

**DUE PROCESS HEARING DECISIONS AND APPEAL REVIEWS
JULY 1, 2010 - JUNE 30, 2011**

**INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA)
PART B**



**JANET BARRESI
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
OKLAHOMA STATE DEPARTMENT OF EDUCATION**

**Due Process Requests
(July 1, 2010 to June 30, 2011)**

Due Process Requests Received (Includes three carryover from 2009-2010)	30
Due Process Hearings Cancelled, withdrawn or resolved	24
Due Process Cases Carried over to FY 2011-2012	3
Due Process Hearing Decisions Rendered	3
Resolution Sessions	21
Resolution Agreements	7
Due Process Hearing Appeal Reviews	2
Appeal Reviews Appealed to District Court	0
District Court Decisions Appealed to the 10 th Circuit	0

**Due Process Decisions
(July 1, 2010 to June 30, 2011)**

Due Process Decision

Due Process No. 1993
Due Process No. 1996
Due Process No. 1999

Date of Decision

September 14, 2010
February 13, 2011
January 5, 2011

Due Process Appeal

Appeal No. 1996
 Corrective Order
 Order Overruling Petitioner's
 Request to Set Aside Order Received

Appeal No. 1999

Date of Decision

March 25, 2011
March 28, 2011

April 13, 2011

March 11, 2011

Due Process Decision 1993
September 14, 2010

THE STATE DEPARTMENT OF EDUCATION
STATE OF OKLAHOMA

REDACTED

Parent of)
[Student]) DPH 1993
)
v.)
) Date of Decision 9/14/2010
)
)
)
SCHOOL DISTRICT)

HEARING DECISION
Location of Hearing
Home School
Date of Hearing - ended July 26th 2010

Appearances:

Attorney for Petitioner

Attorney for Respondent

Parties:

Petitioner

Respondent

Witnesses

1. Assistant Principal
2. Director of Secondary Instruction
3. Special Education Consultant
4. Special Education Consultant
5. Director of Special Services
6. 6th Grade Language Arts Teacher
7. Counselor
8. School Psychologist
9. Principal
10. Director of Elementary Instruction
11. 6th grade science teacher
12. 6th grade history and physical education teacher
13. Mother
14. 6th grade math teacher

Findings of Fact

1. The student was born on July 6, 1997. He is 13 years old. S.E. 1, p. 2.
2. School exhibits 1 through 36 were admitted into evidence. Vol. I, pp. 128-29. Petitioner exhibits 1 through 9 and 11 through 18 were admitted into evidence.
3. The Petitioner, the student's mother, submitted her Due Process Complaint Parent ("Complaint") on May 14, 2010. S.E. 1.
 4. On May 18, 2010, counsel for the District sent the Petitioner, care of her attorney, a letter dated May 18, and attachments explaining her due process rights and the hearing process. S.E. 3. The letter explains to the Petitioner that "You have the right to review all records maintained by the District with regard to your child and to copy all such records at a reasonable cost." Id. One of the attachments to the letter is a copy of Parents Rights in Special Education: Notice of Procedural Safeguards. Id.
5. The District submitted its response to the complaint on May 24, 2010. S.E. 8.
6. The District submitted a Written Notice to Parents form to the Petitioner, care of her attorney, on May 24, 2010. S.E. 9; Axtell, Vol. IV, pp. 826-27. In the Written Notice form, the District addressed each item of requested relief identified in the Complaint. S.E. 9.
7. [Name] is a special education consultant employed by the District. H., Vol. II, p. 323.
 8. Student attended the student kindergarten for a portion of the 2002-03 school year at [ES] Elementary School in the District. P.E. 14.
 9. The student attended kindergarten at [IM] elementary in the [C.] Public Schools. S.E. 22 (Letter dated 2/11/03).
10. The student repeated kindergarten during the 2003-04 school year at [ES]. P.E. 14.
 11. The student attended first grade during the 2004-05 school year at [CE] Elementary in the District. He attended second grade during the 2005-06 school year in the District until February, 2006 when the Petitioner withdrew the student to home school him. Id; S.E. 22 (Letter dated 2/28/06)
 12. The Student re-entered the District at [CE] on October 18, 2006, for third grade during the 2006-07 school year before moving to [SE]

Elementary, also in the District. P.E. (IEP dated 11/9/06, p. 1).

13. The student began fourth grade during the 2007-08 school year at [C E] until the Petitioner withdrew him to home school on September 13, 2007. Id. He attended most of fourth grade during the 2007-08 school year at [N] Elementary School in [N] Public Schools. S.E. 23.

14. The student attended fifth grade during the 2008-09 school year at [SC] the student Elementary School in the District. P.E. 14.

15. The student began the sixth grade in August 2009 at [M] Middle School in the District. He began attending [CAMS] in the District in September 2009 and completed the 2009-10 school year there.

16. The District required the student to change middle schools because he did not satisfy District residency requirements to attend [M]. P.E. 5, pp. 149-50.

17. On November 6, 2006, an IEP team, at [SC] Elementary School in the District, developed an IEP for the student. The team reported that the student moved to [S C] during the second nine weeks from [CE] Elementary, where he received services in the speech lab for an articulation delay. P.E. 6 (IEP dated 11/9/06). The IEP reflects that the student's articulation delay was mild and involved the /r/ sound. Id. Under Parent Concerns on the IEP, the team reported "No other concerns at this time." Id. District speech/language pathologist [name] signed the IEP, along with a regular education teacher, administrative representative and the Petitioner. The Petitioner also initialed the IEP to reflect that she had received a copy of Parents Rights in Special Education. Id.; [A], Vol. IV, pp. 828-29.

18. He began the 2007-08 school year in the fourth grade in the District, but had missed virtually all of every school day as of September 13, 2007. S.E. 22 (Daily Attendance 2007-08). At some point the student went to live with the Petitioner's sister, and attended [N] Public Schools for the rest of fourth grade. S.E. 23 ([N] School Year 2007-2008 Grade Report).

19. [N] Public Schools is a completely different school district than the [MD] Public Schools. Manwell, Vol. I, p. 130.

20. The Petitioner testified that unnamed school personnel began telling her to place the student on medication in third or fourth grade. No school personnel made such comments before that time. Petitioner, Vol. VII, p. 1851. The hearing officer finds that it is more than likely that the some school personnel informed the Petitioner of the possible need for medication because given the Petitioner's level of education and background it is unlikely she would have developed the idea of

possible medical intervention for the student on her own.

21. On November 30, 2007, an examiner in [N] gave the student a Wide Range Achievement Test 4 to measure his academic achievement. S.E. 23 (*WRAT 4 Blue Test Form*). The student's standard scores for word reading, sentence comprehension and math computation and his reading composite score were all within the average range of 85 to 115 even though they may indicate some attention issues concerning the student. Id.; [M], Vol. V pp. 1085-86.

22. On December 4, 2007, two [N] teachers each completed a *Profile for Males: Conners Teacher Rating Scale — Revised: Long Version*. S.E. 23 (*Profiles for Males*). The teachers identified one or two out of approximately 60 scores as significant. [M], Vol. V, pp. 1080-81, 1085, 1087. On the same day, Canary completed a *Profile for Males: Conners' Parent Rating Scale — Revised: Long Version*. S.E. 23 (*Profile for Males* by [V C]). [C] identified no inattentive or hyperactive symptoms for the student. Id.; [M], Vol. V, p. 1081.

23. On January 10, 2008, a [N] team that included [C], special education personnel, classroom teachers and an administrator completed a Section 504 Eligibility Determination form for the student. They found that the student had the documented physical or mental impairment of "inattention" that substantially limited his learning. The group identified the documentation and rationale for the decision as follows: *The student's background history indicates he has missed a lot of school due to a difficult home life. Conners' Rating Scale indicate significant inattention difficulties in class*. S.E. 23 (Section 504 Eligibility Determination) (emphasis added).

24. Based on the Section 504 Eligibility Determination, the [N] 504 team prepared a Section 504 Accommodation Plan that placed the student in a special classroom for reading, spelling, English and math, with modifications in the regular classroom for science and social studies. S.E. 23 (Section 504 Accommodation Plan).

25. The student earned Satisfactory scores on his Grade 4 Reading and Math Oklahoma Core Curriculum Tests (OCC.'s) at [N]. S.E. 23 (Parent and Student Reports)

26. When the student returned to live with the Petitioner and attend [SC] Elementary for [#] grade, a 504 team convened to review the documentation supporting the [N] team's 504 eligibility determination. The [SC] team determined that there was no documentation to support the existence of a physical or mental impairment. Counselor [name], teacher [name] and the Petitioner signed the Section 504 Eligibility Determination form. S.E. 24 (Section 504 Eligibility

Determination); Vol. I, p. 200 (Petitioner's statement during [CM]'s testimony).

27. On August 19, 2008, District speech/language pathologist [name] conducted an informal assessment of the student's speech. [The speech/language pathologist] noted no articulation errors, no concern regarding the student's language, adequate sentence length and structures for age, adequate conversational skills and good intelligibility in conversational speech both with and without contextual cues. [The speech/language pathologist] also noted that the student's fluency and voice were within normal limits. [The speech/language pathologist] recommended dismissal from speech. P.E. 6 ([name]Schools Summary of Speech-Language Evaluation).

28. On September 5, 2008, [The speech/language pathologist] contacted the Petitioner by phone "[t]o schedule Review of IEP meeting to discuss present skills and to discuss dismissal from speech." P.E. 6 (Record of Parent Contact). [The speech/language pathologist] reported that "Mother said to call back next week because she didn't know her work schedule yet, but would be off work some days next week and could come then." Id. On September 11, 2008, contacted the Petitioner again by phone "[t]o schedule Review of IEP meeting to discuss present skills and to discuss dismissal from speech." Id. [The speech/language pathologist] reported that "Mother said she would be at school tomorrow at 1:00 pm to check out [the student] for an appointment, so she could meet with the team at that time. Meeting scheduled at 1:00 pm, 9/12/08 at mother's request." Id.

29. During the 2008-09 school year, Petitioner observed the student in a classroom or speech session at [SC]. District personnel advised her that the student's speech was good, he had completed learning his speech skills and didn't need further speech services. Petitioner attended the student's IEP meeting on September 12, 2008 to dismiss him from the speech IEP. Petitioner did not think the student needed to continue receiving speech services. [Petitioner], Vol. VII, pp. 1857, 1859, 1861-62, 1910, 1912; Vol. VIII, pp. 1956-58.

30. The speech pathologist delivered a copy of the Notification of Meeting form to the Petitioner at the meeting. P.E. 6 (Notification of Meeting). The team members, including the speech pathologist and the Petitioner, signed the Record of Access to Educational Records, reflecting the Purpose of Accessing Records as "Review IEP/Discuss Dismissal from Speech." P.E. 6 (Record of Access to Educational Records); S.E. 30 (Record of Access to Educational Records). The team completed and signed an IEP Review form.

31. The Petitioner initialed the IEP Review form to reflect that she had received a copy of Parents Rights in Special Education. The team members recorded on the IEP dated November 9, 2006 that the student had achieved the three short-term objectives/benchmarks with 100% accuracy. The team members

initialed page 2 of the IEP and dated it 9-12-08. P.E. 6 (IEP, p. 2)

32. [The speech/language pathologist] recorded the meeting on the Record of Parent Contact, stating "Meeting held. Mother agreed with team and signed all necessary paperwork to dismiss [the student] from the SUI category." P.E. 6 (Record of Parent Contact). When a student's IDEA eligibility is terminated in the District, the student's special education records do not travel with the student to subsequent schools. [H], Vol. VI, pp. 1730-32, 1740.

33. During the 2008-09 school year at [SC], the student earned passing grades in all subjects except writing, in which he earned an Unsatisfactory grade. P.E. 14.

34. The student earned a Satisfactory score on his Grade 5 Oklahoma Core Curriculum Test (OCC) in Writing, Proficient scores on his Grade 5 OCC 's in Reading and Science and Limited Knowledge scores on his Grade 5 OCC 's in Math and Social Studies. S.E. 24 (Parent/Student Reports). The two Limited Knowledge scores were close to the Satisfactory cut-off scores for those tests. Honey, Vol. VI, pp. 1685-86. The student also earned a Proficient performance standard score on his mid-year and final Scholastic reading tests. S.E. 24 (Student Action Report).

35. The student had poor attendance at [SC] during the 2008-09 school year. S.E. 24 (Daily Attendance 2008-09).

36. During the 2008-09 school year, the Petitioner received letters from the District concerning the student's absences, but none concerning failing grades or other concerns. [Petitioner], Vol. VII, p. 1879.

37. During the 2009-10 school year, [name] served as the assistant principal at [CAMS], and [name] completed her 16th year as the principal at CAMS. [M], Vol. I, 27; [H], Vol. VI, p. 1391.

38. [CM] served as the student's sixth grade language arts teacher at CAMS. [M], Vol. I, p. 39; [MB], Vol. IV, p. 917.

39. [Name] served as the student's sixth grade history and P.E. teacher at CAMS. [M], Vol. I, p. 43; [B], Vol. VI, p. 1599-1600, 1610.

40. [Name] served as the student's math teacher, [name] was the student's science teacher and [name] was his industrial arts teacher during the sixth grade at CAMS. [M], Vol. I, p. 46; [H], Vol. VI, p. 1496.

41. [Name] served as the ISR teacher at CAMS during the 2009-10 school year. [M], Vol. I, pp. 47, 165.

42. [Name] was a counselor at CAMS during the 2009-10 school year. [K],

Vol. IV, p. 940.

43. [Name] was the special education teacher on the [RH] team to which the student was assigned for the 2009-10 school year. [MB], Vol. IV, pp. 896, 920; [M], Vol. V, p. 1131.
44. At CAMS, the student's teachers reported that he did not pay attention in class and the student looked dazed. [M], Vol. I, p. 125. The student often did not complete his assignments. [M], Vol. I, p. 71; [H], Vol. VI, pp. 1496-97. He earned Ds and Fs because he did not do his work. [MB], Vol. IV, p. 914. The student did well on his class work and earned good grades when he completed his work. [M], Vol. I, p. 217; [H], Vol. VI, pp. 1525, 1546, 1559-60, 1565. The student did not have good study habits. [H], Vol. VI, p. 1559; [B], Vol. VI, p. 1609. The student earned poor and failing grades over much of the 2009-10 school year. S.E. 35 (Quick Lookup).
45. During the 2009-10 school year at CAMS, the Petitioner asked school administrators for help with the student because he was falling behind with his schoolwork. [M], Vol. I, p. 111.
46. [Name] was the CAMS administrator who primarily interacted with the student over the 2009-10 school year. [M], Vol. I, p. 151.
47. [The CAMS administrator] met with the student on Fridays during the 2009-10 school year to review his missing assignments. [The CAMS administrator] did that with about 30 students. [M], Vol. I, pp. 160-62, 214.
48. [The 6th grade Language Arts teacher] voiced concerns about the student to [the school psychologist], [the counselor] and CAMS administrators in mid-November 2010. [MB], Vol. IV, pp. 895-96, 919. The student was not performing in class, and the teachers believed the problem was behavioral, not a disability, because the student would work for rewards. [MB], Vol. IV, pp. 904, 912, 929-30; [H], Vol. VI, pp. 1559-61; [B], Vol. VI, p. 1612.
49. [The counselor] was briefly involved in the process in the absence of the other CAMS counselor. [K], Vol. IV, pp. 943, 947-48, 998. The student's teachers and [the school psychologist] initiated a response to intervention process to determine whether the student's issues could be successfully addressed through interventions. S.E. 29; [MB], Vol. IV, pp. 909, 930-31. The Petitioner met with the student's teachers on December 3, 2009. S.E. 35; [M], Vol. I, p. 178. The school team members involved the Petitioner, thinking that if she could help the student get working they could figure out how to motivate him to complete his work. [MB], Vol. IV, pp. 929-30. [The school psychologist] observed the student and suggested Tier I interventions, including seating arrangements and clearing the student's desk before starting work. The Tier I interventions did not resolve

the student's issues. S.E. 29; [M], Vol. V, pp. 1247-48. [M], Vol. V, pp. 1090, 1234-36. One intensive Tier II intervention used was placing the student in a focus math class team taught by two teachers — one a special education teacher on the [RH] team. S.E. 29; [M], Vol. V, pp. 1246-47; [H], Vol. VI, p. 1561. The student made some progress with the interventions and support from his parents, but he did not maintain the progress. [MB], Vol. IV, pp. 909-13, 933-34; [M], Vol. V, p. 1122; [H], Vol. IV, pp. 1562-65. The student's interventions were appropriate and implemented over an appropriate time. [MB], Vol. IV, p. 933; [M], Vol. V, p. 1079.

50. During the 2009-10 school year, [the assistant principal] and [the principal] met with the Petitioner and asked her to bring any documentation that might help them with the student. [H], Vol. VI, pp. 1663 [The assistant principal and the principal] invited [the school psychologist] into the meeting. The Petitioner stated that she had had the student tested, and [the principal] asked if [the school psychologist] could review the testing with the Petitioner. The Petitioner left CAMS to get the testing and returned with Conners rating scales administered by Dr. [S] at the [student's private counseling center]. [The school psychologist] discussed the Conners rating scales with the Petitioner. [M], Vol. V, pp. 1075-76, 1267-69. [The principal] did not throw papers at the Petitioner or tell the Petitioner that she did not believe the student had ADD. [H], Vol. VI, pp. 1392-94, 1715-16. The papers the Petitioner brought to school were immediately turned over to [the school psychologist] for review. [H], Vol. VI, pp. 1394-95.
51. [The petitioner] first obtained an ADD diagnosis for the student from Dr. [S] during the 2009-10 school year. [S]'s evaluation was paid for through Sooner Care. [Petitioner], Vol. VIII, 1930-31, 1935-36, 1975.
52. During the 2009-10 school year, [name] was the District's Director of Secondary Instruction. [B], Vol. I, pp. 239-40; [M], Vol. I, p. 119.
53. The student took medication for approximately one week in March 2010. [M], Vol. I, p. 210; S.E. 36 ([M] emails sent 3/3/10 and 3/22/10).
54. On March 22, 2010, The student's father told [M] that he believed the student's problem was not ADHD but the fact that he had previously missed so much school. [M], Vol. I, pp. 163-64; S.E. 36 ([M] email sent 3/22/10). The father told [M] that the student just needed structure. [M], Vol. I, pp. 222-24.
55. The Petitioner did not request an evaluation of the student or an IEP for the student during the 2009-2010 school year. On March 31, 2010, The student's father requested the District evaluate the student. [M], Vol. I, pp. 164-65; [MB], Vol. IV, p. 919; [H], Vol. VI, p. 1715. The father's request came at the same time

the team was completing the student's intervention process. [M], Vol. V, pp. 1249-50.

56. A team comprised of school personnel and the student's father met on April 20, 2010, to complete the Review of Existing Data form and obtain the consent of the student's father for the student's evaluation. S.E. 30; [M], Vol. V, pp. 1107, 1262-65. The team identified the student's suspected disabilities as Specific Learning Disability, Intellectual Disabilities and Other Health Impaired ("O.H.I."). S.E. 30 (Parent Notice/Consent for Evaluation, p. 2). Although the Petitioner requested two additional assessments at the June 1, 2010, resolution session, she did not seek to identify autism as an additional suspected disability or request any evaluation components to address her purported concerns about Asperger's or autism. S.E. 13 (Resolution Agreement & Parent Notice/Consent for Evaluation, p. 2). After the April 20, 2010, meeting, [the school psychologist] sent the student's father a Written Notice reflecting the District's proposal to complete the evaluation. S.E. 30 (Written Notice to Parents); [M], Vol. V, pp. 1265, 1301-02.
57. During the 2009-10 school year, [the principal] and the Petitioner discussed the student's progress and attendance and how important it was for the student to focus on his grades so he would meet District criteria for promotion to seventh grade. [The principal] became involved with the student and the Petitioner during the second semester of the 2009-10 school year due to the student's worsening attendance. [H], Vol. VI, pp. 1740-41. [H], Vol. VII, p. 1839. District personnel recommended that the student enroll in summer school during the summer of 2010 to move on to the seventh grade. [H], Vol. VI, 1681. The student did enroll in summer school. [H], Vol. VI, p. 1684.
58. [The school psychologist] obtained Dr. [S]'s January 14, 2010, letter after she faxed him a letter and release on May 11, 2010. S.E. 28 (Fax Transmittal Sheet); S.E. 30 (Letter dated 5/11/10); S.E. 31 (Letter dated 1/14/10); Martinez, Tr. V, pp. 1076, 1242. Dr. [S]'s letter states that [S] does not believe the student exhibits the symptoms of autism or Asperger's. S.E. 31 (Letter dated 1/14/10); [M], Vol. V, pp. 1103-04, 1269-70.
59. [The school psychologist] began testing the student in May 2010. P.E. 4, p. 28. [M], Vol. V, p. 1096. She administered the WISC-IV and the WIAT-II and obtained completed adaptive behavior forms. [M], Vol. V, pp. 1243-45. The WISC measures ability, and the WIAT-II measures academic performance. The WISC and WIAT-II scores are compared to determine whether the student is achieving up to his ability. In [the school psychologist]'s opinion, the student's WISC/WIAT-II scores do not indicate a learning disability because they do not reflect a significant discrepancy between the student's ability and achievement in any area. [M], Vol. V, pp. 1250-55. The student's full-scale score of 89 IQ is not a low IQ score nor does it indicate that he needs accommodations at school. [M],

Vol. V, pp. 1179-80, 1251-52.

60. [The school psychologist] admits that the district should have started the intervention process upon receipt of that information in 2008. P. 1083 lns 1-17; p. 1085 lns 4-14 (stating that the district should have started intervention in 2008).
61. [The school psychologist] also finds that the student's processing speed in her testing in May 2010, was extremely low. P. 1097 lns 19-22.
62. By the end of the 2009-10 school year, the District did not have medical information about the student as required to consider O.H.I. eligibility under the IDEA. [The school psychologist] gave the Petitioner a medical report form to take to the student's physician, but the Petitioner returned it blank. [M], Vol. V, pp. 1166, 1257-61, 1276.
63. [The school psychologist] has no recommendation now as to whether the student meets the eligibility criteria for an IDEA disability. S.E. 13; [M], Vol. V, pp. 1101-03, 1177, 1255, 1275, 1298.
64. The Petitioner has not incurred any expense for tutoring for the student. [Petitioner], Vol VIII, p. 1963, 1975.
65. During the course of the hearing the District produced several documents that should have been produced prior to the hearing pursuant to a subpoena. These documents were at best cumulative evidence that the student was having trouble in school and at worst not material or probative of the evidence in this case. Further, while it is certainly indicative of sloppy record keeping on the part of the District, it is unlikely that the failure to produce these documents was intentional. After all, it is the testimony of District officials that uncovered the documents and established a failure to timely evaluate the student for the purposes of child-find. One would believe that if there was a conspiracy to destroy or hide evidence, the District could have done a better job of effectuating that end.1.

Conclusions of Law

1. The District failed to evaluate the student for services when it had reason to suspect the student had a disability and might be in need of special services.
2. The Petitioner fail to produce any evidence that the student was in need of special services.
3. The Petitioner failed to produce any evidence that the student was in need of compensatory education or extended school year (ESY),

4. The Petitioner failed to produce any evidence that the student was denied a Free and Appropriate Public Education (FAPE) as it relates to the termination of the IEP during the school year 2008-2009.

Statement of the Case

This case concerns a student who was in the 6th grade during the 2009-2010 school year. The Petitioner is alleging that the student is afflicted with Attention Deficit Disorder and Autism. The Petitioner asserts that the District has failed in its child find obligations to properly evaluate the student. It is asserted that because of this failure to evaluate the student, the student was not placed in special education and given an IEP (Individual Education Plan). The Petitioner also contends that various procedural violations of the IDEA is a denial of FAPE.

For its part, the District denies that it has failed either in its Child Find obligations or in the provision of FAPE. The District seems to assert that whatever problems this student had in school, it was not the result of any disorder, but was merely a choice on the part of the student to not complete his work or be attentive in class. To support this contention the District relies on: 1) testimony of teachers and administrators and 2) records of excessive absences from school of the student.

Burden of Proof

The Petitioner bears the burden of proof in this case. The party opposing any IEP or failure to identify a child for special services must prove by a preponderance of the evidence that a child's special needs are not being met as required by the Act, *Johnson v. Independent School District No. 4 of Bixby*, 921 F.2d 1022, 1026 (10th Cir.1990). While the preponderance of the evidence standard is legally the easiest standard to satisfy, the standard is not trivial or meaningless. Additionally, the hearing officer should not substitute his view of

educational policy for the determinations that are made by the school officials reviewing the students educational placement, *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 206, 102 S.Ct. 3034, 3051, 73 L.Ed2d 690(1982). That is to say, that it is not for the Hearing Officer to determine what is the "best" education for any given student only to determine if the school has provided educational standards consistent with the Act.

I

The District Failed to timely evaluate the student for Eligibility for Special Education.

All children with disabilities regardless of the severity of their disabilities, and who are in need of special education and related services, are to be identified, located, and evaluated as required by 20 U.S.C. § 1412(a)(3)(A). This is the what is known as the child-find obligation, and it imposes an affirmative obligation on the school district. *Clay T. v. Walt County Central United Sch. Dist.*, 25 IDELR 409 (M.D.Ga.1997). The duty is triggered when a district has reason to suspect a disability, and reason to suspect that special education services may be needed to address that disability.” *Dep't of Educ., State of Hawaii v. Cari Rae S.*, 158 F.Supp.2d 1190, 1194 (D.Haw.2001). Further, that identification must occur “within a reasonable time after school officials are on notice of behavior that is likely to indicate a disability” *W.B. v. Matula*, 67 F.3d 484, 501 (3d Cir.1995) . Knowledge of a disability may be inferred from written parental concern, the behavior or performance of the child, teacher concern, or a parental request for an evaluation. *See 20 U.S.C. § 1415(k)(8)(B)(i-iv).*

In this case, the District had reason to suspect the student might have a disability and may be in need for special services. There is evidence in the record that this student had some

attendance issues while in elementary school and was the subject of a 504 plan. While a 504 plan is not conclusive evidence that the student needed special education, it does evidence the student had some attention difficulties that could be ADHD. Further, there is some evidence in the record that elementary teachers made reference to medication as it related to the student and his school performance. When the student arrived at middle school his grades suffered and he began to struggle. The District had access to all this information and certainly should have put the District on notice that an evaluation was required.

There was no evaluation for this student offered until the spring of 2009-2010 school year. The evidence suggests this evaluation was not offered until a parental request. Up until this time, the district had been using Response to Intervention (RTI) with the student. However, testimony indicated RTI was not the districts procedure for evaluation. The evidence suggests that the District should have known that this student should have been evaluated at least as early as the fall of 2009.

II

The Petitioner has failed to present evidence that the student is in need of special services

The fact that the student has a diagnosis from a psychologist of ADHD does not automatically indicate that the student is eligible for special services. Attention Deficit Hyper active Disorder is not a specific category under the IDEA. In order to obtain services under the IDEA a student with ADD/ADHD must qualify under the category as Other Health Impaired (O.H.I.).

A child's ADD diagnosis alone, however, cannot establish the basis for a student's eligibility for special education pursuant to the IDEA. *See, Sanders v. DeKalb County Central Unif. Sch. Dist.*, 26 IDELR 257 (N.D.Ind.1996) (mere symptoms of ADD are not enough to require referral under IDEA, especially when student's behavior could have been caused by other, unrelated factors). By

definition, the IDEA only applies to children with disabilities *who require special education and related services*. 20 U.S.C. § 1401(3)(B) (emphasis added).

