

**STATE OF MISSOURI
DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION**

XXXXXXXX,)	
)	
Student/Petitioner,)	
)	
v.)	Filed: March 25, 2011
)	
)	
Lee's Summit R-VII School District,)	
)	
Respondent.)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
DECISION AND ORDER**

The Hearing Panel, after conducting the due process hearing in this matter on October 4-7, 2011, November 1, 2011 and November 16, 2011, issues the following Findings of Fact, Conclusions of Law, Decision and Order:

FINDINGS OF FACT

The Hearing Panel makes the following Findings of Fact:

The Parties

1. XXXXX (“Student”) is the son of YYYYY (“Parents”). The Student’s date of birth is April 9, 2003. During all times material to this due process proceeding, the Student resided with his Parents who reside within the boundaries of the District. (DEX 2, pp. 18-19; Wright Hearing, Tr. Vol. I, p. 25). The primary mode of communication of the Student and his Parents is written and spoken English. (DEX 2, p. 19; Wright Hearing, Tr. Vol. I, p. 25). (See: Baker Hearing Panel Decision, DEX 46, p. 1590).¹

2. The Student’s Mother lacks a semester of credit to graduate from college. She has recently been an instructor at Longview Community College, in the Kansas City area, in an ACED program. (Baker Hearing, Tr. Vol. II, pp. 442-445; Wright Hearing, Tr. Vol. II, p. 486; PEX 836). The Student’s Mother has also had considerable experience dealing with children with disabilities including her own three children (Wright Hearing, Tr. Vol. II, pp. 488-491); as

¹ As will be noted later, the same parties had a due process hearing on February 14-16, 2011 before a Hearing Panel chaired by Janet Davis Baker. The Panel’s Decision was issued on September 6, 2011, with references in this case noted as “the Baker Hearing Panel Decision.” References to the transcript in the earlier case will be cited as Baker Hearing, Tr. Vol. __, p. __. References to the transcript in the current case will be noted as Wright Hearing, Tr. Vol. __, p. __.

an officer of the Lee's Summit Autism Support Group, which has recently changed its name (Wright Hearing, Tr. Vol. II, pp. 494-495); through training with MPACT (Wright Hearing, Tr. Vol. II, pp. 495-496); and, as an advocate for other parents and students on a number of occasions in the District and in other area school districts. (Baker Hearing, Tr. Vol. II, pp. 442-445; Wright Hearing, Tr. Vol. II, pp. 498-500).

3. The District is a Missouri Public School District which is organized pursuant to Missouri statutes. The District is located in Jackson County, Missouri and maintains approximately twenty-six (26) educational buildings. (Wright Hearing, Tr. Vol. I, p. 25; Vol. III, p. 648). The District educates approximately eighteen thousand (18,000) students of which approximately one thousand eight hundred (1,800) students receive special education and related services. (Wright Hearing, Tr. Vol. III, p. 648).

4. The Student and his Parents were represented at the hearing by Deborah S. Johnson, 9923 State Line Road, Kansas City, Missouri, 64114.

5. The District was represented by Ransom A. Ellis, III who is with the law firm of Ellis, Ellis, Hammons & Johnson, P.C., 901 St. Louis Street, Suite 600, Springfield, Missouri 65806-2505.

6. The Hearing Panel for the due process proceeding was:

Pamela S. Wright	Hearing Chairperson
Dr. Patty Smith	Panel Member
Dr. Richard Staley	Panel Member

7. During all times relevant to this proceeding the following persons were employed by the District and have provided educational services to the Student:

Dr. David McGehee	Superintendent
Jerry Keimig	Executive Director – SPED
Donna Southwick	Assistant SPED Director
Debbie Campbell	Process Coordinator
Karen Merrigan	Process Coordinator
SS	Process Coordinator
Tina Arney	Process Coordinator
SJ	SPED Teacher
KR	SPED Teacher
JA	SPED Teacher
SW	SPED Teacher
HS	Regular Education Teacher
TW	Regular Education Teacher - Kindergarten
RH	Regular Education Teacher – 1 st Grade
KB	Speech Language Pathologist
JT	Speech Language Pathologist
CL	Occupational Therapist

TM	Occupational Therapist
LB	Occupational Therapist
JB	Occupational Therapist
SM	Autism Coordinator
Denise Mann	Registered Nurse
Cindy Langensand	Principal
Patty Reynolds	Principal
Tamara Asplund	Principal
Denise Mann	Registered Nurse
Geri Barnes	Elementary Secretary

**Procedural Background--
First, Second and Third Due Process Complaints**

8. The Parents filed the first due process complaint with the Department of Elementary and Secondary Education (“DESE”) on September 15, 2010, which was received by DESE that same day. (DEX 23, pp. 592-595). This due process complaint was assigned to Hearing Chairperson Janet Baker. (DEX 46, pp. 1585-1586).

