD or directing her to check canvas or Summit for missing assignments. She has also had direct communication with teachers via email.

She is aware of [Student]’s state test scores including RISE and Dibels. He struggled with the latter with results at or below benchmark.

[Parent 1] explained that [Student] has sought professional help dating back to elementary school. She touted the success of therapy sessions with [REDACTED] and he has seen psychologist [REDACTED] as well.

[Parent 1] said she relayed information regarding [Student]’s issues and treatment to the school district over the years (Example: [Former Assistant Principal and 504 Coordinator]). She also spoke of the communication between her and [Student]’s sixth grade teacher via email or phone. [Parent 1] said that teacher was particularly accommodating working with [Student]. In a variety of ways when he had severe issues.

[Parent 1] said she sent a copy of a treatment summary from [Mental Health Counselor] (counselor) to [Former Assistant Principal and 504 Coordinator] prior to [REDACTED] grade. This was recommended by the aforementioned [REDACTED] grade teacher. [Parent 1] said the purpose of forwarding the summary was for [Student's] Plan.)”

According to [Parent 1] she sent emails to [Former Assistant Principal and 504 Coordinator] and the school principal to set up a meeting regarding [Student] She sent an additional email from Dr. [REDACTED]. A meeting between [Parent] and [Former Assistant Principal and 504 Coordinator] took place on ??? To set up a plan for [Student].

[Parent 1] said she gave [Former Assistant Principal and 504 Coordinator] [Student]’s diagnosis “I listed more than anxiety and tried to explain to her what DMMD was and she said ‘well, I’ll just put anxiety’ on the form. “I told her it was more than that bout she put anxiety anyway.” She agreed that under the header Major Life Function ‘thinking and concentrating’ applied to [Student] In the academic setting.

Accommodations we’re put in place for [Student] including assignments and worksheets with [Student] Tasked with notifying his mother or teacher he needed help ‘breaking it down.’ His mother would then help [Student] put together an email requesting help to organize the assignment into small sections. [Parent 1] said she felt this would help [Student] be successful in school.

Additional accommodations included [Student] having a (??) minute reset when “feeling overwhelmed” either in hallway or separate part of class. If needed he could seek the school counselors’ help. His mother said to her knowledge [Student] never utilized those specific accommodations.

(The accommodations outline regarding [Student] using coping strategies). [Parent 1] said these had been discussed with counselor. Drawing was listed as an option but she said she never knew of being allowed to draw in class.

She went on to say she was told a list of accommodations was distributed to [Student]’s teachers for them to give to him if needed but to her knowledge no teacher had indicated he had used those accommodations. While she never saw any evidence that the accommodations agreed upon weren’t distributed to [Student] [Parent 1] said “it wasn’t addressed.”

[Parent 1] said [Student] Had problems at school to include suspension during this period. She said that in this [REDACTED] grade period she worried about her child’s productivity and sought guidance from teachers via email. “Some of those were responded to, others were not”. She said those who did respond would make her aware of missing assignments. Some offered after school options to help.

[Parent 1] spoke in regard to evidence entered marked Excused to Remote Learning. According to her [Student] Was suspended at this time and was supposed to receive assignments via email or phone from teachers. She said none did this. [Student] tried unsuccessfully to use computer to retrieve assignments but could not without teacher releasing it. Mother said she sent emails seeking help but got no response from any of the instructors.

[Parent 1] said to best of her knowledge [Student]'s last day of attendance was December 8. She said he did not receive any instruction after his removal from the school by the district despite the fact he was supposed to have access to remote leaning.

A document to test [Student] for IEP was entered. Mother said that areas marked for testing were academic, hearing, observation, vision, cognitive and social behavior. She did not dispute that [Student] struggles in area of communication.

In an evaluation by [Mental Health Counselor] requested by the district he identified the following problems with [Student]: excessive impulsivity or hyperactivity, memory deficits with mobile, seating or self-help skills, difficulty maintaining alertness in a regular classroom, alertness to environmental stimuli and mood liability. The document forwarded to the district by [Parent 1] was part of the district's IEP evaluation.

[Parent 1] completed a "parent interview or survey" emailed by [School Psychologist]. As part of the IEP meeting she recalled mentioning [Student]'s interest in becoming a paleontologist in an effort to find classes he would enjoy. However, she stated that a change in language arts teacher was the only thing discussed. When questioned she did recall that putting her son in a smaller class setting was mentioned but nothing came of it, nor did a special writing class that was also discussed.

She relayed other options for [Student] that the district mentioned such as a behavioral tracker and psychology services directly with [School Psychologist], the latter of which she said did not take place. Class assignment reductions also did not take place, according to the mother. Access to a trusted adult when deregulated was assigned by the district to "I want to say it was [School Counselor 2]" [Parent 1] said. [Parent 1] said the district informed the family that "based on current data and information [Student] needs behavioral strategies because his behavior impedes his learning and/or the learning of others. [Student]'s strategies are addressed in this IEP."

She added that the strategy was supposed to be behavioral tracking with [School Psychologist] which did not take place.

[Parent 1] said in her opinion a solution to [Student]'s issues would entail a number of things to temper his disability including smaller class size in subjects where he struggles or is overwhelmed and a break period for him when he puts his head down or goes unresponsive. She said some teachers had recognized the need for the latter, respecting his need for a break.

Regarding November incident that led to suspension and eventual removal from [School] [Parent 1] said she received a call from [School Counselor 1] who said there was an issue and she was needed at school. She met with principal who summarized situation and called in a school resource officer. [Student] was in [School Counselor 1]'s office. [Parent 1] took [Student] home and returned to the school the following day for a meeting with the principal.

The principal went over what would happen in regard to [Student]. She said there would be a meeting with the team at the district office and they would determine how to proceed with [Student] Asked if she was invited to this meeting [Parent 1] said "physically, no." Her son's first full day of suspension was November 9.

[Parent 1] said she, [Student] and her husband [Parent 2] attended a November 15 meeting where they were told he would go to school as part of the "program." He would be searched and escorted to class. He would remain there with the exception of "maybe" bathroom breaks.

++++(Long discussion of what program he was in. Expedition?)

[Parent 1] said he program her son was part of lacked instruction and was primarily one of supervision. She said [Student] Only attended Tuesday's and Thursdays. Special education evaluation of [Student] took place at this time. The IEP took place in December. She said in January she received a call in forming her "the team" decided [Student] would attend Renaissance. [Parent 1] said "the team" was "the state schools or team that met in the district office."

According to [Parent 1] [Student] received no actual instruction from the time of suspension through early January when the principal informed her of the decision to move him to Renaissance. At that time she informed the principal she intended to fight the decision and was told to see [Director of Responsive Services] who [Parent 1] said is in the district office. She said that individual was part of the team making the Renaissance decision.

[Parent 1] said her appeal was not successful. She said she did not receive official notification of the decision to send [Student] To Renaissance, only the phone call and eventually an email stating the "team's" decision and how to enroll him in the school. [Parent 1] said she was not happy with the idea of Renaissance since she had researched other schools and was not impressed with the schools opportunities, test scores or graduation rates.

SUMMARY OF STUDENT'S [STUDENT] TESTIMONY

[Student]: "I think half of this I was actually at school and the other half I just stayed home."

Math is difficult. Understands what the teach is talking about "sometimes." Does not like asking teacher questions because doesn't feel like it. Prefers to try and "figure it out."

[Student]: Likes science and Spanish. Also indicated he likes biology. Reading was difficult early but clicked about [REDACTED] grade.

[Student]: Indicated he does not get along with his siblings who are younger.

[Student]: Stated [School Counselor 1] was a counselor at school. "I think he was just my assigned counselor." Said they would meet to talk about school and his office was where some of his "breaks" took place. Meetings took place prior to Thanksgiving but "not anymore."

[Student]: Would leave class to take breaks "if the teacher let me." Would seek permission first.

[Student]: Has some memory of day he was suspended. Said he got mad and refused to talk in [English Teacher]'s language arts class. Counselor came and got him. [Student] left room willingly. Was sent home with parents "because of what I told him." Does not remember what he said or much about meeting with [School Counselor 1].

[Student]: After suspension he recalls that he went to a "special class with very loud-mouthed class." Said he believes there were 5 students in the class and work was done on the website Summit. The indicated teacher assigned to the class would monitor progress on computer but no teacher to class instruction.

[Student]: Stated he did not "necessarily" have trouble with bullying and did not have any physical encounters with other students while attending school.

[Student]: Said sometimes he wishes he were dead because "sometimes i just think my family's life would be better if I was never in it."

[Student]: He said there was no one at school he wanted to harm in any manner. Said sometimes he says things in anger that he would never actually do. Responded that he had made a threat against his sister before. Had slapped his sister but added "she's hit me more."

[Student]: Is aware of guns in home but said they (rifles and pistols) are stored in a safe secured with padlock. [Student] does not have access to the storage area. Admitted he had opened it with use of the key more than a year ago to retrieve snacks. Said parents had stopped storing those there.

[Student]: Said he never had any intention to "shoot" [English Teacher].

SUMMARY OF TESTIMONY OF [SCHOOL TEACHER]

Has 25 years' experience at [School]. Currently a math teacher who taught in 2-5 Program last year. 2-5 Program for students not doing well in class and those having difficulty in regular setting. Smaller classes separate from regular setting. Admission typically self-directed with teacher support with some solely in program and others splitting time with daytime program at [School].

Agreed 90% or more of students' time spent on computer learning to include PFAs (Power Focus Area) and Summit, an on-line learning platform that "houses curriculum" and allows teachers to grade and provide feedback. Used as classroom assignment towards a class grade. Resources are

on Summit so course is self-directed without teacher instruction. "I was the facilitator" noting those who needed special-ed instruction would receive help from those instructors. Special Education teachers who come into program provide instruction in English and Math. He had personal knowledge of what was offered to [Student]. [Resource Case Manager] worked with [Student] during the 2-5 Program. Would pull the student out of 2-5 for testing purposes to best of [School Teacher]'s knowledge. Noted 2-5 Program and Expedition are not same programs. Agreed 2-5 Program served a remedial purpose.

[School Teacher] provided email summary of [Student]'s time in 2-5 Program to following: [Principal], [Resource Case Manager] and [School Psychologist]. Termed [Student] generally cooperative during that time although he "struggled to connect and communicate with me. My observation was that he was just trying to avoid." Said his use of term avoid could probably apply to the work being done and interaction "although it is not possible for me to know exactly what the student is thinking."

Did not know [Student] outside 2-5 setting. No prior interactions. Said according to his records, [Student] attended 2-5 Program five times out of "to best of my recollection 8-10 (days)." While he kept an attendance log he could not say if missed days were due to testing for [Student] who was scheduled in program Tuesday/Thursday. His first day was December 1 and last day January 10. Document entered into evidence shows January 13, 2023 as day [Student] was unenrolled from [School].

Stated document entered with unenrollment date was something he was unfamiliar with and did not have access to as a teacher. [School Teacher] sent email the date of January 13, 2023 to [Student]'s parents regarding his absence from 2-5. Was told he was in testing with [Resource Case Manager] (special education). [School Teacher] was not clear if [Student] had been found eligible for IDEA special education services. "As far as I knew that was the purpose of the testing [Resource Case Manager] was conducting," to determine eligibility.

[School Teacher] agreed that if [Student] had an IEP that called for him to receive specialized instruction that would have been provided in the 2-5 Program.

Said only other conversation he recalled with [Student]'s father was a day he walked him down to meet his dad. Did not recall any particular parts of conversation.

SUMMARY OF TESTIMONY OF [SCHOOL COUNSELOR 1]

Met with [Student] a handful of times, typically when the student was having a bad day, an issue or was sent to him by a teacher. Said latter happened once with gym teacher when [Student] was bumped by other students scuffling over a hockey puck. [Student] had put head down and wasn't talking. Doesn't recall if he went to gym to get student or if he was sent to counseling office.

Wasn't sure if [Student] got two-minute reset as outlined by accommodations when gym incident occurred before counseling referral. Did not know what [Student]'s 'coping strategies' were but said he fell into his group of students he was responsible for as a counselor and "I would help him calm down and just give him plenty of time to – you know, the handful of times that I met with [Student] -- to relax." Upon further questioning did recall seeing [Student] use a non-distracting fidget object but "rarely." As for drawing as a coping mechanism, [School Counselor 1] said that was a teacher's decision when they felt it was appropriate. [Student] never relayed that as an accommodation to [School Counselor 1].

Said under a 504 with an impairment code for anxiety as counselor his strategy would be to provide a comfortable office space for student to relax. Stated he does not provide therapy but assists students in a crisis until further action can be taken. If students are in a situation where needed help with "feelings such as this" counselor is point of contact with discipline issues falling under administration. Discretion of which would fall to teacher.

Regarding an allegation of bullying, he followed up with teacher on what she thought took place. Believes he followed up with phone call to [Student]'s mother. Could not remember what teacher said took place other than something about tussling over a hockey puck.

He recalls he knew [Student] saw an outside counselor through conversations with mother. Said he did not receive a request or release to talk to counselor [School Counselor 1] and had never spoken with him. Has never personally collaborated with outside counselors. Does not recall being designated as "safe space" for [Student] when feeling deregulated.

Sent November 8, 2022 email to [Principal] a couple of hours after [Student] had been in counseling center around time he was waiting for parents to arrive to pick up student.

[School Counselor 1] is a mandatory reporter which in Utah means he must disclose certain information. Typical information designated is mention of things of a harmful nature to themselves or others that a parent needs to know. He said he would also notify administration, district or school resource officer if necessary. On day of incident with [Student] he recalls notifying an administrator. Stayed with [Student] and did not personally notify school resource officer.

Is aware [Student] mentions suicide. During some of their sessions had done so. Parent was called and child picked up from school. Done so individual is under supervision and not alone. Encourage parents to keep close eye on them. Happened approximately twice with [Student]. [School Counselor 1] would be the person to call in those instances. Does not consider those "suspensions."

As for if [Student] appeared distressed in meetings with [School Counselor 1] characterized it more as seeming "tired and drained" in his opinion.

On day of incident in [English Teacher]'s class [Student] said he got in trouble for not "knowing anything" about the subject matter she was teaching. "I wrote I didn't know anything about this."

Said he was warned he might have to stay after class. [School Counselor 1] said he thought [Student] was more upset about not knowing what teacher wanted. From document entered [School Counselor 1] read quote of “knife or gun. I don’t care.”

[Student] went on to say “there are guns in the house but they are in the safe and have gun locks. I would use them but I don’t know where the key is. Some days I think about just killing myself so that I don’t kill other people but some days like today I want to kill a lot of people or whoever I can and then probably kill myself.” [School Counselor 1] said he could not previously recall [Student] saying something like that in “such detail.”