W.H. ex rel. B.H. v. Clovis Unified Sch. Dist., CV F 08-0374 LJO DLB, 2009 WL 1605356 (E.D. Cal. June 8, 2009) judgment withdrawn in part, CV F 08-0374 LJO DLB, 2009 WL 5197215 (E.D. Cal. Dec. 22, 2009).

In the instant matter, the record is replete with evidence that the student had attention issues in elementary school culminating in a diagnosis of ADHD in the school year 2009-2010. However, in order to qualify for special education it must be shown that the ADHD adversely affected the student's education.

To be "other health impaired" for the purposes of the IDEA the Petitioner must show that the ADHD had negative effect on a child's educational performance. Other Health impaired is defined as:

9) Other health impairment means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that--

(i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and

(ii) Adversely affects a child's educational performance. *34 C.F.R. § 300.8*

Once it is determined that a student has an impairment due to a chronic or acute health problem, one must next determine the meaning of 'adversely affects a child's education'.

Courts have not defined the term adversely affecting a child's education to include every instance where a disability may impact a child in the school environment. If the student's health problem does not affect his education to the point that he or she needs specialized instruction then obligations under the IDEA are not implicated. The

following case from Hawaii is instructive:

The Court agrees with the DOE that whether a student's disability “adversely affects” his “educational performance” refers to the student's ability to perform in a regular classroom designed for non-handicapped students. **If a student is able to learn and perform in the regular classroom taking into account his particular learning style without specially designed instruction**, the fact that his health impairment may have a minimal adverse effect does not render him eligible for special education services.

Ashli C. ex rel Sidney C. v. State of Hawaii, CIV. 05-00429 HG-KSC, 2007 WL 247761 (D. Haw. Jan. 23, 2007).

Therefore, to be eligible as “Other Health Impaired” in this case the Petitioner must show a heightened level of alertness to environmental stimuli that results in limited alertness in the educational environment that adversely affects education to the extent it requires specially designed instruction.

In this case the evidence that the student’s ADHD requires specially designed instruction is mixed at best. It seems quite clear that this student has a diagnosis of ADHD. The record indicates that in elementary school the student made some educational progress. However, it is

clear that the student began struggling a great deal when he matriculated to middle school. There is no evidence from a physician, psychologist or psychometrist that the ADHD rises to the level of requiring specialized instruction. The Petitioner simply cannot carry her burden of proof.

It is possible that upon further evaluation this analysis could change. The District has been ordered to complete certain evaluations that could prove this student eligible for special services. Also, the provision of relevant medical data could also effectuate that purpose. However, until that information is forthcoming the Petitioner cannot demonstrate that it is the student's ADHD that is causing his problems in school and those problems rise to the level of requiring specialized instruction implicating the protections of the IDEA.

The existence of an accommodation plan under Sec. 504 of the Rehabilitation Act does not automatically entitle the student to relief under the IDEA. From the tone of the Petitioner's arguments in her brief, it appears she may be arguing that because the student was on a 504 accommodation plan he would automatically be eligible for special education. Section 504 of the Rehabilitation Act is similar to the IDEA. However, Section 504 is broader in scope than the IDEA and eligibility under Section 504 does not mean one is entitled to services under the IDEA.

Courts have plainly stated:

The statutory purpose of the Rehabilitation Act is similar to that of IDEA, but the Rehabilitation Act is broader in scope. *See Muller ex rel. Muller v. Comm. on Special Educ. of the E. Islip Union Free Sch. Dist.*, 145 F.3d 95, 100 n. 2 (2d Cir.1998)... A student could therefore qualify for accommodations under Section 504 of the Rehabilitation Act and yet not be entitled to special education services under IDEA.

Maus v. Wappingers Cent. Sch. Dist., 688 F. Supp. 2d 282, 287-88 (S.D.N.Y. 2010)

As a result, the mere fact that the student had a 504 accommodation plan while enrolled at [N] elementary does not automatically mean that he was eligible for special education once he transferred to [SC] elementary and subsequently to middle school. ¹

III

Procedural Violations involving the IDEA are not actionable per se.

In her brief, the Petitioner seems to argue that she should be entitled to relief because of procedural violations of the IDEA. The law, however, is quite clear that a procedural violation of the IDEA that does not implicate the substantive provision of FAPE is not actionable.

“[a] procedural violation of the IDEA is not a per se denial of a FAPE; rather, a school district's failure to comply with the procedural requirements of the Act will constitute a denial of a FAPE only if such violation causes substantive harm to the child or his parents.” *Knable ex rel. Knable v. Bexley City Sch. Dist.*, 238 F.3d 755, 765 (6th Cir.2001) (citations omitted); *see also D.S. v. Bayonne Bd. of Education*, No. 08-4730, 602 F.3d 553, 564-67 (3d Cir.2010) (“A procedural violation is actionable under the IDEA only if it results in a loss of educational opportunity for the student, seriously deprives parents of their participation rights, or causes a deprivation of educational benefits.”); *Adam J. v. Keller Indep. Sch. Dist.*, 328 F.3d 804, 811-12 (5th Cir.2003) (“[P]rocedural defects alone do not constitute a violation of the right to a FAPE unless they result in the loss of an educational opportunity.”); *DiBuo v. Bd. of Educ.*, 309 F.3d 184, 190 (4th Cir.2002) (“[A] violation of a procedural requirement of the IDEA (or one of its implementing regulations) must actually interfere with the provision of a FAPE.”).

C.H. v. Cape Henlopen Sch. Dist., 606 F.3d 59, 66-67 (3d Cir. 2010)

When faced with a procedural violation a Petitioner must now show more than a technical

¹ This tribunal has no jurisdiction to resolve issues involving section 504 of the Rehabilitation Act and nothing in this opinion should be construed as to whether that Act was or was not violated by the District.

violation of requirements such as the provision of proper notice.

Procedural violations effect FAPE if they impede a student's ability to obtain an educational benefit from classroom instruction. A definition for a free and appropriate public education has long been defined and is commonly referred to as the Rowley standard.

A "free appropriate public education" consists of educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child "to benefit" from the instruction. Almost as a checklist for adequacy under the Act, the definition also requires that such instruction and services be provided at public expense and under public supervision, meet the State's educational standards, approximate the grade levels used in the State's regular education, and comport with the child's IEP.

Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist., Westchester County v. Rowley, 458 U.S. 176, 188-89, 102 S. Ct. 3034, 3042, 73 L. Ed. 2d 690 (1982)

Absent evidence that a student did not receive an educational benefit, analyzing the issue of supposed procedural violations of the IDEA are unnecessary.

In this case there is no evidence of a substantive violation of FAPE due to procedural irregularities. Evidence has been developed that this student was on an IEP for a articulation disorder. It is not necessary to reach any issues involving procedural matters because there is no evidence that the students substantive rights to FAPE were breached. The evidence has shown the student completed his speech goals and was dismissed from special education. There is no evidence in the record that this malady ever reasserted itself or in anyway impede the students' education thereafter.

IT IS THEREFORE, ORDERED, ADJUDGED and DECREED that the Petitioner's request for relief is granted in part and denied in part. The District is directed within a reasonable time to complete a comprehensive evaluation of the student, including a Functional Behavioral

Assessment, a Sensory Profile and a review of medical records. The Petitioner is instructed to make reasonable efforts to execute the proper release to accomplish that purpose. Upon completion of the evaluation, the District is order to convene a multi disciplinary team to use the evaluations and all relevant existing data to determine if this student should be categorized with a specific disability as delineated in the IDEA. If the team determines the student is in need of special services they are to complete an IEP to address the student's unique needs. The remainder of the Petitioner's request is denied.

Dated September 14th 2010



David R. Blades
HEARING OFFICER

IF EITHER PARTY IS DISSATISFIED WITH THIS DECISION THEY MAY APPEAL THE ORDER WITHIN THIRTY-DAYS OF THE RECEIPT OF THE DECISION TO:

**DUE PROCESS HEARING APPEALS
STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION SERVICES
2500 NORTH LINCOLN BLVD
OKLAHOMA CITY, OK. 73105**

For more information call (405) 521-4871

Procedural safeguards were followed in this matter.

Certificate of Mailing

On this 14th day of September 2010 a copy of the forgoing was mailed certified mail and e-mail to:

[Manager of the due process hearing system]
[Attorney for School District]
[Attorney for Petitioner]

A handwritten signature in black ink, appearing to read "David Blades", with a horizontal line underneath it.

David Blades

Due Process Decision 1996
February 13, 2011

**THE STATE DEPARTMENT OF EDUCATION
DUE PROCESS PROCEEDING
STATE OF OKLAHOMA**

DECISION CASE NO ****

PETITIONER: Parents

REPRESENTATIVE: Parent Attorney

RESPONDENT: School District

REPRESENTATIVE: School District Attorneys

HEARING DATE: August 9th 2010 -December 13th 2010

DECISION: February 13th 2011

HEARING OFFICER: David R. Blades, Esq.

Location of Hearing: Administrative Building of School District

Findings of Facts

1. The Student was born on [date]. He turned [age] during the pendency of the due process hearing. S.E. 1.
2. [The Director of Special Services] from the District mailed a Prior Written Notice to Parents form and attachment to the Parents, care of their attorney, on May 7, 2010. S.E. 13; Tr. 6, pp. 154-55. The Prior Written Notice to Parents form and attachment addressed the items of relief requested in the Parents' complaint. The District submitted as evidence a receipt reflecting that the Prior Written Notice to Parents form and attachment were delivered via certified mail, return receipt requested, to the Parents' attorney. S.E. 13.
- 3, On July 2, 2010, the District submitted its response to the Parents' complaint in DPH ***2. The District submitted as evidence a receipt reflecting that the email containing the response was successfully relayed to the Parents' attorney. S.E. 62.
4. The relief the Parents sought in their complaint in DPH ***1 was identical to the relief sought in their complaint in DPH ***2 except for the addition of the phrase "district to have full settlement authority on this matter at any resolution session" in item 5 of their complaint in DPH ***2. S.E. 1, 56. The District stated in its response to the complaint in DPH ***2:

Because the District provided the Parents a Prior Written Notice responding to these same items of relief on [date], the District is not required to and will not submit another Prior Written Notice. See 34 C.F.R. § 300.508(e) ("If the LEA has not sent a prior written notice under § 300.503 to the parent regarding the subject matter contained in the parent's due process complaint, the LEA

must, within 10 days of receiving the due process complaint, send to the parent a response” that includes the required elements).

S.E. 62 (last page of exhibit).

5. [The private occupational therapy center]'s staff advised [director of student services] that they wanted a copy of the Student's fall 2009 occupational therapy evaluation from the District before [they] began its evaluation. At the resolution session in DPH ***2, [director of student services] requested that the Parents sign a release so that the District could release the evaluation to [them]. The Parents did not sign the release, so the District's attorney sent the release to the Parents' attorney for them to sign and return. The Parents did not return the signed release. S.E. 63; Tr. 7, pp. 57-59.

6. On July 27, 2010, [the private occupational therapy center] wrote Parents' counsel and informed him that by March 29, 2010, [they] had received assurance from the School District that it would pay the \$350.00 cost for the evaluation of the Student. However, the Parents never returned the new patient packet to [them] and never contacted [them] in any way. Therefore, [they] did not pursue the evaluation because [the private occupational therapy center] waits until the paperwork is completed before scheduling an evaluation. PE 76.

7. The [private psychologist] first evaluated the Student in 2002. Tr. 1, p. 52. The October 2002, evaluation of the Student reflects a full scale IQ score of 80. S.E. 18. It is difficult to obtain an accurate IQ score for very young children. Tr. 8, p. 68.

8. The [private psychologist] evaluated the Student at the District's request in 2004. Her primary recommendations were that he continue to split his time between the special education resource room and regular classroom, continue with regular classroom modifications like modifying assignments and providing additional verbal instruction and preferential seating, continue speech therapy to work on pragmatic language and language processing issues, continue occupational

therapy to address motor planning and social skills instruction. Tr. 1, pp. 51-52; P.E. 4. The October 2004, evaluation reflects a full scale IQ score of 101. The Student's score of 101 is in the middle of the average range. Tr. 8, p. 68.

9. [Private psychologist] assumed that the District would take her 2004 recommendations into consideration. Tr. 1, pp. 52-53.

10. [Private psychologist] next assessed the Student in the fall of 2009. Tr. 1, p. 56. She observed him at school in a math class, an English class and in the hallway making a transition, talked with him and then they "completed a variety of testing experiences together." Tr. 1, pp. 57-58, 62-63; P.E. 5. The Student told [private psychologist] that middle school was a living hell. He did not explain his statement, but did state concerns. The Student was frustrated socially because he felt he was having a hard time fitting in with and getting along with other kids, and the kids did not always behave in ways that made sense to him. He felt sometimes threatened, shunned and ignored by other kids. Tr. 1, pp. 58-60. The Student also told [private psychologist] that he felt bullied in middle school based upon his initial experiences at the school, such as someone taking his lunchbox, people calling him names, touching and taking his stuff, "getting in his face and pushing, touching or bumping him in the hall. The Student didn't always understand why those things happened and what he was doing to make them happen" and was not comfortable in that setting. The Student "never talked about being beaten up or anything like that." Tr. 1, pp. 60-61, 82-85.

11. [Private psychologist] recommended use of a computer or AlphaSmart as much as possible because she thinks it's a more efficient output mechanism for a child with motor planning difficulty. Tr. 1, pp. 63-64; P.E. 5.

12. On [date], during the Student's fifth grade year, his IEP team conducted a reevaluation of the Student by reviewing existing data. The team completed a Review of Existing Data form.

The team reported that the Student was performing on grade level in all academic areas, had social skills deficits and that his Parents were concerned about his social skills and friendships. The team determined that no additional assessments were needed and that the Student continued to qualify for special education under the autism category. S.E. 21; Tr. 2, pp. 265-66, 271-72. [Name] Elementary School principal [name], special education teachers [name] and [name], general education teachers [name] and [name], speech language pathologist [name] and the Parents attended the meeting signed the form. S.E. 21, 43 (4th page).

13. At the [date], IEP meeting, the team also completed a subsequent IEP and IEP Review for the Student. S.E. 69. On the IEP, the team reported that the Student had earned straight A's as a 4th grader and, at that point in the 2007-08 school year, was earning A's, B's and C's as a 5th grader. The team identified the Student's strengths as academic achievement, reading comprehension and attendance, and his educational need as social skills. The team did not identify any special factors as relevant to the Student. The Parent Concerns box reflects that "Parents are concerned about [the Student's] social skills and friendships." S.E. 69 (IEP page 1). The team identified two social skills goals, both of which were to be measured using response recordings, with progress reported via progress report and report card. S.E. 69 (IEP page 2). The team identified the Student's special education services as consultation weekly as needed by the special education teacher, with a related service of language therapy 30 minutes per week. The Student was to spend all day in the general education classroom, with program modifications of less written work, if needed, in the regular classroom, assistance with tests or assignments in the mild/moderate classroom and modifications for state/districtwide assessments in a small group setting. S.E. 69 (IEP page 3). The team determined that the Student would take the regular District and state assessment and that extended school year services were not needed. The team identified the date of the Student's next three-year reevaluation as September 11, 2010.

S.E. 69 (IEP page 4). The Parents, [name], [name], [name], [name], [name] and [name] all signed the IEP. *Id.* The Student's Father initialed the IEP to confirm the receipt of "Parents Rights in Special Education." *Id.*

14. On the IEP Review form from the September 11, 2007, meeting, the team checked the boxes for review program progress, develop subsequent IEP, continue the same type of services delivery, review eligibility and reevaluation. The team proposed that the Student remain in special education under the autism category, that he continue to remain in the regular classroom for all academics, that the special education teacher monitor his progress and that he receive therapy from the speech language pathologist. The team noted that he was performing well on grade level with above average grades and that he may need assistance with socialization skills in the classroom. The Parents, [name], [name], [name], [name] and [name] signed the IEP Review form. S.E. 69 (first 2 pages).

15. An IEP meeting was also conducted for the Student at [name] Elementary on September 11, 2008. The Student was in the 6th grade. The Parents, special education teachers [name] and [name], general education teachers [name] and [name] and principal [name] attended the meeting. S.E. 43 (4th page). Speech language pathologist [name] also attended the IEP team meeting, although her name does not appear on the Record of Access form. S.E. 43 (4th page), 45 (IEP page 6). The team developed a subsequent IEP. The team noted that the Student had satisfactory scores on the Oklahoma core curriculum tests administered during the 2007-08 school year in writing, math, science and social studies and a limited knowledge score in reading. The team also noted that he was currently making average or above average grades in all academic areas in the general education classroom. The team members noted that the Student's "test results and grades indicate that he is making good progress in the general education curriculum." S.E. 45 (IEP page 1). The team identified the Student's strengths as academic

achievement, reading comprehension, attendance and handwriting, and his educational need as social skills. *Id.* The team did not check any of the special factors boxes. The Parent Concerns box on the IEP was left blank. S.E. 45 (IEP page 2). The team identified four speech goals, all of which would be measured by response recording every five and nine weeks by progress report and report card. S.E. 45 (IEP pages 3 and 4). The team identified the Student's special education service as 10 minutes per week of consultation in all academic areas by the special education teacher, with speech language therapy as a related service two times per week for 30 minutes per session. S.E. 45 (IEP page 5). The team determined that the Student would be in the general education setting 100% of the instructional day with assistance with tests or assignments as a program modification available in the special education classroom. *Id.* The team determined that the Student would take the Oklahoma core curriculum test, with the only accommodation test administration in a small group setting. S.E. 45 (IEP page 6). The team completed and signed the Consideration for Extended School Year (ESY) Services form and determined that ESY services were not necessary for the provision of a free appropriate public education to the Student. The Student's Mother, [name], [name], [name], and [name] signed the ESY form. S.E. 45 (Consideration for Extended School Year Services form). The team members also noted on the IEP that ESY services were not necessary for the Student. S.E. 45 (IEP page 6). The team noted that the date of the Student's next three-year reevaluation was [date]. *Id.* The [Student's mother], [name], [name], [name] and [name] all signed the IEP and checked the box for "Agree." *Id.* The [Student's mother] initialed the box confirming that she had received "Parents Rights in Special Education."

16. At the [date], meeting, the IEP team also completed an IEP Review form. The team checked the boxes for review program progress, develop subsequent IEP and increase the amount of services. The team proposed that the Student remain in the regular classroom for all

academic classes with support from the special education teacher, that he could go to the learning lab for help on any assignment or test and that he would continue language therapy with the speech pathologist. The team noted that he earned average grades on grade level in all academic areas and performed at the satisfactory level on all Oklahoma core curriculum tests except reading during 5th grade. The team also noted that the Student continued to need help with language in the social areas. S.E. 45 (1st page). The [Student's mother], [name], [name], [name] and [name] signed the IEP Review. The [Student's mother] initialed the form to confirm receipt of "Parents Rights in Special Education." S.E. 45 (2nd page).

17. The IEP team met again on [date]. The Parents, special education teachers, [name] and [name] and [name], general education teachers [name] and [name], principal [name] and speech language pathologist [name] attended the meeting. S.E. 43 (4th page). The team completed a subsequent IEP. They stated that the Student was earning average or above average grades in all academic areas in the general classroom and that he had earned a limited knowledge score in reading and satisfactory scores in writing, math, science and social studies on the Oklahoma core curriculum tests during the 2007-08 school year. The team noted that his test results and grades indicate that he is making good progress in the general education curriculum. The team identified the Student's strengths as academic achievement, reading comprehension, attendance and handwriting, and his educational need as social skills. S.E. 41 (IEP page 1). The team did not check any of the special factors, and the Parent Concerns box is blank. S.E. 41 (IEP page 2). The team identified three social skills goals for the student. The first goal was to be measured with performance-based assessment, and the other two were to be measured via demonstration/performance. The team decided that progress toward all goals would be reported every nine weeks. S.E. 41 (IEP page 3). The team determined that the special education teacher would monitor the Student's progress in English, math, geography, science, core literacy and

explore, and provide direct instruction in social skills one period five days per week. The team placed the student in the general education setting for six of seven class periods per day. The team determined that the Student would be able to use a calculator and leave class 5 minutes early to transition from class to class as his supplementary aids and services in the general education setting. For program modifications, the team decided that he would receive assistance with tests or assignments from the special education teacher in the special education classroom. As a support for personnel, the team identified use of a teacher's assistant when appropriate in the general education setting. S.E. 41 (IEP page 4). The team determined that the Student would participate in the Oklahoma core curriculum tests with the only accommodation identified as administration in a small group setting. The team decided that ESY services were not necessary. The team identified the date of the Student's next reevaluation as [date]. S.E. 41 (IEP page 5). Both Parents, [name], [name], [name], and [name] all signed the IEP and marked "Agree." The [Student's mother] initialed the IEP to confirm receipt of "Parents Rights in Special Education." *Id.* The IEP team also completed a Consideration for Extended School Year (ESY) Services form at the meeting. The team determined that ESY services were not necessary for the provision of FAPE to the Student. Both Parents, [name], [name], [name], and [name] all signed the ESY form. S.E. 41 (last two pages). In addition to the IEP and ESY form, the IEP team also completed an IEP Review at the May 8, 2009, meeting. The team checked the boxes for develop subsequent IEP and increase the amount of services. The members proposed that the Student remain in the general education classroom for all core academic classes with support from the special education teacher and assistant. The team also proposed that he have one social skills class among his seven classes during the 2009-10 school year, which would replace speech time in which he currently received social skills. The team made these proposals due to the Student's transition to the middle school for the next school year. S.E. 61 (2nd page). The Parents, [name],

[name], [name], [name], [name] and [name] signed the IEP Review. The Student's Mother again initialed to confirm receipt of "Parents Rights in Special Education."

18. [Name] is the principal at [name] Elementary School. Tr. 18, p. 85. She met the Student during his 4th grade year. Tr. 18, p. 91. [The principal] attended a course about the autism spectrum that [Private Psychologist] taught for the District during the 2007-08 school year. Tr. 18, p. 96. [The principal] also read materials on her own to better help the Student. Tr. 18, p. 98.

19. [The principal] talked to the Student about why he engaged in some behaviors as to other students. "[H]e would believe someone would do something to him and his thought was that it was on purpose. That someone did it to him on purpose." For example, [the principal] reported that, during the 2008-09 school year, the Student and another student "bumped into each other. I saw what happened. It was very innocent and [the Student's] response was to yell, to call the student names and become very hostile." Tr. 18, pp. 107-08. The Student "often felt other people were saying things." Tr. 18, p. 174. The Student thought that everyone picked on him. Tr. 19, pp. 105, 109-10. During the 2008-09 school year, the Student "had a hard time staying in line or having a place in line without bothering others that were in line next to him." Tr. 18, pp. 112-13. On one occasion, the Student placed his hand behind in the face of the student behind him and expelled gas. Tr. 18, p. 113. [The Principal] confirmed that there was an incident in which two students shoved and another student slapped the Student while in the bathroom. Tr. 18, pp. 113-16, 150-52; Tr. 20, pp. 146-47. The other students reported that the boy hit the Student because of the gas passing incident. Tr. 18, p. 184-85.

20. During the spring semester of the 2008-09 school year, the Student's teachers "were having a hard time teaching because [the Student] continued to speak out during class while they

were giving instruction." The teachers also reported that the Student was irritating the other students. Tr. 18, p. 109.

21. During the 2008-09 school year, the Student's teachers brought him to the office about twice a month. Tr. 18, p. 110. He was rarely brought to the office from the classrooms. It occurred more after transitions. Tr. 18, p. 220.

23. [The Principal] reported to the Student's teachers different children that he needed to stay away from because they did not get along together. Tr. 18, pp. 116-17, 216. The parents of other students called [the Principal] to report that the Student would not leave their children alone and they didn't want them near one another. Tr. 18, p. 117. Some parents believed that the Student was bullying their children. *Id.*

22. [The Principal] offered a smaller resource classroom for the Student and that he could come to her office if he felt he was getting upset. Tr. 18, p. 119-20, 309; Tr. 20, pp. 117-18; P.E. 24 (1st document). The Parents did not want anything special for the Student. Tr. 18, p. 120. They didn't respond to [the Principal's] suggestion about a break space for the Student. Tr. 19, p. 309.

23. [The Principal] talked to the Parents about her concerns, and the Parents expressed concerns to her. Tr. 18, pp. 122-27. [The Principal] communicated with the Parents by phone and email, but mostly by talking to the Mother in the hallway at school. Tr. 18, p. 161. She probably contacted the Student's parents for various reasons more than she's ever contacted any parents. Tr. 19, p. 35.

24. [The Principal] requested that the Parents permit acceptance training with the Student's peers during the 2008-09 school year to help them better understand his needs, but the Parents would not permit it. Tr. 19, pp. 249, 253-55, 309-10; Tr. 20, pp. 113-14; P.E. 24 (1st document).

25. [The Principal] assigned the Student detention during the 2008-09 school year. Detention

means he missed recess. He had to stay in a supervised area instead. Tr. 18, pp. 211-12; Tr. 20, pp. 17-18.

26. The Student did not tell [the Principal] "that other students were persistently attacking him." Tr. 18, p. 216. He was rarely hit and rarely sent to [the Principal's] office for having been hit by a student. Tr. 19, pp. 28-29.

27. The Parents agreed with the IEP dated May 8, 2009. S.E. 41; Tr. 20, pp. 24-26, 206. The team reviewed the entire IEP before signing it. Tr. 20, pp. 68-69, 82-83.

28. [Name] was the Student's 6th grade homeroom, language arts, reading, science and spelling teacher during the 2008-09 school year. Tr. 10, pp. 4-5.

29. The sixth graders in the Student's class with [this 6th grade teacher] all "told on" one another. Tr. 10, pp. 39-40. The students "complained about each other constantly. I mean, not just [the Student]". Tr. 10, pp. 56-58.

30. [This 6th grade teacher] thought that the Student "wrote pretty well." She was not concerned about his ability to write. Tr. 10, pp. 44-45.

31. The Student had issues with some other students in [this 6th grade teacher's] class. He often complained that someone had gotten in front of him in line. Many of the 6th graders called each other "retard." This could have been said to the Student. The Student often complained about transition times. Tr. 10, pp. 47-50. [This 6th grade teacher] observed that the Student found it difficult to transition from one subject to another. Tr. 10, pp. 11, 35-39. The Student complained about "somebody cutting in front of him or possibly calling him a name." Tr. 10, pp. 58-59, 60-62, 73-74.

32. In the spring of 2009, [this 6th grade teacher] developed a daily order for her students to line up, with the Student first. That seemed to help the situation. Tr. 10, pp. 62, 82, 216.

33. Other students complained about the Student calling them names or drawing pictures of

them. Tr. 10, p. 93.

34. [This 6th grade teacher] separated the Student and some other students. Tr. 10, pp 110-15, 130.

35. By the end of the spring semester of the 2008-09 school year, the Student was seated in a study carrel with sides in [this 6th grade teacher]'s room, in a space away from the other students' desks. Tr. 10, pp. 148-49.

36. Two other students also used study carrels in [this 6th grade teacher]'s classroom for as long a time period as the Student used his. The purpose of the carrel was to enhance concentration and lessen distractions. Tr. 10, pp. 149-51.

37. The Student's study carrel was within ten feet of [this 6th grade teacher]'s desk. Tr. 10, pp. 209-10. [This 6th grade teacher] observed that having his things spread out and visible on the carrel made the Student comfortable. Tr. 10, p. 210. It improved his focus on his work. *Id.*

38. [Name] was assigned to [this 6th grade teacher]'s room to take notes regarding the student's interactions with his peers, particularly any altercations or disruptive behavior. However the purported reason for the note taking "so [this 6th grade teacher] could focus on teaching" is nonsensical. [Name] was only to take notes in the classroom, she was not supposed to nor did she intervene in any of the incidents involving the student. Since the responsibility for intervention would still fall on the teacher, this Hearing Officer fails to see how [Name]'s presence assisted [this 6th grade teacher] in any way. This Tribunal finds that the evidence indicates that [Name] was in the classroom acting on behalf of [the Principal] to provide her with information separate from or in addition to information she was receiving from normal channels of communication.