9. The Parents filed a second due process complaint with DESE on September 28, 2010. (DEX 23, pp. 606-608). The Parents withdrew the second due process complaint on October 7, 2010. (DEX 23, p. 614; DEX 46, pp. 1585-1586).

10. The Parents filed a third due process complaint with DESE on October 19, 2010, which was received by DESE on October 20, 2010. (DEX 23, pp. 616-619; 622).

11. On October 26, 2010, the District filed District’s Motion to Consolidate Cases (DEX 23, pp. 628-630) and on November 9, 2010, Hearing Chair Baker issued her Order On Motion To Consolidate Cases finding that Petitioners’ Due Process Complaints filed on September 15, 2010 and October 20, 2010 should be consolidated. (DEX 23, pp. 661-665). (See Baker Hearing Panel Decision, DEX 46, pp. 1585-1586).

12. The Hearing involving Due Process Complaints 1 and 3 (“Baker Hearing”) was held on February 14-16, 2011 in Lee’s Summit, Missouri. (DEX 46, p. 1586).

13. During and following the Baker Hearing the following documents were admitted into evidence and are a part of the record of that hearing:

A. Petitioners’ Exhibits (“PET”): PET pp. 1-6, 290-310, 314-442, 444, 622-681, 832-860, 872-890, 893-947, 949-958, 961-976, 1000-1852, 1930, 1999-2300, 2672-2724, 3000-3078, 3222-3237, 3242-3243, 3249-3256, 3258-3260, 3263, 4000, 4028, 4030-4045, 4110-4137, 4152-4155, 4157-4160, 4166-4169, 4171-4173, 4176-4179, 4181-4182, 4185-4186, 4207-4218 and 4220-4320.

B. District Exhibit (“DEX”): DEX 1-14; 15 (pages 281-295); 16-21; 22 (pages 491-494; 498-499; 522-523; 526-534; 537); 24-37.

C. Petitioners' Exhibits ("PETDEX"): PETDEX pp. 2-243, 272-292, 296-331, 338-413, 434-450, 452-493, 555-562, 595-605, 611-671, 701-702, 704-929, 1174-1340, 1577-1601, 1627-1629, 1631-1671, 1673-1695, 1752-1758, 1760-1785, 1787-1820 and 1908-1938.

(Baker Hearing Panel Decision, DEX 46, pp. 1586-1588).

14. On September 6, 2011, the Baker Hearing Panel Decision was issued. That decision found unanimously for the District on all issues considered by the Panel: whether the District impaired the ability of the Parents to participate in the decision making process and was the September 16, 2008 IEP (including the Addendum dated October 21, 2008) reasonably calculated to provide FAPE in the least restrictive environment; did the District properly implement the IEP. (Baker Hearing Panel Decision, DEX 46).²

Procedural Background-- Current Due Process Complaint

15. The Parents filed their fourth due process complaint, the current due process complaint, with DESE on March 25, 2011. (DEX 47, pp. 1674-1677). On March 25, 2011, the Complaint was assigned to Hearing Chairperson Pamela S. Wright. (DEX 47, pp. 1680-1681).

16. On March 30, 2011, the District filed District's Notice of Insufficiency. (DEX 47, pp. 1691-1698). On March 31, 2011, Petitioners filed Petitioners' Response To Notice Of Deficiency [sic]. (DEX 47, pp. 1712-1713). On April 4, 2011, Hearing Chairperson Wright issued an Order Of Specificity. (DEX 47, pp. 1709-1711).

17. On April 11, 2011, Petitioners filed Petitioners' Amended Request For Due Process Hearing. (DEX 47, pp. 1718-1723). On April 26, 2011, the District filed District's Response To Amended Due Process Complaint. (DEX 47, pp. 1723-1732).

18. On April 13, 2011, the parties conducted a Resolution Meeting which was unsuccessful.³ (DEX 47, p. 1737).

19. On April 26, 2011, Chairperson Wright conducted a Pre-Hearing Telephone Conference with the parties. The parties agreed to hearing dates of October 4, 2011 through October 7, 2011 and an extension of the timeline to November 30, 2011. On May 5, 2011, Chairperson Wright issued a Scheduling Order which set out the hearing dates, described the issues to be heard at the hearing and provided that each party would have 12.0 hours to present direct and cross-examination.⁴ (DEX 47, pp. 1733-1737).

² This decision is on appeal.

³ We heard testimony from both parties about what took place at the Resolution Meeting. As might be expected, the versions were markedly different. We decline to arbitrate this particular conflict.