Asked [Student] for specifics on “who” he might harm because he wanted to know if he had plan and to find out more on what his thoughts were. “It’s my duty to ask further questions to see how we can further help this student and --” Stated he’s not an investigator but “still a counselor.” Agreed [Student] did not make a specific threat against teacher he asked him “who he would kill?” Said he did ask [Student] if he knew the consequences of such actions. Quote in [School Counselor 1]’s report “life in juvenile jail or life in prison.”

He did not have an agenda when asking more questions of [Student]. Instead of notifying parents as was case in expressions of suicide sent him to principal with a counselor. Put note in system about him not having access to firearms but did not tell principal directly. Said he believes he is one that called [Student]’s mother about incident. Doesn’t remember conversation. Upon arrival went over what [Student] said to him. Principal came in and did an assessment after being notified by one of other counselors. [School Counselor 1] said he didn’t think she’d read his report word for word at that time.

Said he spoke with principal when she entered office with student and parents present. Thinks he talked to [Student]’s mom first but “don’t remember.” After [Student] left with mother “that was the end of my dealings with [Student].” Said principal left with [Parents]. He did not go with them.

Does not recall being interviewed by Safe School “team” regarding [Student]’s incident.

Recalling intervention note on [Student] from December 13, 2021 said he puts notes in system as reminder that they met and what was said. Also beneficial if another counselor has to meet with same student in his absence. Is something he is trained to do. Notes are put in as soon as possible. Dates are logged into the system. Not sure if date of meeting and date of documentation could be different “on te computer side of it” but his practice is to do it same day.

Note entered refreshed his memory that he went to gym to get [Student] during prior incident. Said he’s certain the entry time was correct. Recalled another incident April 28, 2022 with [Student] crying in hallway. “Obviously, I was concerned. And so I asked why he was crying.” Said he was brought to his office and [Student] stated someone on Discord suggested he should kill himself.

Parents were notified of that incident. The source of that comment was never identified as a student at his school or any other.

May 9, 2022 incident with two other students. Notified mother and asked her to send [Student] to meet with him to write a statement in order to forward to administration to put a stop to behavior by the two boys in question. Also notes on September 20, 2022 in [English Teacher]'s class as well as one on September 26, 2022 involving [Student].

Notes on November 8, 2022 incident with [Student] reflect an entry by him of 1:30 p.m. Said [Student] tends to "think before he speaks" so he was patient with him. "If I had to guess 40 minutes, 45 minutes that he was in my office while we were waiting for his parents to come. That was when I put the note in the system." After they left, he wrote the email in question.

When he asked [Student] if there was someone he specifically wanted to kill he said? "Whoever, but [English Teacher] would be one of them." When discussing consequences where [Student] stated, "life in juvenile jail or life in prison." he stated "I would miss my mom but not my dad. I don't care."

Saw these statements as cause for concern not just for [Student] but others. "I just wanted to make sure he was safe, other people were safe and that was my focus." He said [English Teacher]'s safety was a concern for him as well. Said he has an obligation to report such statements to administration in order to ensure safety in the school. Also has an obligation to report them to parents of the child who made them.

In regard to Education Meeting Summary entry said he takes notes when "I sit in the 504 (meetings) with [Former Assistant Principal and 504 Coordinator], the vice principal at the time." He said [Former Assistant Principal and 504 Coordinator] was the 504 coordinator and he would note what was discussed along with accommodations for students. Along with the parents they would sign off on the paperwork with copies given to the parents. Said he did not recall any disagreements with parents regarding [Student]'s meeting.

Agreed that having a counselor called to class to take a student to counseling center was probably an uncomfortable situation for [Student]. When questioned if bringing him to office later was a better option [School Counselor 1] said he is supposed to go to classrooms when called by the teacher. He tries his best to be discreet by standing out in hallway and letting students come to him. Students are sent to him at time of issue so situation doesn't escalate "so we try to address it as soon as we can as counselors."

On the day in question, while [Student] had his head down on desk refusing to talk "that behavior, I wouldn't say would escalate" but wanted him "to come talk to me to find – to see if I could find out why he was having a bad day. Or (to) see why he is unresponsive or why he is choosing not to participate?"

Pressed further on why a meeting with [Student] could not wait until later “I went because I was notified by the teacher. For the welfare of the student, we are supposed to go.”

Said [Student] is a slow communicator. “But I took that as he just -- he tends to think before he speaks.”

On November 8, 2022 does not recall asking [Student] more than “maybe” three questions. Just let him talk. Wouldn't call [Student]'s behavior agitated when asking him who he would harm. On occasions when [Student] would mention suicide, [School Counselor 1] would contact parents but not go to administration, instead putting results of the discussion with the student in notes. “They (administration) are able to see those notes – if they chose, but I don't know if they did or not.” Said he notifies parents in those situations because it's their child. If it involves the school, he notifies the administration.

Would not label [Student]'s threat “terroristic” but it was a threat to others or to do harm to himself. Said in his knowledge of the document a threat to harm oneself is not a violation of the Safe School policy review. [School Counselor 1] did not initiate a Safe School policy review when [Student] made threats to harm himself.

In the 504 he wrote down what accommodations were agreed upon. Could not say why anxiety was chosen. Said that's between parent and [Former Assistant Principal and 504 Coordinator]. Said there are times he will make suggestions such as a water break that might be advantageous for the child, but the administration has approval over the 504.

Did not recall [Student]'s mother saying [Student] had more than anxiety. “(Appropriate) if that's what he's been diagnosed with. But I'm, again, not a mental health counselor. I don't know.” Said he believes [Student]'s head down with hoodie over face, not communicating falls under the umbrella of anxiety.

Agreed that as note taker in the meeting he wrote the accommodations for [Student]'s 504 plan. Does not ever remember being asked by a teacher to remove a student when pressed if removal was part of [Student]'s plan. Asked if plan states it's [Student]'s option to meet with counselor [School Counselor 1] said, “If that's the wording, then yes.” Said there was potential for student to miss instruction when he was ‘removed’ from class depending on what was taking place in classroom.

Said he had never known [Student] to be aggressive with teachers or peers. He had never seen him actually harm himself. He said he never made any assumptions about [Student]'s alleged threat to harm others. “I simply put in the notes what [Student] told me – because of the threat that was made towards himself and the school.”

As for why this particular remark by [Student] was given more credibility despite the fact [School Counselor 1] had never seen aggressive nature by the student he stated, “Any time a student says something like that to me, I will – I have no problems acting in the safety of him.”

Said he did not know if it is a requirement for him to notify administration if the word ‘kill’ is used but he chose to do so because “he made a threat to hurt others inside the school.” Agreed it's an automatic referral to administration when mentioning harm to others. “Not directly” when [Student] referenced harm to himself.

Said students are aware that portions of conversations with counselors can be disclosed if they meet certain criteria. “In all our offices there’s a big sign that lets students know we’re free to talk to you about anything you want to, basically. But if you make reference to hurting yourself, hurting others, if you’re participating in activities that may be harmful to yourself, you may be pregnant, they need to let other people know.”

Said [Student] would have seen the sign in his office.

SUMMARY OF TESTIMONY OF [LEA INVESTIGATOR]

Said his duties include checking social media, helping district by conducting home visits and doing threat observations during those visits. His supervisor is [REDACTED], security coordinator. He attends meetings with [Director of Responsive Services], director of student services. He works as part of the Safe Schools team. Coordinates Safe School suspension in-home visits with parents and the school administration. Retired after 21 years in law enforcement before working in Davis School District as a social media investigator in Security Coordination Department.

Says proper name for the safe school “team” is District Case Management Team abbreviated to DCMT. He is part of the decision making process for the “team” but doesn’t know if he’s actually considered a “final decision maker.”

Others who would be part of team at a school are administrators, clinicians, directors and support staff from special education. The director of DCMT is “usually” [Director of Responsive Services] one of the clinicians. When he is asked to do an in-home visit, the request follows completion of mandates through student services. Then he will receive an e-mail from a clinician or [Director of Responsive Services] saying the subject is ready for in-home visit. It’s his job to contact administration at said school and parents.

Performed in-home at [Parents] residence. Was accompanied by [School] Administrator [School Administrator]. Visit took place prior to Christmas (2022 ??). Agreed that document entered was produced by him noting November 30th as date of [Student] in-home.

At in-home [Student] was interviewed along with his father. Described [Student] as cooperative answering the questions [LEA Investigator] had. He, in turn, tried to answer all questions [Student] or his father had.

An in-home visit purpose is to determine if there is a heightened risk of violence to students or staff at a particular school. He described heightened as the possible access to weapons by the student or if they have plans to harm others. Sometimes it can come down to what the subject says. Said in-home with [Parents] revealed that there were times [Student] had access to scissors, but father stated the weapons in the home were secured and the student did not have access to them. [LEA Investigator] did not actually view the weapons in question.

[Student] stated he did not have plans to harm anyone. Admitted he had made comments but did not have intent to follow through. [LEA Investigator] did not understand that the creative writing incident occurred during the previous school year but that did not change his opinion. Said when looking at discipline to make a decision he takes the discipline record and number of offenses into consideration. "It depends." Can review parts of Encore he has access to during this process. Has access to disciplinary screens. Bullying might "not necessarily" appear on screens during this process.

[Student] did not make any additional threats. Wasn't sure if he mentioned discontent with any teachers during in-home. Noted [Student] "appeared to have a supportive parent at home." Felt dad was there to support [Student].

Doesn't recall being present when a final decision by the "team" was rendered for [Student]. DCMT made a recommendation for [Student] to be evaluated for special education. Said when he is present at DCMT meetings he might provide a summary. When not present his summary is usually sent to someone who will attend meeting.

Said process for final determination of a student's status is discussion of situation. Usually a student will receive a Safe School suspension and that's when it goes to the district case management team. Said his team usually meets weekly and discusses students brought before case management team. "then people provide input, various people, depending on the situation and experience they have in similar situations." He said mandates are set. The administration will then inform parents of mandates. Mandates can include expulsion or suspension.

Said during district case management [School] counselor who heard [Student]'s remarks first hand was not asked to attend, only a school administrator. "But prior or later, I don't know." Said administrator who usually knows the child is the one who presents the case to the team.

Said DCMT met again after in-home visit which is what takes place with all students. First meeting determines mandates which he explained are "what they're asking the student to complete to try to determine what we can do to help the student receive the help they need." At the next meeting

the group discusses and summarizes what's determined based on set mandates. "Then they decide what the best thing to do from that point is."

Does not know clinician assigned to [Student] case.

At end of discussion by group there's a "conclusion" by those assigned. Said there's discussion of what's best for the student an agreement is made between the "team" and administration. They don't take a vote.

Said [Director of Responsive Services] leads the meetings but does not make final decision. He provides input on best practices but it is a team decision. Agreed that [Director of Responsive Services]'s opinion carried weight with him and his opinion.

Said he does not typically make recommendations following in-home visits but simply talks about what he learned. Said he doesn't have the expertise to decide what is best for the individual student. Said following 40 minute meeting with [Student] he doesn't think he would have made a recommendation on what is best for him.

Said with his background (in law enforcement) the "team" may seek his opinion in some cases." I can provide information but I don't make recommendations normally."

Had [Student]'s case been turned over to law enforcement, LEA Investigator said "it's hard for me to speculate what law enforcement would do" because a crime wasn't reported to police. However, he added that while the threats could have been reported to police he doesn't think a criminal case would have been opened. He said their involvement would more than likely amount to a welfare check unless they found something else at the home.

Reiterated that he did not find anything of concern at the [Parents] home. Did not feel a need to pass what he learned from the in-home on to law enforcement.

Was not familiar with the Sample Threat Assessment and Response form.

During his time in law enforcement he had served as school resource officer. Said his training includes investigations as well as forensic interviewing for juvenile victims, some Zoom conferences put on by Secret Service that relate to "mass threats." Distinguished the difference he saw between assessment and observation as "assessments have more clinical training – more expertise than I have. My observations are based on things I've learned through my career and tools to use to help me try to determine if there's a heightened risk." Said possibly he could do an observation with someone else providing an assessment to support his findings.

Said Secret Service Zoom conferences entailed analysis of mass shootings over last decade. Has taken part in those to improve his observation skills. Training did not include evacuation procedures but were "mostly" about best practices for interventions and observations.

Was not sure if a recommendation for intervention was made in [Student]'s case during DCMT process. Did not know if DCMT utilized any protocols or other tools that come from his Secret Service training. Had not seen DCMT use other documents to guide the investigation process.

His Secret Service training on "interventions" included what has been learned about mass shooter "commonalities" and protections schools could use with buildings and things of that nature. Agreed that said interventions are more like security measures.

SUMMARY OF TESTIMONY OF [FORMER ASSISTANT PRINCIPAL AND 504 COORDINATOR]

She is assistant principal at [REDACTED]. Formerly served as assistant principal at [School]. As assistant principal over saw discipline, case management team, was the LEA, Summit administrator and at one time 504 coordinator.

Referencing email from [Parent 1] said she was looking for a 504 implementation for [Student] dated June 21, 2021 sent to then principal [REDACTED]. [Former Assistant Principal and 504 Coordinator] sent reply on August 3rd. [Parent] reached out to her the following day attempting to set up time to discuss 504. [Former Assistant Principal and 504 Coordinator] replied on August 11. Meeting was set up. [Parent 1] emailed to explain she was sending letter she received from [Student]'s psychologist. Had discussed she had information she hoped would be helpful. [Parent 1] sent an additional email saying she had a second letter that could be used for the 504 plan. [Former Assistant Principal and 504 Coordinator] recalls receiving first letter but not the second but has since looked through it.

Typically information like the letters for 504 would be stored in hard file in office. Prior to the Wednesday meeting [Parent 1] emailed to say [Student] had an issue in Mr. [REDACTED]'s (assistant principal) class.

Sent out email regarding 504 for [Student] to all of his teachers. Done through Encore as a group message. The attachment sent was within system, not attached to email. No way for her to confirm teachers viewed it. School protocol calls for faculty members to read those once a quarter. In faculty meetings they are reminded to review all of their student's 504s and IEPs. Reiterated she cannot actually verify [Student]'s teachers reviewed his 504.

Reading from [School Counselor 1]'s email "You probably have a voicemail from [Student]'s mom. I spoke with her and put a note in his intervention. I will hopefully meet with him tomorrow." Said email was sent to her to "loop me in" that there might be some form of communication coming from [Parent 1]. Does not remember follow-up from [School Counselor 1] regarding [Student 1] meeting nor did she have knowledge of problem that had come up.