39. [This 6th grade teacher] talked to special ed teacher [name] and speech-language pathologist [name] about ways to work with the Student. Tr. 10, pp. 157-58.

40. The Student was successful in the academic subjects in which [this 6th grade teacher] provided instruction. He made more than minimal progress. He earned good grades on his assignments and tests and expressed his knowledge of the subjects, and [this 6th grade teacher] recommended his promotion to the 7th grade. S.E. 37; Tr. 10, pp. 161-64, 168-69; Tr. 11, p. 5.

41. [This 6th grade teacher] did not tell the other students about the Student's disability. She understood that his Parents did not want other students to know. Tr. 10, p. 169.

42. [This 6th grade teacher] attended the Student's IEP team meeting on May 8, 2009. At the meeting, the team, including the Student's parents, developed the IEP that he would use during the 2009-10 school year in the 7th grade. The Student's parents signed the IEP and did not express any disagreement with it. Tr. 10, pp. 195-203.

43. The Student's jacket was missing during the 2008-09 school year. This did not adversely affect his education. Tr. 10, pp. 204-05.

44. The use of the word "retard" by students during the 2008-09 school year did not adversely affect his education. Tr. 10, pp. 207-08.

45. The Student's use of the study carrel did not adversely affect his education. Tr. 10, pp. 211-12. It assisted his education. Tr. 10, p. 212.

46. In April 2009, the Student earned a Proficient score on his 6th grade Oklahoma Core Curriculum Test in reading. SE. 37; Tr. 10, pp. 217-18.

47. During the 2008-09 school year, the Student could take tests in the special education classroom with special ed teacher [name], and he took some tests there. Tr. 12, pp. 22-23.

48. [This 6th grade teacher] sent home with the Student at least one graded paper per week in each of the four subjects she taught -- reading, spelling, language and science. Tr. 12, pp. 57-58.

49. [This 6th grade teacher] did not recommend extended school year services for the

Student. Tr. 12, pp. 16.

50. The Student demonstrated satisfactory reading skills during the 2008-09 school year. Tr. 12, pp. 18-19.

51. [The 6th grade math teacher] teaches sixth grade math at [name] Middle School. [the 6th grade math teacher] taught the Student social studies and math during his 5th and 6th grade years, school years 2007-08 and 2008-09. Tr. 8, pp. 173-75. [The 6th grade math teacher] determined that the Student performed well in math, academically. Tr. 8, p. 175.

52. [The 6th grade math teacher] offered additional assistance to all of her math students who were having trouble. If they performed poorly on an assignment, she reviewed it with them to see what they were doing wrong. Tr. 8, pp. 175-179. The students did math work in the elementary school computer lab. Tr. 8, p. 212. [The 6th grade math teacher] did not tutor the Student during summers. She can't recall if she tutored him during the 07-08 school year. Tr. 8, p. 177.

53. The Student normally took [the 6th grade math teacher]'s math tests in her classroom. He probably took a few in the resource room. Tr. 8, pp. 180-81.

54. The Student earned some failing grades on math papers during the 2007-08 and 2008-09 school years. P.E. 67; Tr. 8, pp. 183-94, 196-97, 199-211. The Student's math papers reflect that some of these pages involved decimals. The Student and others had difficulty with decimals. Decimals are "a hard concept at the beginning of sixth grade." Tr. 8, pp. 194-95. All of Robertson's students were struggling with decimals in February 2009. Tr. 8, p. 205. The Student and many other students had problems with fractions. Tr. 8, p. 198. The Student was respectful to [the 6th grade math teacher] and let her help him. *Id.*

55. The Student's math grades improved under [the 6th grade math teacher]. The failing papers in P.E. 67 represent just a few of his papers. Tr. 8, p. 201; Tr. 9, pp. 64-65. As the class

reviewed the concepts, he grasped most of them. Tr. 8, pp. 213-14. He also earned A's, B's and C's on his math assignments and tests during the 2008-09 school year. Tr. 9, pp. 73-75.

56. [The 6th grade math teacher] recalled that all of her students complained about the other students. She could not recall any specific complaint the Student had about any other student. Most student complaints arose while moving from one classroom to another during the school day. Tr. 8, pp. 231-34; Tr. 9, pp. 7-8.

57. During the spring semester of the 2008-09 school year, the teachers started going into one sixth grade classroom so the students did not have to change classrooms to see the teachers. There was a female assistant in the classroom. [The 6th grade math teacher] did not know the assistant's specific assignment or whether she was assigned to a particular student. Tr. 8, pp. 237-45, 246-51; Tr. 10, p. 121. [The Principal] and [this one 6th grade teacher] told [the 6th grade math teacher] that the assistant would be in the classroom to observe. Tr. 8, p. 251.

58. [The 6th grade math teacher] recalls taking the Student to the office one or two times, for disrupting the class and not stopping when asked. She thinks this occurred during the 2008-09 school year. Tr. 8, pp. 263-64, 267-68; Tr. 9, pp. 8-9. [The 6th grade math teacher] also took other students who did not stop disrupting class to the office. Tr. 8, pp. 264-65.

59. The Student disrupted the class by talking out, yelling, knocking books off students' desks and making other sounds, such as expelling gas and laughing about it. Tr. 8, pp. 265-67; Tr. 9, pp. 9, 80-81, 83-84. Other students complained, usually saying "[the 6th grade math teacher]" when it occurred or after class.

60. Beginning in spring 2009, [the 6th grade math teacher] and [this 6th grade teacher] let the Student go first in line to avoid him purposely or accidentally hitting or pushing another student in his quest to be first. Tr. 9, pp. 30-34.

61. During the 2008-09 school year, [the 6th grade math teacher] never did anything in her math or social studies classes to embarrass the Student and never discussed his grade in front of either class. Tr. 9, pp. 66-67.

62. The Student made progress in both math and social studies over the 2008-09 school year. Tr. 9, pp. 68-69, 87-88. In math, he earned a 77.7/C for the first nine weeks, an 83.12/B for the second nine weeks, an 80.41/B for the first semester, an 85.64/B for the third nine weeks, an 81.42/B for the fourth nine weeks and an 83.53/B for the second semester. Tr. 9, pp. 69-70; S.E. 37. He earned a B for the fourth nine weeks in social studies and A's for the first, second and third nine weeks and both semesters. Tr. 9, pp. 70-71; S.E. 37.

63. [The 6th grade math teacher] doesn't recall the Student's mother ever mentioning a concern about his safety. She spoke to the mother almost every day, and the mother primarily talked about whether the Student had his homework and books. Tr. 9, pp. 91-92, 99-100.

64. [The elementary counselor] is a counselor at [name] Elementary School. She has a bachelor's degree in elementary education/special education and a master's degree in elementary school counseling. Tr. 14, p. 285. She has worked as a school counselor for 13 years, with the last 7 years in the District. Tr. 14, pp. 286-87.

65. During his 5th or 6th grade year, the Student was in [the elementary counselor]'s social skills group. Tr. 14, pp. 289-90, 308. The group ran for six to eight weeks. Tr. 14, pp. 291-93. The Student was also in [the elementary counselor]'s social skills group when he was in 4th grade. Tr. 14, pp. 303-04.

66. The District contracts with [a counseling agency] to provide additional counseling or social skills training with psychologists and licensed professional counselors for students. Students can work with [a counseling agency] personnel with parent permission. Tr. 14, pp. 294, 299. [The elementary school counselor] talked to the Parents about a referral when the Student

was in elementary school so he could see [a counseling agency] counselor to address his anger and social skills issues. Tr. 14, pp. 296-97; Tr. 15, pp. 121-22, 134. The Mother told [the elementary school counselor] that she needed to talk to her husband. The Mother later contacted [the elementary school counselor] and said they'd decided not to participate. If the Parents had accepted the referral, the District would have paid for the [a counseling agency] counseling. Tr. 15, pp. 122-24.

67. [The elementary school counselor] provided weekly lessons in student classrooms on different character traits. She provided several lessons every year about bullying, bullying prevention, how not to be bullied and what to do if you are. Tr. 14, pp. 312-13.

68. [The elementary school counselor] worked with the Student and his teachers on making transitions from one classroom or building to the next. Tr. 14, pp. 331, 338-39, 341-43. The Student had difficulty in the bathroom because of things he would say to other students. He had problems with other students about being first in line, and the other students asked him to stop pushing and get off their feet. Tr. 14, pp. 339-40.

69. [The elementary school counselor] is aware of the Student being upset because "[Student K.G.] said something that was mean to him." The two were separated in line due to numerous issues. Tr. 14, pp. 340-41. The Student gravitated toward K.G. K.G. claimed that he said inappropriate things to her, like "your momma" and once called her a "bitch." She said that he stepped on the back of her feet in line. Tr. 15, pp. 126-27. The Student denied this or blamed K.G. Tr. 15, p. 127. The Student alleged that K.G. kicked him in the crotch. Tr. 15, pp. 4-16. K.G. stated that her heel accidentally hit the Student because he was shoving close behind her. Tr. 15, pp. 124-25. [The elementary school counselor] talked to both students, and they each complained about the other picking on him or her. The Student's mother was present when [the

elementary school counselor] talked to the Student. She told them to stop picking on each other. Tr. 15, pp. 4-16.

70. [The Principal] told [the elementary school counselor] she was concerned that the Student did not get along with classmates and that they didn't care for him. [The Principal] also told [the elementary counselor] she was concerned the Student said that coming to school was a war. Tr. 15, pp. 86-87.

71. Before the end of the 2008-09 school year, [the elementary school counselor] told [special ed teacher] that she was concerned that the Student would need more support in middle school than he needed in elementary school with organizational skills and having what he needed for class. Tr. 15, pp. 106-07.

72. [The SLP] holds a bachelor's degree in elementary education and a master's degree from the OU Health Science Center in speech language pathology. Tr. 12, pp. 240-41. She has training and experience working as a speech-language pathologist with children with autism. Tr. 12, pp. 256-57. Tr. 12, pp. 92-93; Tr. 14, p. 83. [The SLP] worked with the Student over five years. Tr. 13, pp. 130-31.

73. The Student's IEP team discussed extended school year services for him for speech, but the Parents were not interested. Tr. 12, pp. 245-46, 260-61; Tr. 13, pp. 72-73, 131.

74. During the 2008-09 school year, [the SLP] saw the Student two times a week for 30 minutes per session. One of the sessions was at lunchtime. [The SLP] corrected the Student for inappropriate behavior with other students, such as deliberately belching in their faces. Tr. 12, pp. 251-53; Tr. 14, pp. 31-38. The Student saw [the SLP] in sessions with one other student until near the end of the 2008-09 school year, when the other student was dismissed from speech services. Tr. 13, pp. 45, 51.

75. The Student's "language skills are very, very good as far as receptive language,

understanding and being able to follow direction, expressive language as far as, you know, sentence structures and communicating ideas. His areas that [[the SLP] and the Student] worked with and that were in need were social or pragmatic in nature. And, again, it was – it was just primarily to help him to be able to interact socially with others more appropriately.” Tr. 12, pp. 255-56.

76. [The SLP] prepared written progress reports for the Student for the social skills goals on the September 11, 2008, IEP in September, October and December, 2008 and in January, February, March and April, 2008. S.E. 41 (8th and 9th pages), 68, 70.

77. One of the ways [the SLP] worked with the Student and determined his progress was to show him picture cards illustrating and labeling an idiom, like a student going through a roof. She would grade the Student’s correct or incorrect explanation of the idiom. The Student’s progress varied from September 2008 to April 2009, as he was constantly required to master new concepts. The Student made progress as to all speech goals during structured sessions with [the SLP] on the September 11, 2008, IEP although his real life mastery of goal 4 was inconsistent. Tr. 12, pp. 270-76, 292-95; Tr. 13, pp. 4-5; S.E. 70; Tr. 14, pp. 17-27, 65-66; P.E. 17. [The SLP] wrote an explanatory note rather than assigning a percentage score for some goals in November 2008, because she felt it provided appropriate information for the parent to understand what the Student was doing that a percentage score would not. S.E. 68; Tr. 12, pp. 281-84; P.E. 17; Tr. 13, pp. 172-73.

78. [The SLP] left her progress notes and the Student’s speech-language progress reports for September through November 2008, and January through April 2009, in [this 6th grade teacher]’s box monthly for the Student to take to his parents. Tr. 12, pp. 298, 304-11; Tr. 13, pp. 54-58, 165-67, 181-82; S.E. 68, 70; Tr. 14, pp. 8-17, 57-62, 70-74.

79. When [the SLP] works with students, she typically tests them annually before their yearly IEP meeting. Tr. 13, pp. 8-9, 12-14. She doesn't recall whether she administered such testing to the Student. Tr. 13, pp. 14-15, 27-28.

80. [The SLP] and the Student's mother discussed his general progress over the 2008-2009 school year. The Parents never communicated to [the SLP] a concern that the student was not progressing in social skills. Tr. 13, pp. 58-61. They never asked her about the methodologies she was using to teach him. Tr. 13, pp. 91-92. They never contacted her about not having received his progress reports. Tr. 13, p. 94.

81. Some of the speech-language goals from the Student's September 11, 2008, IEP were carried over to the May 8, 2009, IEP because he continued to need to work on them. Tr. 13, pp. 104-05. For example, what is socially appropriate behavior for a student to make and keep friends in the third grade is different than in fifth and sixth grade. The work encompassed by the goals is different as the Student gets older. Tr. 13, pp. 121-22; Tr. 14, pp. 79-81, 130-31.

82. The Student's Parents were actively involved in his IEP meetings during the 2008-09 school year. Tr. 13, p. 76.

83. [Para] is a paraprofessional employed by the District. Tr. 17, pp. 5-6. During the last two months of the 2008-09 school year, she was moved from her regular duties and reassigned as an observer in [this 6th grade teacher]'s grade class. Tr. 17, pp. 14-15. [The Principal] told [Para] she was to observe and see what was going on because there had been incidents and conflicts between students, some parents were exasperated and children were restless and out of their seats. Tr. 17, pp. 17, 20-21, 22-26; Tr. 18, pp. 199, 204-06.

84. [Para] was not assigned to any particular child and didn't go to the class every day. Tr. 17, pp. 21, 33. She took notes while observing. Tr. 17, p. 28. She gave her notes to [the Principal] every day. Tr. 17, pp. 47, 133; Tr. 18, p. 197. [The Principal] and [para] discussed

certain incidents on occasion. Tr. 17, pp. 133-34. [Para] was not assigned to work with the Student. Tr. 17, pp. 33-34.

85. The other students avoided the Student and tried to get him to stop doing things by yelling "Stop, [Student]." Tr. 17, pp. 34-35, 123. For example, the Student would get out of his seat frequently to get Germ-X or sharpen his pencil while [this 6th grade teacher] was teaching. He was loud, and the other students couldn't hear, and they yelled for him to stop. The Student would then knock books off of random desks. The other students did not retaliate physically or call him names. Tr. 17, pp. 136-37, 267-68. [Para] also noted that several times the Student would pick up a ball and walk away with it when other students were playing with it. Tr. 17, pp. 62-63. She also noted that a student asked her to move the Student because he was making fun of the student's family. The Student did not tell [para] that this student had said or done anything inappropriate to the Student. Tr. 17, pp. 65-70. [Para] does not recall the Student coming to her with complaints about other students. Tr. 17, pp. 90, 109, 122, 124, 128-29, 166-67, 169, 178. [Para] saw the Student and other students make faces at each other. Tr. 17, p. 192. The Student often yelled "shut up" when no one was talking. Tr. 17, pp. 306-07.

86. The Students' parents stated that he was not competent to testify and did not call him as a witness.

87. The evidence includes a letter from parent advocate [name] dated September 4, 2009. The letter contains a facsimile line at the top dated September 9, 2009. [Parent advocate] requests an IEP meeting regarding the Student's proposed behavior plan and IEP on September 11 or 14. [Parent advocate] states that "the parent would like to review all of the student's records at the IEP meeting, including but not limited to, the cumulative folders, confidential folders, discipline folders and any other documents the district may possess relating to the student. Please have these documents available for review at the requested IEP meeting." S.E.

22. Parent advocate] did not request copies of any documents in the September 4, 2009, letter. *Id.*

88. Special education teacher [name], [parent advocate], the Parents, general education teacher [name], [name] Middle School assistant principal [name], [name] Middle School counselor [name] and [Director of Student Services] all attended a meeting on September 11, 2009. S.E. 43 (5th page). The September 11, 2009, meeting was intended to be an IEP Review meeting. However, the team had had so many issues to discuss that they did not get to the IEP Review. The team scheduled another meeting for the IEP Review. Tr. 6, pp. 35-37; P.E. 9, p. 2.

89. Before the next meeting, the Student's Father exchanged emails with [name] Middle School administrators concerning Student records issues. In response to the Father's request, [middle school assistant principal] emailed the Father that the records he requested to review would be available prior to the September 15, 2009, IEP meeting. S.E. 46 (1st page).

90. In the email exchange, the Father also expressed concern about a document containing information about the Student that his Mother had picked up from a table in the office at [name] Middle School. The document was a list of Parent concerns the Parents had given to [middle school assistant principal], not the Student's IEP. S.E. 46 (1st page), 24 (3rd page).

91. The Parents, [parent advocate], special education teacher [name], general education teacher [name], counselor [name] and [name] Middle School principal [name] all attended the IEP meeting on September 15, 2009. S.E. 43 (5th page). The team completed a Review of Existing Data form at the meeting. The team identifying the presenting concern as "Parents want assessment in order to determine current level of functioning, as well as to assist ongoing educational treatment planning." S.E. 25 (1st page). Under Present Levels of Educational Performance, the team again reported the Student's performance on his 2007-08 Oklahoma core curriculum tests and also stated that the Student "is having difficulty with time manegment [sic],

homework, and socializing with his peers during the school day.” *Id.* The team reported that the Student’s grades and progress reports were average and that his work habits were good when he was on task. The team stated that the Student “is having trouble adjusting to the middle school setting, demandes [sic] of the classroom and transitioning from class to class.” *Id.* The team also stated that the Student was having a hard time staying on task and organizing his daily work and homework.” *Id.* The team identified the Student’s speech/language problems as social skills deficits and receptive language. The team recommended additional assessments for reevaluation, noting the Parents’ request for a consult with OATC. S.E. 25 (2nd page). The Student’s Father, [name], [name], [name] and [name] all signed the Review of Existing Data form. *Id.*

92. At the September 15, 2009, IEP meeting, the team also completed a Parent Consent for Evaluation form. The team stated that additional assessment was recommended to determine whether the Student has or continued to have a particular disability, his present levels of performance and educational needs and whether any additions or modifications were needed in his special education and related services to meet the measurable annual goals in his IEP and to participate, as appropriate, in the general curriculum. S.E. 25 (4th page). The team checked the boxes for motor, communication/language, perceptual/processing, psychological, social/emotional, functional behavior, adaptive behavior, observation in classroom/other environment, assistive technology and, under other concerns and assessments, occupational and speech therapy. The Student’s father signed the form giving consent for the evaluation. S.E.25 (5th page). He also initialed the form to confirm receipt of “Parents Rights in Special Education.” S.E. 25 (4th page).

93. The team also completed an IEP Review at the September 15, 2009, meeting. The team checked the boxes for functional behavior assessment and reevaluation. The team proposed that he continue to remain in the regular classroom for all core academic classes with a social

skills class for one period per day. The team noted that the parents had requested testing to determine his current level of functioning, including speech and occupational therapy evaluations, as well as to assist in ongoing educational treatment planning. The team also noted that the Student was having difficulty with the adjustment to middle school, transitioning to class, classroom behavior and riding the bus. S.E. 25 (last 3 pages). The father, [name], [name], [name] and [name] all signed the IEP Review form, and the father initialed the form to confirm receipt of “Parents Rights in Special Education.” *Id.*

94. During the consultation by personnel from the [assistive technology agency], they suggested that the District “[c]onsider using a portable word process [sic] with word predication with [Student] to assist with writing tasks.” [Assistive technology agency] personnel also suggested that the District consider using a pencil grip for the Student and consider using a token system. S.E. 28. The report does not reflect that any of these items are necessary to provide FAPE to the Student.

95. [Parent advocate] prepared a letter dated February 7, 2010, concerning several issues. In it, she stated that the District was to “consider this a formal request for an Independent Evaluation, specifically a Sensory Profile and Sensory Evaluation. The parent has chosen [private OT center] located in [name]. Be advised this evaluation will be at the district’s expense.” S.E. 30.

96. The IEP team met on March 11, 2010, to review the Student’s assessments. The team completed a Multidisciplinary Evaluation and Eligibility Group Summary (“MEEGS”) and an IEP Review. [Special ed teacher], [private Psychologist], general education teachers [name], [name], [name], [name], [middle school assistant principal], occupational therapist [name], the Parents and [parent advocate] attended the meeting. The group stated that the Student had “[o]verall cognitive ability in the High end of the average range. [He] continues to demonstrate

specific social-adaptive challenges associated with Asperger's Syndrome. [He] has visual motor, motor coordination and visual perceptual skills within the average range. [He] is having some difficulties with sensory issues during the school day. [He] needs special education services related to Autism." The parents, [middle school special ed teacher], [middle school assistant principal] and [private psychologist] signed the form and marked "Agree." S.E. 31. On the first page of the MEEGS form, the team noted that additions or modifications were needed regarding extra time to complete daily work and tests, resource room only when the Student becomes frustrated and isn't able to regain focus or needs additional instruction, re-do work when he scores below 60%, use Alpha Smart on written work, sit next to the teacher and special ed teacher will modify general education class work. *Id.*

97. The IEP Review completed on September 11, 2009, the team checked the box for review placement/supplementary aids and services/modifications/supports. The team proposed modifications in English pertaining to written expression which consisted of use of the Alpha Smart. The team also proposed giving the Student less daily work as directed by [special ed teacher] because he had too much homework time. The team proposed math tutoring, which could take place during advisory time. The team also proposed holding the Student between classes to address social skills concerns. The team proposed bus seating across from the bus driver and permitting the Student to listen to a headset on the bus due to difficulties with other students. Finally, the team proposed a new behavior intervention plan. S.E. 31 (1st page). The parents, [special ed teacher] and [middle school assistant principal] signed the IEP Review. S.E. 31 (2nd page). The parents presented a Parent Attachment/Parent Concerns list to be attached to the IEP Review. S.E. 31 (4th – 6th pages).

98. [Special ed teacher] prepared progress reports for the goals on the Student's May 8, 2009, IEP every nine weeks. S.E. 32; Tr. 29, pp. 97-98.

99. The IEP team met again on April 2, 2010, to prepare a subsequent IEP for the Student. The Parents, [parent advocate], [special ed teacher], [middle school assistant principal] and general education teacher [name] attended the IEP meeting. S.E. 33 (IEP page 6). The team identified current assessment data from his recent reevaluation and noted that he maintained good grades in regular classes, has trouble maintaining focus in the classroom and needs redirection to stay on task, needs social redirection so he can succeed in the school setting without redirection or instruction from an adult and was at grade level academically except in written expression. S.E. 33 (IEP page 1). The team identified the Student's strengths as nonverbal conceptual reasoning, sight reading skills, phonological awareness and math computation and his educational needs as written expression and social skills. The team noted that behavior and assistive technology were relevant to the Student. S.E. 33 (IEP page 2). The team identified two written expression goals for the student and that he was able to use the Alpha Smart during all writing. The team identified three social skills goals. S.E. 33 (IEP pages 3 and 4). For special education services, the team identified direct instruction in life skills one period per day five days per week. The team identified transportation as a related service. The Student was to spend seven of eight periods per day in the general education setting. The team listed ten program modifications, as follows:

1. Extra time for daily work and complete test (2 days).
2. Resource room when he becomes frustrated and can not regain his focus (receive help class work).
3. Work 60% below re-due [sic] and take two scores and average them for completed grade.
4. Use of Alpha smart on written work.
5. modified daily work and test.
6. seating next to teacher to reduce classroom stimulation.
6. [sic] Use of calculator in Math and Science class.
7. No more than three

answers during multiple choice assignments or test. 8. Allow [Student] to draw during class lectures to reduce classroom stimulation. 9. Use of class notes, from students in class (copy) give to [Students [weekly daily work check list].

S.E. 33 (IEP page 5). The team determined that the Student would take the Oklahoma core curriculum tests with the only accommodation in the administration in a smaller group setting. The team determined that ESY services were not necessary. The Parents, [special ed teacher], [regular ed teacher], [middle school assistant principal] and [parent advocate], the Parents' advocate, all signed the IEP and marked "Agree." S.E. 33 (IEP page 6). Both Parents initialed the IEP to confirm receipt of "Parents Rights in Special Education." *Id.* The Parents brought a Parent Attachment/Parent Concerns list to be attached to the IEP (10th and 11th pages).

100. The team also completed a positive behavioral intervention plan for the Student at the April 2, 2010, meeting. The team identified two target behaviors and their function, a goal and objectives applicable to each target behavior, antecedents for the behaviors, changes to be implemented to address the antecedents, teaching strategies to increase appropriate behavior, positive reinforcement for each target behavior, intervention steps for each target behavior and data collection tools, methods and person responsible for each target behavior. The Parents, [special ed teacher], [regular ed teacher], [middle school assistant principal] and [parent advocate], the Parents' advocate, all signed the plan. S.E. 33 (last three pages).

101. The Student's teachers completed documentation to track the Student's progress on the behavior intervention plan. S.E. 36.

102. The team also completed an IEP Review at the April 2, 2010, meeting. The team checked boxes for develop subsequent IEP and behavior intervention plan. The team members

proposed to develop a subsequent IEP and behavior intervention plan to help the Student develop proper classroom and social skills in the school setting to address difficulties in staying on task in the classroom setting and interacting with peers at school. S.E. 33 (first three pages). The Parents, [special ed teacher], [regular ed teacher], [middle school assistant principal] and Parents' advocate [parent advocate] all signed the IEP Review. S.E. 33 (IEP Review page 2).

103. Other students did not throw the Student's Alpha Smart or other possessions while he attended [name]'s art class during the spring semester of the 2009-10 school year. The Student threw the Alpha Smart himself. S.E. 34. 105. [Name] was the Student's 7th grade math teacher during the 2009-10 school year. The Student began the school year in a general math class and then moved into a pre-algebra class. The move was made because the Student's schedule was changed to "get him away from some kids" because "[t]hey didn't get along." [7th grade math teacher] taught both classes. Tr. 20, pp. 234-36, 246; Tr. 28, pp. 284-85. None of the students the parents claimed were bullying the Student were in his general math class. Some were in his pre-algebra class, but the parents didn't raise this with [7th grade math teacher] after the class change. Tr. 20, pp. 239-40. [7th grade math teacher] did not believe the Student was prepared for the pre-algebra class and believed the class would take hard work. The parents stated that he had too much pre-algebra work at night, so [7th grade math teacher] condensed his work and shortened his assignments. Tr. 20, pp. 247, 268. It would have been better for the Student to stay in general math because of the workload. *Id.*

104. The Student brought the AlphaSmart device to [7th grade math teacher]'s class some days. He did not consistently use the device in that class. Tr. 20, p. 250.

105. The Student did excellent math homework. He earned C's on tests. He earned a 92 for each semester of pre-algebra. Tr. 20, pp. 256, 310; S.E. 37; P.E. 78HH (Nos. 545 and 555).

106. The pre-algebra students completed a note-taking guide in class as a group with [7th grade math teacher]. The note-taking guide had notes and examples from the math book. Tr. 20, p. 257. [7th grade math teacher] checked to see if the students were getting the notes down. Tr. 20, pp. 257-58.