⁴ The parties agreed to schedule the hearing after the expected date for the Baker Hearing Panel Decision. Thus, the wide gap in time between the Pre-Hearing Conference and the hearing dates. Petitioners' counsel objected to the time constraints during the Pre-Hearing Conference and continued to assert her objection repeatedly throughout the due process hearing.

20. The hearing in this matter took place in Lee's Summit, Missouri on October 4-7, 2011 and November 1, 2011. On November 16, 2011, a telephone hearing was conducted, the hearing was completed and the record was closed.⁵ During the hearing on November 16, 2011 the parties jointly agreed to extend the timeline in this case through January 31, 2011. (Wright Hearing, Tr. Vol. VI, pp. 1053-1054).

21. Petitioner called the following witnesses: RH; Student's Mother; Lisa Miller; KR; and SM. The District called these witnesses: Jerry Keimig; KR; JT and LB.⁶

22. On November 18, 2011, Chairperson Wright issued an Order memorializing the agreement reached by the parties on the last day of the hearing to extend the time lines in the current case to January 31, 2011.

23. The parties stipulated to the admission of the transcript of the Baker Hearing and the exhibits, which were admitted during that hearing or as part of that hearing. (Wright Hearing, Tr. Vol. I, p. 26); Hearing Panel Exhibit #1.⁷

24. The following documents constitute the exhibits constitute the record in this case, either admitted in the Baker Hearing and/or admitted in the Wright Hearing:

A. Petitioners' Exhibits⁸:

Petitioners' Exhs. 1.1.1 through 1.1.3	(PET pp. 1-6)
Petitioners' Exh. 1.1.16	(PET pp. 290-310)
Petitioners' Exhs. 1.1.18 through 1.1.26	(PET pp. 314-442)
Petitioners' Exh. 1.1.28	(PET p. 444)
Petitioners' Exhs. 1.3.1 through 1.3.17	(PET pp. 622-685)
Petitioners' Exhs. 1.3.18 through 1.3.19	(PET. pp. 686-689)
Petitioners' Exhs. 1.3.29 through 1.3.33	(PET pp. 832-860)
Petitioners' Exhs. 1.3.38 through 1.3.57	(PET pp. 872-947)
Petitioners' Exhs. 1.3.49 through 1.3.51	(PET pp. 890-892)
Petitioners' Exh. 1.3.53	(PET pp. 896-900)
Petitioners' Exhs. 1.3.59 through 1.3.65	(PET pp. 949-958)
Petitioners' Exhs. 1.3.68 through 1.3.76	(PET pp. 961-976)
Petitioners' Exh. 1.4.1	(PET pp. 1000-1400)
Petitioners' Exhs. 1.6.1 through 1.7.4	(PET pp. 1999-2300)
Petitioners' Exhs. 1.8.6 through 1.8.9	(PET pp. 2672-2724)
Petitioners' Exhs. 1.9.1 through 1.9.4	(PET pp. 3000-3078)

⁵ At the beginning of the hearing on October 4, 2011, Petitioner requested a closed hearing. (Wright Hearing Tr. Vol. I, p. 8).

⁶ All witnesses listed above are District personnel except for Lisa Miller who is a Board Certified Behavior Analyst who works with Student in the home. (Wright Hearing Tr. II, p. 285).

⁷ This was the only exhibit designated as a Hearing Panel Exhibit.

⁸ The left column lists the Petitioners' Exhibits as designated in the current case, with the corresponding designation of the same exhibit from the Baker Hearing appearing in the right column.