Regarding another email from [Parent 1] addressed to [School Counselor 1] and [Former Assistant Principal and 504 Coordinator] said it was to make them aware she was sending [Student] to school

that day. Said he was reluctant, but she assured him [School Counselor 1] and [Former Assistant Principal and 504 Coordinator] would look out for him along with teachers. Apparently, [Student] didn't want to write a statement "about something" and mother wanted [School Counselor 1] and [Former Assistant Principal and 504 Coordinator] to talk with him. Mother thought it might be a day where if something happened [Student] would shut down. She wanted to be made aware if something took place. [Former Assistant Principal and 504 Coordinator] replied to her "I will and I have notified his teachers." Doesn't recall talking to [Student] herself but stated she talks to numerous students on a given day and "I would say that I talked to him, but I don't have a memory of two years ago."

Received email from [English Teacher] stating she confiscated handmade envelope from [Student] that "talks about killing everyone in the village." Teacher asked if she should be concerned – what she should do with it. Received email from [School Administrator] written to [English Teacher], [Principal] and [Former Assistant Principal and 504 Coordinator]. Said "[Principal] and I looked over." Said there was no school threat and was not an issue. She was not sure if the incident was forwarded to DCMT.

[REDACTED] (Safe Schools administrative assistant) emailed to [Former Assistant Principal and 504 Coordinator] and [School Staff 1] that it would be good if "we could see" [Student] before Thanksgiving break. Said guardians could text on Google Voice if unable to talk to (him?) on phone due to work. [School Staff 1] made arrangements with parents. [Former Assistant Principal and 504 Coordinator] was not aware of what those arrangements were.

Regarding [Principal]'s email to [Student]'s teachers said she was not listed as a recipient but was aware the student was going to be put on remote learning for dates in email. She was aware of situation because "team" coordinates to keep each other in loop so they can be abreast of what's happening and the plan. Acknowledged that type information is discussed in daily meetings. Said her memory of the move to remote learning was due to a threat made to teacher and brought to attention of principal by counselor [School Counselor 1].

Defines remote learning as student not in building but having access to classes virtually; able to meet with teachers and receive services. Said classes can be live streamed but typically a "point teacher" will chat with student to see if they are ok – and -- "if they need to make those arrangements, they can." Does not know if arrangements were made for [Student] She was also unsure who point teacher was nor did she receive or field questions from instructors regarding [Student]'s implementation.

Safe Schools Clinical team are "professionals that work for student and family resources" a department in school district. Does not know their daily routine and responsibilities. [Clinical Team Staff] (part of clinical team) sent email to [Principal] and [School Staff 1] which was assessment of [Student] and was going to connect with one or both to go over it. [Principal] does not remember

if she read the assessment. Did not speak with [Clinical Team Staff] regarding it. Said assessment was not brought into IEP meeting.

Sent individual emails to [Student]’s teachers instead of group email. “So previously there is a button in Encore that I can notify teachers for -- I was gathering information for the IEP in this case. The at-risk documentation that I sent out gathers information for ---- interventions in the classroom, what has been successful for a student, and we use that when we – I forward that to our special ed department head when they’re looking at testing and deciding on accommodations.”

When documentation was returned the information was printed and forwarded to [Resource Case Manager]. She did not review personally. Called the questionnaire for at-risk documentation “pretty standard” to determine if intervention has been successful.

To best of her recollection [School Administrator] was point of contact with [Parents] family. Said 504 team for [Student] included herself “Mr. ---- in this case, [School Counselor 1]. There’s usually a counselor involved. [School Counselor 1] was involved in that one.”

Confirmed “doctor letter” was reviewed in preparation for writing 504. Said when a 504 is written it is helpful to have sources, including those professionals in medical field. Said because [Student] was new to school that type information would help with creating “appropriate accommodations.” To the best of her memory [Parent 1] asked for 504 because of [Student]’s struggles with anxiety and transition from elementary school. Said his anxiety warranted the 504.

According to the ‘letter’, [Student] had a history of anxiety and depression. Was overwhelmed at times and would withdraw “as I remember.” Read from letter that Dr. [REDACTED]’s diagnosis for [Student] included “disruptive mood dysregulation disorder, chronic insomnia, attention deficit hyperactivity disorder, the inattentive type.” Does not recall [Student]’s mother explaining disruptive mood dysregulation disorder and relating that anxiety was not her son’s only issue.

Said while the intervention date can be altered in Encore system recording, the entry date cannot. “The intervention date automatically comes up the same as the entry date unless you change it.” Emails can be copied and pasted as entries in the system such as one from [Parent 1] to [School Counselor 1].

Explained intervention notes would be different from disciplinary notes and the Safe School committee has access to both. Records are cumulative and past infractions can be used to make decisions. “As far back as shows a pattern of behavior.”

Described intervention type behavior as “in intervention you have four choices. “Behavior” is one. “Academic” is another. “Attendance” is a third and “other,” without any context is another option.

While she helped facilitate 504, sat in on IEP and helped collect at-risk documentation from the teachers to [Resource Case Manager] she does not recall other interactions with [Student].

In [Student]'s case the school did a 504 because it was requested and it was the first intervention phase for a student. If 504 isn't successful and student needs more specialized instruction school system moves to IEP. How they progress depends on the student. Does not remember if grades or RISE testing was a consideration for [Student]. Doesn't remember if discipline or infractions for [Student] were used in creating plan.

Said no member of her staff observed [Student] in preparation for the writing of his 504 but said there was enough information available to choose between a 504 and IEP. Did not rule out an IEP at the time.

Explained 'Shoupp-Junior High' is a code for students dropped from school rosters. It's a place school can still access records when students are no longer on the records of school. Documents presented showed [Student] was dropped from [School] roster prior to March 23, 2023. Said if student enrolls in another school inside or outside the district it would no longer say "Shoupp" in records but would reflect name of current school. 'Shoupp' in documentation indicates [Student] had not enrolled anywhere else in Davis district.

Said [Student]'s 2022 grades would not have been cause at time to consider an IEP for [Student] instead of a 504.

Reviewing [Student]'s science grades for 2022 which were passing with a B-, F and two Ds, explained that grades are indicator of learning because "end of year grades and end of term grades indicate a student's mastery based on our Summit Learning platform system. It indicates proficiency." Said [Student]'s science grades based on Summit would show he had a "mastery" but might be considered "off track. If a student is off track they could have one piece of their grade not complete and it pulls their grade down."

Summit as a learning management system similar to Canvas. Allows for review of data by teachers, administrators and counselors. Looked at weekly. Said counselors would look at Summit data more often than term grades which come out every four weeks. Teachers would be first to call attention to a child's issues with academics. Counselors second. "Local case management also does." Students are looked at many levels.

In the case of a student identified as struggling, teacher would work with student success coordinator on campus. Student could be pulled into small group instruction or worked with individually. Could also make a referral. Did not believe [Student]'s student success coordinator currently works with district. Said turnover in that position is high. Student success coordinators don't keep log of students they work with.

During their review of Summit, counselors could also make referrals, possibly enrolling a student in a study skills class. Also make referrals to the student success coordinators and coordinate with teachers on working with students. Might also bring them up in case management.

Did not see a study skills class in [Student]'s schedule. That could be tracked if there was a referral through the office otherwise "If they just had them work with a student success coordinator, that wouldn't be tracked because we have students in and out working with student success coordinators continuously."

504 plans are usually evaluated when students transition from one school to another or if plan isn't successful. In the latter case it is reevaluated. Said a number of Fs by a student would not be reason to change plan or reevaluate.

From [Student]'s attendance record 88 absences, second term, excused. Encore record indicates who excused absence (parent or office). The 88 absences represent class periods, not days.

Defined 'Home Release' as when a student is not enrolled during that class period. It means student is home not in class. No services provided during that time. [School Counselor 2] (counselor) is the person of record for the 'Home Release' period since it is not an actual class.

[Student] had a 'Home Release' listing for 12-2-22 "so he was not in class at that point but could potentially have a teacher assigned. But it wouldn't have been [School Counselor 2]. Typically, when a student isn't enrolled during that period, they are not at school. I'm looking at 'Remote Learning' on the 'Absent' reason and 'Remote Learning' indicates there was possibly a teacher assigned to connect with the student." Had no idea who that would have been. Would have been handled by whoever met with parents.

Permission for testing or evaluation document signed by [Resource Case Manager]. Boxes checked on document after consulting school psychologist and from at risk documentation gathered from teachers by [Former Assistant Principal and 504 Coordinator] as mentioned earlier. [Resource Case Manager] would not have received confidential assessment produced by the Safe School committee.

Does not believe at-risk documentation was used in [Student]'s case to decide what areas to evaluate.

In context of special education, transition would be defined as moving to a more restricted environment or from one school setting to another. Vocational would be defined as transitioning out of school to "like, plan for their future." Concurred transition plans are required for any student 14 or older but could not answer why it wasn't "checked" for [Student].

Explained a Notice of Determination of Eligibility is used to determine if a student is eligible for specialization and if so the classification they fall into. [Student] fell into "other health impairments" but said [School Psychologist] explained why and she couldn't remember reason. Does not know if [Student] would have qualified in other areas. Answered "yes" [Student] would have qualified in areas of math and writing after being presented Kaufman Test of Educational Achievement scores with low marks in math computation, math composite and written expression.

Recollections of IEP meeting, remembers as positive experience. Felt parents of [Student] were friendly during interaction. Final decision was to qualify him as a child with disability who needed specialized instruction.

[Student]'s referral to district case management led to his evaluation. During review of December 19th data, recalls that he was passing in Summit "still in math" and remembers being surprised. Does not remember what documents were used by IEP team in regard to [Student] while qualifying him for disability.

Answered "no" to [Student] being placed in self-contained unit and in a behavior classroom. Doesn't remember if he was moved into special ed classes for math and reading. Recalls [School Psychologist] "went to his 2-5 class after this point to provide services. I asked him to keep a log of that as well as his case manager, who went to 2-5 classes to provide services as well." Can't remember how many times [School Psychologist] saw student under his IEP. "He kept a log."

Said in review of documentation, other than contacting [Parent 1] she doesn't see anything related to the 504 and IEP she was personally involved with.

When situation happens at school that rises to level of Safe School violation, administrative team will contact school directors and student services – consult and make a plan. Agreed it is an intermediary step between discipline and Safe School committee. [School Administrator] and [Principal] would decide who should be called, who to consult and plan with.

Upon questioning by hearing officer, agreed many of protocols listed in (Exhibit 75-2) were used in school district.

Explained 'Case Management Team Referral' as something used after consulting, contacting and planning with school director or student services. Looking specifically at Nov. 9 current services section signed by [Principal], [Former Assistant Principal and 504 Coordinator] responded that [Student] was not eligible for special education at the time form was completed but did qualify for a 504.

Regarding a manifestation hearing under a 504 plan, if a student is going to be out of school for more than 10 allotted days one is held to determine if reason for absence is a manifestation of the disability. Concurred a hearing did not take place. Said student was not suspended but instead put on remote learning. [Student] did not have services at that time but that did not necessarily make his absence from school a suspension. "The student --- would have had access to the curriculum virtually."

Did not have evidence [Student] accessed curriculum virtually. Said [Principal] would have more knowledge of who was charged with contacting student and doing instruction.

'Expulsion for Regular Education and 504 Students' term in the Student Conduct and Discipline Policy means removal from school attendance for a period of longer than 10 consecutive school days. [Student] was not removed from attendance – still enrolled in school – but placed on remote learning pending the district case findings. She did not recall how many days [Student] was on remote learning.

Explaining 2-5 Program, student attends the school 2:00-5:00 overlapping an 8:00-3:00 school day. Reports to teacher overseeing program. Students enrolled in their core classes and can get help from that teacher at that time. Curriculum delivered virtually with teacher of record the 2-5 teacher. Said she has seen the 2-5 Program in person and has seen a teacher standing and giving classroom instruction. Said that would have been [School Teacher] who she said "quite often went from student to student when I have gone up there." Said other teachers have visited classroom including special education teachers who work individually with students.

It would surprise her to know [School Teacher] said he did not instruct during that time.

Does not know when [Student] went from remote learning to 2-5 Program. Said have variety of students in program for different reasons but in [Student]'s case it was because of the Safe School violation and providing safety for him and other students and faculty.

[Student] remained in 2-5 after IEP was completed and would have received special education services. Could not specify if those services were in both math and writing. Said services and who were questions for others in the school system.

Clarified Summit is not considered instruction -- "it's curriculum." Teachers create curriculum and through instruction or resources provided "in there that students can access that they can learn." Said Davis system teachers create curriculum from scratch. Base is created by the district. Explained curriculum can receive adjustments from teachers such as those at [School].

What precipitated [Student]'s unenrollment from [School] "district case management had asked for the school to test for the IEP. The IEP results were provided back to district case management. They met in January and then had decided to change location for [Student], wanted to have some Safe School, like, instruction provided for him. So they decided to change location because [School] does not provide that instruction. So they came back with the mandate that they wanted to change location to Renaissance sometime in January." Defined "they" as district team.

Has attended those meetings.

Summit is a cumulative system. Grades can improve. A student can go back any time and "master any concept during the course of the year." Said grades across first three terms can all be higher in fourth term and reflect cumulatively backwards.

[Student]’s grade for [REDACTED] grade math were C’s in all four terms which is showing proficiency. To have a C in the [School] system and show proficiency a student has to complete quizzes mastered at 80 percent. “They have cognitive skills in their – and specifically math.” They also must master concept units.

[Student]’s [REDACTED] grade English grades were B’s in all four terms. When asked if those grades would lead her to believe a student might have a disability requiring special instruction in math or written expression the answer was “no.”

[School] is the only Title One secondary school in Davis County and one of a few in northern Utah. It services at-risk students and has a lot of students with backgrounds that include family issues – and a lot with trauma in their lives. The school has a higher number of students serviced by IEPs and 504s.

There were a lot of challenges for students academically after COVID with many suffering significant losses in reading, math and social expression with each other. There was a “spike” in behavior - “I believe 2,500 incidences that particular year of discipline and behavior.” Those numbers were “way more’ than experienced in the past.

As for [Student] nothing in transcript, in terms of [REDACTED] grade, that caused her concern or warranted referral for evaluation. During [REDACTED] grade at [School] never written request from [Student]’s parents asking for evaluation under IDEA. “No. The first I – the first expression was coming from case management.” No teachers expressed specific concerns about where they thought [Student] should be evaluated.

“is correct” that as of November 8 neither the parent nor any teacher had conveyed in writing that they felt [Student] needed evaluation under IDEA.

Reading from [Mental Health Counselor] document “diagnosed with major depression, recurrent episode, moderate to severe and generalized anxiety disorder.” No mention of mood disorder or disruptive mood dysregulation disorder. It does not look like [Mental Health Counselor] requested a particular plan for [Student]. Stated he was writing the letter at the request of parents. Said [Mental Health Counselor] could make suggestions from meetings. “Like the Section 504 was – it looks like that was a recommendation.’

Spoke regarding two instances during [REDACTED] grade year where teachers ([REDACTED] and [REDACTED]) offered help catching up or encouragement about [Student]’s progress in emails or other forms of contact to parents. Described as interventions.