107. [7th grade math teacher] shortened the Student's assignments and seated him at the front of the room to make sure he was doing his work. Tr. 20, pp. 268-69. She also shortened or modified his tests. Tr. 20, p. 269. [7th grade math teacher] modified the Student's passing times. Tr. 20, pp. 269-70. The Student did not complain to her about things happening to him. Tr. 20, pp. 271, 300. [7th grade math teacher] set up a peer tutor for the Student in pre-algebra, but he didn't go to her for tutoring after the first time. The tutor continued to be available. [7th grade math teacher] set up math buddies or tutors for the Student in advisory, but he didn't go. Tr. 20, pp. 272-73. [7th grade math teacher] let the Student retake tests below a certain grade in a quiet area. This happened approximately three times. Tr. 20, pp. 301-02; Tr. 21, p. 14. [7th grade math teacher] also let the Student draw in class but once took his drawing away when it occurred during her instruction. Tr. 21, pp. 16-17. The Student appeared very angry about this, but it subsided soon. Tr. 21, pp. 24-27.

108. [Special ed teacher] gave [7th grade math teacher] a copy of the Student's IEP and what the parents provided at IEP team meetings. Tr. 20, p. 288.

109. The Student remained on the [group 1], one of two 7th grade teams covering all 7th grade students, through the 2009-10 school year. Other students were switched from the [group 1] to the [group 2] team because of concerns about interactions with the Student. Tr. 20, pp. 29-32.

110. The Student occasionally complained to [7th grade math teacher] that other students said things to him, but [7th grade math teacher] never heard them. One comment he complained

about was "Chinese eat dogs." Tr. 20, pp. 297-98.

111. The [Group 1] teachers discussed concerns about the Student's comments to other students and his hallway behavior. Tr. 20, pp. 293-94. They discussed the things the Student said to [7th grade math teacher]. Tr. 20, p. 304.

112. [7th grade math teacher] can't recall issuing the Student any lunch detentions. Tr. 20, p. 307.

113. [7th grade math teacher]'s core literacy class for math was a very easy class. Tr. 20, p. 307. The Student earned a 94/A. Tr. 20, pp. 312-13. Core literacy subjects/teachers rotated every nine weeks. Tr. 21, p. 21.

114. The Student usually brought his lunch at the middle school and ate at a table with about five other boys. Tr. 20, p. 308.

115. Based upon his actual work performance, the Student made meaningful educational progress in [7th grade math teacher]'s core literacy, math and pre-algebra classes. Tr. 20, pp. 313, 315-16; Tr. 21, pp. 9-11.

116. [7th grade math teacher] returned the Student's graded math, pre-algebra and math core literacy assignments and tests to him. Tr. 20, pp. 318-21.

117. [7th grade math teacher] was surprised that the Student earned an unsatisfactory score on his 7th grade core curriculum test in math because he performed so well in class. Tr. 21, pp. 12-13; P.E. 78 (no. 597).

118. [Name] served as the Student's science teacher during the 2009-10 school year. Tr. 21, pp. 35-37.

119. After the Student's IEP meetings, [special ed teacher] met with [science teacher] to provide information. Tr. 21, pp. 39-40. [Special ed teacher] talked to [science teacher] about the Student's modifications before the beginning of the 2009-10 school year. Tr. 21, pp. 42, 46-48,

64. [Special ed teacher] mentioned to [science teacher] other students with whom the Student didn't get along. Tr. 21, pp. 71-72, 135-36. [Science teacher] gave the Student extra time to complete assignments. Tr. 21, pp. 66-67.

120. During the fall semester of the 2009-10 school year, the Student complained to [science teacher] about a student standing by his locker. He asked [science teacher] to tell the student not to stand there. [Science teacher] did. The student said, "I was just trying to talk to him and be friends with him." Tr. 22, pp. 22-23. This was the only "incident" [science teacher] witnessed in the hall involving the Student. Tr. 22, pp. 24, 65.

121. [Science teacher] talked to all of her classes about avoiding hurtful words after the Student complained that he was upset that other students said "Chinese eat dogs." Tr. 22, pp. 24-25.

122. The parents asked [science teacher] to make sure the Student wrote things in his planner. While other students did bell work, she "worked with him a lot on writing in his planner." Tr. 22, pp. 27-28. She also reminded the whole class to use the planner and helped the Student get his planner out when he wouldn't do it. Tr. 22, pp. 27-28.

123. [Science teacher] allowed the Student to leave the class any time to see [special ed teacher] or [student's counselor] if he asked. A pass was unnecessary. Tr. 22, pp. 38-39. [Science teacher] never assigned the Student discipline for going to [special ed teacher's] room. Tr. 22, pp. 40-41.

124. The Student never had any difficulty with science assignments for [science teacher]. If he had, [science teacher] understood that she was supposed to work with [special ed teacher] address the difficulty. Tr. 22, p. 55.

125. During science class one day, the Student jabbed or stabbed [science teacher] in the arm with the flat end of a pencil. The following day, [science teacher] spoke with the Mother about

the incident. The Mother told the Student he shouldn't ever stab anyone with a pencil. Tr. 22, pp. 74-75. Then [science teacher] talked to the principal, [name], because assistant principal [name] was unavailable. Tr. 22, pp. 75-76. [Science teacher] never brought any criminal charges against the Student for this incident. Tr. 22, p. 104.

126. [Science teacher] and the Student had a "good student-teacher relationship." She welcomed him to the club she facilitated at school and talked to him every day she was on duty and standing in the hallway. She also talked to him coming in and out of class. Tr. 22, p. 84.

127. [Science teacher] provided positive reinforcement for the Student in class by letting him share his pictures with students in class as long as he did not disrupt the class. Tr. 22, pp. 98-99. [Science teacher] never stopped the Student from drawing in class. Tr. 22, p. 99.

128. In [science teacher]'s science class, the Student earned a 96 for the first semester and a 97 for the second. He was one of [science teacher]'s better students. Tr. 22, p. 108. [Science teacher] returned the Student's graded work to him to take home. Tr. 22, p. 109. The Student "[m]ost definitely" learned material in [science teachers]'s class. He learned a substantial amount in science. He did a "great job" in [science teacher]'s class. Tr. 22, pp. 110-11.

129. At the end of the 2009-10 school year, the Mother sent [science teacher] a note that she needed to fix his grades to ensure that the Student earned credit for labs he did at home after he stopped attending school. [Science teacher] did. Tr. 22, pp. 111-12.

130. [Science teacher] knew that the Student could retake exams. He never had to retake a science exam. Tr. 22, p. 117.

131. [Name] is the media assistant at [name] Middle School. Tr. 15, p. 146.

132. The Student received peer tutoring during the 2009-10 school year. Peer tutors were available to work with him through the middle school media center. Tr. 15, pp. 157-59, 166-67,

223-25. The parents never requested any tutoring through [media assistant]for the Student. Tr. 15, p. 179.

133. During the 2009-10 school year, after talking to the media specialist, [name], [media assistant] went to one of the Student's classes to see if he had left the media center with a book. She asked the teacher, [name], if she could talk to the Student. She asked the Student if she could search through his things before she did so. His things were all over the floor. Tr. 15, pp. 182-85, 187-88, 192-94; Tr. 15, pp. 211-12. The book was not there. The Student wasn't embarrassed or humiliated by this. Tr. 15, pp. 183, 194. The day before this occurred, the Student set off the alarm when leaving the media center. Although he denied that he was removing a book from the center when the alarm went off, he had the same book in his possession then. [Media assistant] was checking to see if the Student had this book when she visited him in [teacher]'s class. Tr. 15, pp. 191.

134. The Student's media center privileges were not affected by the book incident. Tr. 15, pp. 200-01.

135. [Name] is the media specialist at [name] Middle School. The media center has resources on bullying available for staff and students. Tr. 15, pp. 228-29.

136. [Name] is the family and consumer science teacher at [name] Middle School. Tr. 16, p. 6. She was aware that the Student had a disability and an IEP when he entered her class during the 2009-10 school year, but had not reviewed his file, although it was available for review, before he left the class. Tr. 16, pp. 7-8, 9, 16-17. [Family and consumer science teacher] knew the Student was to sit at the front of her class and that she would have issues with the curriculum for him. Tr. 16, p. 10. He was in [family and consumer science teacher]'s class for three to four weeks at the beginning of the 2009-10 school year. Tr. 16, pp. 12-13. While he was in the class,

[family and consumer science teacher] was told to alter his passing time slightly – letting him go before or somewhat after the bell. Tr. 16, pp. 13, 22.

137. [Family and consumer science teacher] was not hostile to the Student and didn't ask that he be removed from her class. Tr. 16, pp. 42-43.

138. [Name] teaches 7th grade English and is the coach for the Positive Behavioral Intervention System at [name] Middle School. The Student was in her English class during the 2009-10 school year. Tr. 16, pp. 49.

139. Before the school year began, [special ed teacher] told [7th grade English teacher] that the Student was on an IEP and that an IEP meeting would be held soon. Tr. 16, p. 50. The team discussed some parent concerns at a meeting, like giving the Student more one-on-one time, providing prompts and that he wouldn't be able to finish his work if given too much. Tr. 16, pp. 53-55. The group also discussed avoiding Student frustration by altering his transition times. Tr. 16, pp. 70-74.

140. The Student told [7th grade English teacher] that students were saying "Chinese eat dogs," and he didn't like it. She spoke generally to her classes about this without using his name. Tr. 16, pp. 56-57, 141. [7th grade English teacher] was not aware of other students being mean to him or causing him trouble during transition times. Tr. 16, pp. 73, 76-77. [special ed teacher] told [7th grade English teacher] the accommodations to implement for the Student. Tr. 16, pp. 67-69.

143. The core middle school team teachers for the [Group 1], a team of approximately 100 students, including the Student, met every day for 45 minutes to discuss students. Tr. 16, pp. 74-75, 128.

144. The Student had the AlphaSmart device in [7th grade English teacher]'s class. [special ed teacher] told [7th grade English teacher] how the Student would use it. Tr. 16, pp. 78-79, 83, 170-71.

145. The Student sat about five feet from [7th grade English teacher]'s desk and podium in the classroom. Tr. 16, p. 83.

146. The Student did not like it when other students touched his belongings. Tr. 16, p. 84, 176.

147. [7th grade English teacher] observed the Student become extremely frustrated, which she noted by the Student's very red face, less than five times over the 2009-10 school year. Tr. 16, pp. 86-88, 95.

148. [7th grade English teacher] noted that the Student used inappropriate language in her class a few times per week. For example, if students were talking (not to the Student) and [7th grade English teacher] told them to be quiet, the Student would turn around and say, "Shut up you idiots." Tr. 16, pp. 105-09. He was frustrated because he wanted the students to be quiet and listen to [7th grade English teacher], but sometimes used inappropriate language to express his frustration. Tr. 16, pp. 109-10.

149. The Student did not do bell work in [7th grade English teacher]'s class. Instead, she verbally urged him to write his assignments in his planner during bell work time. Sometimes [7th grade English teacher] wrote the assignments down for him. Tr. 16, pp. 148-49.

150. [Special ed teacher] checked with the Student's teachers to see if he was turning his work in or had 0s. Tr. 16, p. 150.

151. [7th grade English teacher] provided accommodations to the Student for assignments related to *The Sea Devil*. Tr. 16, pp. 151-57; P.E. 57A.

7. [7th grade English teacher] never had the Student in lunch detention during the

2009-10 school year. Tr. 16, p. 162.

8. [7th grade English teacher] understood that the Student could go to [special ed teacher]'s room if he felt he needed to or if there was a stressful situation in the classroom. The Student went to [special ed teacher]'s room when [7th grade English teacher]'s class worked on a research project so he could use the computer to type. The computer allowed him to see more of his text at a time than the AlphaSmart. [7th grade English teacher] never refused the Student's request to go to [special ed teacher]'s room. Tr. 16, pp. 163-64, 209-10.

9. The Student did "very good" work in [7th grade English teacher]'s class over the 2009-10 school year, mastered the material and was ready to move to the next level of study. Tr. 16, pp. 164-65.

10. The Student was in both a regular and an honors or advanced English class during the 2009-10 school year. Tr. 16, p. 165. He entered the honors class after the September 2009, IEP meeting. Tr. 16, p. 202. The parents were concerned about bullying in the regular English class and wanted him in the honors class. They had a list of students they wanted him to be away from and this required that his schedule be rearranged. He was academically ready for the honors class. Tr. 16, pp. 202-04. The Student earned 99 out of 100 for the first semester in honors English, and 103 out of 100 for the second. He was one of [7th grade English teacher]'s top students. He made educational progress in the honors class. Tr. 16, pp. 171-72; S.E. 37.

11. The Student's Einstein poem got crumpled. He was concerned that another student crumpled it. Although the Student got red-faced about that, [7th grade English teacher] was able to verbally handle the situation by telling him that it was fine to turn in the crumpled paper and it wouldn't hurt his grade. The Student thanked [7th grade English teacher]. Tr. 16, pp. 172-74.

12. [7th grade English teacher] talked to the Student daily to make sure he understood

her instruction. Tr. 16, p. 200.

13. While the Student was still in regular English with [7th grade English teacher], the Student hit student D.L. with his open hand on the left side of the face while D.L. was talking to [7th grade English teacher]. [7th grade English teacher] wrote an incident report about the matter. Tr. 16, pp. 205-07.

14. [7th grade English teacher] found the Student's penmanship "acceptable". She could read his writing. Tr. 16, pp. 212-13.

15. [Name] is an occupational therapist with the District. She holds a bachelor's degree in occupational therapy and a master's degree in special education. Tr. 16, pp. 220-22.

16. The Student was referred for an occupational therapy evaluation in fall 2009, and [occupational therapist] performed it in September 2009. Tr. 16, pp. 222-23; S.E. 26. [Occupational therapist] did not suggest further evaluation of the Student's sensory needs. Tr. 16, pp. 225-26; S.E. 26. She was not concerned about his penmanship. She was concerned about his ability to regulate behaviors through the school day and how this might relate to sensory issues and how he was able to work through the school day, such as attention and staying on task. Tr. 16, p. 231.

17. [Occupational therapist] observed the Student in the classroom prior to the March 2010, MEEGS meeting to determine if she could make helpful recommendations about him. Tr. 16, pp. 276-77.

18. [Occupational therapist] reviewed her evaluation results at the March 11, 2010, MEEGS meeting, and the group discussed the evaluation and some issues related to the Student. Tr. 16, p. 285; Tr. 18, pp. 51-52, 54-55. She recommended consultation occupational therapy for the Student. She didn't recommend direct OT services. Tr. 18, pp. 75-77, 79-81.

19. [Occupational therapist] sent a letter to [special ed teacher] dated April 29, 2010,

about consultation and assistance she could provide for the Student. Tr. 16, p. 290; Tr. 18, pp. 70-71, 72-73, 81-82. [Occupational therapist] also talked to [special ed teacher] at least twice between September 2009 and May 2010 about whether she could recommend activities for the Student. Tr. 16, pp. 292-93.

20. [Bus Driver A] began driving the school bus that the Student rode in approximately February 2010. He became aware of the Student's need to sit on the front seat within a few days after he took over the route. He moved the Student to the front seat of the bus. Tr. 1, pp. 106, 112-13, 115-16, 144-45.

21. The previous route driver, [Bus Driver B], is certain that he told [Bus Driver A] about the Student and his situation when they changed routes. Tr. 2, pp. 145-46.

22. Bus driver [Bus Driver B] knew the Student for several years from the bus. The Student used profanity and he and other students "mouth[ed] off to each other." When the Student sat in the back of the bus, he did not get along well with some of the other students, so [Bus Driver B] moved the Student to the front seat of his bus. Tr. 2, pp. 142-45, 148.

23. After a meeting in September 2009, [Director of Special Services] called [an employee] in the District Transportation Department to address the parents' concern that the Student always sit on the front seat of the school bus. Tr. 2, pp. 275-76.

24. Bus Driver A heard the Student and other students arguing and name calling on the bus. He doesn't recall what was said. Other children did nothing else to the Student on his bus. Tr. 1, pp. 134-35, 137, 151, 152, 160.

25. Whenever someone began talking to the Student on the bus, "he would inevitably start calling them names." The Student often called other students stupid. Then they would start calling him names or saying he was stupid. Bus Driver A told the other students not to tease him. The Student would also inject himself into conversations among other students. Tr. 1, pp.

140-42, 154, 160-61.

26. [name], the middle school counselors' secretary, asked the Student's mother to sign one of his suspension forms. In response to the mother's question about the Student's schoolwork during the suspension, [middle school counselors' secretary] interrupted [middle school assistant principal] during a meeting to ask if the Student's sister could pick up the schoolwork and take it home to the Student. Tr. 1, p. 177.

27. [Name] had the Student in a 7th grade technology engineering class for eight weeks during the 2009-10 school year. He thinks that he received a list of the Student's accommodations before the class began. Tr. 2, pp. 21-22, 41, 42, 48.

28. The Student and other students bugged one another in [7th grade technology teacher]'s class. No students picked on the Student. He moved the Student up by the teacher's desk, which stopped the children from bugging one another. Tr. 2, pp. 29-30.

29. The Student mastered the material in [7th grade technology teacher]'s class, earning an A or B. He completed his work. Although he needed multiple reminders regarding some things, he generally followed the classroom rules. Tr. 2, pp. 46-47.

30. [Name] is a school counselor who divides her work time between two District middle schools. Tr. 2, pp. 57, 109-10.

31. In April 2010, [School counselor] observed the Student deliberately sneeze on another student. Tr. 2, pp. 110-11, 115. [School counselor] advised [Student's counselor] of the incident. Tr. 2, pp. 111, 113. [Student's Counselor] was the counselor who worked with the Student. Tr. 2, pp. 112-13.

32. In September or October, 2009, [T], a new teacher, wrote a behavior referral form for the Student and another boy for running in the halls and pushing one another. He took the students to the office. [T] didn't question the students involved or conduct any investigation. Tr.

2, pp. 156-57, 163, 169.

33. During the 2009-10 school year, teacher [D] saw a student's hand hit a notebook that the Student was holding in front of his face. [D] took the two students to the office and completed an incident report. Tr. 2, pp. 170-72, 180, 181.

34. [Director of Student Services] is the District's Executive Director of Student Services. She is in charge of special education for the District. Tr. 2, pp. 192-93.

35. In February 2010, [Director of Student Services] began talking to Sensational Kids about the independent evaluation of the Student his parents requested. Tr. 3, p.15; Tr. 4, pp. 122-25, 127, 133-34, 140; P.E. 79.

36. The District has had a bullying policy in place since September 9, 2002. S.E. 39; Tr. 3, pp. 35-36, 38.

37. The team discussed and agreed that [special ed teacher]'s classroom would be used as a calm down area for the Student during the 2009-10 school year. Tr. 3, pp. 109-10. [Student's counselor] set up a pass system for the Student to go to[special ed teacher]'s room. Tr. 3, pp. 111.

38. [Director of Student Services] set up the Student's assessment by the [assistive technology agency] in the fall of the 2009-10 school year. Tr. 3, pp. 122-23.

39. The MEEGS meeting to review [private psychologist]'s 2009 reevaluation was scheduled to accommodate the parents' desire that [private psychologist] attend. The death of [private psychologist]'s parent caused delay in the meeting date. Tr. 3, pp.171-72.

40. The Parent Consent for Evaluation form that the parents signed before the Student's reevaluation during the 2009-10 school year satisfied IDEA prior written notice requirements. Tr. 3, pp. 189-94, 197-98, 199-200; S.E. 25.

41. During the 2009-10 school year, the Student served ten days of out-of-school suspension and one day of in-school suspension. Tr. 4, pp. 149-50; Tr. 5, pp. 34-35; S.E. 38. A

certified teacher is in charge of the in-school suspension classroom, and [special ed teacher] provided specialized instruction to the Student in that setting. Tr. 4, pp. 150-51.

42. In spring 2009, [Director of Student Services] had a transition meeting with [special ed teacher] and other special education teachers to communicate which special needs students were expected to attend [name] Middle School during the 2009-10 school year. [Director of Student Services] also sent a projected class list to [middle school Principal], [special ed teacher] and the other special education teachers. Tr. 4, pp. 160-61.

43. In the spring semester of the 2008-09 school year, [Director of Student Services] and [elementary school Principal] discussed concerns about the Student and his class. They decided to assign another adult - a paraprofessional - to [6th grade teacher]'s classroom. Tr. 5, pp. 6-7. The paraprofessional was not assigned to the room due to concerns about the Student's safety. Tr. 5, p. 7. The paraprofessional was to keep track of incidents reported by all students to have a more accurate picture of what was happening in the classroom. Tr. 5, p. 8.

44. An Alpha Smart device is like a mini laptop computer on which students can do word processing. Students can hook the device up to a computer to print their notes or a paper they have written. Students can also use the device for District-provided learning programs, such as Math Facts in a Flash, with which lower elementary students can practice basic math facts. Tr. 6, p. 47; Tr. 8, pp. 140-41. There are no math programs at the student's level available for use with the AlphaSmart. Tr. 8, pp. 81-84. The District assigned the Student an AlphaSmart device during the 2009-10 school year. Tr. 6, p. 47.

45. At the September 11, 2009, meeting, the parents requested an assistive technology evaluation. After obtaining parent for the evaluation, the District arranged it. The agency that conducted the evaluation recommended an AlphaSmart and provided a sample device for Student use. There were problems with the cords for the sample device. After that, the District

provided the Student with a District AlphaSmart device to use. Tr. 6, pp. 47-48.

46. [Director of Student Services] has served as a special education teacher, a school psychometrics and an administrator with responsibilities for special education and other programs. Tr. 6, p. 49.

47. On April 23, 2010, the parents' attorney sent a facsimile to [the Superintendent] regarding the Student. S.E. 50.

48. In early September, 2009, [parent advocate] sent a facsimile to [the Superintendent] regarding the Student. S.E. 22.

49. At the September 11, 2009, meeting, [parent advocate] "did a lot of talking for the family, but also she made some suggestions that the team and the family didn't feel was appropriate." The parents never requested that the District communicate with [parent advocate] instead of them. Tr. 6, pp. 130-31, 138-39, 142-43; Tr. 7, pp. 43-45.

50. The District did not schedule an IEP meeting on April 26, 2010, due to scheduling conflicts. Tr. 8, pp. 94, 96-98.

51. The Student's IEP team discussed his need for a behavior intervention plan beginning in September 2009. Tr. 8, pp. 119-20.

52. [Name] teaches theater at [name] Middle School. During the 2009-10 school year, she relieved [name], the in-school intervention teacher, for a portion of every day. [Theater teacher] doesn't recall serving as the ISI teacher when the Student was in the room. The Student did not tell her that another student in ISI was bothering him. Tr. 8, pp. 274-75.

53. [Theater teacher] wrote a referral for the Student while she was on hall duty on September 17, 2009, when he did not obey her repeated warnings not to enter the building. Tr. 8, pp. 307-08; P.E. 78M (pp. 108-09). The Student told [theater teacher] he was getting his binder and agenda. Tr. 8, pp. 310-11, 315. The Student was the only student who didn't come back

when [theater teacher] called to him. Tr. 8, pp. 312-13. The Student went into [special ed teacher]'s classroom. Tr. 8, p. 318. [Theater teacher] did not take the Student to the office. Tr. 9, p. 121. At the time, [theater teacher] was not aware of any accommodations for the Student. Tr. 8, p. 314. Afterwards,[middle school assistant principal] told [theater teacher] that the Student could go to [special ed teacher]'s room at lunch or before school. Tr. 8, pp. 327-29; Tr. 9, pp. 112-13; P.E. 78M.

54. [Name] teaches Spanish at [name] Middle School, Tr. 9, p. 124. She taught the Student for a seven-week rotation during the 2009-10 school year. [Spanish teacher] assigned [Spanish teacher] work to the Student during the first three weeks he was in her class. Tr. 9, pp. 126, 147.

55. In February 2010, [Spanish teacher] assigned the Student and other students to write sentences as a consequence for talking. The Student's mother sent [Spanish teacher] a note stating he was not to write sentences, so [Spanish teacher] did not have the Student complete the sentences. Tr. 9, pp. 129-30; P.E. 22. Bates did not know the modifications on his IEP as of the day she assigned the sentences. Tr. 9, p. 130. After the letter,[special ed teacher] explained the modifications to [Spanish teacher]. Tr. 9, p. 131.

56. The Student never talked to [Spanish teacher] about concerns with other students in class. Tr. 9, pp. 133-34, 157. She didn't see any students picking on him in hallways. Once or twice, before class started, he and other students would tease one another verbally in class. [Spanish teacher] would get them quiet and working. Tr. 9, pp. 145-46, 151, 153-54. The Student and other students initiated the other teasing. Tr. 9, pp. 157-61, 163. [Spanish teacher] saw the Student and other students laugh about it. Tr. 9, pp. 162-63.

57. [Spanish teacher] does not remember any disruptions or incidents in ISI on February 16, 2010, the day the Student was there. Tr. 9, pp. 141, 144. She supervised ISI during

7th hour, which is 45 minutes long. Tr. 9, pp. 149-50.

58. The Student turned in his Spanish work, did fine on Spanish tests and behaved in a respectful manner. Tr. 9, pp. 144-45. Almost all the Spanish work was done in class. Tr. 9, p. 152. He earned an A for the class. Tr. 9, pp. 151-52. He made academic progress in Spanish during the 2009-10 school year. Tr. 9, p. 153. The Student's education was not adversely affected by any interactions with other students in Spanish. Tr. 9, p. 154. Once or twice, if [Spanish teacher] thought the Student was having a hard time with something or came to class a little agitated, she calmly asked if he would like to see [special ed teacher] and do his work there. Tr. 9, p. 151.

59. [Name] teaches keyboarding at [name] Middle School. The Student was in [Keyboarding Teacher]'s keyboarding class for a seven to eight-week rotation during the 2009-10 school year. Tr. 9, pp. 167-68, 187-88. The special education teacher told her about the accommodations on the Student's IEP before he started her class. Tr. 9, pp. 172-73. Before the Student went to [Keyboarding Teacher]'s class, [special ed teacher] told her the Student could come to his class any time he wanted to. Tr. 9, p. 177. [Keyboarding teacher] kept him a little later than other students to pass to his next class. Tr. 9, pp. 182-83. The Student didn't complain about any students to [Keyboarding teacher], and no students complained to her about him. Tr. 9, pp. 175-76. She never noticed any students bothering the Student. Tr. 9, pp. 178-79. She saw the Student nag other students. Tr. 9, pp. 179-80, 184-85. [Keyboarding Teacher] reminded the Student once or twice a week to keep working during class. Tr. 9, pp. 180-81.

60. [Keyboarding Teacher] had no problems communicating with the Student, and he seemed to understand her instruction. He earned an A or B in her class and made academic progress. Tr. 9, p. 188. The Student's education was not adversely affected by interactions with classmates in [Keyboarding Teacher]'s keyboarding class. Tr. 9, p. 188.

61. [Name] is the [name] Middle School attendance secretary. She enters attendance information. Tr. 9, pp. 192-93.

62. [Middle school attendance secretary] observed the Student come into the office on many days to use the phone and call home. The only conversation she ever heard was when the Student called his mother to report that someone had stolen his chips. Tr. 9, pp. 211-15.

63. [Name] taught the ISI class during the 2009-10 school year. The Student attended that class for one day. Tr. 9, pp. 230-31. A student named C.R. entered ISI later on the day the Student was there. He put his feet on the Student's desk twice, and [ISI teacher] moved C.R. back a seat. Tr. 9, pp. 236-37, 255. [ISI teacher] considered the feet on the desk issue "minor." Tr. 9, p. 258.

64. The Student didn't tell [ISI teacher] that someone spit on him in ISI, and [ISI teacher] did not see that happen. Tr. 9, pp. 253-55.