Petitioners' Exh. 1.9.16 (partial)	(PET 3211-3212 – See: Wright Hearing, Tr. Vol. 1, pp. 375-376)
Petitioners' Exh. 1.9.17 (partial)	(PET pp. 3213-3260)
Petitioners' Exh. 1.9.18	(PET p. 3263)
Petitioners' Exh. 1.10.1	(PET p. 4000)
Petitioners' Exh. 1.10.3	(PET p. 4028)
Petitioners' Exhs. 1.10.5 through 1.10.6	(PET pp. 4030-4045)
Petitioners' Exhs. 1.11.1 through 1.11.6	(PET pp. 4110-4139)
Petitioners' Exhs. 1.11.9 through 1.11.10	(PET pp. 4146-4150)
Petitioners' Exhs. 1.11.12 through 1.11.13	(PET pp. 4152-4155)
Petitioners' Exhs. 1.11.15 through 1.11.17	(PET pp. 4157-4164)
Petitioners' Exhs. 1.11.19 through 1.11.20	(PET pp. 4166-4169)
Petitioners' Exhs. 1.11.22 through 1.11.23	(PET pp. 4171-4173)
Petitioners' Exhs. 1.11.25 through 1.11.26	(PET pp. 4176-4179)
Petitioners' Exh. 1.11.28	(PET pp. 4181-4182)
Petitioners' Exhs. 1.11.30 through 1.11.31	(PET pp. 4185-4186)
Petitioners' Exh. 1.11.39	(PET p. 4203)
Petitioners' Exhs. 1.11.41 through 1.11.44	(PET pp. 4207-4218)
Petitioners' Exhs. 1.12.1 through 1.14.4	(PET pp. 4220-4320)
Petitioners' Exhs. 1.15.6 through 1.15.7	(PET pp. 4400-4404)
Petitioners' Exh. 1.15.9	(PET pp. 4407-4467)
Petitioners' Exhs. 1.16.1 through 1.16.3	(PET pp. 4468-4472)
Petitioners' Exhs. 1.16.5 through 1.16.8	(PET pp. 4480-4489)
Petitioners' Exh. 1.17	(PET pp. 4500-4696)
Petitioners' Exhs. 1.18.2 through 1.18.30	(PETDEX pp. 2-243)
Petitioners' Exh. 1.18.32 (partial)	(PETDEX pp. 272-292)
Petitioners' Exhs. 1.18.34 through 1.18.47	(PETDEX pp. 296-331)
Petitioners' Exh. 1.18.50	(PETDEX p. 336)
Petitioners' Exh. 1.18.51	(PETDEX pp. 338-413)
Petitioners' Exh. 1.18.67	(PETDEX 405-406)
Petitioners' Exh. 1.18.79	(PETDEX pp. 434-450)
Petitioners' Exhs. 1.18.81 through 1.18.96	(PETDEX pp. 452-493)
Petitioners' Exh. 1.19.2	(PETDEX pp. 510-512)
Petitioners' Exh. 1.19.14	(PETDEX pp. 550-554)
Petitioners' Exhs. 1.19.18 through 1.19.26 (partial)	(PETDEX pp. 595-605; 611-671)
Petitioners' Exh. 1.19.27	(PETDEX pp. 672-699)
Petitioners' Exh. 1.19.29	(PETDEX pp. 701-702)
Petitioners' Exhs. 1.19.31 through 1.19.34	(PETDEX pp. 704-929)
Petitioners' Exhs. 1.20.5 through 1.20.21	(PETDEX pp. 1174-1340)
Petitioners' Exh. 1.20.24	(PETDEX p. 1343)
Petitioners' Exhs. 1.20.26 through 1.20.27	(PETDEX pp. 1348-1349)
Petitioners' Exh. 1.20.29	(PETDEX p. 1358)
Petitioners' Exh. 1.20.31	(PETDEX p. 1362)
Petitioners' Exh. 1.20.33	(PETDEX p. 1395)
Petitioners' Exh. 1.20.35	(PETDEX p. 1397)
Petitioners' Exh. 1.20.37	(PETDEX pp. 1420-1421)

Petitioners' Exh. 1.20.39	(PETDEX p. 1425)
Petitioners' Exh. 1.20.41	(PETDEX p. 1428)
Petitioners' Exhs. 1.21.1 (partial)	(PETDEX pp. 1577-1601)
Petitioners' Exhs. 1.21.2 through 1.21.3	(PETDEX pp. 1627-1629)
Petitioners' Exh. 1.21.4	(PETDEX pp. 1631-1671)
Petitioners' Exh. 1.21.5 (partial)	(PETDEX pp. 1673-1695; 1752-1758; 1760-1785; 1787-1820; 1908-1915; 1917-1938)

B. District Exhibit ("DEX"): DEX 1-40; 41 (pages 1407-1460); 42-52.

C. Transcript of the Baker Hearing held February 14-16, 2011.

D. Depositions taken in connection with the February 2011 due process proceeding of: TW, Tamara Asplund, LB, Eric Flack, Samantha Gailey, Jerry Keimig, Tracy Oliver, Stacie O'Neal, KR, Patricia Rick, SS and JT. The depositions are subject to the exclusions of testimony by Chairperson Baker set forth as a part of the Baker Hearing Panel's Decision. (DEX 46, pp. 1657-1672).

25. Note the Transcript of this hearing, Volume I, page 2, states that Petitioners' Exhibit 1.1 was admitted. Portions of Petitioners' Exhibit 1.1 were admitted as noted above. However, the entire exhibit was not admitted during the hearing. (See: Wright Hearing, Tr. Vol. 1, pp. 172-174). Additionally, Petitioner requested the admission of Exhibit 1 in its entirety, a CD containing thousands of pages admitted on the last day of the hearing but this request was denied.⁹ (Wright Hearing, Tr. Vol. VI, p. 997. Petitioner, however, made an offer of proof of the CD marked Exhibit 1 over the objection of the District. (Wright Hearing, Tr. Vol. VI, pp. 996-997).