Confirmed documents she prepared for hearing were school records. “They came from our intervention system.”

Confirmed she was present at December 19 meeting where Evaluation Results Summary Report, Prior Notice for Identification and Determination Eligibility was prepared and made. Confirmed she, along with [School Psychologist], had read over the evaluation prepared by [Safe School Intervention Specialist] as part of district case management.

Confirmed Counselor [School Counselor 2] is also a licensed teacher and was assigned as 'general teacher' to [Student]'s home release while he was in remote learning. Also confirmed she [Former Assistant Principal and 504 Coordinator] was in role of LEA at December 19 IEP meeting. [School Counselor 2] was also there as a team member and [Former Assistant Principal and 504 Coordinator] said that was appropriate as she had knowledge of the student.

She took notes in meeting. All present would review those notes before signing off on them. Said she asks if anyone has anything to add or if changes need to be made. Notes accurately reflect what was discussed in the meeting. There were "no items of disagreement." No concerns raised by the parents. Said if there had been they would have been followed or noted.

IDEA generates invitations to those invited to the meeting. Procedural safeguards are distributed with the notice of meeting.

In regard to 504 distribution email, it is understood that plan is to be implemented immediately. A yellow flag is put on student's account. "It states the student has a 504, an IEP, as well as a variety of other flags. All the teachers, they know where to see them. They're trained on them."

When teachers click on an IEP or 504 in system it pulls up everything except signatures. Shows impairment code, team's rationale, the discipline such as accommodations and bus eligibility. Said lack of signatures on records she pulled were because they came from the system, not the hard copies. That is why parents received an unsigned copy.

Acknowledged 'educator licensing lookup' from Utah State Board of Education lists [School Counselor 2] as a counselor at [School]. School counselor is her licensing area. Further acknowledged evidence that 'educator licensing lookup' showed [School Counselor 2]'s professional license expired 6/30/21.

Went on to say that [School Counselor 2] is employed by the school as a counselor with an "endorsement" in college and career readiness (CCR) which allows her to provide general education in classroom setting. She is not allowed to teach math, language arts or science. Said her previous testimony that [School Counselor 2] was a teacher was a "miscommunication or misremembering things." Said it was confusion on her part – confusing the endorsement that allowed [School Counselor 2] to go into CCA classrooms. She has known of [School Counselor 2]'s endorsement in CCA through her principals.

As to how accommodations are considered under Summit said teachers can adjust timelines, assign extra resources to be credit for students and can adjust expectations within the platform -- so they can unassign different pieces of the projects. Quizzes can be read aloud which she has seen happen.

Described quizzes (PFAs) as multiple choice that students can click on or read aloud if they choose. Acknowledged students do not have to complete the reading to complete the quiz. Can't guess at questions until correct. Can request to retake quiz if they do not pass. Students can take notes on any of the resources that are provided in the quiz. Can utilize practice test and resources found there. Can 'click' on request button to take quiz a second time.

Explained she can go in system and see all such requests and teachers can too. Can go step further "within a classroom" where teachers can approve request. Said teachers check that software daily. When a student can retake quizzes depends on when the teacher logs into the system. Could be within an hour if they are logged in.

For students with accommodations "teachers can ask their department head to make those changes." Said a variety of people ranging from special education instructors to administrators and counselors "have made changes." Said teachers aren't allowed to make those changes until they've "been trained."

As for seeing if changes or accommodations were made in the system that pertained to [Student] did not know if those could be seen. "Somebody would probably have to get into the system and take a look."

Acknowledged that standardized tests are considered when deciding if a student has a need academically for an IEP. In [Student]'s [REDACTED] grade RISE testing he posted a 2 on a scale of 1-4 (four being extremely proficient) Said 2 is not proficient. Said this was not a factor considered helpful for determining [Student]'s 504. "The communication I got from the mom was that the elementary (counselor) had recommended a 504 as well as the medical professional." Did not speak to the elementary school about need for 504.

Said her statement that C's in math each term of [REDACTED] grade showed [Student] was responding to intervention meant that "a C in Summit is a proficient score so it was an indication of understanding." To receive a C in the class [Student] would need a score of 80 percent within PFAs with the rest of the grade based on math projects that serve as concept units.

Explained that an 80 on a quiz would not alone give a student a C grade. The student would also have to keep pace in instruction in PFAs (Power Focus Areas) to balance grade into a C. A student with an 80 on one quiz who only took one PFA "on his report card, it would look like an F." To remain on track the student must keep pace. For a child to earn a B they would have completed all PFAs "by the end of the year."

Explained a Title One School as one based on free/reduced lunch status. Said if approximately 40% of students fall into that category a school is granted Title One status.

Was not sure if [School] had a higher number of 504s but confirmed there are more IEPs than other schools. Said based on some reports she's seen that's due to having a "higher count" than other schools. Reconfirmed earlier testimony that the school had highest behavior reporting in district (2,500) "Somewhere in that neighborhood with incidences in our discipline record." That data was from the 2021-2022 year. Does not believe [School] is disciplining harder than other schools in district.

Is aware that when a child is referred to Safe School Committee the team can access the child's discipline file and take into consideration the length and contents of that file before the committee makes a decision on consequences. Thinks the conversations and notes "in there give a complete picture" of the student's needs. Said it's possible higher number of behavior incidents and IEPs might be related to Title One status.

Confirmed [Student] receives Title One services. Deferred how Title One status dollars are spent to Principal.

Said she is aware part of qualifying a student for an IEP is comparing his/her IQ to their academic results. Recalls mentioning that [Student] does better than average compared to other students at school. Said in his case that's relevant because when she looked at his academic record she didn't see any red flags. "When I looked at the grades and saw that there were Cs, there were some Bs – looking at that, it just wasn't something that alarmed me. Confirmed she's seen many students with lower grades.

She does not attribute the large number of students at [School] not passing to the Summit Learning program. Said Covid played a factor with a lot of students who had hard time getting back into school "based on that, it didn't look – it looked as if he was adjusting.

Asked if giving an F grade to a child adjusting from Covid is fair said, "I wouldn't presume to know what a teacher gave an F for." Said Summit delivers the core classes so not all Fs could be tied to it. Confirmed it is the policy of the school that a math student would receive an F if Summit work was below average.

Is aware a student can qualify for an IEP based on behavior alone. Said in [Student]'s case "when we made his IEP, we had looked at the testing and had looked at the recommendations from – the results of that." Referral was made by district case management team.

Did not recall that it stated DCMT on referral form. Acknowledged the referral came from a committee recommendation tasked with assessing safe behavior. Said IEP considered behavior as an area of need for the student. "We considered those recommendations that were made from – that." Said that was referred to in form from [Safe School Intervention Specialist] and [School

Psychologist]. Does not recall discussion of creating a functional behavior assessment for [Student] If someone were assigned to create one it would be [School Psychologist] or [Resource Case Manager]. Does not know status of either one's area of license.

Purpose of a transcript is to reflect classes taken and grades achieved. Said it was possible that term "honors math" created a false notion to parents and future educators about student's ability.

Regarding letters from two doctors provided by [Student]'s parents that were considered by 504 committee, [Former Assistant Principal and 504 Coordinator] said [Mental Health Counselor] was a licensed clinical mental health counselor. She was not aware that counselors are not licensed or qualified to provide diagnosis. With that in mind, could not say that the fact disruptive mood dysregulation disorder (DMDD) was not listed made more sense to her. Said "I just listed what he had here. I don't know if I had said it was important or not."

Qualifications of person(s) in Exhibit 15 is board-certified psychiatric mental health practitioner. Was not aware if they are qualified to provide diagnosis. "I assumed from both of these letters that both of them would be qualified to give that."

Said 504 was written for [Student] [REDACTED] grade year of 2021. Said Exhibit P26 "Might have been used for the IEP." Form was filled out by [Mental Health Counselor]. [Former Assistant Principal and 504 Coordinator] not familiar with that particular type of form.

Form said "it is the Health Professional Report." Agreed it does report DMDD as well as generalized anxiety disorder. Does not remember if it was considered by IEP team when writing [Student]'s IEP. Is aware use of medication to address a disability can't be used to disqualify a child for a 504 or IEP.

Revised earlier statement regarding Evaluation Results Summary Report. Said it was reviewed with parents in meeting – not prepared in the meeting.

Regarding Page 16 email, said it was written by [Safe School Intervention Specialist]. Email sent to [Former Assistant Principal and 504 Coordinator] and [School Staff 1]. Sent as an assessment after meeting with [Student]. Said she had reviewed the document after earlier stating had not.

Said IEP team did not discuss [Safe School Intervention Specialist]'s summary in the IEP evaluation meeting. As for if the behavioral information contained within was important and should have been considered, said "I think that the knowledge was summarized by the school psychologist in the meeting. I think the knowledge [School Psychologist] had from that document – was utilized in determining the information. He'd be better to ask about that."

Stated earlier that [School Counselor 2] was assigned to IEP meeting because she had knowledge of [Student] but was not aware the meeting was the first time [School Counselor 2] had met him. Earlier claim was based on [School Counselor 2]'s work visiting the classes and working with students in all grades presenting skills. Asked if she believes [School Counselor 2] could have

identified [Student] prior to meeting [Former Assistant Principal and 504 Coordinator] said “she ([School Counselor 2]) would have to answer that.”

Regarding unsigned 504 versus signed copy, reiterated that she pulled from system because “we were trying to collect everything and everything on the system is the exact same.” Signatures do not appear on the online form. They do appear on the hard copy. All accommodations are the same both online and in hard copy. Does not know if doctors’ letters are in hard copy file. Does not remember if she prepared the hard copy file.

Is no longer a 504 coordinator for the school. “I wasn’t last year either. I moved all those files.”

Said she did prepare [Student]’s 504 folder.

Summit Learning program has assessments, projects and instruction built into system. Also contains resources. Hasn’t fielded any complaints from parents in district claiming there is no instruction (in Summit). Has not attended board meetings where parents have complained about Summit. Has read headlines but not articles stating some parents in the district had complained.

She has heard people at other schools discussing parents wanting to opt-out of Summit. “The things I’ve heard have been a misrepresentation of the system when they’ve argued about – you know, there’s been rumors they’re upset that their kids are in front of a computer all day. That’s not true. But I haven’t attended any board meetings because we haven’t had any complaints from our community about the system.”

In her opinion parents are upset about the social environment in the country, worried about changes made within the school systems. Said when faced with change they attack and get false information. She said that has not been the case at “our school.” School has gotten positive feedback. “(Parents) can look directly at – what a specific assignment is and they can click on resources and the instruction on how to do it.” Said Summit was a life saver for the school during COVID.

When asked about earlier testimony that students lost ground during COVID, [Former Assistant Principal and 504 Coordinator] said she believed that was true.

She did not know if the Summit platform could exist independent of a teacher for students like [Student] during his ‘alleged suspension.’ [Former Assistant Principal and 504 Coordinator] stated “It certainly wouldn’t be ideal, but I do think that a student could progress through that system.” Said the school has had students work ahead in system.

Did not know if that would be the case in mathematics with a learning disability student.

WITNESS TESTIMONY OF [DIRECTOR OF RESPONSIVE SERVICES] ON DIRECT EXAMINATION

The witness testified in pertinent part as follows: The witness, [Director of Responsive Services], has an educational background in social work, school counseling, and school administration. He is the director of responsive services in the Davis district. In this role, he oversees various tasks such as working with school counselors, mental health services, crisis response, and case management. He supervises a team including licensed clinical professionals.

The witness discussed the process of receiving referrals from school principals, assessing concerns, and convening a district case management team to discuss student incidents. He mentioned a specific incident involving the student in this case, who was referred for concerning behavior and possible self-harm/suicide ideation. He further talks about the consultation process, setting mandates for the student, and how refusal to complete mandates could result in alternative education options. The witness explains that some students might be on remote learning during this time but clarifies that remote learning is not always considered a suspension, as services are still provided. The witness also clarifies that parents' decisions can influence the duration of alternative education arrangements and potential reenrollment.

The witness examines a document, which appeared to be discussing an incident involving the student who made concerning statements. The witness provides information about the criteria for expulsion, mentioning a period of 90 to 180 days without services as a possible threshold. The witness is asked about a situation where a student was out of school for 90 days due to non-compliance with mandates, and whether that would be considered an expulsion. The witness clarifies that it would only be considered a formal expulsion if formally classified as such through case management.

The testimony then shifts to a discussion about a home visit conducted by the school. The witness is questioned about whether they find a home visit intrusive and whether it is considered a friendly meeting. The witness confirms that the visit was conducted by a school administrator along with another person, and feedback from the visit was provided to the case management team. The witness also discusses the findings and recommendations from the visit, including concerns that the student might continue to make claims or threats without appropriate support.

[Director of Responsive Services]'s testimony then delves into a detailed examination of the student's statements. The witness is asked to assess whether various statements made by the student could be perceived as threats. The witness acknowledges that some statements might not be threatening, but others, such as the mention of using guns, despite them being locked up, could be seen as threats. The witness further explains that statements made by the student that he considered harming himself to prevent harming others, are taken seriously due to safety concerns.

The witness was further questioned about prior incidents involving the student's statements about self-harm and whether those incidents led to a referral to the committee. The witness confirmed that a school investigation took place, but it did not result in a referral to the committee due to the belief that the issue could be addressed at the school level.

[Director of Responsive Services] then suggested that the decision to handle different situations involving the student at school and through him was due to a pattern of behavior. He mentioned that he wanted to provide more support for the second incident because it seemed escalated. The witness also distinguished between a student making specific threats to harm someone and a counselor asking clarifying questions to investigate a student's comments. He testified that the counselor's question aimed to gather information for addressing concerns, not necessarily for investigating a crime.

The witness mentioned that [Safe School Intervention Specialist], a member of the Safe School clinical team, had a conversation with the parents and conducted a risk assessment for the student. However, the witness could not recall specific details about [Safe School Intervention Specialist]'s recommendations or whether the suggestion of committing the child to a psychiatric facility was made. [Director of Responsive Services] testified that he had met with the parents to review district policies and concerns. The parents expressed frustration with the student's behavior and communication from the school.

The witness then discussed the transition of the student to a different program and evaluation for an Individualized Education Program (IEP). The witness mentioned interactions with the principal of Renaissance Academy, and the decision was made to refer the student to Renaissance Academy for services based on IEP recommendations.

[Director of Responsive Services] was questioned about whether the student was technically expelled according to district policy due to being removed from school for more than 10 consecutive days. The witness stated that in practice, the interpretation of expulsion is related to the provision of services, not just removal from school. He was next asked about the issuance of a letter to parents regarding the committee's decision and the appeal process. The witness couldn't recall whether such a letter was sent and couldn't confirm whether the parents were informed of their right to appeal.