65. [ISI teacher] had the Student sit at the front of the ISI classroom. Tr. 9, p. 256. [ISI teacher] knew the Student had an IEP. Tr. 9, p. 259. [ISI teacher] saw [special ed teacher] come into the ISI classroom to work with the Student. Tr. 9, pp. 256, 259, 270, 273-74.

66. [Name] taught algebra and pre-algebra at [name] Middle School during the 2009-2010 school year. Tr. 12, p. 67. She did not teach the Student. She sat with him during an assembly because she could tell he had anger issues when he was throwing things and cussing at a group of students around him. She talked with him to help him calm down. Tr. 12, pp. 70-71, 79-81. The other students were not bullying the Student, and he was not scared. Tr. 12, pp. 74, 89.

67. [Director of Student Services] asked [Speech pathologist W.] to reevaluate the Student during the 2009-10 school year. Tr. 12, pp. 99-100, 162-163. [Speech pathologist W] tested him on October 1 and 8, 2009, using the TOPL-2, the Test of Pragmatic Language, 2d

edition, in which children look at pictures and interpret social situations, and the TOLD-I:4, the Test of Language Development Intermediate, 4th edition. Tr. 12, pp. 102, 108, 112, 115, 143. P.E. 8. The TOLD-I:4 provides an overview of a child's language development. Tr. 12, p. 148. Both tests are oral; the Student wrote nothing down. Tr. 12, pp. 124-25, 143-44. [Speech pathologist W] noted in her testing that the Student was easily agitated. Tr. 12, pp. 104-05; P.E. 8. Before testing him, she went to [special ed teacher]'s classroom two or three times to try to develop a rapport with the Student. Tr. 12, p. 105. The Student's index score on the TOPL-2 was a 112, at the 79th percentile, with an age equivalent of 18 years, 11 months. Tr. 12, pp. 107-08. The Student's score on the TOPL-2 is one measure that indicates that "he could come up with appropriate means of handling that situation [in the picture]. He knew what to do in a particular situation." Tr. 12, pp. 108-12. The Student performed "great" on the TOLD-I:4. He earned a raw score of 23 on sentence combining with a percentile rank of 50 and an age equivalence of 15.0 years. Tr. 12, pp. 145-46; P.E. 8. His percentile rank for the grammar section was 12, which is below average. [Speech pathologist W] noted that he was agitated while taking the grammar section and does not think this represents his best effort. Tr. 12, pp. 166-69, 171, 174-76. In her observations of the Student, "his grammar was fine." Tr. 12, pp. 171.

68. [Speech pathologist W] holds bachelor's and master's degrees in speech pathology from OSU. She is a licensed speech pathologist in Oklahoma, practicing since 1983. Tr. 12, pp. 138-39.

69. During the 2009-10 school year, [speech pathologist W] was asked to and did provide copies of her records about the Student to [Student's counselor]. Tr. 12, pp. 149-50, 151-53.

70. [Name] is the [name] Middle School principal's secretary. Tr. 12, p. 181. She observed that the Student checked the lost and found bucket by her regularly because he "lost a

lot of things” during the 2009-10 school year. Tr. 12, pp. 190, 191. The Student stated to [Middle School Principal’s Secretary] that some things had been stolen, and [Middle School Principal’s Secretary] told him to look in the lost and found. Tr. 12, pp. 236-37. Sometimes he would find the missing item in lost and found. Tr. 12, pp. 237-38. The Student’s mother gave [Middle School Principal’s Secretary] some documents about the Student that were on a desk in the office. [Middle School Principal’s Secretary] gave the documents to assistant principal [middle school assistant principal]. Tr. 12, p. 214.

71. [Name] served as a substitute teacher at [name] Middle School during the 2009-10 school year. Tr. 14, p. 134. She worked in [special ed teacher]’s, [Name]’s, [Substitute teacher]’s and [Name]’s rooms as a substitute. Tr. 14, p. 136. She subbed in [Name]’s social studies class for the last 19 days of the 2009-10 school year. [special ed teacher] and [Name] both gave [Substitute teacher] information about the Student before she began working with him in [Name]’s class. Tr. 14, pp. 137-38, 161, 165. [Special ed teacher] told [Substitute teacher] about the Student’s specific accommodations, and she followed them. Tr. 14, pp. 138-40, 149, 215-16, 241, 246-47; P.E. 60B, 15B. [Substitute teacher] and [special ed teacher] frequently discussed how the Student was doing in class. Tr. 14, pp. 237-38.

72. The Student never complained to [Substitute teacher] about another student bothering him in class. Tr. 14, p. 191. She was unaware of any bullying incidents involving the Student, and the other students didn't say mean things to him in class. Tr. 14, pp. 240, 241-42, 244-45, 247. The Student was sometimes respectful to [Substitute teacher] and the other students in [Name]’s classroom. Tr. 14, p. 240.

73. [Name] is a special education teacher in the District. She never had the Student in class or helped develop his IEP, but has seen him around the school. In October 2009, O’Neal was a duty teacher at a school dance. She saw the Student running and two boys walking

quickly. The students were moving toward one another. She asked the Student what was going on. He said “These guys are picking on me.” [Another Special Ed Teacher] didn’t see the boys do anything. The Student said they were saying things to him. [Another Special Ed Teacher] asked the boys what was going on, and they said that the Student was saying things to them. [Another Special Ed Teacher] told the two boys and the Student, who was with his Mother, to stay away from each other. Tr. 14, pp. 253-58, 275-76. [Another Special Ed Teacher] is unaware of any other incident involving the Student at the dance. Tr. 14, p. 258.

74. [Another Special Ed Teacher] is also the coordinator for Camp [], an orientation for students held the summer before they enter middle school. The Student didn’t express any concerns to [Another Special Ed Teacher] and she is unaware of any misbehavior by other students to him at Camp []. The Student was reported by his web leader and other students to have used inappropriate language and cussed during the camp. Tr. 14, pp. 258-62, 277-78. [Another Special Ed Teacher] and the Student went to see counselor [Student’s counselor], who asked him to stay and help her, to defuse the situation. Tr. 14, pp. 260-61, 263, 266-67. The Student and another student each claimed that the other one had hit and used inappropriate language. The Student directed the word “fuck” at [Student’s counselor]. She told him in his Mother’s presence that he needed to stop swearing or leave. The Mother reiterated this to the Student. Tr. 29, pp. 219-22.

75. Other than the dance, the Student never complained to [Another Special Ed Teacher] about other students, but two of [Another Special Ed Teacher]’s students reported to her that he called them names or said inappropriate things to them during the 2009-10 school year. Tr. 14, pp. 265-66, 271, 273.

76. At the beginning of the 2009-10 school year, [middle school assistant principal] asked [Another Special Ed Teacher] to arrange to have the Student’s web leader at Camp [], a

popular 8th grade boy, eat lunch with the Student once or twice per week. The 8th grader acted as the Student's "buddy" during the 2009-10 school year. Tr. 14, pp. 267-69, 278.

77. [special ed teacher] gave presentations to District staff at meetings regarding special needs students and their disabilities, including autism. Tr. 30, p. 194.

78. At the beginning of the Student's 7th grade year, the District discussed bullying in front of the entire school population. Tr. 30, pp. 193-94.

79. The District started a program for PBIS, positive behavior intervention system, to prevent bullying during the Student's 7th grade year. [Middle school assistant principal] was on the PBIS committee and shared information concerning incidents involving the Student with other committee members. Tr. 30, p. 187-88.

80. During 7th grade, the Student was suspended out-of-school for three days for fighting by [middle school assistant principal]. The Student was disciplined even though he hit another student in self-defense because District policy states that students are disciplined, regardless of who starts it or whether a student was acting in self-defense, students are disciplined. Tr. 30, pp. 240-41.

81. Although the Student had incidents with other students during his 7th grade year, [middle school assistant principal] does not believe that the Student was bullied. Tr. 30, pp. 241-42.

82. When the Student's IEP team discussed the documents the parents provided at the September 2009 IEP team meeting attended by [middle school assistant principal]. TR. 30, p. 243.

83. The parents' advocate, [parent advocate], consulted with the parents at IEP team meeting attended by [middle school assistant principal] during the Student's 7th grade year and was an active participant at those meetings. Tr. 30, pp. 243-44.

84. [middle school assistant principal] spoke with the Student when investigating incidents involving him. On at least one occasion, [middle school assistant principal] determined that the Student was not being truthful as an incident after he spoke to the Student's teacher, [7th grade English teacher], during his investigation. Tr. 30, pp. 244-45.

85. [Middle school assistant principal] would often speak with the Student about how the Student's day was going and would discuss with the Student problems he was having. [Middle school assistant principal] would also give suggestions to the Student on ways to deal with the problems the Student might be having. Tr. 30, p. 245.

86. During the Student's 7th grade year, the District offered to permit the Student to ride on the mini bus because of bus related issues involving the Student. However, the parents did not accept this option for the Student. Tr. 30, pp. 245-46.

87. According to [middle school assistant principal]'s experience and training regarding bullying, a drastic increase in a student's nonattendance at school is an indicia of bullying. [Middle school assistant principal] did not see a drastic increase in the Student's nonattendance at school during the 7th grade. In fact, the Student had good attendance. Tr. 30, pp. 246-47.

88. According to [middle school assistant principal]'s experience and training regarding bullying, a drastic increase in a student's nonattendance at school is an indicia of bullying. [Middle school assistant principal] did not see a drastic increase in the Student's nonattendance at school during the 7th grade. In fact, the Student had good attendance. Tr. 30, pp. 246-47.

89. According to [middle school assistant principal]'s experience and training regarding bullying, a drastic increase in a student's nonattendance at school is an indicia of bullying. [middle school assistant principal] did not see a drastic increase in the Student's

nonattendance at school during the 7th grade. In fact, the Student had good attendance. Tr. 30, pp. 246-47.

90. According to [middle school assistant principal]'s experience and training regarding bullying, a dramatic decrease in a student's grades is an indication of bullying. [middle school assistant principal] did not see such a decrease increase in the Student's grades during the 7th grade. In fact, the Student made straight As. Tr. 30, p. 247.

91. [Middle school assistant principal] did not see any red flags during the Student's 7th grade year that led him to believe the Student was being bullied. Tr. 30, pp. 247-48.

92. District practice is for parents to report student related incidents to the administration for investigation and handling. One morning while student were arriving at school, the Student's mother brought a student down to the Middle School office because of an incident with the Student. Tr. 30, pp. 248-49, 282.

93. The Student's father reported in an email to [middle school assistant principal] that he had investigated himself an incident involving the Student. However, the Student's father did not share any of his investigatory materials with [middle school assistant principal] regarding the incident. Tr. 30, p. 249.

94. The Student's father never shared a videotape he allegedly had regarding an incident involving the Student with [middle school assistant principal]. Tr. 30, p. 249.

95. [Middle school assistant principal] was never informed by the parents that they were recording conversations and telephone calls with District personnel outside of IEP team meetings. Tr. 30, p. 250.

96. [Middle school assistant principal] never had any problems communicating with the Student during the 7th grade, and the Student never told [middle school assistant principal] that he was having a problem understanding him. Tr. 30, pp. 254-55.

97. On one occasion when the Student was assigned to Saturday school for inappropriate language directed towards another student. When [middle school assistant principal] spoke to the Student regarding this during his investigation, the Student admitted to using the inappropriate language and acknowledged to [middle school assistant principal] that he understood using this language at school was inappropriate. When [middle school assistant principal] later discussed this with the Student's mother, the Student's mother stated that she did not understand where the Student had learned this language and did not think the Student would say anything like that at school. Tr. 30, pp. 255-57, 264-66.

98. [Middle school assistant principal] saw the Student with students S.D. and G.N. the most during his 7th grade year, and he believed these two students were friends of the Student. In addition to S.D. and G.N., there were other students that the Student would associate with while at school. Tr. 30, pp. 188-89, 258.

99. [Middle school assistant principal] believes that the Student liked coming to school during his 7th grade year. Tr. 30, pp. 258-59.

100. The Student would share with [Middle school assistant principal] drawing he had made during his classes. Because they were so good, [Middle school assistant principal] even offered to hang the Student's drawing in the Middle School trophy display case. Tr. 30, p. 259.

101. The Student never expressed any apprehension in coming to [Middle school assistant principal] and talking to him about problems he was having at school, and [Middle school assistant principal] believed he had a good relationship with the Student. Tr. 30, pp. 259-60.

102. [Middle school assistant principal] recalls receiving a number of incident reports concerning incidents involving the Student during a one or two day period in mid-September, 2009. After that, the number of these incident reports dropped dramatically, i.e., from receiving

20 to receiving two or three. [Middle school assistant principal] attributes this dramatic decrease to the actions taken by the District and by separating the Student from other students. Tr. 30, pp. 260-63.

103. [Middle school Principal] has received training in bullying and its prevention from the Oklahoma State Department of Education and through various workshops. Tr. 30, p. 290.

104. [Middle school Principal] was the assigned administrator of the [Group 1]Team for the 2009-2010 school year, which included the Student. Tr. 30, p. 290.

105. [Middle school Principal] regularly has training meetings with District staff members regarding the District's bullying policy at least once a month. Tr. 30, p. 291.

106. Other than having a short temper, [Middle school Principal] believes the Student responded in her office as most 7th grade boys do. [Middle school Principal] does not believe the Student's emotional maturity is several years behind his current grade level. Tr. 30, pp. 291-92.

107. From her experience with the Student, [Middle school Principal] has not noticed the Student has a limited vocabulary. Tr. 30, p. 291.

108. [Middle school Principal] is not aware of the Student having a lack of subtlety when expressing himself to others or copying and mimicking others. Tr. 30, p. 294.

109. [Middle school Principal] does not recall the parents reporting a death threat against the Student in September 2009. Had one been reported, District policy required that the District's central office be notified depending on the nature of the threat. The threat is then investigated and sometimes law enforcement is notified. Tr. 30, p. 294.

110. [Middle school Principal] never disciplined the Student for manifestations of his disability. Tr. 30, pp. 303-04.

111. Parents did not keep all of Student's homework papers that were sent home with him because it was "too much paper" and they did not have anywhere in their home to keep it all. That which they did not keep they threw away during the course of the school year. Tr. 26, pp.10-11.

112. [The father] has a college degree in business administration and is the manager of a company that manages the logistics of liquid bulk products, primarily through rail. Tr. 26, pp. 14-17.

113. [The father] does not generally sign documents that he has not read and does not understand. Tr. 26, pp. 15-16.

114. [The father] has no specialized training in education, educational curriculum, special education or psychology. Additionally, he has not taken any classes, academic or otherwise, regarding autism or Asperger's. Tr. 26, pp. 17-18.

115. [The father] believes the Student has Asperger's Syndrome, which is on the higher functioning end of the autism spectrum. Tr. 26, p.18.

116. The first time the student began seeing an out-of-school mental health professional was when the Student started seeing a counseling professional in August 2010. Tr. 26, pp. 20-21.

117. Prior to August 2010, the parents did not seek any type of training for themselves from a mental health professional regarding the Student's disability. Tr. 26, p. 21.

118. During the Student's 7th grade year, he told the parents that he thought he was developing a friendship with a couple of classmates. Tr. 26, pp. 28-29.

119. Between August 2009 and May 2010, the Student did not receive any social skills training outside of what he was receiving at the District. Tr. 26, pp. 31-32.

120. [Name] is an advocate who the parents compensated. [Parent advocate] was

referred to the parents by a friend as an expert in the IEP process. {Parent advocate} told the parents that she had formalized training on the IEP process, and the Parents believed she was very familiar with autism. Tr. 26, pp. 32-41.

121. The parents never asked [parent advocate] about her educational background. Tr. 26, p.41.

122. [Parent advocate] attended every IEP team for the Student during his 7th grade year, advised the Parents and made recommendations to them regarding the Student's education at the District. Tr. 26, pp. 42-43.

123. [Parent advocate] recommended attorney [parent attorney] to the parents. Tr. 26, p. 47.

124. While the Student is at home, he is being home schooled and receiving instruction from The mother. Tr. 26, pp. 48-49.

125. During the Student's 7th grade year, the parents made surreptitious recordings of telephone calls and conversations with District employees. Tr. 26, pp. 64-68.

126. The father was present at the September 11, 2007, September 11, 2008, May 8, 2009, September 11, 2009, September 15, 2009, March 11, 2010, and April 2, 2010, IEP team meetings for Student. Tr. 26, pp. 68-71; SE 43.

127. The parents signed the September 11, 2007 Review of Existing Data ("RED"). Amongst other things, the RED reflects that the Student suffers from social skills deficits and that "The team has determined that Student continues to qualify for special education under the category of autism." Furthermore, this RED indicates that the team did not believe any additional assessments were needed for the Student. Tr. 26, pp. 72-74; SE 21.

128. The parents never indicated on the September 11, 2007 RED that they believed the Student needed a psychological evaluation. Tr. 26, p. 76; SE 21.

129. The parents had read and understood the September 11, 2007 RED when they signed it. Tr. 26, pp. 70-82.

130. The parents received "Parent's Rights in Special Education" at the September 11, 2009, IEP team meeting. SE 69; Tr. 26, pp. 91-92.

131. The parents signed the September 11, 2007, IEP Review after reading and understanding it. Tr. 26, pp. 92-93; SE 69.

132. The September 11, 2007, IEP Review reflects the team's determination in the RED that the Student will remain in special education under the classification of autism. Tr. 26, pp. 88-89.

133. No one at the September 11, 2007, IEP team meeting denied the parents the opportunity to ask questions regarding the IEP Review. Tr. 26, pp. 93-94; SE 69.

134. The parents signed the September 11, 2007, IEP after reading it and understanding it. Tr. 26, pp. 94-96; SE 69.

135. The September 11, 2007, IEP reflects the team decision that ESY services were not needed for the Student and that the Student's next three-year reevaluation would occur on or before September 11, 2010. Tr. 26, pp. 95-96.

136. While [the father] was present at the September 11, 2008, IEP team meeting when a new IEP was drafted from Student. Although [the father] did not sign the IEP, there was no reason for him not signing. Tr. 26, pp. 99-100; SE 45.

137. The Parents signed the September 11, 2008, IEP because they wanted Student to continue receiving services and hoped those services would be beneficial to the Student's education. Tr. 26, pp. 102-03; SE 45.

138. Student made reasonably good grades during his 6th grade year (2008-2009). Tr. 26, p.104.

139. The mother signed the ESY Checklist attached to the September 11, 2008, IEP. The ESY Checklist states the team's decision that ESY services were not necessary for the Student. The mother did not sign any document at the September 11, 2008, IEP team meeting that [The father] did not want her to sign. Tr. 26, pp. 111-13; SE 45.

140. At the September 11, 2008, IEP team meeting, the parents were not prohibited from participating, were not prohibited from adding anything to the IEP or IEP Review that they wanted added, received "Parent's Rights in Special Education," and received a copy of the IEP when they left. Tr. 26, pp. 114-17; SE 45.

141. During the Student's 6th grade year, the parents never requested a psychological evaluation of the Student, other than requesting one from the Elementary School Principal (Ms. Lidia), who they claim convinced them to withdraw their request because of the principal's concern that the evaluation could render the Student ineligible for special education. Tr. 26, p. 116.

142. The parents signed the [date], IEP Review after reading it and understanding it. Furthermore, no one prevented the parents from changing anything written on the IEP Review, and the parents received a copy of "Parent's Rights in Special Education." Tr. 26, pp. 118-19; SE 41.

143. At the [date], IEP team meeting, the Parents did not ask for social skills training for Student during the summer of 2009. Tr. 26, pp. 135-36.

144. At the [date], IEP team meeting, the team determined that ESY services were not necessary for the Student. The Parents signed the ESY Checklist after having read and understood it. Tr. 26, pp. 128-37; SE 41.

145. During the summer of 2009, the parents did not attempt to obtain any type of social skills training for the Student outside of that being provided by the District. Tr. 26, pp.

139-42.

146. At the time they signed it, the parents believed the [date], IEP was calculated to benefit the Student. Tr. 26, pp. 142-43; SE 41.

147. The parents were provided a copy of the May 8, 2009, IEP at the end of the meeting. Tr. 26, p. 260; SE 41.

148. The parents believe that the Student learned enough during his 6th grade year to receive the grades he received from his teachers. Tr. 26, pp. 143-44.

149. The parents received all of the Student's report cards when he was in 6th grade. Tr. 26, pp. 148-49, 155; SE 37.

150. The parents did not have any concerns that the Student was not bringing home papers from school. Tr. 26, p. 151.

151. Although some of the IEP forms for the Student had information already typed into them, the parents knew that the team could handwrite information if needed. Tr. 26, pp. 165-67.

152. The mother was the parent in charge of making the "tactical" education decisions for the Student. Tr. 26, pp. 11, 107, 151, 153.

153. No one from the District prohibited the parents from addressing any of the special factors contained on page 2 of the May 8, 2009, IEP team meeting. Tr. 26, p. 179.

154. The recommendations for the Student's education submitted by the parents in September 2009, either came from [private psychologist]'s 2004 evaluation, the parents, or the parents' advocate [name]. Tr. 26, pp. 192-94.

155. The parents do not believe that they were entitled to know the specific punishment another student received because of any disciplinary infraction committed by another student directed towards the Student. Tr. 26, pp. 196-98; SE 39.

156. When the Student was in 7th grade, the parents objected to the Student having to copy a "Maturity Sheet" by hand as a form of discipline. However, during this same school year the parents had the Student write a two-page document in the Student's handwriting to be submitted to the District regarding an incident with another student. Tr. 26, pp. 200-04.

157. The parents notified the District of an alleged death threat made against the Student by another student, K.G. Although the parents testified they took this threat seriously, they did not contact the police regarding it or conduct any investigation of their own regarding it. Tr. 26, pp. 204-05.

158. The Student was disciplined in August 2009, after other parents complained that the Student was flipping people off while riding a school bus. Tr. 26, pp. 206-09.

159. The parents testified that the Student has never told them anything in 6th or 7th grade that they subsequently found to be untrue. Tr. 26, pp. 213-14.

160. According to the parents, all of the Student's 7th grade year (2009-2010 school year) out-of-school suspensions are contained on the first page of Parent Exhibit 53. Tr. 26, pp. 232-33.

161. The parents gave consent for the OATC evaluation. Tr. 26, pp. 238-39; SE 28.

162. Prior to January 2010, Mr.[special ed teacher] provided the parents with a copy of [private psychologist]'s 2009 evaluation. Tr. 26, pp. 239-40; SE 47.

163. The parents signed the [date], MEEGS as being in agreement. Tr. 26, pp. 244-45; SE 31.

164. The Parents signed the [date], MEEGS after reading it and in the presence of their advocate, [parent advocate]. At the [date] meeting, the parents did not sign any documents that [parent advocate] told them not to sign. Tr. 26, pp. 248-49; SE 31.

165. At the [date], meeting, the parents were provided an opportunity to ask [private

psychologist] questions concerning her evaluation. Tr. 26, pp. 249-51.

166. At the [date] meeting, the parents were provided an explanation of the evaluation procedures, evaluation results, and the eligibility determination, as participants in the group. Tr. 26, pp. 246-52; SE 31.

167. The parents signed the March 11, 2010, IEP Review after reading and understanding it, and they were not prevented by District personnel from writing anything on the IEP Review that they wanted to write. Tr. 26, p. 252.

168. On the [date], IEP Review, the Parents gave consent for an evaluation by [private OT center]. Tr. 26, pp. 253-54; SE 65 (pages 3-4).

169. The parents never wrote the District, via email or otherwise, and notified it that they were not receiving progress reports for the goals written in the Student's IEP. Tr. 26, pp. 264-65.

170. The parents signed the [date], IEP after reading it and understanding it. [Parent advocate], the parents' advocate, was also present, signed the IEP, did not advise the parents not to sign the IEP, and did not advise the parents of any defects in the IEP. Tr. 26, pp. 267-70, 281-87; SE 33; PE 78-A.

171. The [date], IEP reflects the IEP team's decision that ESY services were not necessary for the Student. Tr. 26, pp. 288-89.

172. The parents believed at the time they signed the [date], [date], [date], and [date] IEPs that they were reasonably calculated to provide a meaningful educational benefit to the Student. Tr. 26, pp. 290-91, 302-03.

173. The parents, as well as their advocate, signed the "Functional Behavior Assessment / Positive Behavioral Intervention Plan" dated [date], as being in agreement and after they had read and understood it. Tr. 26, pp. 297-301.

174. The parents do not believe that a student defending themselves amounts to bullying. Tr. 26, pp. 308-10.

175. The District told the parents from the beginning that the District would be paying for the independent educational evaluation of the Student by [private OT center]. Tr. 26, pp. 312-13.

176. [special ed teacher] is a special education teacher at [name] Middle School. He earned a bachelor's degree in mild/moderate disabilities from the University of Central Oklahoma. In addition to his degree,[special ed teacher] has approximately 100 hours of education in the field of autism, including a 60-hour symposium and a three or four-day class with [private psychologist] on identifying children with Asperger's. Tr. 28, pp. 5-8.

177. [Special ed teacher] reviewed the Student's special education folder before the IEP meeting held on May 8, 2009. Tr. 28, pp. 28-29. He met with elementary school special ed teacher [Spec ed teacher 2]. He did not meet with the Student's special ed teacher, [Student's elementary special ed teacher 1], because she was absent. Tr. 28, pp. 74-75. He talked to the elementary school speech-language pathologist. Tr. 28, pp. 38-39. The Student's teachers shared that the Student was a great student, academically. Tr. 28, p. 83. Haak advised[special ed teacher] that the Student had difficulties with peer interactions. Tr. 28, pp. 25-27.

178. [special ed teacher] obtained the books referenced in [private psychologist]'s report (P.E. 4) at approximately the end of the third nine weeks of the 2009-10 school year. Tr. 28, pp. 29-30. The District ordered the books following the meeting at which [private psychologist] discussed the Student's testing. Tr. 28, p. 30. [Special ed teacher] used portions of the books when working with the Student. Tr. 28, p. 31.

179. [Special ed teacher] teaches a social skills or life skills class at the middle school. Tr. 28, p. 34. The students work on learning how to deal with their emotions. Tr. 28, pp. 40-41.

There were four or five students in the class during the 2009-10 school year. Tr. 28, p. 41.

180. At the [date], IEP meeting,[special ed teacher] offered an assistant or paraprofessional to accompany the Student to class. The Parents did not want an assistant. They said that this would embarrass the Student, and he didn't need it. [Special ed teacher] also recommended modified passing times and attending his social skills class. Tr. 22, pp. 67-68. No team member suggested assistive technology at the [date], meeting. Tr. 28, pp. 68, 70-71.

181. In [special ed teacher]'s observation, the Student's handwriting is "really neat" and "nice." Tr. 28, pp. 68-69. [Special ed teacher] had seen examples of his handwriting before the [date], IEP meeting. Tr. 28, p. 72.

182. The only document [special ed teacher] reviewed in drafting the proposed social skills goals for the [date], IEP was the Student's previous IEP. At the meeting, principal [elementary school Principal] stated that the Student needed to work on social skills. Tr. 28, pp. 113-14. [Special ed teacher] noted the Student's demonstrated performance toward the goals when the Student was working in his social skills class. Tr. 28, pp. 116-19. To measure the Student's performance,[special ed teacher] made a checkmark for the behavior. "And I will take as many times as we have been in class, and then I'll take as many times as I've observed that behavior, and that's how I come up with my percentage." Tr. 28, p. 121. [Special ed teacher] understood that he was to report the Student's progress to his parents every nine weeks. Tr. 28, p. 121. As rewards for the Student,[special ed teacher] let him pick from the class treasure box and have candy. Tr. 129, p. 153.