Time Line Information

26. The Petitioners filed the current due process complaint with DESE on March 25, 2011. (DEX 47, pp. 1674-1677).

27. On March 30, 2011, the District filed District's Notice of Insufficiency. (DEX 47, pp. 1691-1698). On April 4, 2011, Chairperson Wright issued an Order of Specificity. (DEX 47, pp. 1709-1711).

28. On April 11, 2011, Petitioners filed Petitioners' Amended Request For Due Process Hearing. (DEX 47, pp. 1718-1723). On April 26, 2011, the District filed District's Response to Amended Due Process Complaint. (DEX 47, pp. 1723-1732).

29. On April 13, 2011, the parties conducted a Resolution Meeting which was unsuccessful. (DEX 47, p. 1737).

⁹ Three other exhibits offered by Petitioner were ruled inadmissible: Petitioners' Exhibit 1.3.12 (PET. p. 673) ; Petitioners' Exhibit 1.3.13 (PET. p. 674) and Petitioners' Exhibit 1.3.73 (PET. pp. 979-980). (Wright Hearing Tr. Vol. I, pp. 206-208; Vol. II, pp. 278-283; Vol. V, p. 1016)

30. On May 5, 2011, Chairperson Wright issued a Scheduling Order which among other things, extended the time line through November 30, 2011. (DEX 47, pp. 1733-1737).

31. The Wright Hearing took place in Lee's Summit, Missouri on October 4-7, 2011 and November 1, 2011. On November 16, 2011, a telephone hearing was conducted, the hearing was completed and the record was closed. At the close of the hearing on November 16, 2011 the parties jointly agreed to extend the time lines in this case through January 31, 2011, with post-hearing briefs due on December 30, 2011. (Wright Hearing, Tr. Vol. VI, pp. 1053-1054). The Briefs were timely filed by the parties.¹⁰

32. On November 18, 2011, Chairperson Wright issued an Order memorializing the agreement reached on the record at the close of the hearing extending the time line to January 31, 2011. The opinion is issued within the current timeline.

The Issues

33. The Issues in this matter were set out in the Scheduling Order issued by Chairperson Wright on May 5, 2011 (DEX 47, pp. 1733-1734) as follows:

Issue 1. Did the District violate the procedural requirements of IDEA in its development of the April 1, 2009, IEP ("the IEP") for Student? If so, did the conduct: (a) impede the Student's right to a free appropriate public education; (b) significantly impede the Parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education ("FAPE") to Student; or (c) cause the Student to suffer deprivation of an educational benefit?

Issue 2. Is the IEP reasonably calculated to provide Student with FAPE in the least restrictive environment as alleged in detail by the Petitioner in his First Amended Due Process Complaint?

Issue 3. Did the District violate IDEA by not properly implementing the IEP as alleged in detail by Petitioner in his First Amended Due Process Complaint?

Issue 4. If the Petitioner prevails on one or more of the issues above, what are the appropriate remedies?

¹⁰ The "Pre-mature"(sic) Brief filed by Petitioners is devoid of any page citations to the deposition transcripts, Baker or Wright Hearing transcripts or any of the Hearing Exhibits. No statutory or case law is included in the Brief, which is basically a restatement of the allegations in the Amended Due Process Complaint.

BACKGROUND FACTS¹¹

Student's Disabilities

34. Student's Evaluation Report dated March 3, 2009 indicates the medical disabilities reported by Mother: illness induced asthma as well as food and environmental allergies; severe oral and verbal apraxia and autistic disorder, moderate/severe. ¹² (DEX 13, pp. 167-168). His March 1, 2009 IEP contains an educational diagnosis of Other Health Impaired. (DEX 14, p. 246).

35. The Student has significant cognitive difficulties. KR testified very credibly that the cognitive testing provided to the District by the Student's Parent showed that in May 2008, he had greater than a fifty percent (50%) cognitive delay. (Wright Hearing, Tr. Vol. IV, pp. 862-864; DEX 52). Petitioners' expert witness, Lisa Miller admitted that when she gave the Student the PEP-R in February 2007, the test indicated that he was "approximately at the 50th percentile in his chronological age throughout the test." (Wright Hearing, Tr. Vol. IV, pp. 333-338, 339, Ins. 4-7). KR testified that the results obtained by Ms. Miller on the PEP-R demonstrated that the Student "had significant delays both in his cognitive performance and cognitive verbal skills." (Wright Hearing, Tr. Vol. IV, pp. 861-862). These results are higher than the results obtained by the Britain Center who administered the AEPS (birth to three) test to the Student in August 2007 and May 2008. At that time, the Student was fifty-two (52) months and sixty-one (61) months old, but the tests he was give were scaled for a three year old child. The Student's cognitive performance on the AEPS tests was 34% of a 36 month old child in August 2007 and 44% of a 36 month old child in May 2008. (DEX 52; Wright Hearing, Tr. Vol. IV, pp. 861-864).