The witness was asked about the student's refusal to provide information during an investigation, and testified that according to district policy, students have the right to refuse to respond, and this refusal should be respected without becoming argumentative or coercive.

[Director of Responsive Services] was additionally questioned about a document, labeled as Exhibit 45. He confirmed recognizing the document as a policy review page and identified his own signature as the policy reviewer. The document discussed threats and their types, including "terroristic

threat," which is defined as a threat to harm three or more people. The witness clarified that the student in question did not make a terroristic threat. The document contained an asterisk indicating that committing certain acts may result in school discipline and criminal prosecution. The witness agrees that using school discipline as a consequence for a student's threat to harm themselves is appropriate, particularly if the parents are not taking the threat seriously. The witness also confirms that support and interventions for mental health concerns are preferred over discipline. The witness questions the appropriateness of initiating criminal prosecution for a child who threatens to harm themselves.

[Director of Responsive Services]'s initial testimony on direct examination concluded with a discussion about a letter dated November 17, 2022, which referenced a "terroristic threat," but he explained that this was a clerical error and the paperwork referred to a "threat to harm others." The witness acknowledged the significance of accurate terminology in such communications. Additionally, it's noted that the witness did not personally make contact with parents to deliver mandates or final results; this responsibility falls on the school administration.

The witness, [Director of Responsive Services], testified in pertinent part as follows: [Director of Responsive Services] was questioned about Exhibit 11, which is a binder containing relevant documents. He was asked about specific policy sections within Exhibit 11 and their relevance to [Safe School Intervention Specialist]. He clarified that certain sections are not applicable to [Safe School Intervention Specialist], and that section 3 of the policy is not applicable to him either. The witness discussed the interpretation of the term "Removal from the school of attendance" in relation to the definition of expulsion. He explains that the term refers to where the student is placed to attend school and emphasizes the role of case management in placement decisions.

The witness additionally talked about Renaissance Academy, where the student [Student] was recommended to enroll. He explained the school's programs, offerings, and the criteria for enrollment. [Director of Responsive Services] further detailed the review process for students at Renaissance Academy, indicating that reviews are conducted each term to determine whether a student continues attending the school or returns to a traditional school.

The witness additionally discussed documents related to records requests, enrollment at Renaissance Academy, and a parental consent form. He was next questioned about a threat observation form (D30) used in the district for assessing threats. He clarified that this form is based on a comprehensive school threat assessment guidelines (CSTAG) developed by Dewey Cornell. He then discussed entries in the administrator narrative that highlight threats made by [Student], including thoughts of harming himself and others, and the severity of the threats and the potential for terroristic threat implications.

The witness explained his perspective on the importance of providing students with services rather than expelling them, emphasizing the benefits of staying in an educational environment with

support. [Director of Responsive Services] testified that he supported the recommendation to enroll [Student] at Renaissance Academy and discussed the potential benefits of the program for his needs. The witness clarified that if new information arises, it would be reviewed through the case management process before making a decision regarding [Student]'s placement. He further discussed the appropriateness of asking follow-up questions to obtain a clear understanding of potential threats and safety concerns. He explained the obligations of mandatory reporting and the need to ensure the safety of students and staff.

Overall, the witness provided insights into district policies, the assessment of threats, the rationale behind educational placements, and the importance of thorough communication and follow-up in ensuring the safety and well-being of students.

The witness, [Director of Responsive Services], testified in pertinent part as follows: [Director of Responsive Services] was questioned about various aspects related to the disciplinary actions taken against a student at Renaissance Academy. The testimony covered topics such as the witness's role, qualifications, and familiarity with school policies. The questioning delved into whether the witness is considered a school administrator, their experience with student investigations, licensing, and the structure of the school. The testimony also touched on details about the student in question, including their grade level and the suitability of Renaissance Academy for them.

There was discussion about the separation of different groups of students, including those from youth detention facilities, and the witness clarified the distinctions between them. The witness was then asked about disciplinary incidents involving the student and the investigation process.

The questioning additionally extended to the witness's knowledge of the school's testing results, graduation rates, and success metrics. The witness acknowledged that their belief in the program's success is based on anecdotal data, but there is uncertainty about specific academic statistics. He also provided insights into the decision-making process regarding disciplinary actions and the consideration of potential dangers posed by the student's behavior.

[Director of Responsive Services] responded to questions about the deterrent factors for the student's behavior, such as the possibility of going to jail or prison. He also discussed the population size and social opportunities at Renaissance Academy, comparing it to larger schools. He further testified about the special education teacher at the school and the witness's familiarity with their qualifications.

He was then questioned about a document (P95) related to CSTAG toolkit, used for threat assessment. The document contained condensed questions for threat investigation. The witness confirmed its origin and mentioned their district's modification of these questions. The questions were discussed individually. The witness admitted not filling out the form with the student and not knowing if the student had a history of physical violence. The witness was asked about an incident

where a student threatened self-harm and whether it was referred to their committee, which it wasn't. The witness acknowledged that a threat to harm oneself is a valid referral reason.

Further discussion covered an incident where a student was removed from class, and it was questioned whether the student's response was an expression of anger. The witness agreed it could be. The document's steps for evaluating a threat were discussed, focusing on whether a threat was transient or not. The witness noted that the student's access to secured weapons was discussed during a home visit. It was suggested that the threat might have been transient, and the witness agreed it was possible.

The witness was additionally asked about prior incidents, indicating there was a prior threat made by the student. The witness testified that he supported the school administration's investigation but didn't conduct it himself. Disagreements about the interpretation of whether prior incidents constituted threats were discussed, with the witness supporting the school administration's assessment.

The witness, [Director of Responsive Services], testified in pertinent part as follows: The witness was asked to consider the semantics of the term "threat" and whether it implies an ongoing danger. He was then questioned about [School Administrator]'s completion of the threat observation form, specifically focusing on a statement made by the student about shooting up the school and was asked to clarify whether such a statement should be considered a threat. [Director of Responsive Services] testified that on its face, the school would consider that statement a threat.

The witness was then directed to page 254 of D30, which included categories like "mild threat," "minor threat," "major threat," and "critical threat." The purpose of these categories is to determine the impact and severity of the threat and decide on an appropriate response, either at the school level or district level. The witness also discussed how even if a threat is determined to be a joke, other students might still feel threatened. The witness emphasized the importance of addressing such incidents appropriately to ensure a safe environment for all students. There was also a discussion about prior writings of the student and whether they contained references to violence or threats. The witness explained that some documents contained references to killing but can't recall specific details due to the time that has passed.

Lastly, the witness was asked about a different document, D29, and whether it's used by clinicians. He explained that while it contains questions from the Safe School clinical team, it's not a tool they use in their work with students and parents.

The witness, [Director of Responsive Services], testified in pertinent part as follows: The witness was asked about the purpose of Question 10 in document D30 page 254, which pertains to assessing the threat level of an incident. The witness clarified that the purpose of Question 10 is to evaluate the impact of the incident on the school environment, the safety of the student, and others

involved. The question asks how the threat level of the incident would be rated based on the collected information. The witness mentioned that the response from the assessment was "Not a threat."

The witness, [Director of Responsive Services], testified in pertinent part as follows: the witness is questioned regarding the decision to recommend a transfer to the Renaissance Academy. The witness is questioned regarding the decision to recommend a transfer to Renaissance Academy, and he clarifies that the decision was made by a team, not an individual. The questioning then focuses on the differences between the services offered at Renaissance Academy and the student's original [REDACTED] school, and the witness explains that Renaissance Academy provides smaller class sizes, shorter class periods, and daily interaction with a clinical therapist, which were not available at the original [REDACTED] school. The hearing officer asks if a similar number of other students in a classroom, as provided in an IEP for a self-contained special education room, could have been available at the original [REDACTED] school. The witness confirms that the IEP could have been serviced at both locations.

SUMMARY OF [PRINCIPAL]'S WITNESS TESTIMONY

The witness testified in pertinent part as follows: The witness, [Principal], an educational professional, provided her background and employment history in the Davis School District. She discussed her interactions with the student involved in the case and clarified the circumstances that led to the student's suspension for refusing to remove his hoodie, indicating that the office referral isn't always a punishment. She also acknowledged the existence of a 504 Plan for the student due to anxiety.

The witness clarified that the decision to refer the student to Renaissance Academy was a collaborative one based on a risk assessment and home visit. The testimony shifted to a hypothetical scenario about disciplinary actions for a vaping incident, which the witness declined to answer because disciplining students is individualized. Regarding whether remote learning and home learning are the same, the witness clarified that they are not and explained the distinction between suspensions and remote learning.

The witness was then asked to mark a calendar to determine the number of days the student was on remote learning and provided details about the student's time on remote learning, which totaled 13 school days. She confirmed that remote learning is allowed for up to 30 school days, not calendar days, and clarified the count of days the student was on remote learning.

The witness further testified about remote learning and the communication between teachers and a student. The witness mentioned that the curriculum is available online, 24/7, and teachers and students can interact through the learning management systems. The witness is asked about

evidence of teacher-student communication during remote learning, and the witness states it might be in the intervention screen of the Encore system.

[Principal] further discussed the intervention screen in Encore and the absence of evidence showing teacher-student communication during remote learning. After being shown pages from the intervention screen and is asked about the dates of the entries, the witness confirmed that there were no entries within specific dates.

The witness's understanding of remote learning was questioned, and the witness provided clarifications. The conversation shifted to the decision to place the student in Renaissance Academy and the involvement of the witness in the decision-making process. The witness mentioned reviewing accommodation for the student but not the full IEP evaluation.

The witness also confirmed not attending the student's Individualized Education Program (IEP) meeting. The witness's early mention of Renaissance Academy was brought up, and it was suggested that the witness already had an interest in placing the student there. The witness denies having made such a decision at that point. Finally, the witness testified in regards to her decision-making process and communication with the parent regarding the student's placement.

Overall, the testimony covered the witness's interactions with the student's parent, discussions about the possibility of placing the student at Renaissance Academy, and the witness's role in the decision-making process.

The witness testified in pertinent part as follows: The witness, [Principal], testified about various documents and interactions related to a case involving a student referred for disciplinary actions. The documents included referral forms, notices of suspension, and a narrative of the incident. [Principal] confirmed her involvement in filling out and authenticating these documents. The incident involved a threat made by the student against a teacher.

[Principal] also discussed her conversation with the teacher ([English Teacher]) who was the target of the threat. She testified that the teacher expressed concern, fear, and the need for safety measures. [Principal] balanced the safety of both the students and staff, considering the appropriate response to the incident. She recommended the student's placement at Renaissance Academy for his education, where he would receive academic and behavioral support, smaller class sizes, and specialized services.

Her testimony also covered the process of reviewing the case at district level, the decision-making behind recommending Renaissance Academy, and the intention for the student to potentially return to [School] after a period at Renaissance. [Principal] emphasized the importance of addressing safety concerns and providing proper support for students in challenging situations.

The witness discussed several email communications (documents D13 and D14) and interactions related to the case. In D13, the witness sent an email to the student's teachers, notifying them of

his remote learning status and how to access assignments during a specific time frame. This was done due to the student's referral for disciplinary actions. The witness explained that this email was sent on November 8th and mentioned that November 15th was a significant date related to district case management. In D14, the witness received and reviewed emails related to a student's writing assignment that raised concerns. The witness consulted with the Dean of Students and concluded that the writing did not constitute a threat. The witness emphasized her efforts to stay informed about student interests, such as anime, to better understand student behavior and interactions.

The witness also discussed the recommendation to place the student at Renaissance Academy for the remainder of the school year. This recommendation was made independently of the aforementioned writing assignment and was based on considerations related to the student's education, safety, and support needs. The witness clarified that prior to November 8th, there were no explicit requests or indications from the student's parents or teachers about the need for special education services or concerns about patterns of behavior.

Additionally, the witness described the parent's reaction to the recommendation for the student to attend Renaissance Academy, which was met with strong opposition. The witness attempted to explain the benefits of this placement but acknowledged that the emotional state of the parent hindered effective communication.

The witness testified in pertinent part as follows: The witness discussed various aspects related to a student's suspension and referral to district case management. She acknowledges that the threat assessment form was created in the presence of the student and his mother on November 8th. The witness further clarifies that the student was placed on remote learning due to the nature of the situation, not as a disciplinary suspension, and that the decision was made in coordination with district case management.

The witness is then questioned about whether certain documents were attached to the record, including the threat assessment form, and provides explanations about the procedures for recording interventions and disciplinary actions in the school's systems.

The witness is also asked about the purpose and content of the threat assessment form, including whether it addressed self-harm, and the witness confirms that such concerns were discussed and documented. The witness clarifies that the remote learning status was extended based on the completion of necessary mandates and procedures. Additionally, the witness addresses discrepancies between the document's terminology and the witness's understanding of certain terms.

[Principal] discussed entries in a document related to the student's actions and interactions. She mentioned that the student made a specific threat on November 8th and explains the decision to recommend the student for a Safe School committee process based on the nature of the threat.

The witness also discussed the student's prior behavior and interactions, including instances where the student had joked about shooting up the school. There was a discussion about the influence of prior incidents on the recommendation and whether the student had threatened anyone by name, and the witness clarified that the decision was based on the specific threat made on November 8th and that knowing certain details earlier might have affected the recommendation.

The witness additionally discussed entries in a document related to the student's actions and interactions. The witness mentioned that the student made a specific threat on November 8th and explained the decision to recommend the student for a Safe School committee process based on the nature of the threat. The witness also discussed the student's prior behavior and interactions, including instances where the student had joked about shooting up the school. There is a discussion about the influence of prior incidents on the recommendation and whether the student had threatened anyone by name. [Principal] clarified that the decision was based on the specific threat made on November 8th and that knowing certain details earlier might have affected the recommendation.

The witness discussed the narrative of the incident, where initial comments about harming others led to further questioning by the investigator. The witness acknowledged that the student mentioned specific individuals, including a teacher, as potential targets. The witness was questioned about their decision not to initiate an Individualized Education Plan (IEP) evaluation despite the student's history of threatening suicide. The witness explained that the student's behavior was not perceived as unusual for their age group and that they relied on information from assistant principals and parents.

The witness also discussed an email sent to a guardian and addresses concerns about the accuracy of the recipient list. The witness is questioned about a decision to move the student to a different school and is asked whether they consulted with a mental health professional before making that decision. The witness is also asked about a conversation with a teacher and whether they provided certain details about the incident to the teacher.

The witness mentioned being aware of incidents involving harm to teachers through news and social media but clarified that her training on school safety was not solely based on social media. She acknowledged that fake videos can be posted online but believed that the news reports of harm to teachers were real.

The witness was familiar with Renaissance Academy's program and curriculum, which included special education services, smaller class sizes, safety training, and behavior support. She mentioned having behavior support in her school, including special program classes and counseling assistance for certain students. When asked about considering the student for a behavior unit placement, she indicated that the student didn't meet the specific criteria for the special programs in her school.