183. [Special ed teacher] began working on the Student's social skills goals in August [] when the 2009-10 school year began. [special ed teacher] prepared progress reports for the parents every nine weeks. Tr. 28, p. 122. He sent them home with the Student in his folder. Tr. 28, pp. 122-23. The progress reports [special ed teacher] sent consist of the IEP goal page with

the percentage marked. [Special ed teacher] also wrote notes to the parents when the Student began on his behavior plan. Tr. 28, p. 124. When the parents asked for one of the progress reports in an IEP meeting, he gave them another copy. Tr. 28, pp. 123-24. [Special ed teacher] does not maintain the underlying documentation of his students' progress. *Id.*

184. The Student did not attain his social skills goals, but did improve. Tr. 28, pp. 308-13, 327, 331-32; S.E. 32. The Student often demonstrated appropriate social skills with other students in [special ed teacher]'s classroom. Socializing appropriately in that setting was easier for him than in general education classrooms. Tr. 28, p. 328.

185. No one at the [date] IEP meeting suggested that the Student needed social skills training during the summer. Tr. 28, p. 126.

186. To teach social skills,[special ed teacher] uses the Social World curriculum and a book [private psychologist] recommended, *Navigating the Social World*. He also models the desired behavior and uses social strips, a technique that reflects conversations to be read aloud. Tr. 28, pp. 127-28, 130, 274. In at least two IEP meetings,[special ed teacher] explained the techniques he used to teach social skills. Tr. 28, p. 130.

187. In [special ed teacher]'s experience, many students with autism find it difficult to change classes. For that reason, he proposed a change in the Student's passing time. Tr. 28, pp. 131-32. The purpose of this recommendation on [date], was to prevent the Student from becoming overstimulated. Tr. 28, p. 164.

188. At the [date] IEP meeting, the team reviewed the ESY Checklist. S.E. 41 (last three pages); Tr. 28, pp. 133, 137. All team members agreed that the Student did not need ESY services and signed the form. P.E. 17; Tr. 28, pp. 137-43.

189. The parents handed out a page about alleged bullying at a meeting during the 2009-10 school year. Assistant principal [name] got a copy of the bullying page. Tr. 28, pp.

157-58, 160-61. To address concerns of bullying against the Student at the middle school, District staff adjusted his passing times, offered a teacher's assistant and more time in [special ed teacher]'s class and separated the students in the cafeteria at lunch. Tr. 28, pp. 161-62, 257-58. The Parents refused the offers of more time in [special ed teacher]'s room and an assistant. Tr. 28, pp. 257-58. [Special ed teacher] did not observe any bullying of the Student. Tr. 28, p. 163.

190. When completing the Parent Consent for Evaluation form at the IEP meeting on September 15, 2009, [special ed teacher] checked all evaluation components the Parents wanted. Tr. 28, pp. 182-84. The parents' advocate, [parent advocate], grabbed the papers and also checked items and wrote things on the forms at that meeting. Tr. 28, pp. 184-85, 187, 226.

191. To address any visual processing issues the Student might have, [special ed teacher] moved the Student closer to him in class and obtained a reading guide for him, which breaks large passages into smaller ones. Tr. 28, pp. 198-99.

192. Occupational therapist [name] suggested things that [special ed teacher] could implement to assist the Student with any sensory issues. Tr. 28, pp. 206-07, 215. [Special ed teacher] understood from [occupational therapist] that the Student's sensory issues were not significant. Tr. 28, pp. 206, 215.

193. Any delays in setting the MEEGS meeting during the 2009-10 school year were attributable to [private psychologist]'s testing schedule, the Father's work schedule and the death of [private psychologist]'s parent. Tr. 28, pp. 227-28, 235-40; S.E. 47.

194. The Student never had any physical altercations with any other student in [special ed teacher]'s classroom. [Special ed teacher] never observed any physical altercations between the Student and any other child anywhere. Tr. 28, pp. 243-44. None of the students on the parents' bullying list were in [special ed teacher]'s classroom. Tr. 28, pp. 245-46. [Special ed teacher] does not believe that the Student was bullied at school. Tr. 28, pp. 254-55.

195. [name] Middle School had a bullying prevention team during the 2009-10 school year. The District also had a two-day professional development program about bullying at the beginning of the school year and additional professional development through the school year to prevent bullying. Tr. 28, pp. 259-60. [Special ed teacher] attended at least three meetings with [middle school assistant principal] about alleged bullying of the Student. Tr. 28, pp. 262-63. The Student told [special ed teacher] about an incident involving girls in the cafeteria and two times when he believed he was being teased verbally. Tr. 28, pp. 266-68. One of the teasing matters had to do with his dog. Tr. 28, p. 267.

196. The team started a positive behavior intervention plan for the Student. [Special ed teacher] obtained tracking forms from a State Department of Education website and gave them to the Student and his teachers to keep track of goals on the plan across settings. Tr. 28, pp. 295, 297-98. [Special ed teacher] planned to use the forms to adjust the Student's behavior plan, but the Student stopped attending school just four weeks after the plan was implemented. Tr. 28, p. 300. [Special ed teacher] also started keeping track of the Student's behavior in his own class. Tr. 28, pp. 303-06; P.E. 78HH (Nos. 66-86).

197. At the Student's IEP meeting on [date], the team added goals for writing and grammar. S.E. 33 (IEP page 3); Tr. 28, p. 333. Based on the Student's performance, he was at 90% on the writing goal and about 80% on the grammar goal at the end of the 2009-10 school year. Tr. 28, pp. 333-35.

198. [Special ed teacher] observed that when doing work he was interested in or drawing, the Student would work for long periods of time without becoming distracted. If he was doing something he wasn't interested in, he became distracted. If others were holding a conversation, he might listen, or if there was a loud noise outside, he might look up and wonder what it was. Tr. 29, pp. 3-4. [Special ed teacher] redirected the Student by suggesting a break if

he needed one or asking him to start working again. Tr. 29, pp. 8-9. [Special ed teacher] let the Student work on the computer or draw during breaks. Tr. 29, p. 9.

199. The Student consistently "did pretty well" in the one class he had with [special ed teacher]. He sometimes had difficulty with emotion worksheets in which he had to explain the emotion he would feel in a particular scenario. The Student usually stated that he would be angry in the scenarios. [Special ed teacher] had a difficult time "trying to get through to him that there was more emotions out there than just anger." Tr. 29, pp. 5-7.

200. The Student was easily frustrated about some things, like someone talking about animals or touching his belongings. Tr. 29, pp. 10-11.

201. [Special ed teacher] worked with the Student on putting his thoughts into written words for perhaps three weeks over the 2009-10 school year. Tr. 29, pp. 11-12.

202. [Special ed teacher] and the Student role-played situations relevant to the Student, such as the proper way to ask someone for something, "[t]rying to think of other people's feelings instead of just what he was thinking about at the time." Tr. 29, p. 13. Another example of role-playing they did involved handling a situation where the Student and another child bump into each other in the hall. Tr. 29, pp. 15-16.

203. In [special ed teacher]'s class with the Student they worked together directly 20 to 30% of the time. Tr. 29, p. 18. In addition to work on emotions and role-playing, they also worked on ways to initiate conversation with other children to try to make friends. Tr. 29, pp. 18-19.

204. [Special ed teacher] also had a classroom assistant in the Student's class. Tr. 29, p. 16. The assistant was not assigned to the Student, although she worked with him. Tr. 29, p. 23.

205. Counselor [Student's counselor] designed a pass system so the Student could go

to her office or [special ed teacher]'s room. Tr. 29, p. 25, 224-25. The purpose of this was to give the Student a place to go if he needed extra help with work or was overstimulated and needed a place to calm down. *Id.* [Student's counselor] talked to the Student's team teachers about the pass system. Tr. 29, p. 321.

206. P.E. 59 contains some of the lessons [special ed teacher] assigned to the Student. Some of the pages are not from [special ed teacher]'s class. The exhibit does not contain all the assignments [special ed teacher] gave the Student. Tr. 29, pp. 32-38. P.E. 14 contains another assignment from [special ed teacher]'s class. Tr. 29, pp. 39-40.

207. [Special ed teacher] guesses that teachers sent the Student to his classroom seven or eight times over the 2009-10 school year. The Student also came to [special ed teacher]'s room on his own. Tr. 29, pp. 46-47.

208. [Special ed teacher] went to help the Student with his work twice the day he was assigned to ISI. The Student didn't ask for help with his work. Tr. 29, pp. 50-52. [Special ed teacher] spent approximately 15 minutes with the Student on each visit. The Student wouldn't talk to [special ed teacher]. Tr. 29, pp. 52-53.

209. When the Parents requested all of [special ed teacher]'s documents, he gave them to [Student's counselor], not to the Mother. Tr. 29, pp. 60-64, 166-67.

210. From the Student's April 2, 2010, IEP meeting until the Student was pulled out of school, [special ed teacher] sent home student behavioral information weekly with the Student in his backpack. Tr. 29, pp. 76-78. The parents complained once that they hadn't received it, so [special ed teacher] made a copy and either handed it to the Mother or put it in the Student's backpack. Tr. 29, pp. 78-86.

211. [Parent advocate] wrote on the IEP Review of [date], when it was passed around for review. Tr. 29, pp. 92-93; S.E. 31 (1st page).

212. [Special ed teacher] never prevented the Parents from reading any IEP documents. Tr. 29, p. 95. The Parents never told [special ed teacher] that they were signing a document with which they disagreed. Tr. 29, p. 96.

213. [Special ed Teacher] did not prevent the Parents or [Parent advocate] from writing any comments they chose on the IEP Review dated April 2, 2010. Tr. 29, pp. 98-100; S.E. 33 (1st document).

214. When the team developed the Student's IEP on [date], there wasn't any progress reported on pages 3 and 4. The progress notes were written on the goal pages later. Tr. 29, pp. 106-08; S.E. 33 (IEP). The handwriting on pages 2, 3, 4, 5 and 6 (other than the team member signatures) of the April 2, 2010, IEP belongs to [special ed teacher]. Tr. 29, pp. 106-11; S.E. 33 (IEP). [Parent advocate] and the Parents signed the IEP. Tr. 29, pp. 111, 132; S.E. 33 (IEP).

215. The handwriting on the Student's [date], positive behavior intervention plan belongs to [special ed teacher]. The Parents and [parent advocate] signed the plan with no objection. Tr. 29, pp. 111-14; S.E. 33 (last three pages).

216. The parents and [parent advocate] brought a parent attachment to the April 2, 2010, IEP meeting. [Special ed teacher] did not require any changes to the attachment before attaching it to the IEP under Parent Concerns. Tr. 29, p. 114.

217. The Student made progress toward the goals in his IEPs until two weeks before his parents pulled him out of school. Tr. 29, pp. 115-16.

218. In May 2010, in response to the Mother's request for work for the Student when the Parents pulled him out of school, [special ed teacher] talked to all of his teachers and asked them for his work, which [special ed teacher] gave to [Student's counselor]. Tr. 29, pp. 123-25; S.E. 52.

219. At the [date], IEP meeting, neither the parents nor [parent advocate] stated that

the Student needed ESY services. Tr. 29, pp. 130-31, 154.

220. Other than IEP meetings, the Parents never revealed to [special ed teacher] that they were tape recording other communications with him. Tr. 29, pp. 132-33.

221. The [assistive technology agency] representatives gave [special ed teacher] a copy of their report, and [special ed teacher] gave the Mother a copy. He completed a form to borrow an AlphaSmart from [assistive technology agency] and obtained a particular pencil grip for the Student. Tr. 29, pp. 133-34; S.E. 28.

222. In the fall semester of the 2009-10 school year, [special ed teacher] proposed a behavior intervention plan for the Student. [Parent advocate] and the parents objected to it because they did not want the District to impose any negative consequences on him. The team decided to await the results of [private psychologist]'s testing and not to implement the proposed plan. Tr. 29, pp. 138-41.

223. The parents never told [special ed teacher] that the Student wasn't bringing documents home from school with him. Tr. 29, p. 142.

224. [Special ed teacher] and the Mother had a disagreement about a situation in which she requested that [special ed teacher] change the Student's 67 grade on an assignment or have him redo the assignment although the Student had already earned an A in the class and rotated out of it. Tr. 29, pp. 144-45.

225. [Student's counselor] serves as a guidance counselor at [name] Middle School. She met the Student at Camp [C] before the 2009-10 school year began. Tr. 29, pp. 186-87. [Student's counselor] is also the building coordinator for the Oklahoma core curriculum tests. Tr. 29, pp. 194-95.

226. [Student's counselor] was not actually assigned as the Student's counselor, but believed she had a wonderful relationship with the Mother and answered her questions.

[Student's counselor] tried to help the Mother. Tr. 29, pp. 244-45, 311.

227. When the Parents wanted to move the Student out of classes in which they felt other students were bothering him, [Student's counselor] reviewed the scheduling options. She called the Mother and explained that the only way to make the requested changes was to place him in pre-algebra. The Mother said "he would love that because he wanted in pre-algebra anyway." [Student's counselor] told her that it wouldn't hurt him if he didn't do well because he could take pre-algebra again the following year. [Student's counselor] also thought taking pre-algebra as a 7th grader might help the Student's self-esteem. [Student's counselor] only made the change after the Mother approved the proposed plan. Tr. 29, pp. 201-02, 261-62.

228. During a September, 2009, meeting, [Student's counselor] told the group, including the Parents and [parent advocate], that she could do a referral for the Student for social skills and counseling through Tri-City. Tr. 29, pp. 224, 249-50. [Student's counselor] made this suggestion because the Mother wanted him to get along with others. Tr. 29, p. 245. [Student's counselor] believes she also gave the Tri-City referral form to the Parents after the meeting. [Parent advocate] told [Student's counselor] that she thought the referral was "a wonderful idea." Tr. 29, pp. 247-48, 329-30. The Parents said they would get back with [Student's counselor]. [Student's counselor] asked them several times more about this recommendation. Tr. 29, pp. 248-49.

229. [Student's counselor] visited with the teachers on the Student's team and reminded them about the passes he could use to visit [special ed teacher] and [Student's counselor]. Tr. 29, pp. 236-38.

230. The Student told [Student's counselor] that another student spit on him. That student told [Student's counselor] that he "accidentally sneezed." [Student's counselor] told the Student that she didn't think the other student was after him. Tr. 29, pp. 241-42.

231. Someone told [Student's counselor] that someone put barbecue sauce on a feminine napkin and put the napkin on the Student's leg. [Student's counselor] called the Student in, and he stated that it was no big deal. [Student's counselor] thought it was a big deal, and she had the student or another student fill out an incident report. Tr. 29, pp. 253-54.

232. [Student's counselor] discussed bullying four different times with the 7th grade student body. Tr. 29, p. 254.

233. [Student's counselor] does not know that the Student was physically assaulted at school. Tr. 29, p. 272.

234. [Student's counselor] does not administer discipline to students. Tr. 29, pp. 282-83.

235. [Student's counselor] gave the Parents a copy of everything in the Student's confidential folder. Tr. 29, pp. 283-84, 294-95; S.E. 48. [Student's counselor] believes that her secretary, [name], wrote and circled numbers on the bottom of the Student's records. [Student's counselor] did not tell her to. Tr. 29, pp. 295-96.

236. There is no credible evidence that the Student was ever enrolled in the wrong classes at the middle school. Tr. 29, pp. 210-13, 216-17.

237. [Middle school assistant principal] is the Assistant Principal of [name] Middle School. Tr. 30, pp. 8-9. Part of [middle school assistant principal]'s child duties to investigate matters that come to his attention come by either teachers or students. [Middle school assistant principal]'s investigation starts by interviewing the complaining party, determining if there are any witnesses and then speaking to the witnesses. Tr. 30, pp. 10-11.

238. When a student would bring in an incident report, [middle school assistant principal] would read over it and ask student if there are any witnesses to it. He would then make sure if there were witnesses that the witnesses' names were on the report. [Middle school

assistant principal] would then call on the witnesses listed on the incident report talk to them and find out what they knew about the incident. Tr. 30, p. 12.

239. [Middle school assistant principal] participated in the student's IEP meetings at the beginning of the 2009-2010 school year. He also met with the Parents in his office and by phone. Tr. 30, p. 14.

240. The mother was at school everyday. Tr. 30, pp. 13-15.

241. Part of the beginning of the Student's 7th grade year (2009-2010) [middle school assistant principal] would meet with the special education director of [name] Middle School and go over a list of students that were on IEP's. Tr. 30, p. 15.

242. During the Student's 7th grade year (2009-2010) there were six teams at [name] Middle School: Two eighth grade teams, two seventh teams and two six grade teams. Those teams are divided by the teachers on those teams. The Student was on the ["Group 1 Team"] – a team that [middle school Principal] oversaw. Tr. 30, pp. 16-18.

243. [Middle school assistant principal] is not familiar with a death threat made against the Student by student K.G. Tr. 30, p18.

244. [Middle school assistant principal] recalls parents bringing documents with the IEP meetings during 2009-10, including Parent's concerns and a list of students who the Parents believed were bullying the Student. Tr. 30, pp. 19-20.

245. [Middle school Principal] performed her own investigations. Tr. 30, pp. 26-27.

246. During his 7th grade year, the Student was moved from one English class and one math class to another. This was done to prevent this Student and another student from having contact with each other. Tr. 30, pp. 36-37.

247. [Middle school assistant principal] investigated incident reports filled out by the Student. Tr. 30, p. 53.

248. As assistant principal, it is [middle school assistant principal]'s responsibility to handle some disciplinary matters. Tr. 30, p. 55.

249. [Middle school assistant principal] investigated an incident where the Student was hit in the face by another student. The student did not receive any discipline because of this incident. Tr. 30, pp. 54-56.

250. When students are involved in physical altercations [name] Middle School, Administrators try to keep the students away from one another. This included making teachers aware that there maybe an issue between the two students and to keep an eye on them. Tr. 30, p. 57.

251. [Middle school assistant principal] investigated an incident between the Student and student C.R. wherein the Student was hit in the head with a soda can in the cafeteria. Student C.R. was disciplined for this offense. Tr. 30, pp. 60-62.

252. [Middle school assistant principal] kept track of the students who were involved in incidents with the Student by making notations on the incident reports that the Student would fill out. Tr. 30, p. 74.

253. [Middle school assistant principal] recalls that sometime in September of 2009, he called the transportation department and asked them to put the Student at the front of the bus by the bus driver based on parent concerns that were brought to his attention. Tr. 30, pp. 75-78.

254. During his seventh grade a student tutor to the Student to help with math. Tr. 30, pp. 81-83.

255. [Middle school assistant principal] does not have a recollection of a tutor for the student D.H., telling him there are incidents of the Student being bullied. Tr. 30, p. 84.

256. [Middle school assistant principal] did the best job he could investigating those incidents that were brought to his attention by the Student. Tr. 30, p. 84.

257. [Middle school assistant principal] investigated an incident where the Student was allegedly kicked the bottom by a student named T.N. [Middle school assistant principal]'s investigation revealed that this incident was a result of the Student being pushed by another student into the Student. Tr. 30, pp. 87-89.

258. The Student was not disciplined when he was sent to the office by [theater teacher] for disregarding instructions not to enter the school. Tr. 30, p. 95.

259. [Middle school assistant principal] does not recall there being a consistent pattern with respect to the incidents reported to him by the Student. Tr. 30, pp.105-106.

260. [Middle school assistant principal] remembers the Student coming into the office and claiming that a student had grabbed his AlphaSmart and had thrown it into the street behind the art room. [Middle school assistant principal] investigated this incident and spoke with the Student's teacher and several students. The teacher witnessed that it was actually the Student that threw the AlphaSmart onto the road, not other students. Tr. 30, pp. 123-124.

261. [Middle school assistant principal] investigated an incident reported to him by the Student involving he and another student while in ISI. [Middle school assistant principal] investigated the incident and spoke with the ISI teacher, [name]. [ISI teacher] did not witness any of the matters alleged by the Student to have occurred. Tr. 30, pp. 139-143, 146-147.

262. [Middle school assistant principal] only remembers two incidents that he investigated where it had been reported to him that other children were telling the Student that "Chinese eat dogs." Tr. 30, pp. 164-165.

263. Besides [middle school assistant principal], [middle school Principal] investigated the incident reports. Tr. 30, p. 171.

264. [Middle school assistant principal] recalls an incident where he learned of other students per who wanted to fight the Student. Forewarning of this, he called the students in and

they all agreed that they did not want to fight. Tr. 30, pp. 171.

265. [Middle school assistant principal] did not specifically notice the Student copying any of his classmates behaviors. Tr. 30, p. 193.

266. [Middle school assistant principal] was the administrator for the seventh grade team known as the "S. M." Tr. 30, p. 191.

267. [Middle school assistant principal] defines bullying as a continual physical or mental harassment of an individual. Tr. 30, pp. 202-203.

268. After [middle school assistant principal] conducts his investigation, he will contact the parents if he believes it's necessary. Tr. 30, p. 204.

269. [Middle school assistant principal] found Student's binder on the same day that it was reported missing by the mother. Tr. 30, pp. 206-207.

270. With regard to the pencil stabbing incident of [a teacher], [middle school assistant principal] did not accuse the Student of having committed a felony. Rather he informed him that the stabbing incident was a serious matter and that assaulting a teacher is a felony. Tr. 30, p. 211.

271. The Student was involved in an altercation with another student named D.S. during his 7th grade year. When the School District investigated the incident, they found that the Student had been making fun of D.S. because his mother was dead and indicated that there is some kind of sexual relationship between D.S. and his dead mother. [Middle school assistant principal] determined that it was the student's comments that lead D.S. to hit him. Tr. 30, pp. 235-237.

272. The Student received a three day out of school suspension during his 7th grade year for fighting. It was immaterial to [middle school assistant principal] as to whether or not the student hit another student out of self defense because the School District's discipline policy

is if there is a fight, no matter who starts it, whether it's self defense, the students are disciplined according. Tr. 30, pp. 134-135, 239-241.

273. [Middle school assistant principal] does not believe that the Student was bullied during his 7th grade year. While there was some incidents between he and other students, [middle school assistant principal] believes that he took appropriate actions to address the situations that needed to be addressed with the students. Tr. 30, pp. 241-242.

274. During the Student's 7th grade year, his IEP team discussed the parent handouts and materials that they brought to the IEP team meeting. Tr. 30, pp. 242-243.

275. During the Student's 7th grade year, parents attended the meeting with their advocate, [parent advocate]. [Parent advocate] was an active participant at those meetings and the Parents consulted with the [parent advocate] during the meetings. Tr.30, pp. 243-244.

276. [Middle school assistant principal] had discussions with the Student during the seventh grade year regarding ways to address the issues that he was facing with his other students.

277. The Student's mother has an Associate's degree in Applied Science and for the past 10-15 years has been a homemaker and taking care of her children's needs. Tr. 31, pp. 42-43.

278. With respect to the incident that occurred with the Student at Camp C., [student's counselor] did not write up an incident report on the Student. Tr. 31, p. 54.

279. The Student's 6th grade year, there was an incident between himself and student S.A. on the bus. During this incident, there was an exchange of words between the Student and S.A. that resulted in the Student making the comment "your momma" to S.A. As a result of the Student saying "your momma" to S.A., there's a physical altercation between the two. Tr. 31, pp. 92-95.

280. In April 2009, the Student's mother made [middle school principal] aware that the Student's jacket was missing. [Middle school principal] investigated this matter. Tr. 31, pp. 101-102.

281. The Student's mother testified that on the first day of the Student's 7th grade year (2009-2010), the Student got off the bus "with blood gushing from his knee." The Student's mother took photographs of the Student's knee and deemed in Parent's Exhibit 30. Tr. 31, pp. 104-107; PE 30.

282. The wounds sustained to the Student's knee is evidenced parent's Exhibit 30 nearly reflects a scratch to the Student's knee that would not have caused the "gushing" of blood as testified to by the Student's mother. Parent's Exhibit 30. Tr. 31, p. 110; PE 30.

283. Student's mother testified that with respect to incidents occurring during his 7th grade year, she kept track them in two ways. One was to type the incidents and have the Student turn them into the School District and the other was to keep a log of the incidents on her personal computer. Tr. 31, p. 118.

284. Student's mother beliefs of bullying is repeated intentional harm or harassment of an individual who lacks the ability to defend themselves thereby creating an imbalance of power. Tr. 31, pp. 121-122.

285. Although the Student's mother testified that there were multiple death threats against the Student that they were aware of, she only notified the School District of one such threat. Tr. 31, p. 123.

286. The Student's mother testified that she reported an incident to [middle school assistant principal] that occurred on August 25, 2009 at the public library involving another student allegedly threatening to fight the Student. [Middle school assistant principal] said that he would keep an eye on the student, C.R. Tr. 31, pp.126-131.

287. [Date] IEP team meeting, [middle school Principal] told the parents that she wanted them to report any and all incidents that the parents were aware of where other children had mistreated the Student and wanted the parents to write up as many as they could remember by dates and information. Tr. 31, p. 145.

288. The parent's provided the written reports of incidents involving the Student to [middle school Principal] on or about [date]. [Middle school Principal] reviewed the stack of incident reports provided by the Parents and asked the Parents to identify the three students who were the most concern to the Parents. [Middle school Principal] also told mother that from her review of the incident reports it appeared that the incidents were occurring around the same time frame and asked if the Parents had looked at the possibility of changing the Student's class schedule said that these problems might be eliminated. The Student's schedule was changed that day. Tr. 31, p. 145-147.

289. Prior to this meeting on [date], [Middle school Principal] informed the Student's mother that she was aware of an incident involving another student kicking the Student's lunch pail and that she had already addressed the incident and the other student had already been dealt with. Tr. 31, pp. 147-149.

290. At a meeting with the parents prior to [date], [middle school Principal] told the parents that she wanted them to assist the student in writing up any incident that occurred against him at school and to turn it in to her office so that it could be investigated. Tr. 31, pp.149-150.

291. When [middle school Principal] and the Student's mother met on September 21, 2009, the Parents had provided well over twenty incident reports involving the Student. Tr. 31, pp. 168-169.

292. Student's mother testified on September 25, 2009, [middle school assistant principal] stated that he had spoken to students C.R. and had told C.R. that he was not to be

within ten feet of the Student or there will consequences and that there was a strict no tolerance for him to be near the Student. Tr. 31, p. 176.

293. Approximately three days after classes started during the Student's 7th grade year, Student's mother made [special ed teacher] aware that the Student's schedule had incorrectly placed him in a physical education class instead of a special skills class. Student's schedule was changed immediately after this fact was brought to [special ed teacher]'s attention. Tr. 31, pp. 223-226.

294. Student's mother has no first hand knowledge that the Student received the lower grade in art during his 7th grade year because he used an AlphaSmart. Tr. 31, pp. 282-285.

295. The Student's mother has no experience than teaching other than homeschooling. Tr. 31, p. 295.

296. During his 7th grade year there were a number of personal items of the Student went missing, some of which later were found and some which were never found. The Parent's can only surmise that these items were taken by other students and not misplaced by the Student. Furthermore, the parents do not know the names of any students who allegedly took any of these items. But with regard to them, District personnel always assisted the parents in searching for them at school. Tr. 31, pp. 313-332.

297. The Student's goals in his IEP for the 6th and 7th grade years were discussed at IEP team meetings. Tr. 31, pp. 349-350.

298. During this Student's 6th grade year, [middle school principal] recommended it would be beneficial for the Student if he would go out and purchase an MP3 player with discreet earbuds that could be placed in his ears by running the cords up through his clothing and where only a little piece of the earbud would stick out so it could keep him distracted from engaging in conversations on the bus. Student's mother, [middle school principal], and [Director of Student

Services] also knew it would be best if the Student sat in the first diagonal across from the bus driver so that the bus driver could keep an eye on the Student. Tr. 32, pp. 9-13.