Student's Educational History

School Year 2005-2006

36. On January 23, 2006, the District conducted a Transition Meeting for the Student to discuss his transition from the First Steps Program to the District's Early Childhood program. (DEX 17, p. 362). Subsequently, the Student's Team conducted an Evaluation and determined that he met the criteria for YCDD. (DEX 2, p. 35).

37. On March 17, 2006, following preparation of the Student's Evaluation Report, the Student's Team prepared an Individualized Education Program ("IEP") for the Student. Student's Mother stated that she wanted to have the Student split his time in Early Childhood Special Education and Early Childhood programs. The Student's Team agreed that an appropriate placement for him was Part-Time Early Childhood/Part-Time Early Childhood Special Education. (DEX 3, p. 45; DEX 17, p. 363).

¹¹ As noted in the Issues above, the focus of this case is the April 1, 2009 IEP. The Baker Hearing Decision contains Findings of Fact covering Student's educational history prior to April 1, 2009, with primary focus on 2008. Since the Baker Hearing Decision is on appeal, these Findings are not final and binding upon us. Thus, we will independently summarize Student's educational history albeit in a more summary fashion than in the Baker Hearing Decision.

¹² Student's initial Evaluation Report dated March 17, 2006 had an educational diagnosis of Young child with Developmental Delay ("YCDD"). (DEX 2, p. 35)

School Year 2006-2007

38. Student's Mother requested a number of meetings in the 2006-2007 school year:

(a) The District held an IEP meeting on September 22, 2006. Student's Mother asserted that Student's speech had regressed and asked that the Present Levels of the IEP be amended with a statement that Student did not need ABA. (DEX 17, pp. 365-368).

(b) On October 6, 2006, approximately one and one-half months into classes for school year 2006-07, an IEP meeting was conducted at the request of the Parents. The Student's Mother was accompanied to the meeting by child advocate Ricky Presberry, who was assigned to the Parents by Missouri Protection and Advocacy. (Baker Hearing Tr. Vol. II, pp. 447-448). The Student's Mother requested that the Student's speech therapy services minutes be increased to four times a week which was agreed to by the Student's Team and an additional oral/motor goal was added to the Student's IEP. (Baker Hearing Tr. Vol. II, p. 449). The District also offered to have the Student receive more time in the STARS (Early Childhood Special Education) room so his needs could be met and the desire of the Student's Mother for a more structured, intensive instructional setting could be provided. The Student's Mother agreed to the revisions made to the Student's IEP. (DEX 5, pp. 51-62; DEX 17, p. 369).

(c) On or around January 19, 2007, the Student's Mother requested that the Student be moved to a full-time placement in the Early Childhood classroom with a one-on-one aide because of his limited communication skills and concerns about Student learning inappropriate behaviors in the special education classroom.. The Student's IEP Team considered and rejected the request because the Team believed that "[the Student's] current placement of part-time early childhood classroom/part-time special education classroom is most appropriate to meet [the Student's] behavioral and communication needs in the least restrictive environment." A Notice of Action was prepared and provided to the Student's Mother. (DEX 6, p. 63).

(d) On or around February 9, 2007, the Student's Mother and Parent Advocate Rhonda McMillen met with District staff members to review the classroom data concerning the Student. The Student's Mother alleged that the District was not allowing her to look at data. The Student's Mother was told that the District would arrange another meeting to provide more time for her to review and discuss the data and have the Student's therapists present so the Student's Mother could ask questions concerning the data. (DEX 17, pp. 371-372).

(e) On or about February 16, 2007, the Student's Mother made ten (10) requests to change the Student's program of special education and related services. (Baker Hearing, Tr. Vol. II, pp. 450-455). The District considered the requests and rejected same. (DEX 6, pp. 64-73).

(f) On March 7, 2007, an IEP meeting was convened to review and revise the Student's IEP. Prior to the meeting the Student's Mother requested that the Student be removed from SJ's STARS (Early Childhood Special Education) classroom. Karen Merrigan explained the effect of withdrawal of consent to the Student's Mother and urged her to complete the IEP and make appropriate changes rather than withdrawing the Student from the Early Childhood Program.

The Student's Team offered to provide more minutes in HS's Early Childhood Program classroom. The Student's Mother stated she did not want the Student in the STARS classroom. (DEX 17, pp. 374-376).