The witness confirmed that she wasn't directly involved in certain aspects, such as assessment for autism, and that placements in special programs were determined by a special education placement team. She explained that her decision to refer the student to Renaissance Academy was intended to benefit the student and not a disciplinary measure. The witness mentioned the lack of staff to implement specific safety plans but clarified that there were other safety measures, such as no-contact agreements. The witness stated that her decision was based on the severity of the threat, and she believed it went beyond a typical safety plan due to the specific circumstances. When asked if [English Teacher]'s life was in danger, the witness responded that she didn't know for certain in either case. The witness emphasized making the best decision based on available information while considering the safety of both parties.

Overall, the testimony delves into the witness's decision-making, knowledge of available support services, the considerations involved in addressing the student's behavior and safety concerns, and revolves around the decision-making process, communication with parents, intervention procedures, and documentation related to the student's case, including the creation and completion of the threat assessment form.

The witness testified in pertinent part as follows: In this segment of witness testimony, the witness is questioned about prior discipline incidents and their recollection of the level of discipline imposed. The witness confirms that there was some minor discipline for a specific incident on a particular day.

The testimony also addressed the topic of social media and fake videos. The witness clarified that they were referring to specific news stories rather than social media. She mentioned incidents from the news involving a six-year-old with a gun in a backpack shooting a teacher, as well as a case where two 14-year-olds brought baseball bats to school and assaulted a teacher. These incidents were cited as examples that were in the news around the time of the current incident. The witness was then asked whether [English Teacher] had similar incidents in mind, but the witness stated that they did not discuss that with her.

The witness confirmed the existence of a brochure given to parents when a student is facing a disciplinary issue. This brochure contained information about district practices related to suspension and expulsion.

The witness was shown a document (P45) and is directed to page 6, where definitions for "suspension," "expulsion," and "remote learning" were provided. The witness acknowledged recognizing these definitions. The witness then stated that these definitions are the ones most often referred to when addressing disciplinary matters. The definition of "expulsion" was read out, indicating that it involves a student being removed from school for a specified period without receiving district services, participating in academic or extracurricular activities, or visiting school premises. Expelled students have the right to appeal within a certain timeframe.

The witness was specifically asked whether they understood the student in this case to be expelled when required to attend Renaissance instead of [School], and she responded "No."

Overall, the witness's testimony focuses on the definitions provided in the brochure and clarifies that they did not consider the student in this case to be expelled despite the change in placement to Renaissance Academy.

The witness testified in pertinent part as follows: The witness is asked about a prior email communication regarding remote learning, and she cannot recall if anyone followed up with additional questions about the email. The witness was questioned about an incident involving a confiscated item by [English Teacher], she testifies that she does not remember discussing the details of how the item was confiscated. The witness clarified the process of expulsion within the school district. The witness explained that expulsion typically involves the student being permanently removed from the district with no services or curriculum. The concept of a manifestation determination hearing was discussed. The witness acknowledged that no such hearing took place in this case and states that it was believed at the time that one was not needed. The witness also identified the individuals responsible for making the decision about holding a manifestation determination hearing – the Local Education Agency (LEA) or the 504 coordinators. The witness was unable to provide a specific reason for not conducting a manifestation determination hearing in this case, as there was no discussion about it at the time.

Overall, the witness's testimony addressed prior communication, the process of expulsion, the lack of a manifestation determination hearing, and the roles of specific individuals in making such decisions.

The witness testified in pertinent part as follows: The witness was questioned about various aspects of the student's remote learning during a suspension period. She verified that the student was removed from school for 10 to 180 days and did participate in academic classes during the suspension period. The witness clarified that the student was able to access educational activities digitally and communicate with teachers on the Summit platform for remote learning.

The witness discussed the definition of remote learning, where information is relayed through technology such as email, videoconferencing, and online assessments. The witness was unsure whether the student had engaged in email exchanges, videoconferencing, or online assessments with teachers during the remote learning period. She also clarified that the student's removal from the physical school environment was at the discretion of a school administrator in consultation with the parent or guardian. The parent or guardian did not consent or consult with the witness about this decision.

The witness was presented with an email she had sent to teachers regarding the student's remote learning period. The email indicated that the student would be on remote learning and that

teachers should ensure work is available for the student to complete at home. The witness discussed the role of Summit, a computer-based program, as a form of instruction that provides videos and information to guide student learning. She clarified that teachers were not specifically assigned to engage with the student in writing between certain dates, and she did not recall sending an email regarding such engagement.

Overall, the testimony addressed the definitions of relevant terms, the nature of remote learning, and the communication between the witness, teachers, and the student during the period of remote learning.

SUMMARY OF [DISTRICT COUNSEL]’S WITNESS TESTIMONY ON DIRECT EXAMINATION

The witness testified in pertinent part as follows: The witness, [District Counsel], has an educational background from BYU and U of U, and he has worked for the governor's office, DWS, and Davis School District as general counsel for approximately seven years. The witness was questioned about a document titled "Student Conduct and Discipline Document" specifically sections related to parent notification, student suspension, and expulsion policies. The witness's responses indicate that he was not able to recall specific details about the case being discussed, including whether parents were contacted before detaining and questioning a student, the length of the student's suspension, and whether due process procedures were followed. He also stated that he did not review materials in preparation for the hearing and that he was on vacation.

[District Counsel] was additionally questioned about the interpretation of district policies related to student suspensions and expulsions, specifically whether a student being out of school for more than ten consecutive days would be considered an expulsion, to which [District Counsel] testified that it depends on the circumstances and whether services were provided during that time. [District Counsel] also mentioned that his recollection of the specific case is limited and that he cannot provide detailed information without reviewing the relevant documents.

[District Counsel] confirms that in his role in advising administrators on policy matters, he does indeed advise administrators on how to follow district policy but clarifies that he does not necessarily interpret policy. When asked who the right person would be to contact for questions about policy, [District Counsel] suggests starting with the principal. The testimony highlights [District Counsel]'s limited recall of the specific case details and his role in providing guidance on policy matters.

SUMMARY OF [RESOURCE CASE MANAGER]’S WITNESS TESTIMONY

The witness testified in pertinent part as follows: The witness, [Resource Case Manager], graduated from Weber State University in 2008 with a dual degree in K-12 mild moderate resource and elementary education. She started her teaching career in 2008, initially as a student teacher and later as a full-time teacher at [School], specializing in language arts and reading.

[Resource Case Manager] was the assigned case manager for [Student], an [REDACTED]-grade student, who was referred for special education testing. She met [Student] for the first time when his parents came to sign the consent form for testing. She subsequently met him to conduct assessments over two days.

The witness described her interactions with [Student] during the assessment process, indicating that he was cooperative. She noted that she did not engage in instruction with [Student] during his time in the 2-5 program (a specific program at the school), and she did not observe [School Teacher] (another teacher) providing instruction to [Student] during that time. [Resource Case Manager] mentioned that [Student]'s case was referred by [Former Assistant Principal and 504 Coordinator], but she was not aware of all the details at that time.

The witness discussed the completion of a Prior Notice for Consent to Test document and clarifies the markings made on the document. She explained that [Student]'s referral did not explicitly raise concerns related to self-harm or threats. The witness and the IEP team classified [Student] as "other health impaired" (OHI) and discussed other potential classifications, but they did not consider placement in a specialized behavioral class. She further explained the various special education classes at the school, including resource classes and applied skills classes.

The witness then addressed whether [Student] could have been placed in one of the specialized classes and mentions the process required for such placement. She discussed her reasons for not conducting a functional behavior assessment as part of the evaluation and highlights the team's considerations. The witness further provided information about the testing environment and safety during the assessment.

Overall, the testimony delves into details about the assessment process, classifications, and considerations made by the witness and the IEP team regarding the student's special education needs.

The witness testified in pertinent part as follows: The witness, [Resource Case Manager], testified about her role as a special education case manager and her interactions with the student, [Student]. She graduated from Weber State University with a dual degree in K-12 mild moderate resource and elementary education. [Resource Case Manager] started her career in education in 2008 and has taught various subjects including language arts.

[Student] was a student for whom [Resource Case Manager] was the assigned case manager. She first met him when his parents came in to sign consent for testing, and later conducted an assessment over two days. During the assessment, [Student] was cooperative, and [Resource Case Manager] noted that he had received one-to-one instruction from another teacher.

The witness discussed the process of evaluating [Student] for special education and determining his eligibility. She mentioned that [Former Assistant Principal and 504 Coordinator] had referred

[Student] for testing due to concerns. However, [Resource Case Manager] was unsure about the specific details of the referral. [Resource Case Manager] explained the evaluation process and how they determined that [Student] qualified under the "other health impaired" (OHI) classification. She also discussed the consideration of other possible classifications like specific learning disability (SLD) and emotional dysregulation.

The witness further testified about the accommodations and services proposed in [Student]'s Individualized Education Program (IEP). The proposed placement was in regular classes with part-time special education services. She explained that they aimed to provide services in the least restrictive environment and considered co-taught classes.

[Resource Case Manager] mentioned that she conducted a transition assessment for [Student] through a parent interview and considered his interests and activities. The team concluded that a more restrictive placement, such as a special class or school, was not needed for [Student]. They decided on a placement in general education classes with specified service minutes for writing, math, and social/emotional support. In the IEP, there was an accommodation for extended time, written in by hand, though [Resource Case Manager] did not recall the exact origin of this addition. She noted that parents signed off on the IEP without expressing disagreements or concerns, and the team believed the proposed IEP was appropriate to meet [Student]'s needs.

The witness testified in pertinent part as follows: The witness confirmed that she did not have permission to conduct vocational or transitional assessments without consent for testing. [Resource Case Manager] explained that she conducted a transition assessment with [Parent 1's] assistance. Typically, transition assessments involve the student, but sometimes parents are contacted for information if the student is absent.

The witness acknowledged providing behavior support for other students with disabilities, including a social/emotional goal for this student. She mentioned that students are referred to Renaissance Academy through the district's local case management team, indicating that she did not have the authority to unilaterally enroll the student there.

The concept of Least Restrictive Environment (LRE) was discussed, including the idea that moving a student to a classroom with fewer peers may be more restrictive, especially if the student's IEP goals are best met in a regular education setting. The witness clarified that discussions during the IEP meeting focused on service minutes and goals, rather than the specific classes where services would be provided. She was unsure about whether the student's plan would be implemented at [School]. The witness stated that the parents left the IEP meeting feeling grateful and hopeful, but she was uncertain if they believed the plan would be implemented at [School].

Overall, the testimony sheds light on the witness's role in the IEP process, her involvement in the transition assessment, the consideration of different placements, behavior support, and the parents' perception of the IEP outcome.

The witness testified in pertinent part as follows: [Resource Case Manager] recognized and identified the document at Tab 35 as a graph organizer illustrating different settings for providing services to students with disabilities. She confirmed that she has received training regarding the concept of placement for special education students and has seen this document in the context of that training.

[Resource Case Manager] then discussed the principles of placement, emphasizing that it aims to find the least restrictive environment for students with disabilities, which may include settings with or without nondisabled peers. Placement decisions are not based solely on specific schools, teachers, services, or curriculum. The witness indicated that her understanding is that Renaissance Academy serves both students with and without disabilities, and that students with IEPs at Renaissance would receive instruction based on their grade level and the goals outlined in their IEPs.

The testimony highlighted [Resource Case Manager]'s knowledge of the placement principles, including considerations for least restrictive environments and the fact that placement decisions are not solely tied to specific factors. It also established her awareness of Renaissance Academy's inclusive approach to serving students with disabilities.

The witness testified in pertinent part as follows: The witness was presented with a document which contained circles representing different placement options for students with disabilities. The witness indicated that they would place Renaissance Academy in the "special school" circle on the document. The witness acknowledged that when a child transitions from a regular education setting to a special school, it constitutes a change of placement.

The witness was then directed to an IEP document and read the section titled "Proposed Placement." She confirmed that the proposed placement for the student was in a regular class with itinerant services and/or part-time special education services.

The witness then listed other placement choices, including "special class," "special school," "home instruction (district office involvement required)," and "hospital or institutional (district office involvement required)." She was asked again whether a change from a regular class to a special school constitutes a change in placement, and confirmed that it does. Additionally, the witness acknowledged that a change from regular class to home instruction was also considered a change in placement.

The testimony highlighted the witness's understanding of the concept of placement, particularly in relation to transitions between different educational settings for students with disabilities. It

established that moving from a regular class to a special school or home instruction is indeed considered a change of placement.

SUMMARY OF [SPECIAL EDUCATION DIRECTOR]'S WITNESS TESTIMONY

The witness testified in pertinent part as follows: the witness, [Special Education Director], is a director of special education and has a bachelor's degree in elementary education and a master's degree in educational leadership. She has 26 years of education experience and has held various roles in education, including being a teacher, assistant principal, principal, and special education director.

The witness was asked about the applicability of certain sections of Utah State board of education rules regarding protections for students not determined eligible for special education. The witness explained that the student in this case had a disability under Section 504, but they were not yet eligible for special education services under IDEA (Individuals with Disabilities Education Act) at the time of the infraction. The witness argued that the protections of IDEA did not apply to the student on the day of the incident because the student's eligibility for special education services had not been established before the behavior occurred.

There was a dispute between the questioning party and the witness about whether the student was protected under IDEA on November 8th, and the witness maintained that the student was not protected under IDEA at that time due to the lack of established eligibility.

The witness discussed the interpretation of the state board rules and whether the student's change to remote learning constituted a change of placement and triggered IDEA protections. The witness continued to assert that the student was not protected under IDEA on November 8th.

On further questioning, the witness reiterated that the student was not under the protections of IDEA on November 8th.

The questioning party and the witness debate the applicability of the state board rules and whether the student should have been protected under IDEA. The witness maintained her position that the student was not protected under IDEA at the time of the infraction.

The questioning party then challenged the witness's interpretation of the state board rules and argued that the student's disability status and the signed 504 plan should have provided him with IDEA protections on the day of the incident.

The witness was then asked about the definition of suspension according to the district policy. She defined suspension as a temporary interruption of district services and activities for up to ten consecutive school days. During suspension, a student may have access to homework and tests but is not allowed to attend classes or participate in school activities.

The witness was further questioned about whether a student is still considered suspended if they have access to a home study program and she confirmed that a student who is suspended remains suspended regardless of having access to a home study program.

The witness is asked about the district policy's definition of expulsion and explained that expulsion is the complete removal of a student from all schools and district services. The witness was asked about whether the student's behavior fell short of reasonable expectations and whether any interventions were implemented before referring the student to a case management team, and she could not give a definite answer.

It is discussed whether the student's suspension exceeded ten consecutive school days, which might lead to a change of placement according to IDEA rules. When asked about whether prior written notice was given to parents regarding the student's suspension and other disciplinary actions, the witness mentions that there were several instances of prior written notices sent to parents, but the details are not explicitly stated.