299. February of 2010, new bus driver was assigned to the student's bus who changed the seating assignment for the student. Upon being advised of this, [middle school assistant principal] advised that he would investigate this and that he and special education teacher [name] would speak to the new bus drivers to make sure they understood the student's accommodations on the bus. Tr. 32, pp. 14-17.

300. He did not have any friends in elementary school. Tr. 32, p. 35.

301. In middle school, the Student had a sparse number of friends with whom he had minimal social interaction. Tr. 32, pp. 37-38.

302. Parents admit receiving on April 28, 2009, a thick packet of student behavior information sheets that have been placed in the Student's binder by [special ed teacher]. Tr. 32, pp.40-41.

303. The Parent's did not tell the Student that he had autism until later in the fall of 2009. Tr. 32, p. 57.

304. Student's homeroom teacher in the 6th grade was [name]. Tr. 32, p. 87.

305. When the Student was in 6th grade, he had a folder that the District would put paperwork in for the Student which was then put in his backpack and brought home to the parents. Tr. 32, pp. 86-87.

306. The Parents admit that during the Student's 7th grade year they received assignment related work that was sent home with the Student. Tr. 32, pp. 94-95.

307. The Student's mother had not taken any elementary or secondary education classes that relate to education, as it relates to teaching, and as it relates to educational curriculum. Tr. 32, pp. 95-97.

308. Part of the adaptations of the Parent's presented at the September 15, 2009 IEP team meeting were from an evaluation conducted by [private psychologist] in 2004. Tr. 32, pp. 98-101.

309. Student's mother testified that she does not know who put together the list of accommodations that were provided by the parents to the IEP team on September 15, 2009. Tr. 32, pp. 98-104.

310. The Parents continued discarding assignments of the Student all the way through 7th grade. Tr. 32, pp. 112-114

311. The Student was withdrawn by his Parents from in May of 2010 shortly after he had served a three day suspension. Tr. 32, p. 116.

312. The Student's mother could not testify as to any events occurring to the Student after a return from the three day suspension in May of 2010 until the time he was withdrawn from school by his parents. Tr. 32, pp. 116-120.

313. The Student's mother was at school an awful lot because she wanted to be the Student's assistant as much as possible, to make sure she understood as much as she could help him to without actually physically being present in the classroom. Tr. 32, p. 122.

314. The Student's mother testified that she never witnessed the Student acting inappropriately either in the hallways or in a classroom at school. Tr. 32, pp. 122-123.

315. Parent testified that she does not believe that the Student instigated any of the incidents that she believe occurred to the Student. Tr. 32, pp. 122-123.

316. The Student's mother testified that she believes that the Student has difficulty initiating conversations with his peers. Tr. 32, p. 123.

317. Other than interrupting someone before they are finished making a statement and trying to become a part of a conversation to which he is not already a party, the Parent was

unable to identify any behaviors that the Student engaged that she believed was inappropriate when he was attempting to interact with his peers. Tr. 32, pp. 125-129

318. Other than acting silly, the Student's mother testified that she has not observed the Student modeling any behavior, good, bad or indifferent, from other people he has observed. Tr. 32, pp. 133-135.

319. The Student's mother testified that between July 1, 2008 and May 20, 2010, the Parents never saw any type of social skill training for the Student outside of the School District from anybody qualified to provide such training. Tr. 32, pp. 139-141.

320. The Student's mother does not believe he earned the straight A's he received in 7th grade. Tr. 32, p. 142.

321. At the time the Student's mother signed the Student's IEPs in place during the 6th and 7th grade, she thought that she had enough information to sign them. Tr. 32, pp. 143-144.

322. The Student's mother admits receiving a copy of "Parent's Rights" when she attended IEP meetings during the Student's 6th and 7th grade years. Tr. 32, pp. 144-146.

323. The School District never denied the Student bus transportation at any time during his 6th or 7th grade years. Tr. 32, pp. 160-161.

324. The Parents wanted the Student to ride the bus said he would have an opportunity to interact with his peers and because they thought it would be an appropriate special skills training moment for him. Tr. 32, pp. 161-162.

325. The preponderance of the evidence demonstrates that the Student was not subjected to a pattern of bullying during the 2009-10 school year.

326. The preponderance of the evidence demonstrates that the Student received a free appropriate public education during the 2009-10 school year.

327. The preponderance of the evidence demonstrates that the Student did not need

extended school year services during the summer breaks of 2010 to receive a free appropriate public education.

328. During the Student's 6th or 7th grade years, the Student's mother never asked the School District for an adult aide to sit next to the Student on the bus. Tr. 32, pp. 162-163.

329. During the Student's 6th and 7th grade years, he wrote a bus with regular education students, and not a bus for children with special needs. Tr. 32, pp. 162-163.

330. During the 7th grade, the Student did not have a locker isolated from his peers. Tr. 32, p. 164.

331. The only out of school tutoring assistants that the Student received in math was from his parents and other family members. Tr. 32, pp. 167-168.

332. The Student's mother testified that she can not recollect specificity any incident involving the Student that occurred in the hallway when other students were not present. Tr. 32, pp. 168-170.

333. During the Student's 7th grade year, his mother observed him tease others. Tr. 32, p. 170-171.

334. The Student's mother testified that she does not recall ever going up to any students to whom the student was teasing and asking if the Student was acting inappropriately toward them. Tr. 32, p. 171.

335. The Student's mother testified that during the Student's 7th grade year she observed the Student teasing others that was both appropriate and inappropriate. Tr. 32, pp. 176-178.

336. The Student's mother testified that when the Student got off the bus with blood gushing from his knee, the injury was not sufficient for her to seek the assistance of a doctor and that he did not require any stitches. Tr. 32, p. 178; PE 30.

337. Parent's never provided [private occupational therapy center] a copy of [occupational therapist]'s report. Tr. 32, p. 184 to 185.

338. At the [date] IEP team meeting, the Parent's never made a request for any type of evaluation for their son to Principal [name]. Tr. 32, pp. 205-212.

339. At the [date] IEP team meeting, [middle school principal] did not deny the Parents any request for evaluation of the Student. Tr. 32, pp. 206-212.

340. At the [date] IEP team meeting, the Parents did not request any type of evaluation for the Student. Tr. 32, pp. 207-212.

341. As the Administrator Representative and a member of the Student's IEP team, [middle school principal] has never denied any testing that the Parent's had requested for the Student. Tr. 32, p. 212.

342. At the Prehearing Conference conducted on August 5, 2010, the Parents' counsel informed the Hearing Officer that the Student was incompetent to testify at the due process hearing. Prehearing Conference, August 5, 2010, p.23.

343. Hearing Officer acknowledges that Parents' counsel is objecting to almost every question and his objections are a little bit unique and "oftentimes, frankly, irrelevant" and has unnecessarily slowed down the process. Tr. 19, p. 322.

344. Hearing Officer finds Parents' counsel's objections meritless. Tr. 26, p.157.

345. Hearing Officer tells Parents' counsel that his last two objections are without merit. Tr. 29, pp. 104-06.

346. Hearing Officer comments that Parents' counsel is belaboring the point. Tr. 13, p. 174.

347. Hearing Officer comments that Parents' counsel's questions are often confusing. Tr. 13, p. 178.

348. Hearing Officer tells Parents' counsel that his questions make no sense and that Parents' counsel is changing his questions he is asking while explaining his questions to the Hearing Officer in response to an objection. Tr. 14, pp. 169-70.

349. Hearing Officer tells Parents' counsel that he is having trouble understanding the Parents' case due to Parents' order of witnesses and says it would be more efficient for Parents' counsel to handle the hearing by calling the Student's mother as a witness. Tr. 14, p. 179.

350. Hearing Officer notes that Parents' counsel is wasting time with a witness (B. [substitute teacher]) and eventually takes over the questioning of the witness. Tr. 14, pp. 202-04, 213-14.

351. Hearing Officer comments that sometimes Parents' counsel makes questioning so convoluted that while Parents' counsel may have a point it is hard to tell. Tr. 14, p. 335.

352. Hearing Officer takes issues with the way Parents' counsel is asking his questions – around issues – and admonishes him to get away from background information and on to the substance of the issues. Tr. 15, pp. 72, 75.

353. Hearing Officer comments that Parents' counsel's questions appear like Parents' counsel is rehashing a witness's testimony (Schendel). Tr. 15, pp. 92-93.

354. Hearing Officer says repeatedly that Parents' counsel is presenting his case by presenting information with no evidentiary context and suggests Parents' counsel should do it differently. Tr. 15, pp. 169, 186-87, 205-06.

355. Hearing Officer admonishes Parents' counsel on the irrelevancy of his questions to a witness (R.). Tr. 15, p. 201.

356. Sixteen minutes into Parents' counsel's questioning of a witness (S.), the Hearing Officer tells Parents' counsel that he does not understand why the witness is testifying. Tr. 16, pp. 20-21.

357. Hearing Officer tells Parents' counsel to pick up the pace of his questioning. Tr. 16, p. 112.

358. Hearing Officer repeatedly asks Parents' counsel to hone in on information regarding the Student, not general information during witness (E.) testimony. Tr. 17, pp. 9-13, 15-17, 19-20, 29-31.

359. Parents' counsel had another attorney (Second Parents' counsel), assume the direct examination of a [occupational therapist]. Second Parents' counsel is repeatedly told by the Hearing Officer to move things along, stop going over matters Parents' counsel has already asked and rehashing the same testimony, and ever interposes a break in the proceedings so that Second Parents' counsel can get prepared so the hearing can continued more efficiently. Tr. 17, pp. 49, 59-60, 65-66.

360. Hearing Officer notes the irrelevancy of Parents' counsel's line of questioning of witness (E.) regarding tally marks. Tr. 17, pp. 170-74, 183, 186-88.

361. Hearing Officer tells Parents' counsel he does not understand the purpose of the questioning of witness (E.) and tells Parents' counsel to move to something that makes sense. Tr. 17, pp. 199-200.

362. Throughout Parents' counsel's questioning, the Hearing Officer takes over for Parents' counsel and asks questions instead. The Hearing Officer also threatens to excuse the witness (E.) if Parents' counsel continues to ask irrelevant questions or ignores his directives. The Hearing Officer also tells Parents' counsel that he has exhausted an incident to death. Tr. 17, p. 298.

363. Hearing Officer tells Parents' counsel not to build, just to get to the point. Tr. 18, pp. 100-01.

364. Hearing Officer repeatedly warns Parents' attorney not to ask about dates outside

of the statute of limitations or the Hearing Officer will dismiss the witness. Tr. 19, pp. 54-56.

365. Hearing Officer repeatedly warns Parents' attorney not to ask about the discipline of other students or the Hearing Officer will dismiss the witness. Tr. 19, p. 107.

366. Hearing Officer tells Parents' counsel that he is going over evidence already in the record and "is just wasting [Hearing Officer's] time." Tr. 19, p. 208.

367. Parents' counsel attempting to admit documents already in the record. Tr. 19, pp. 217-18.

368. Hearing Officer urges Parents' counsel to find something new or the Hearing Officer will pass the witness. "[W]e're just going over the same material, over and over and over. Tr. 19, p. 221.

369. Hearing Officer requests Parents' counsel to get to the point with his questioning. Tr. 19, pp. 225-26.

370. Hearing Officer advises Parents' counsel that Parents should have testified first so Hearing Officer would understand the constellation of their complaints. Tr. 19, pp. 236-37.

371. Hearing Officer tells Parents' counsel that the hearing is becoming tedious and to "get somewhere quickly." Tr. 19, p. 246.

372. Hearing Officer tells Parents' counsel that he is getting tired of questioning and that Parents' counsel has already covered every conceivable topic with witness (L.). Tr. 19, p. 258.

373. Hearing Officer agrees that Parents' counsel is wasting time questioning witness (L.) and Hearing Officer tells Parents' counsel to move to something about which he has questioned the witness. Tr. 20, p. 88.

374. Hearing Officer tells Parents' counsel that he has heard all about Ms. E. already and to move on in his questioning. Tr. 20, pp. 122-26.

375. Hearing Officer tells Parents' counsel that he is not going to permit the rehashing of witness's (L.) direct examination and to move on to other area of questioning. Tr. 20, p. 167.

376. Hearing Officer tells Parents' counsel to "Ask something within the scope of [School District Counsel]'s cross and that has not been gone over *ad nauseum*." Tr. 20, pp. 168-70, 203-04.

377. Hearing Officer agrees that Parents' counsel has had 20 days to separate the wheat from the chaff. Tr. 20, pp. 264-65.

378. Hearing Officer notes Parents' counsel is not asking relevant questions of the witness (W.). Tr. 20, pp. 285-86.

379. Hearing Officer warns Parents' counsel about asking witness about discipline of other students. Tr. 21, pp. 144-45.

380. Hearing Officer tells Parents' counsel to stop asking witness (W.) about Student's detention as "This does not matter." Tr. 22, p. 32.

381. Hearing Officer tell Parents' counsel that questions regarding pencil poking is not relevant of much of anything. Tr. 22, p. 103.

382. Hearing Officer tells Parents' counsel to stop objecting to testimony regarding the Student's grades. Tr. 22, pp. 108-09.

383. Hearing Officer states that he is tired of having to go over Parents' counsel's questions about what was on [special ed teacher]'s pre-[date] IEP draft and why. Tr. 28, pp. 91, 93, 94-97.

384. Hearing Officer continues to tell Parents' counsel to move on, as the witness ([special ed teacher]) has already testified to the matters being asked about by Parents' counsel. Tr. 28, p. 129.

385. Hearing Officer tells Parents' counsel that if he is going to ask witness ([special

ed teacher]) about a document, at least ask him about a document the witness ([special ed teacher]) prepared. Tr. 28, p. 150.

386. Hearing Officer tells Parents' counsel that he is beating a dead horse with his line of questioning. Tr. 28, p. 168.

387. Hearing Officer asks why Parents' counsel is asking certain questions because it only elicits cumulative testimony. Tr. 28, pp. 198-99

388. Hearing Officer tells Parents' counsel to move to something relevant very quickly. "My patience is getting short." Tr. 28, p. 216.

389. Hearing Officer tells Parents' counsel that his questions are wasting time. Tr. 28, p. 218.

390. Hearing Officer does not understand why Parents' counsel is belaboring a point, and tells him "Your line of questioning makes no sense to me." Tr. p.28, p. 222.

391. Hearing Officer tells Parents' counsel "[T]his is a monumental waste of time the way you are doing this, [Parents' counsel]." Hearing Officer also tells Parents' counsel he has to be more efficient. Tr. 28, pp. 223-24.

392. Hearing Officer tells Parents' counsel that his line of questioning is not necessary. Tr. 28, p. 261.

393. Hearing Officer admonishes Parents' counsel for relevancy issues and tells Parents' counsel that "I am this close to passing this witness." Tr. 28, p. 270.

394. Hearing Officer tells Parents' counsel that "I am losing my patience, because he (witness) has told us this." Tr. 28, p. 288.

395. Hearing Officer tells Parents' counsel that he's walking the line and warns Parents' counsel. Tr. 28, p. 289.

396. Hearing Officer tells Parents' counsel to move on because Parents' counsel's

questions are not material. Tr. 28, pp. 323-24.

397. Parents' counsel explains why he should get more time for a witness's ([special ed teacher]'s) direct examination and the Hearing Officer tells Parents' counsel that these areas of testimony are cumulative. Tr. 29, pp. 101-03.

398. Hearing Officer tells Parents' counsel that in his questions to the witness ([special ed teacher]), Parents' counsel is "unnecessarily dragging out this particular aspect of this hearing." Parents' counsel is argumentative with the Hearing Officer and the Hearing Officer admonishes Parents' counsel for commenting on the witness's [[special ed teacher]'s] truthfulness. Tr. 29, pp. 178-79.

399. Hearing Officer tells Parents' counsel to stick with questions about the Student. Tr. 29, p. 192.

400. Hearing Officer tells Parents' counsel that the identification of another student is irrelevant. Tr. 29, pp. 226-28.

401. Hearing Officer states that questions about mimicking to witness ([Student's counselor]) are a waste of time. Tr. 29, p. 233.

402. Hearing Officer notes that Parents' counsel is asking questions about matters already covered. Tr. 29, p. 252.

403. Hearing Officer sustains objection to Parents' counsel's argumentative question and tells Parents' counsel that he is wearing on the Hearing Officer's nerves. Tr. 29, p. 262.

404. Hearing Officer tells Parents' counsel that he needs to hit some relevant testimony. Tr. 29, p. 275.

405. Hearing Officer states that he has no idea why Parents' counsel is asking the witness ([Student's counselor]) something for which another teacher ([special ed teacher]) is responsible. Tr. 29, p. 301.

406. Hearing Officer warns Parents' counsel that if he does not move to another topic, he will excuse the witness ([Student's counselor]). Tr. 29, p. 305.

407. Hearing Officer tells Parents' counsel that hearing testimony is not a fishing expedition. Tr. 29, p. 314.

408. Hearing Officer admonishes Parents' counsel for going back to an area of questioning already covered. Tr. 29, p. 316.

409. Hearing Officer notes that he has sat through 30 days of testimony and has not heard any testimony about alleged bullying from use of the Pass System. Tr. 29, p. 322.

410. Hearing Officer warns Parents' counsel that the next question out of his mouth better be relevant or he will pass the witness. Tr. 29, p. 324.

411. Hearing Officer notes that Parents' counsel is making a mountain out of a mole hill. Tr. 29, p. 335.

412. Hearing Officer wants Parents' counsel to move on in his questioning or the witness would be passed. Tr. 30, p. 50.

413. The conduct of Parents' counsel at the hearing unreasonably protracted the due process hearing as a result of (a) his lack of familiarity and understanding with the IDEA, (b) his lack of familiarity with the applicable policies and procedures that govern due process hearings in Oklahoma, (c) his lack of organization in presenting the Parents' case both in his assembly of exhibits for hearing and the questioning of witness, (d) failing to appear at hearing at the required time, (e) his often meritless objections to School District's counsel, (f) his arguments with the Hearing Officer after evidentiary ruling had been rendered, (g) his treatment of hearing testimony as though it were deposition testimony, and (h) his calling of witnesses who offered cumulative testimony, and (I) his questioning of witnesses on matters that were either irrelevant or cumulative in nature.

Conclusions of Law

1. A parent or LEA/agency shall request an impartial due process hearing within two years of the date the parent or LEA/agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the state has an explicit time limitation for requesting such a hearing under this part, in such time as the state law allows.

Exceptions to the timeline—the timeline shall not apply to a parent if the parent was prevented from requesting the hearing due to:

"Specific misrepresentations by the LEA/agency that it had resolved the problem forming the basis of the complaint; or

"The LEA/agency's withholding of information from the parent that was required under this part to be provided to the parent.

20 U.S.C. § 1415(b)(6)(B).

2. Oklahoma does not have an explicit time limitation for requesting a special education due process hearing.

414. The IDEA two-year statute of limitation bars all claims made by the Parents against the District prior to June 21, 2008.

415. The District's obligation under the IDEA is to provide the Student a "free appropriate public education." The IDEA defines a free appropriate public education" as follows:

The term "free appropriate public education" means special education and related services that --

- (A) have been provided at public expense, under public supervision and direction, and without charge;
- (B) meet the standards of the State educational agency;
- © include an appropriate preschool, elementary, or secondary school education in the State involved; and

- (D) are provided in conformity with the individualized education program required under section 1414(d).

20 U.S.C.A. § 1402(9).

416. The IDEA defines the term "special education" as:

[S]pecially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including --

- (A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and
- (B) instruction in physical education.

20 U.S.C.A. § 1401(29); 34 C.F.R. § 300.39(a)(1).

417. "Specially designed instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction --

- (I) To address the unique needs of the child that result from the child's disability; and
- (ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children."

20 U.S.C.A. § 1401(26); 34 C.F.R. § 300.34(a).

418. The IDEA defines the term "related services" as:

"General. Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training."

419. General. As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a

meeting in accordance with §§300.320 through 300.324, and that must include –

- (1) A statement of the child's present levels of academic performance, including –
 - (I) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or
 - (ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;
- (2) (I) A statement of measurable annual goals, including academic and functional goals designed to –
 - (A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and
 - (B) Meet each of the child's other educational needs that result from the child's disability;

(ii) For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;
- (3) A description of –
 - (I) How the child's progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and
 - (ii) When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;
- (4) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child –
 - (I) To advance appropriately toward attaining the annual goals;
 - (ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and

to participate in extracurricular and other nonacademic activities;
and

- (iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;
- (5) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(4) of this section;
- (6) (I) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 612(a)(16) of the Act; and
 - (ii) If the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or districtwide assessment of student achievement, a statement of why –
 - (A) The child cannot participate in the regular assessment; and
 - (B) The particular alternate assessment selected is appropriate for the child; and
- (7) The projected date for the beginning of the services and modifications described in paragraph (a)(4) of this section, and the anticipated frequency, location, and duration of those services and modifications.

420.(a) Development of IEP.

- (1) General. In developing each child's IEP, the IEP Team must consider –
 - (I) The strengths of the child;
 - (ii) The concerns of the parents for enhancing the education of their child;
 - (iii) The results of the initial or most recent evaluation of the child; and
 - (iv) The academic, developmental, and functional needs of the child.
- (2) Consideration of special factors. The IEP Team must –
 - (I) In the case of a child whose behavior impedes the child's

learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior;

- (ii) In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;
- (iii) In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;
- (iv) Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction the child's language and communication mode; and
- (v) Consider whether the child needs assistive technology devices and services."

421. Removal for 10 School Days or Less in a School Year

- a. School personnel may remove a child with a disability who violates a school code of conduct to an appropriate interim alternative educational setting for not more than 10 consecutive school days, and for additional removals of not more than 10 consecutive school days, in the same school year for separate incidents of misconduct.
- b. A public agency is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 days or less in that school year, if it provides services to a child without disabilities who is similarly removed. No prior determination by the IEP team of whether the child's misconduct is caused by the disability is required for this type of short-term removal.

- c. Days served in an in-school suspension would not count as days suspended out-of-school as long as the child is afforded the opportunity to continue to participate in the general curriculum, although in another setting, to progress toward meeting the goals as set out in the child's IEP, and continues to receive the special education and related services specified in the IEP. Portions of a school day that a child has been suspended out-of-school would count as suspension and would be included in determining whether the child had been removed for more than 10 cumulative school days or subjected to a change of placement under 34 CFR § 300.536.

Policies and Procedures for Special Education in Oklahoma, pp. 162-63.

422. It is permissible to review existing data to determine needed evaluation data as part of the IEP Review meeting. If additional reevaluation data are not needed to determine whether the child continues to be a child with a disability and to determine the child's educational needs, the LEA will document this on the IEP Review (OSDE Form 8 or Reevaluation Addendum) for the three-year reevaluation, or more often for reevaluation consideration as needed. The IEP Review (OSDE Form 8) and the Reevaluation Addendum will document the three-year reevaluation process. In this case a MEEGS (OSDE Form 5) is not necessary. The parent will be provided with a copy of the IEP Review (OSDE Form 8) and/or Reevaluation Addendum informing them of the team's decision and, as appropriate, the Review of Existing Data (OSDE Form 3). Parents are to be informed of their right to request an assessment to determine whether their child continues to be a child with a disability. The LEA is not required to conduct the assessment if the team determines additional data are not needed, unless the parent requests data to determine whether the child continues to be eligible as a child with a disability and to determine the child's educational needs under the IDEA (34 CFR § 300.8). If the determination of the team, including the parent(s), is that no additional evaluation data are needed, the date of the IEP Review (OSDE Form 8) will document the date of the current three-year reevaluation. *Id.*, pp. 68-69 and 76.

423. A reevaluation will be conducted at least once every three years, or more often if conditions

warrant the need for reevaluation, or if requested by the child's parent or teacher in accordance with the requirements of 34 CFR §§ 300.304 through 300.311. *Id.*, p. 74.

424.If additional evaluation data are deemed necessary, the additional information, assessments, or evaluations must be completed and the team must reconvene on or before the three-year anniversary of the previous initial evaluation or reevaluation (i.e., MEEGS (OSDE Form 5) or IEP Review (OSDE Form 8 or Reevaluation Addendum), if used to document the previous reevaluation). The IEP team must consider the additional and existing evaluation results and, as appropriate, revise the IEP. The parent(s) must be provided a copy of the evaluation report and the documentation of the team decisions. *Id.*, p. 76.

425.It is the responsibility of the LEA to provide special education and related services to children with disabilities in accordance with an IEP. This does not require that the LEA, teachers, or others who implement the IEP are to be held accountable if a child does not achieve all of the stated annual goals and short-term objectives or benchmarks (for children who are taking alternate assessments aligned to alternate achievement of the standards) established on the IEP. However, teachers and responsible personnel of LEAs must make good faith efforts to implement the IEP and assist the child in achieving these annual goals and benchmarks or objectives. *Id.*, p. 116.

426.In *Board of Education v. Rowley*, 458 U.S. 176, 102 S. Ct. 3034, 73 L. Ed. 2d 690 (1982), the United States Supreme Court discussed the meaning of a "free appropriate public education." The Court identified the following two-part test to determine whether a school district is meeting its obligation to provide a child with a disability a free appropriate public education:

Therefore, a court's inquiry in suits brought under § 1415(e)(2) is twofold. First, has the State complied with the procedures set forth in the Act? And second, is the individualized educational program developed through the Act's procedures

reasonably calculated to enable the child to receive educational benefits? If these requirements are met, the state has complied with the obligations imposed by Congress and the courts can require no more.

458 U.S. at 206-07, 102 S. Ct. at 3051, 73 L. Ed. 2d at 712 (footnote omitted).

427. The IDEA does not require public schools to maximize a child's potential or to provide the best possible program. *Rowley*, 458 U.S. at 200-01, 102 S. Ct. at 3048, 73 L. Ed. 2d at 708; *Johnson v. Independent School District No. 4*, 921 F.2d 1022, 1028 (10th Cir. 1990), *cert. denied*, 114 L. Ed. 2d 79 (1991). Rather, a child's entitlement to a free appropriate public education is satisfied by the provision of "personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." *Rowley*, 458 U.S. at 203, 102 S. Ct. at 3049, 73 L. Ed. 2d at 710. The benefit conferred must be "meaningful." *Cedar Rapids Community School District v. Garret F.*, 526 U.S. 66, 119 S. Ct. 992 (1999).

428. When determining whether a student's educational program is reasonably calculated to confer educational benefit, "due weight" must be given the opinions of school officials responsible for the student's education. *A.E. v. Independent School District No. 25*, 936 F.2d 472, 475 (10th Cir. 1991).

429. The burden of proof in an administrative hearing challenging an IEP is properly placed upon the party seeking relief. *Shaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528, 537 (2005). As the parties attacking [student's] educational programming, the Petitioners bear the burden of proof in this case.

430. "In all matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate education only if the procedural inadequacies (i) impeded the child's right to a free appropriate public education; (ii) significantly impeded the parents' opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education to the parents' child; or (iii) caused a deprivation of educational

benefits." 20 U.S.C. § 1415(f)(3)(E)(ii), *O'Toole v. Olathe District Schools Unified School District No. 233*, 144 F.3d 692, 707 (10th Cir. 1998) (quoting *Roland M. v. Concord School Committee*, 910 F.2d 983, 994 (1st Cir. 1990)).

431.No procedural deficiencies deprived the Student of an appropriate education, significantly impeded the Parents' opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education to the Student or caused a deprivation of educational benefits to the Student.

432.Each IEP developed for the Student in the District complied with applicable law and requirements, and the educational services provided to the Student in the District addressed his unique educational needs.