(g) On March 8, 2007, the Student's Mother and Rhonda McMillen met with Cindy Langersand to review classroom data. (DEX 17, p. 372).

(h) On March 12, 2007, the Student's Mother met with Karen Merrigan and Cindy Langersand and expressed her dissatisfaction with KB, the Student's Speech/Language Pathologist. (DEX 17, p. 377).

(i) On March 14, 2007, Ms. Merrigan arranged a meeting between the Student's Mother and KB to discuss the Mother's dissatisfaction with Ms. Baker. (DEX 17, p. 377).

38. On April 17, 2007, Student's Mother removed Student from the District (DEX 6, p. 74; DEX 7, p. 77).

School Year 2007-2008

39. On October 22, 2007, an IEP Meeting was conducted. The District provided a draft IEP (DEX 7, pp. 75-90). The meeting was held even though the Student had not been in attendance in the District since April 17, 2007. (Baker Hearing Tr. Vol. II, p. 456; DEX 7, p. 77). The Student's Mother was accompanied to this meeting by child advocate Rhonda McMillan. (Baker Hearing Tr. Vol. II, p. 456). The parties were unable to agree on an IEP for the Student.

40. On November 27, 2007, another IEP Meeting was conducted. The parties were not able to agree to an IEP for the Student. (DEX 17, pp. 385-386).

41. On March 27, 2008, the Student's Parents re-enrolled him in the District. (DEX 8, pp. 92-94). The Student began attending school again in the District in August 2008. The Student did not attend school in the District from April 17, 2007 through August 2008. (DEX 8, pp. 92-94, 96).

School Year 2008-2009

42. On August 6, 2008, SS called the Student's Mother to set up an IEP meeting to receive the transfer paperwork from the Student's "private school." (DEX 17, p. 389).

43. Five days later, the Student's Mother sent an email message to SS. The message stated that there would be no need to have a meeting to complete the transfer paperwork and review the Student's education plan since the Student was "not attending a private or public school." The email further stated that the Student had been "receiving therapy at the LeAnn Britain Center, a community outreach program provided through Shawnee Mission Medical Center." (DEX 22, pp. 479-481).

August 18, 2008 IEP Meeting

44. On August 18, 2008, an IEP Meeting took place. Present at this meeting were: Jerry Keimig; SS; KR; JT; LB; TW; Patty Reynolds; Tamara Asplund; SW; Shelli Guin (District's Attorney); the Student's Mother; Molly Pomeroy (private behavior therapist); Sherri Tucker (Parent's friend); Lisa Sutherland (Parent's attorney) and Chrys Sevic (KCRD Service Coordinator).

45. Jerry Keimig is the District's Executive Director of Special Education. Mr. Keimig has a Bachelor's degree in Social Studies education and a Master's degree in Special Education from the University of Kansas. Mr. Keimig has additional graduate hours to complete an endorsement as a director of special education. Mr. Keimig has thirty-six (36) years in education which includes time as a special education teacher; Director of Educational Services at the Kansas State Psychiatric Hospital in Osawatomie, Kansas; Director of Special Education in the Osawatomie, Kansas and the Grandview, Missouri School Districts. Mr. Keimig has been employed by the District for twelve years. Mr. Keimig has a Missouri certificate as Director of Special Education and multiple educational certifications from the State of Kansas. (Wright Hearing, Tr. Vol. III, p. 647).

46. KR was the Student's Special Education teacher during his Kindergarten and First Grade school years – School Years 2008-09 and 2009-10. (Wright Hearing, Tr. Vol. IV, p. 754). KR has a Bachelor of Arts degree in Special Education and a Master's degree in Special Education. She has educational certifications in Learning Disabilities, K-12; Behavior Disorders, K-12; Mental Retardation, K-12; Severe Developmental Disabilities Birth to 21; and Medically Fragile Child. (Wright Hearing, Tr. Vol. IV, pp. 752-753; DEX 49, pp. 1772-1773). She has been employed as an educator since 1985 and during the last thirteen (13) years has been employed as a special education teacher in the District. (Wright Hearing, Tr. Vol. IV, pp. 752-753; DEX 49, pp. 1772-1773).

47. JT provided the Student with Speech and Language Therapy services during his Kindergarten and First Grade school years – School Years 2008-09 and 2009-10. (Wright Hearing, Tr. Vol. IV, pp. 917-918). JT has a Bachelor of Science Education degree in Speech Pathology and a Master's of Science degree in Speech Pathology. She is a licensed Speech Pathologist in the State of Missouri. She has been employed as an Speech Pathologist since 1997 with the District. (Wright Hearing, Tr. Vol. IV, pp. 916-917; DEX 49, pp. 1774-1775).