The document revolves around clarifying the district's policies regarding suspension, expulsion, and the application of these policies to a specific student's case, particularly focusing on whether actions taken adhered to special education regulations and procedural rights.

The witness testified in pertinent part as follows: The witness was asked about the USBE (Utah State Board of Education) Special Education Rules and their knowledge of these rules, particularly focusing on the definition of a "student with a disability." The witness explained that, according to the USBE rules, a "student with a disability" is one who has been evaluated and found eligible under the Individuals with Disabilities Education Act (IDEA) to have a disability. [Special Education Director] testified that the definition does not include students who only require related services without specialized instruction. The witness clarified that a student is only eligible for protections under the USBE rules if they have been determined to have one of the 13 categorical disabilities and are receiving specialized instruction under an Individualized Education Program (IEP).

The witness suggested that the protections for a student with a disability would kick in when there is a formal indication of a need for additional support, which may occur during meetings with parents or discussions related to the Safe Schools policy review process. The witness expressed disagreement with a previous testimony regarding the classification of Renaissance Academy as a special school. The witness clarified that Renaissance Academy is a general education school, not a special school under IDEA, and discusses the correct definition of a special school under the rules.

The witness also provided information about their role as the special education director, the number of students enrolled in the district, the number of students under their department's purview, and the staff structure within the department. The witness explained their role in

collaborating with others, including [Principal] and [Director of Responsive Services], to create a letter addressing concerns about a student's enrollment. The witness acknowledged their involvement in responding to records requests, shares authentic copies of email correspondence with opposing counsel, and explains their effort to gather and provide requested documents.

Overall, the witness's testimony covered various aspects of special education rules, student eligibility, their role as a director, and their involvement in addressing records requests related to the case.

The witness testified in pertinent part as follows: The witness was asked about a document titled "Supporting Students with Disabilities and Avoiding the Discriminatory Use of Student Discipline Under Section 504 of the Rehabilitation Act of 1973." The document was examined for its implications regarding student behavior, disabilities, and protections.

The witness then read a section from the document explaining that a school must conduct an initial evaluation if they have reason to believe a student needs special education or related aids and services due to a disability, including instances where the student's behavior indicates a potential disability.

The witness was questioned about the principal's concerns regarding a student's behavior and whether the principal engaged in a Child Care Plan (CCP) discussion with district personnel due to those concerns. She provided explanations and clarifications about how and when Child Find is initiated.

In regard to whether a specific child's pattern of behavior should have triggered Child Find based on Section 504 protections, the witness explained that the district did initiate Child Find for the child in question, but exact dates and details are not provided.

Overall, the testimony focused on the interpretation of documents, the application of Section 504 protections, and the district's actions in response to a student's behavior and potential disabilities. The witness provided insights into the district's processes related to special education evaluation and protections.

SUMMARY OF [SAFE SCHOOL INTERVENTION SPECIALIST]'S WITNESS TESTIMONY

The witness testified in pertinent part as follows: The witness, [Safe School Intervention Specialist], is a Safe School intervention specialist. [Safe School Intervention Specialist] is employed by the Davis School District and holds a master's degree in marriage and family therapy, along with a license to practice therapy and conduct assessments in the state of Utah. He has been in this role for 15 years and has extensive experience conducting evaluations and assessments.

In this case, [Safe School Intervention Specialist] was tasked with conducting a risk evaluation for a student who had made threats to a teacher and to himself. He administered several assessments,

including the Behavior Assessment System for Children (BASC-3), the Children's Aggression Scale (CAS), the Psychosocial Evaluation Threat Risk Assessment (PETRA), and the Beck Depression Inventory-2. These assessments aimed to evaluate the student's behavior, aggression, risk factors for violence, and depression.

[Safe School Intervention Specialist] testified that he observed that the student displayed a guarded nature during the clinical interview, making it difficult to assess the full extent of his risk factors. He noted elevated scores on some scales, indicating potential concerns for depression and aggression, but he could not predict imminent violence. [Safe School Intervention Specialist] further discussed potential interventions with the student's parents, including day treatment and stabilization services, but the parents seemed reluctant to pursue these options.

The witness also emphasized that he does not make the final decisions but provides feedback and considerations to a case management team, which then determines appropriate mandates or interventions based on the assessment results and his input.

Overall, [Safe School Intervention Specialist]'s testimony highlights his role in conducting risk evaluations and assessments for students and his involvement in the decision-making process for intervention strategies.

The witness testified in pertinent part as follows: The witness, a mental health professional, testified about their assessment of a student ([Student]) regarding potential danger to self and others. The witness mentioned that based on the information received, they did not find imminent danger. The assessment involved several tools, including the Beck Depression Inventory (BDI) and the Child and Adolescent Symptom Inventory (CASI), to evaluate [Student]'s mental state.

The witness discussed their conversation with [Student] and the completion of assessment forms. They highlighted the use of critical items from the Behavior Assessment System for Children (BASC), which indicated statements related to self-harm and threats. The witness acknowledged [Student]'s guarded nature during the assessment and the challenges in obtaining complete information about potential risks.

There was a discussion about [Student]'s potential access to weapons at home, with some confusion about whether guns were accessible. The witness recommended that firearms be removed from the home if there was any risk. The witness also considered the possibility of [Student] qualifying for special education services based on the information provided.

The witness faced questions about the use of certain assessment tools, their recommendations, and interactions with the student's parents. The witness clarified that they included risk factors that contributed to their risk assessment but did not always list factors that were absent.

Overall, the testimony highlighted the complexities of assessing a student's risk of harm based on various tools and the need for thorough evaluation to determine potential danger to self or others.

SUMMARY OF [ASSISTANT DIRECTOR OF SPECIAL EDUCATION]’S WITNESS TESTIMONY

The witness testified in pertinent part as follows: The witness, [Assistant Director of Special Education], is the Assistant Director in Special Education for the Davis School District. She has 31 years of experience in the district, primarily working with students with mild to moderate disabilities in grades K-12. She has held various roles, including resource teacher and teacher coordinator, before her current position. Her responsibilities include supporting school-based Individualized Education Program (IEP) teams, ensuring compliance, conducting training, addressing questions and concerns related to special education, and participating in district case management team meetings.

[Assistant Director of Special Education] oversees the Renaissance Academy program and is familiar with the delivery of special education services to students at the academy. She clarified that students enrolled in the 18-to-22-year-old Vista program are included under Renaissance Academy for enrollment purposes, even though they are physically located in a different facility.

Regarding placement options, [Assistant Director of Special Education] referred to a guidance document provided by the Utah State Board of Education (USBE) that outlines different continuum of placement options, ranging from regular classes to special schools or home instruction. The document helps define the environment and location of special education services. According to this guidance, [Assistant Director of Special Education] explained that a change of placement would involve moving a student from one type of placement to another, such as from regular class to special class or school. She emphasized that in the case being discussed, sending the student to Renaissance Academy would not constitute a change of placement, as it would not alter the student's placement within the continuum defined by USBE.

[Assistant Director of Special Education] also discussed the importance of ensuring that students with disabilities are placed appropriately and receive the necessary services as outlined in their IEPs (Individualized Education Programs). She mentioned her role in reviewing IEPs during district case management meetings and her efforts to ensure that students' rights are upheld. The testimony suggested that according to her understanding of the USBE guidance and district policies, the student's transfer to Renaissance Academy would not constitute a change in placement, as the essential aspects of the student's educational services and environment remain consistent.

The witness, [Assistant Director of Special Education], testified regarding various documents and their relevance to a case involving a student's placement in a special education program. The documents discussed include drafts related to technical assistance, training materials, and student enrollment data.

[Assistant Director of Special Education] recognized a draft document titled "Technical Assistance regarding Placement, Environment, Regular Percent, and Time." She explained that it was received

from the Utah State Board of Education (USBE) and used to inform the creation of other district documents. The witness then discussed a PowerPoint presentation (D35) used for training special education teachers and Local Education Agencies (LEAs) on placement options. The presentation outlined the continuum of placement options and defines key factors. [Assistant Director of Special Education] also referred to document D34, which provided definitions and criteria for identifying child count and educational environments. The discussion focuses on the criteria for identifying a separate school, including the percentage of students with disabilities.

The witness referred to document D36, which presented enrollment data for special education students at Renaissance Academy. The data indicates that the student count for special education students at Renaissance Academy is below 50% of the total student count.

The witness then distinguished between the protections provided under Section 504 of the Rehabilitation Act and the Individuals with Disabilities Education Act (IDEA). She explained that the student in question was not eligible for IDEA protections on a specific date due to the absence of certain conditions, such as parental expression of concern or teacher involvement. The witness discussed the more stringent rules under IDEA for removing a student from their current placement, including the consideration of special circumstances. She clarified that these rules did not apply on a particular date and that Section 504 rules may differ.

She also briefly referred to Exhibit-52, a school calendar for the '22-'23 school year, and its relevance to determining school days for the case.

Overall, the testimony provided by [Assistant Director of Special Education] revolves around the documents, regulations, and criteria used to determine student placement, eligibility for protections, and the application of relevant rules.

The witness testified in pertinent part as follows: The witness, [Assistant Director of Special Education], confirmed that the CMT (Case Management Team) had not received a referral for the student in question and that threats of self-harm are typically reported to student and family resources, not the district case management. She further testified that multiple threats of self-harm, if not reported, could indicate a pattern of behavior warranting special education. The witness also gave clarification on the reporting and decision-making process regarding threat observation reports and whether incomplete information affected the decision-making process.

[Assistant Director of Special Education] further discussed the difference between the regulations for removals under Section 504 and the IDEA (Individuals with Disabilities Education Act), specifically addressing timelines for interim alternative education settings (IAES) and other related matters. She then explained special circumstances and less stringent rules under Section 504 compared to IDEA. The witness discussed how students are divided by grade and subject at

Renaissance Academy, with a focus on whether the student in question could potentially be alone in a classroom.

[Assistant Director of Special Education] then gave further clarification on the administrative hierarchy and supervision structure at Renaissance Academy, including who oversees the school. She examined various sections of the regulations, particularly those related to a student's eligibility for special education services under Section 504 and gave her perspective on whether certain exceptions listed in the regulations are applicable to the case and whether a 504 plan is considered an expression of concern by supervisory personnel.

The witness testified that she was aware of the student's mental health condition and that factors like severe depression were considered by the CMT. She then discussed concerns related to the student's well-being and potential increase in suicidal ideation due to a change in placement, as well as whether this was considered during the decision-making process. She further talked about the student's educational placement and relevant legal provisions and testified about the concept of "remote learning" and its potential fit within the described scenarios.

The testimony delves into the term "disciplinary change of placement" and its significance, considering whether the student's transition from a regular class to a special class qualifies as such a change. The witness is also asked about the "2-5 program," a type of placement, and whether it falls under a regular class. The witness provides insights into the provisions of the "Least Restrictive Environment" in education, discussing the requirement for students with disabilities to be educated with nondisabled peers to the maximum extent appropriate.

The questioning became focused on whether the student's placement in remote learning constituted a removal from regular classes to a special class, which hinges on the interpretation of applicable regulations and the timing of the student's eligibility for IDEA protections.

Overall, the witness testimony revolves around the student's educational placement, the nature of the classes attended, the legal implications related to the provision of special education services, answers related to the student's special education eligibility, placement, and various aspects of the decision-making process by the Case Management Team.

SUMMARY OF [PARENT 2]'S WITNESS TESTIMONY

The witness testified in pertinent part as follows: The witness, [Parent 2], discusses his concerns about his son's education and well-being. [Parent 2] testified that his concern revolved around his son not receiving a proper education during the 2022-2023 school year. He indicated that his son did not receive education after a certain date. The witness expressed dissatisfaction with remote learning, believing it was not an appropriate setting for his son. He also disagreed with the effectiveness of the 2-5 grade setting and Renaissance Academy.

[Parent 2] acknowledged expenses related to having his son home throughout the year and mentioned the impact on his family due to contesting his expulsion. [Parent 2]'s son has missed interactions with friends and the experience of going to school. He emphasized that his son has been struggling with depression, anxiety, and self-harm thoughts since a young age. [Parent 2] became concerned about his son's mental health when he was around 9 years old due to signs of depression, anxiety, and comments indicating self-harm. He sought counseling and support for his son's mental health issues. The witness was positive about an IEP (Individualized Education Program) meeting, where goals were discussed, but he expected more direct involvement from school staff in providing support.

[Parent 2] felt betrayed when his son was assigned to Renaissance Academy without much input or say in the decision. He expressed reservations about the school and felt that it did not prioritize his son's well-being. The witness had negative impressions of some school staff members, including [District Counsel] and [Director of Responsive Services], feeling they lacked concern, sympathy, and a focus on his son's best interests.

[Parent 2] believes his son needs support, a trusted adult during the day, smaller classes, and social interaction to improve his mental health and well-being. He found it difficult to envision specific solutions to make up for the lost school year but acknowledged the potential benefits of personalized home instruction or private school with focused teacher attention. The witness believed that the school failed to respond adequately to his son's disabilities and struggles, leading to the negative impact on his education and well-being.

Overall, the testimony highlights [Parent 2]'s concerns about his son's education, mental health, and the perceived lack of support and appropriate accommodations from the school system.

The witness testified in pertinent part as follows: [Parent 2] is asked if he is aware that part of the request for a due process hearing involves setting forth a proposed resolution to the complaint. [Parent 2] states that he is not sure if he was involved in that aspect of the process and does not remember what was set forth as a proposed resolution in the request for the due process hearing.

The testimony suggests that [Parent 2] may not recall the details of the proposed resolution in the request for the due process hearing at the time of the questioning.

The witness testified in pertinent part as follows: The witness is asked about discussions that occurred during a mediation session, but it is noted that the witness is not allowed to disclose the specifics of those conversations due to mediation confidentiality. The witness confirms that their recollection has been refreshed and they acknowledge the alignment between the requested terms discussed in mediation and those being presented in the due process hearing.

Overall, the witness's recollection is refreshed regarding the content of the discussions during mediation and how they relate to the terms requested in the due process hearing.

SUMMARY OF [ENGLISH TEACHER]'S WITNESS TESTIMONY

The witness testified in pertinent part as follows: The witness, [English Teacher], is an English teacher at [School], teaching English [REDACTED], Creative Writing 1 and 2. She testified that [Student] was a student in her classes, and she describes him as a typical [REDACTED] grade student.

[English Teacher] also confirmed that she observed [Student] putting his head down on his desk, covering his head with his hoodie, and occasionally refusing to answer when spoken to in this position. It is discussed that [Student] had a 504 plan with accommodations that allowed him short breaks, fidget toys, writing, or drawing with permission from the teacher.