433.School districts determine the appropriate methodology to be used to implement a child's IEP. Parents, "no matter how well motivated—do not have a right under IDEA to compel the school district to provide a specific program or employ a specific methodology for the education of their disabled child." *Logue by and through Logue v. Shawnee Mission Pub. Sch. Unified Sch. Dist. No. 512*, 959 F. Supp. 1338, 1351 (D. Kan. 1997), *aff'd*, 153 F.3d 727 (1998); *see also Tucker by Tucker v. Calloway County Bd. of Educ.*, 136 F.3d 495, 506 (6th Cir. 1998) ("Case law is clear that they [parents] are not entitled to dictate educational methodology or to compel a school district to supply a specific program for their disabled child.").

434.Neither federal nor state law, regulations or requirements direct or discuss the use of a particular methodology for children with autism.

435.The District could select any methodology or combination of methodologies it deemed appropriate to implement the Student's IEPs.

436.An IEP is not a contract and a school district is not obligated under the IDEA to adhere to

each and every provision of an IEP. No denial of FAPE exists where a school district's failure to implement a provision of an IEP is non-material to the student's education. *Ms. K. v. City of South Portland*, 407 F. Supp.2d 290 (D. Me. 2006); *Van Duyn v. Baker School District J5*, 502 F.3d 811 (9th Cir. 2007).

437. In order to establish a denial of a FAPE due to alleged bullying, a teacher or administrator must have been "deliberately indifferent to teasing of a disabled child and the abuse [must have been shown to be] so severe that the child can derive no benefit from the services that he or she is offered by the school district[.]" *M.L. v. Fed. Way Sch. Dist.*, 394 F.3d 634, 650-51 (9th Cir. 2005); *Cf. Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629, 633, 119 S.Ct. 1661, 143 L.Ed.2d 839 (1999) (holding that to violate Title IX "harassment ... [must be] so severe, pervasive, and objectively offensive that it effectively bars the victim's access to an educational opportunity or benefit").

438. The Parents failed to prove by a preponderance of credible evidence that the Student was subjected to bullying or a pattern or bullying in the District at any time.

439. The Parents failed to prove by a preponderance of credible evidence that the District denied the Student a free appropriate public education in the least restrictive environment. *L.B. v. Nebo School District*, 379 F.3d 966 (10th Cir. 2004) (establishing LRE standard for Tenth Circuit).

440. The Parents failed to prove by a preponderance of credible evidence that the District failed to report progress for the Student as often as it reported progress for non-disabled children.

441. The Parents failed to prove by a preponderance of credible evidence that the District failed to provide related services to the Student that he needed to obtain a free appropriate public education.

442. The Parents failed to prove by a preponderance of credible evidence that the District failed

to ensure that assistive technology devices were made available to the Student.

443.The Parents failed to prove by a preponderance of credible evidence that the District failed to comply with the IDEA or its own policies concerning the imposition of discipline upon the Student. A manifestation determination was not required for the Student.

444.The Parents failed to prove by a preponderance of credible evidence that the District failed to implement the Student's IEPs in any significant way.

445.The Parents failed to prove by a preponderance of credible evidence that the District failed to reevaluate the Student as required by the IDEA.

446.The Parents failed to prove by a preponderance of credible evidence that the District failed to hold the Student's multidisciplinary meeting in a timely manner.

447.The Parents failed to prove by a preponderance of credible evidence that the Student's IEPs do not contain appropriate modifications or accommodations to address the Student's sensory or other needs.

448.The Parents failed to prove by a preponderance of credible evidence that any delay in completion of the independent evaluation by [private occupational therapy center] was the fault of the District. A preponderance of credible evidence demonstrates that any delay has been caused by the Parents' failure or refusal to (a) provide information requested from [private occupational therapy center], and (b) sign a consent form authorizing the District to release [occupational therapist] 's 2009 occupational therapy evaluation to [private occupational therapy center].

449.The Parents failed to prove by a preponderance of credible evidence that any District employee threatened the Student with incarceration.

450. The Parents failed to prove by a preponderance that the student was denied a FAPE.

451.The Parents' requests for relief, including but not limited to their requests for compensatory

education and monetary reimbursement, are denied.

Specific Determinations of Credibility

1. [Name]: Her testimony was very credible. She was a speech therapist who worked directly with the student. Her testimony was presented in such detail and expertise it made her testimony very persuasive.
2. [Name]: [private psychologist] testimony and reports were objective and free of rank speculation. Her testimony was factual. She demonstrated a clear grasp on various educational issues and how they related to the student in this case. Her testimony was very credible.
3. [Name]: [middle school assistant principal]'s testimony is suspect. His memory seems unreliable and he further demonstrated a limited understanding of special education issues.
4. [Name]: [special ed teacher]'s testimony was very credible. He demonstrated a understanding of special education. He described in detail the efforts that were undertaken to provide educational benefit to the student. Petitioner's counsel argued that the progress toward the goals put on the goals page by [special ed teacher] was inappropriate; that they were not somehow scientifically formulated. However, [special ed teacher] met the standards as required by law when completing the goals page. During the hearing, there were a number of questions about boxes on IEP and other documents as being "pre-checked". The implication being that the documents were somehow fraudulent. This is a completely irrelevant argument. It doesn't matter whether the boxes were checked before or during an IEP meeting, the fact is the parents agreed to the actions evidenced in the documents. There is no evidence that, contemporaneously with the execution of any of the education documents, that the parents disagreed with their contents.

Analysis

A. Burden of Proof

The Petitioner bears the burden of proof in this case. The party opposing any IEP or failure to identify a child for special services must prove by a preponderance of the evidence that a child's special needs are not being met as required by the Act, *Johnson v. Independent School District No. 4 of Bixby*, 921 F.2d 1022, 1026 (10th Cir.1990). While the preponderance of the evidence standard is legally the easiest standard to satisfy, the standard is not trivial or meaningless. Additionally, the hearing officer **should not** substitute his view of educational policy for the determinations that are made by the school officials reviewing the students educational placement, *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 206, 102 S.Ct. 3034, 3051, 73 L.Ed2d 690(1982). That is to say, that it is not for the Hearing Officer to determine what is the "best" education for any given student only to determine if the school has provided educational standards consistent with the Act.

B. Procedural violations of the Act are not by themselves a denial of FAPE.

The law is clear that a procedural violation of the IDEA that does not implicate the substantive provision of FAPE is not actionable. 34 C.F.R. §300.513(a)(2).

“[a] procedural violation of the IDEA is not a per se denial of a FAPE; rather, a school district's failure to comply with the procedural requirements of the Act will constitute a denial of a FAPE only if such violation causes substantive harm to the child or his parents.” *Knable ex rel. Knable v. Bexley City Sch. Dist.*, 238 F.3d 755, 765 (6th Cir.2001) (citations omitted); *see also D.S. v. Bayonne Bd. of Education*, No. 08-4730, 602 F.3d 553, 564-67 (3d Cir.2010) (“A procedural violation is actionable under the IDEA only if it results in a loss of educational opportunity for the student, seriously deprives parents of their participation rights, or causes a deprivation of educational benefits.”); *Adam J. v. Keller Indep. Sch. Dist.*, 328 F.3d 804, 811-12 (5th Cir.2003) (“[P]rocedural defects alone do not constitute a violation of the right to a FAPE unless they result in the loss of an educational opportunity.”); *DiBuo v. Bd. of Educ.*, 309 F.3d 184, 190 (4th Cir.2002) (“[A] violation of a procedural requirement of the IDEA (or one of its implementing regulations) must actually interfere with the provision of a FAPE.”). *C.H. v. Cape Henlopen Sch. Dist.*, 606 F.3d 59, 66-67 (3d Cir. 2010)

As a result, when faced with a procedural violation a Petitioner must show more than a technical

violation of the IDEA.

C. Legal Standard for the provision of FAPE.

This Tribunal must determine if the IEP for the student was “reasonably calculated” to provide the child with “educational benefits.” *Rowley*, 458 U.S. at 206-07, 102 S.Ct. 3034. The IEP complies with the Act's substantive standards if it provides the disabled student with “[a] ‘basic floor of opportunity’ ... [that] consists of access to specialized instruction and related services which are individually designed to provide educational benefit....” *Rowley*, 458 U.S. at 201, 102 S.Ct. 3034. Courts have interpreted the *Rowley* standard to require an educational benefit that is more than *de minimis*. *Urban*, 89 F.3d at 726-27; *see also Rowley*, 458 U.S. at 200, 102 S.Ct. 3034 (“Implicit in the congressional purpose of providing access to a ‘free appropriate public education’ is the requirement that the education to which access is provided be sufficient to confer *some educational benefit* upon the handicapped child.” (emphasis added)). It is also recognized, however, that the Act focuses on providing disabled children access to public schools, and thus, does not require an education “**guaranteed to maximize the child's potential.**” *Urban*, 89 F.3d at 727 (quoting *Johnson ex rel. Johnson v. Indep. Sch. Dist. No. 4*, 921 F.2d 1022, 1025-26 (10th Cir.1990)). As a result, courts in this jurisdiction apply the “**some benefit**” standard the Supreme Court adopted in *Rowley*. *See, e.g., O’Toole*, 144 F.3d at 699.

More plainly stated, one who opposes the efficacy of an IEP has a daunting challenge. In this case, the Petitioner must prove by a preponderance of the evidence that the IEP was not reasonably calculated, at the time it was written, to provide **some** educational benefit. That benefit, while it needs to be more than *de minimus*, does not have to maximize the students educational opportunity. Further, when the Hearing Officer examines the record, it is not his role to substitute what he believes is “best” for the student, but whether the student received some benefit from participating in public school.

D. The Parent's failed to present evidence that the District failed to provide the student with FAPE

In this case, the student was enrolled with the District and attended as a student in the District for many years. It has been alleged that the student was subjected to a pattern of “bullying” by his peers; that this “bullying” rose to the level that it denied the student with a FAPE. During the student’s seventh grade year (2009-2010 school year) an altercation between the student and one of his peers led the student’s parents to voluntarily remove him from classes in the District and begin home schooling.²

The student has been identified as in need of special services and is categorized as having Aspergers , a diagnosis on the autism spectrum. Aspergers is defined as : a developmental disorder resembling autism that is characterized by impaired social interaction, by repetitive patterns of behavior and restricted interests, by normal language and cognitive development, and often by above average performance in a narrow field against a general background of deficient functioning—called also Asperger's disorder *Merriam-Websters Unabridged Dictionary*. The root of the Parents complaint in this case involves accusations of “bullying” of the student and how the district failed to properly address the situation leading to a denial of provision of FAPE.

There has been a great deal of testimony in this case concerning numerous events of supposed bullying. There has been evidence as to the student being struck and kicked. There has also been testimony that the student instigated these actions either intentionally or as a result

² There have been allegations that the District engaged in certain procedural violations of the IDEA. However since the Tribunal has determined that the District provided FAPE regardless of these procedural concerns, the Hearing need not reach any issues regarding the Districts adherence or lack thereof to IDEA procedures.

of the effects of Aspergers. This Hearing Officer does not believe that it is necessary to analyze each confrontation between the student and his peers. Whether the student instigated confrontations with other students or whether social awkwardness made him a target of peer abuse is not the material question; because at the center of both situations is the student's Asperger's disorder and its effect on social interactions that can lead to conflict. The question is, did the District provide FAPE to the student by reasonably formulating his IEP to address the Aspergers, thereby providing the student with an educational benefit. The IDEA does not impose on the District the obligation to provide an environment free of peer conflict. However, any conflict that rose to the level of denying an education benefit would clearly be a denial of FAPE.

There are two related, but distinct, periods of time to analyze when trying to determine whether an educational benefit has been provided to the student. First, is the examination of the actionable period of time wherein the student was enrolled and regularly attending the classes in the District. The next period of time is narrower in its focus. Was the event that led to the decision to home school the student so severe, and the District's actions so inadequate, that the District could no longer provide FAPE?

A critical factor in whether the student was receiving an educational benefit was his academic performance.

... a child's "difficulties with [his or her] disorder," [citation omitted] which presumably include emotional and behavioral troubles, are not the proper measure of "educational performance." Rather, "educational performance" must be assessed by reference to academic performance which appears to be the principal, if not only, guiding factor. *See N.C.*, 300 Fed.Appx. at 13 (finding that even if student displayed characteristics of an emotionally disturbed child, his educational performance was not adversely affected where he did not fail any classes at school and his grade point average dropped only nine points); *C.B. ex rel. Z.G.*, 322 Fed.Appx. at 22. *A.J. v. Bd. of Educ.*, 679 F. Supp. 2d 299, 309 (E.D.N.Y. 2010)

As a result, even if the student is experiencing difficulties while at school, if he is receiving a benefit from his education plan he is receiving a FAPE.

The evidence is quite clear that while the student was attending classes in the district, he received educational benefit. The grades received by the student were not only above average but often times in the excellent range. The student's core curriculum test scores also showed that he was performing at a satisfactory level in most instances. While it is true, his scores were not optimal or even maximized, that is not the legal standard the school is required to meet. There was no evidence presented that would indicate the test scores or grades earned by the student were materially false. During the course of the hearing there were allusions by Petitioners' counsel that the grades and test scores of the student were inaccurate. However, there was no evidence presented to undermine the Districts grading procedure or state core testing methods.³ Additionally, the Petitioner's counsel might have presented the entire body of class and homework that could have directly contradicted the quarterly and semester grades received by the student. That type of evidence was not forthcoming and this Tribunal cannot base its rulings on unsupported assertions or vague allusions to some type of "wrong doing".

³It was Petitioners, counsel who selectively admitted math homework assignments to make it appear that the student was struggling in mathematics. However, there was testimony that there were homework assignments that were in possession of the parents that were destroyed. The parents further testified that these other assignments were not problematical and they didn't think they needed to retain those documents. This Tribunal makes no finding as to whether the acts of the Petitioner were in an effort to evade compliance with a subpoena in this case, but it is clear that had the Petitioners produced all homework assignments it would have affirmed the fact that the student was making passing grades in math.

There was simply no basis that the student did not receive an educational benefit based on his academic performance.

The fact, that the student clearly had success while attending the district, does not fully dispose of the issue. The student's academic performance, while a major factor in determining whether FAPE was provided is, however, not the only factor in making such a determination.

.... the Court does not believe that passing grades are conclusive of a FAPE. *Board of Educ. of Hendrick Hudson Central School Dist., Westchester County v. Rowley* noted that passing grades are important but not determinative factors. See 458 U.S. at 207 n. 28 (noting that "the achievement of passing marks and advancement from grade to grade will be one important factor in determining educational benefit").

Bell v. Bd. of Educ. of Albuquerque Pub. Sch., CIV.06-1137 JB/ACT, 2008 WL 5991062 (D.N.M. Nov. 28, 2008)

The Tribunal is then compelled to examine the evidence beyond academic performance to determine if FAPE was denied.⁴

In this case, the Petitioners allege that "bullying" was so severe that they were forced to remove the child from the District and begin home schooling. The incident that led to the student's removal from school *could have been* so severe that the emotional trauma *could have been such* that educational benefit would have been impossible. This, coupled with the District failing to make efforts to remedy the situation, could lead to a denial of FAPE.

It would not be feasible or practical to expect that a school district could prevent every fight, confrontation or teasing of one student by another. Additionally, were one to classify every such incident as "bullying," the word would quickly lose its meaning and make it more

⁴ Even though the Tribunal is examining the record beyond simply academic performance, it should not be assumed that the hearing officer finds there is any impropriety in the grading process. Indeed the evidence of academic performance is credible, it simply does not answer all the necessary questions to resolve this case.

difficult to address situations which would clearly satisfy any definition of ‘bullying’. The only guidance that this Tribunal has on the issue is from previous decisions where this issue was examined.⁵

The definition of “bullying” is amorphous, however some guidance can be divined from some judicial precedent. The case of *Shore Regional High School Board of Education v. P.S. ex rel. P.S.* 301 F3d 194 (3rd cir. 2004). In that case, the Petitioners asserted that the student was denied FAPE because he was subjected to systematic “bullying” and assaults by other students. Most to the adverse actions centered on the students “girlish” appearance. The student was called names such as faggot, transvestite and other sexualized names. Rocks were thrown at him and other students were told not to socialize with him. The student was sent to a psychological counselor who diagnosed him with depression. His grades slipped badly. Further, the harassment occurred over a period of several years, but became so intense the student attempted suicide. The court found in favor of the Petitioners holding that these conditions denied the student FAPE.

There have been other cases where abuse from one student toward another did not rise to the level that denied FAPE. In the case of *Emily Z v. Mt. Lebanon School District* 2007 WL 3174027 (W.D. Pa 2007) the Petitioners alleged that the Student was choked and slammed against the wall of the coatroom by a peer. Further, the student’s parents kept track of like incidents occurring to her child on a daily basis. However, the court found that the school took steps to mitigate the hostile interactions, including the implementation of a behavior intervention plan. The court found that the district “neither tolerated, condoned or tacitly supported negative

⁵ It would have been helpful to the Plaintiff’s case had he offered expert testimony as to the psychological of these incidents on the student. The record is replete with assertions that the student could not testify for various psychological reasons, but there was never any expert testimony offered as to how the alleged acts of “bullying” affected the child at school;

reactions by other students.” *Id.* The court found for the District in no small part because of the Defendant’s actions in trying to mitigate the “bully” and its effects.

The instant matter more closely resembles the facts and circumstances of *Emily*. There was no evidence in this case that the incidents between the student and his peers in any way materially impeded the student’s education. There was no evidence of a psychological diagnosis, there was no indication of severe emotional trauma as in *Shore Regional High School Board of Education*. There is persuasive evidence that the District did make an effort to prevent the altercations between the student and his peers and to teach the student the social skills necessary to mitigate the likelihood of conflict. For these reason’s the alleged “bullying” while the student was attending class simply does not arise to the level where it denied a FAPE.

The Petitioners failed to present evidence that the incident that led to the students home schooling was so severe that his removal from school was necessary. If the Petitioner had presented expert testimony that the student’s mental state was such that removal from school was necessary then perhaps this opinion might be different. However, that was not the case. Petitioner’s counsel asserted the student was in such a mental state he could not testify at hearing. However, counsel’s remarks are not evidence. While the parent’s clearly had an opinion as to why the student was removed from school, neither parent has the credentials to make a psychological determination. As a result, the only evidence as to the removal of the student from school, is the parent’s subjective belief that such action was necessary. While a parent’s opinion on such issues may be important, it does not rise to the level of the type of psychological evidence that would carry the day.

E. Other contentions concerning allegations of a denial of FAPE

a. The District is generally allowed to select the education methodology for its students

The school district is not required to follow the recommendations of experts who are hired to evaluate a student and suggest certain methodologies for a student's education. Plaintiff's counsel seemed to make an issue out of the fact that the District did not follow all the recommendations of [private psychologist] regarding the student's education. This type of argument misses the mark as to the District's responsibilities entirely.

The notion that the district has a great deal of latitude in selecting methodologies for students is a well settled legal principle. This is exemplified in a recent case *R.P. ex re C.P. v. Prescott Unified School Dist.* 2011 WL 343966. This case involved an autistic student whose parents asserted that their child did not receive FAPE because the district failed to follow certain peer reviewed methodologies. The court disagreed and stated:

The IDEA accords educators discretion to select from various methods for meeting the individualized needs of a student, provided those practices are reasonably calculated to provide him with educational benefit. *See, e.g., Adams v. Oregon*, 195 F.3d 1141, 1149-50 (9th Cir.1999); *Deal v. Hamilton Cnty. Bd. of Educ.*, 392 F.3d 840, 861-62 (6th Cir.2004). *R.P. ex rel. C.P. v. Prescott Unified Sch. Dist.*, 09-15651, 2011 WL 343966 (9th Cir. Feb. 4, 2011)

Petitioner's counsel could have presented expert testimony attacking the methodology used by the District; asserting that the District's educational plan for the student did not provide the student an educational benefit. However, there was no such evidence. It does not logically follow that one suggested course of action, evidences a material defect in another.

b. The District did not deny the student a FAPE because of alleged failure to implement the student's IEP.⁶

Petitioner's counsel made allegations that the student's IEP was not implemented appropriately. For example, there was some evidence that the student was not to be given types

⁶ In the Due Process complaint Petitioner's counsel makes an allusion to the District have violated the Least Restrictive Environment as required by the IDEA. However, no evidence was presented that this violation in fact occurred.

of writing assignments. There was some indication some of this type of written work was assigned. Also, the student's IEP evidenced goals with a certain percentage of those goals having been attained. In no event did the student attain 100% of his goals. However, any failures to properly implement the student's IEP were not material. Further, there is no requirement that the student attain all of his educational goals.

The IEP is not a contract to the extent that failure to implement its provisions constitutes a denial of FAPE. The IEP is not a contract, but it is a creation of federal statute. Mistakes in implementing an IEP does rise to the level of violation of the IDEA unless the faulty implementation results in a denial of FAPE. This is a well recognized principle of law.

IEP formulation issues do not automatically violate the IDEA, but rather do so only when the resulting IEP is not "reasonably calculated to enable the child to receive educational benefits." 458 U.S. at 207. This suggests that minor failures in implementing an IEP, just like minor failures in following the IDEA's procedural requirements, should not automatically be treated as violations of the statute.

Burke v. Amherst Sch. Dist., 08-CV-014-SM, 2008 WL 5382270 (D.N.H. Dec. 18, 2008)

As noted earlier the record in this case is replete with this student receiving an educational benefit. None of any of the allegations of improper implementation of the student's IEP have effected the students classroom performance or core curriculum grades.

c. The Defendant failed to provide evidence that the District did not provide transportation services as required.

The Petitioner asserts Student was denied transportation services. To support this notion, the Petitioner relies on statements from District employees to the effect that special education doesn't apply to the bus. Not only is such a notion ridiculous, it is beyond surprising that District personnel would make such a statement. However, that statement does not indicate transportation services were not provided. While there were altercations on the bus between the student and his peers, the bus drivers did attempt to remedy the situation. Further, the photographs presented to support the claims surrounding these altercations mitigate against the severity of these confrontations. In any event, no evidence was presented that the incidents on the bus were so severe that the student would have no choice but to seek another mode of transport to the school.

District's Motion to Strike

The Petitioner asks that the Hearing Officer to admit a demonstrative exhibit which is a condensed listing of the alleged "bullying" instances visited upon the student. This demonstrative aid was used at the hearing to help refresh the memory of each parent when they testified. Petitioner's counsel was told at the hearing that this document was merely used to assist the witnesses in exemplifying their testimony. As is in most cases demonstrative exhibits are not admitted into evidence.

Also, this is another example of having to repeat a ruling that has already been made on the record. The Petitioner was told on numerous occasions this document would not be admitted, to have to address this matter again is a waste of time.

Conclusion

The evidence is quite clear that this student derived an educational benefit while attending classes with the District. While it may be true that the District did not maximize the student's ability in math, the law simply does not place such a burden on the District.

The incidents of alleged "bullying" do not rise to the level of a denial of FAPE. As case law has demonstrated, "bully" only implicates FAPE when academic performance is materially effected and extreme emotional impact has been experienced by the student. In this case, while the student was attending class at the District he was clearly making education progress. Further, the emotional upset caused by the incidents leading up to the student's departure from the District did not rise to the level of emotional distress as required by other judicial decisions.

The Petitioner's counsel failed to present expert testimony that the culminating incident that caused the parents to remove the student from the district for home schooling was of such severity that it would have denied the student educational benefit.

IT IS THEREFORE ORDERED ADJUDGED AND DECREED, that the Request for relief herein is denied.

IT IS FURTHER ORDERED ADJUDGE AND DECREED, That the Defendant's Motion to Strike the Petitioners demonstrative exhibit and any reference thereto is granted.

Dated 2-13-2011

/s/ David Blades

David Blades
Hearing Officer

IF EITHER PARTY IS DISSATISFIED WITH THIS DECISION THEY MAY APPEAL THE ORDER WITHIN THIRTY-DAYS OF THE RECEIPT OF THE DECISION TO:

**DUE PROCESS HEARING APPEALS
STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION SERVICES
2500 NORTH LINCOLN BLVD
OKLAHOMA CITY, OK. 73105
For more information call (405) 521-4871**

Appeal Decision 1996
March 25, 2011

**STATE DEPARTMENT OF EDUCATION
DUE PROCESS APPEAL REVIEW
STATE OF OKLAHOMA**

[Parents],

Petitioners/Appellants,

Case Number 1996
(Appeal)

[Name] Public Schools,

Respondent/Appellee.

APPEARANCES:

For Appellants:

[Parent Attorney and Contact Information]

For Appellee:

{School District Attorney and Contact Information]

Appeal Officer:

Gary Payne

[Contact Information]

SUMMARY ORDER ON APPEAL

A decision was rendered in this case on February 13, 2010, by Hearing Officer, David R. Blades. A copy of the decision was mailed to the attorneys of record. The return receipt from the United States Post Office indicates that the attorney of record for the Appellants, [Name], signed and acknowledged receipt of the decision on February 16, 2011.

Appellants filed their appeal with the Special Education Resolution Center on March 21, 2011 by filing a pleading styled "*Appeal Brief of Petitioners.*" [The Special

Education Resolution Center is the office charged with administrative responsibilities for due process hearings and appeals regarding children with disabilities in Oklahoma.]

The following notice appears in bold type after the conclusion of the Due Process Hearing Opinion:

“IF EITHER PARTY IS DISSATISFIED WITH THIS DECISION THEY MAY APPEAL THE ORDER WITHIN THIRTY-DAYS OF THE RECEIPT OF THE DECISION....”

The Oklahoma Department of Education and the Special Education Resolution Center, which operates under the auspices of Oklahoma State University, have published *Guidelines For Parents And School Administrators* regarding special education services and procedures applicable to due process hearings and appeals. The requirements for appealing a decision by a Due Process Hearing Officer are addressed in the Guidelines under Section X., Due Process Hearing Decision Appeals, at page 39 as follows:

A. The procedures for making an appeal of a hearing decision are as follows:

1. Within 30 calendar days of the receipt of the due process hearing decision, a written appeal request must be received by the SEA at the following address:

Oklahoma State Department of Education
Attn: Special Education Services
2500 North Lincoln Boulevard, Room 412
Oklahoma City, Oklahoma 73105-4599

The *Guidelines* are available to anyone as a public record and are posted on the Center’s website. Council for Appellants is familiar with the *Guidelines* since he cited them in his *Appeal Brief*. (Page 2, first full paragraph)

Similar language is set forth at page 106 of the *Amended Policies and Procedures for Special Education in Oklahoma* published by the Oklahoma State Department of Education and available on its website. That provision states:

A decision made in a hearing is final, except that any party involved in the hearing may appeal the decision. Appeals must be initiated by a parent, or by the LEA, and must be received by the OSDE-SES, within 30 calendar days after receipt of the decision. The hearing officer's decision will be reviewed by an impartial appeal officer assigned by the OSDE who meets the qualifications outlined under State and federal regulations.

In the instant case, the Appeal Brief of Petitioners was not received within the thirty day prescribed requirement. Apparently no communication was had with the opposing party regarding the granting of an extension of time and no extension was granted. Appellants are clearly out of time for filing an appeal in this matter and an appeal is, therefore, not allowed.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED, that Appellant's appeal of this matter is summarily denied as being out of time and out of compliance.

Dated: March 25, 2011.

[signature]
Gary E. Payne
Appeals Review Officer
[Contact Information]

NOTICE OF APPEAL RIGHTS

Pursuant to 20 U.S.C. § 1415(g) and (i) and 34 C.F.R. §300.516, the decision of the Appeal Review Officer is final except that any party involved in such hearing who feels themselves aggrieved by the findings and decision made shall have the right to bring a civil action in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy within 90 days of receipt of this Order.

NOTICE OF MAILING

I certify that on March 25, 2011, I mailed by certified mail, return receipt thereon, full paid, a copy of the above and foregoing to the following:

[Parent Attorney and Contact Information]

[School District Attorney and Contact Information]

[Signature]
Gary E. Payne