The witness testified that on November 8th, [Student] left [English Teacher]'s class voluntarily, and a meeting was held with administrators [Principal] and [School Administrator] to discuss an alleged threat made by [Student] against [English Teacher]. The exact wording of the threat was discussed, with variations in how it was relayed to [English Teacher], including [Student] wanting to harm her.

[English Teacher] then explained that the current climate of school safety concerns, including news of other school shootings, influenced her perception of the threat and her response to it. She testified that she was not informed about [Student]'s lack of access to guns or other specific details regarding the alleged threat.

The witness was then asked whether additional information about [Student]'s lack of access to guns or his statements about not wanting to harm others could have lessened her fear. She suggested that given the prevailing climate, such information might not have changed her response.

[English Teacher] also testified that she did not receive a written report of the incident or have access to [School Counselor 1]'s firsthand account of the situation, and that her impression of the incident and her actions were based on the information she was given during the meeting with administrators.

It is highlighted that [English Teacher]'s understanding of the incident was based on the information relayed to her, which may have been partial or incomplete. Overall, the testimony revolves around [English Teacher]'s response to an alleged threat made by the student [English Teacher], her perception of the threat, and her understanding of the circumstances based on the information provided to her by administrators.

DISCUSSION

GENERAL LEGAL STANDARDS

Students with disabilities, who are protected by the IDEA, are entitled to be appropriately identified, evaluated, placed, and have available to them a free appropriate public education ("FAPE") that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 20 USC § 1400(d); 34 CFR § 300.1(a). The IDEA further provides that a party may present a complaint and request for due process hearing with respect to any matter relating to the identification, evaluation, educational placement, or provision of a FAPE to a disabled student. 20 USC § 1415(b)(6).

The IDEA and its implementing regulations provide that in order to qualify as a "student with a disability" under the IDEA, a student must (1) meet the definition of one or more of the categories of disabilities which include: . . . a specific learning disability . . . , and (2) need special education and related services as a result of the student's disability. CFR § 300.8 (a)(1). A student is in need of special education and related services when the student requires those services in order to receive an educational benefit from the student's educational program. *Marshall Joint Sch. Dist. No. 2 v. C.D.*, 54 IDELR 307 (7TH Cir. 2010); *Sebastian M. V. King Phillip Reg'l Sch. Dist.*, 59 IDELR 61 (1st Cir. 2012).

PETITIONERS' PROCEDURAL ISSUES

An allegation of a denial of FAPE to a disabled student can be based on either substantive grounds or procedural violations of the IDEA. 20 USC § 1415(f)(3)(E). *Hendrick Hudson Central School Dist v. Rowley*, 458 US 176; 102 S Ct 3034; 73 L Ed 2d 690 (1982); *Sytsema v. Academy School District No. 20*, 538 F.3d 1306(10th Cir. 2008), 50 IDELR 213. "The IDEA also sought to maximize parental involvement in educational decisions affecting their disabled child by granting parents a number of procedural rights. For example, parents are entitled to: (1) examine all records relating to their child, 20 U.S.C. § 1415(b)(1); (2) participate in the IEP preparation process, *id.*; (3) obtain an independent evaluation of their child, *id.* (4) receive notice before an amendment to an IEP is either proposed or refused, § 1415(b)(3); (5) take membership in any group that makes decisions about the educational placement of their child, § 1414(f); and (6) receive formal notice of their rights under the IDEA, § 1415(d)(1)." *Ellenberg ex rel. S.E. v. New Mexico Military Institute*, 478 F.3d 1262 (10th Cir. 2007). The IDEA's "procedural guarantees are not mere procedural hoops through which Congress wanted state and local educational agencies to jump. Rather, the formality of the Act's procedures is itself a safeguard against arbitrary or erroneous decision making." *Daniel R.R. v. State Bd. Of Edc.*, 874 F.2d 1036, 1041 (5th Cir. 1989) (internal quotation marks omitted).

However, proving a procedural violation is only a first step to obtaining relief. In *Sytsema*, the court held that an "IEP's failure to clear all of the Act's procedural hurdles does not necessarily entitle a student to relief for past failures by the school district." *Sytsema*, 50 IDELR at 216; *quoting Garcia v. Bd. of Educ. of Albuquerque Pub. Schs.*, 520 F.3d 1116, 1125-26 & n.4 (10th Cir. 2008) ("[O]ur precedent hold[s] that procedural failures under IDEA amount to substantive failures only where the procedural inadequacy results in an effective denial of a FAPE."); *quoting Urban ex rel. Urban v. Jefferson County Sch. Dist. R-1*, 89 F.3d 720, 726 (10th Cir. 1996) (holding that a procedural failure did not entitle a student to relief because that deficiency did not result in the denial of a FAPE).

Congress provided in the 2004 amendments to the IDEA that to find a denial of FAPE based on a procedural violation, the Hearing Officer must find that the procedural violation: (1) impeded the student's right to a FAPE, (2) significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of a FAPE to the student, or (3) caused a deprivation of educational benefits. 20 USC § 1415(f)(3)(E)(ii); 34 CFR § 300.513(a)(2); UCA § 53A-15-301(IV)(O)(2).

The IEP process provides that the parents and school personnel are equal partners in decision-making; the IEP team must consider the parents' concerns and information they provide regarding their child. (64 Fed. Reg. 12473 (Mar. 12, 1999).) The IDEA's requirement that parents participate in the IEP process ensures that the best interests of the child will be protected, and acknowledges that parents have a unique perspective on their child's needs, since they generally observe their child in a variety of situations. (*Amanda J.*, *supra*, 267 F.3d at 891.) A parent who has had an opportunity to discuss a proposed IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way. (*Fuhrmann v. East Hanover Board of Education*, 993 F. 2d 1031,1036 (3rd Cir. 1993).) Stated another way, a parent has meaningfully participated in the development of an IEP when he/she is informed of his/her child's problems, attends the IEP meeting, expresses his/her disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools*, 315 F.3d 688, 693 (6th Cir. 2003); *Fuhrmann*, *supra*, 993 F.2d at 1036.)

Procedural Issues

In this matter the parents present for decision two procedural issues which fall under the jurisdiction of the hearing officer as follows:

- a. Whether the transfer of the student to Renaissance Academy constitutes a change of placement; and consequently,
- b. Whether the school district failed to provide prior written notice and an IEP team meeting to discuss and possibly ratify this transfer?

SUBSTANTIVE ISSUES

Petitioner's substantive issues are:

- a. Whether the school district violated the Child Find Mandate.
- b. Whether the school district failed to provide the Student with a Free Appropriate Public Education (FAPE) during the time the student attended the School by:
 - i. unilaterally transferring the student to Renaissance Academy at the start of the second term of the 2022-23 academic year,
 - ii. summarily refusing to consider a request for a meeting with the parents to discuss the transfer.

DISCUSSION

a. Whether the transfer of the student to Renaissance Academy constitutes a change of placement; and consequently,

The IP that was developed for the student on December 19th, 2022 did not indicate any change from [School]. However, it didn't indicate that he would stay at [School] either it was just presumed that he would. The preponderance of the evidence would indicate that the services, supports and accommodations under the December 19th 2022 IEP would have remained exactly the same had the child ever enrolled in the Renaissance Academy. Since he did not enroll, it is factually impossible to establish the truth of that. However, the evidence fails to support the Petitioners' contentions. The evidence supports the notion that the anticipated transfer to Renaissance Academy was a change of location.

"...a "change in location alone does not qualify as a change in 'educational placement'" and that a change in placement only occurs "when there is a significant change in the student's program." OLIVER C. V. EDU-HI, No. 17-17498 (9th Cir. 2019)

The hearing officer finds that this was merely a change of location and not a change of placement and thus, on this procedural issue, the Hearing Officer finds in favor of the Respondents.

b. Whether the school district failed to provide prior written notice and an IEP team meeting to discuss and possibly ratify this transfer?

The remaining procedural issue involved prior written notice if the hearing officer finds that this was, in fact a change of placement, and the finding herein above renders the second procedural issue moot and it is also denied.

DISCUSSION

a. Whether the school district violated the Child Find Mandate.

The State must have in effect policies and procedures to ensure that—

(i) All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; and

(ii) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services....

Other children in child find. Child find also must include—

(1) Children who are suspected of being a child with a disability under §300.8 and in need of special education, even though they are advancing from grade to grade; and

(2) Highly mobile children, including migrant children.

34 C.F.R. 300.111

The child find mandate is an affirmative duty placed upon public school districts, of which Davis School District is one. During the course of the hearing, there was evidence, and there were references to evidence, that the student in question had a history of behavioral issues. The mother of the student identified that as early as age 8, the student had made statements about self-harm and that they had immediately thereafter sought private counseling for the student. While this behavior is troubling, it doesn't in and of itself constitute or rise to the level of a violation of child find if the school district fails to take action. While there was some evidence, it was not a preponderance of the evidence that would lead the hearing officer to conclude that a child find violation had occurred. In fact, the evidence tended to indicate that almost immediately after the mother made the school district aware of a letter from a medical provider that recommended the child be put on a 504 plan, the school district took action to in fact enroll the child in a 504 plan with accommodations as requested. The school district created these accommodations based on input from the medical providers and the parent but did not find that the child needed specialized instruction, only that he needed accommodations During school to cope with his anxiety and his inability to think and concentrate at times.

Students with disabilities who are eligible under the IDEA are entitled to be appropriately identified, evaluated, placed, and have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 34 CFR § 300.1(a); USBE SER II.A.

The hearing officer finds that no violation of Child Find Mandate occurred during the course of this student's enrollment with Davis School District, and on this substantive matter, finds in favor of the respondent.

DISCUSSION

- b. Whether the school district failed to provide the Student with a Free Appropriate Public Education (FAPE) during the time the student attended the School by:
- i. unilaterally transferring the student to Renaissance Academy at the start of the second term of the 2022-23 academic year,
 - ii. summarily refusing to consider a request for a meeting with the parents to discuss the transfer.

While the hearing officer does not find that the transfer to Renaissance Academy constituted a change of placement, the preponderance of the evidence in this case points to an inquiry or a question of why was such a decision made? This question bears discussion. On the one hand the hearing officer can certainly understand the need to provide a safe school environment for all the students and employees at [School]. The Hearing Officer does not find that the actions of the Davis school district in investigating the threat and making recommendations to ensure continued safety were done with anything less than good faith and genuine concern for the safety of ALL students, including [Student]. The petitioners presented evidence throughout the course of the hearing that the Davis school district overreacted to the threat based on the individual circumstances. As mentioned earlier the Hearing Officer finds the use of the term “terrorist threat” to be a mischaracterization of what was communicated by the student. [Student], and all other similarly situated students, whether disabled or nondisabled, should be educated to understand that certain types of language and threats will be taken as very serious and that serious repercussions can result from uttering these threats. However, even if this hearing officer finds fault with the school district and how they responded to the threat, any actions that they took in response to the threat fall outside of the scope of this hearing officer's jurisdiction as his jurisdiction only attached on or after December 19th, 2022. Lastly, the evidence indicates that the school district's actions would have only resulted in “relocating the threat” ([Student]) and not addressing the issues with the student which may have caused or continue to cause the threat(s) to occur. Providing a safe school environment and addressing behaviors of students which may threaten that safety are not mutually exclusive services that the school district should provide.

The hearing officer must now address the questions before him regarding the transfer to Renaissance Academy and the school district's refusal to consider meeting with the parents and or their attorney to discuss this transfer and gather input from them. The evidence in this case shows that while it was intended for the student to enjoy the provisions of his IEP at Renaissance Academy, those same provisions could have been provided at his previous school, [School]. There was in fact no evidence that Renaissance Academy could provide any of his supports better than, or in place of, the supports he would be provided at [School]. The absence of this very evidence is what leads the hearing officer to conclude that transferring the student to [School] was not in his best interest

and further, that the transfer to Renaissance Academy failed to provide FAPE because it failed to establish, by evidence, that such a move was reasonably calculated to enable the student to make some progress in light of his unique circumstances.

Thus, the hearing officer finds in favor of the Petitioners on this substantive issue.

Regarding the districts refusal to consider I'm meeting with the parents to discuss the proposed transfer to renaissance Academy, the hearing officer finds the actions of the school district in unilaterally declining this request to be unreasonable and not in the best interest of the child. Parental input with regard to a child's educational plan, curriculum, environment and future is almost always a vital part of that plan. The school district did not offer any reasonable explanation for its refusal and there was no evidence to support its refusal. The hearing officer, While unable to provide any specific relief with regard to this substantive issue, the hearing officer takes this opportunity to admonish the school district to at least consider meetings and good communication with the parents and all of the interested parties, or stakeholders, surrounding a student and his needs

Therefore, Petitioner has proven by a preponderance of the evidence that Respondent violated the provisions of the IDEA within the statutory jurisdiction period of Petitioners' due process Complaint, which was filed on April 15, 2022. *Shaffer v. Weast*, 546 U.S. at 49, 62 (2005), by failing to provide and Free Appropriate Public Education. The Petitioner failed to show by a preponderance of the evidence, violations of the procedural issues herein described.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and analysis of issues and the Hearing Officer's own legal research, the Hearing Officer now enter the following Conclusions of Law:

1. Petitioners met their burden of proof that Respondent failed to provide the Student with a FAPE by ordering the student transferred to Renaissance Academy and by refusing to hold a meeting with parents to discuss same. *Shaffer v. Weast*, 546 U.S. 49, 61 (2005).

ORDER

Based upon the foregoing, it is hereby ORDERED as follows:

1. It is ORDERED that Respondent will do each of the following:
 - a. Re-enroll [Student] in the [School] for the 2023-24 school year.
 - b. Cause to be performed a Functional Behavior Assessment, and, where appropriate and necessary, develop a behavior intervention plan based upon this data to be put in place as soon as possible.
 - c. The school district will collect criterion reference assessments commonly referred to as short cycle assessments to determine students current academic functioning.
 - d. After the collection of this data and analysis the IEP team will convene to develop appropriate interventions and supports to allow the student to access and progress in the general curriculum.
2. It is FURTHER ORDERED that the parents and the school district will ensure that each stakeholder will be fully involved and integrated into all the assessments to be done above herein; and specifically that the parents will ensure that the student is available and gives his best effort to ensure the genuineness of the results of these assessments.
3. Further that upon the conclusion of the academic assessments and data gathering, that the IEP team, at the direction and insistence of the school district, will meet and set forth and implement a plan to recoup the nearly one half year of academic instruction that the child or student lost in the 2022-2023 school year, if the date so indicates.
4. The Petitioner's request for attorneys fees is beyond the scope of authority of this hearing officer, thus such request is neither granted nor denied.

All other requested relief, not specifically GRANTED and ordered herein, is DENIED.

Dated this 15th day of August, 2023.

//s// Frank Snowden

USBE Due Process Hearing Officer