48. LB provided the Student with Occupational Therapy services during his Kindergarten and First Grade school years – School Years 2008-09 and 2009-10. (Wright Hearing, Tr. Vol. IV, p. 941). LB has a Bachelor of Science degree and a Master's degree in Occupational Therapy. She is a licensed Occupational Therapist in the State of Missouri. She has been employed as an Occupational Therapist since 1995 with the District. (Wright Hearing, Tr. Vol. IV, pp. 939-940; DEX 49, pp. 1776-1779).

49. Among other things, the following took place at the August 18, 2008 IEP meeting:

(a) The Student's Mother indicated that the Student had been using an assistive technology device. The Student's Team asked questions concerning the device, which was not working correctly at the time of the meeting. SS stated the District would investigate the assistive technology device similar to the one the Student had tried out.

(b) The Student's Mother stated she wanted to attend school with the Student because he was non-verbal and she would "not hand over a non-verbal child without being in attendance." Jerry Keimig and Shelli Guin stated that the Mother's presence created a confidentiality issue for the District with respect to other students in the classroom. Jerry Keimig stated that the District would be willing to contract with the Student's private behavior therapist, Molly Pomeroy to assist the District's staff to get to know the Student. The Student's Mother stated that she would "not be excluded" and wants to come with the Student for three hours a day, until the Student is comfortable with the programming.¹³ Jerry Keimig offered to contract with Molly Pomeroy for 5-10 hours per week. Molly Pomeroy stated that "it was not beneficial for the Student for [the Student's Mother] to attend with him." Ultimately, the District contracted with Molly Pomeroy for 10-12 hours per week during the transition period. (Baker Hearing, Tr. Vol. III, p. 602, Ins. 4-13).

(c) The Student's IEP Team discussed increasing his speech therapy minutes from the 90 minutes per week which was on the October 2006 IEP, to 150 minutes a week. Speech/Language Pathologist JT stated that the speech therapy would be delivered in one-on-one therapy sessions and some small group sessions.

(d) The Student's IEP Team discussed the occupational therapy minutes and LB stated that she felt the number of minutes in the October 2006, IEP were acceptable as a starting point.

(e) SS shared a proposed transition plan (DEX 9, pp. 103-104), which started with the Student attending school for one hour a day with Molly Pomeroy providing support. The purpose of the transition plan was to provide ". . . a graduated plan as far as the number of hours that he attended school. That he would start with [KR] and then we would gradually increase the hours and include some time in the regular kindergarten classroom as well as speech services and OT services." (Baker Hearing, Tr. Vol. III, p. 597, Ins. 12-17).

(f) The Student's IEP Team determined that the appropriate placement for the Student was "Inside regular class less than 40% of time."

(DEX 17, pp. 390-392; DEX 9, pp. 103-104).

50. On August 18, 2008, after the IEP meeting that day, the Student's Mother met with KR and toured her classroom, the speech therapy room and the Kindergarten classrooms. (DEX 17, p. 394).

¹³ Student's Mother has disputed the meeting minutes on this issue – she testified that she stated at the meeting that she merely wanted to "observe" to make sure Student and the District could communicate with each other. (Wright Hearing Tr. Vol. VI, pp. 1029-1030.) We question Student Mother's version in view of her longstanding penchant for micro-managing Student's education at the District.

51. Later that day, the Student's Mother sent an email message to SS. The message stated that the Student would not be attending school on August 19, 2008 because of the "concerns" of the Student's Mother "regarding what will his program at PVE [Prairie View Elementary School] look like and my concerns over the district's inability to communicate with [the Student]." (DEX 22, pp. 485-486).

52. On August 22, 2008, SS wrote a letter to the Student's Mother which transmitted the updated IEP sections, a copy of the October 2006 IEP, a Notice of Action and a graduated transition plan to the Parents. The letter also stated that if the Parents wish to observe the classroom they will need to use the parent observation procedure set forth in the Student Handbook. (DEX 9, pp. 103-107).

53. On August 26, 2008, KR met with the Student's Mother, Molly Pomeroy and the Student in the Elementary School. The Student hugged Molly and held hands with KR and Molly while they walked down the hall to KR's Life Skills classroom. LB, JT, SM and TW were in the classroom while the Student was there. The Student explored the room and materials, went into other student learning areas and into the medical privacy area. Molly Pomeroy demonstrated how she presented tasks to the Student and gave SM, the District's Autism Specialist, a copy of the current skill sets for the Student. The Student was scheduled to return for school on August 27, 2008. (Baker Hearing, Tr. Vol. III, pp. 607-609; DEX 17, p. 394, 402; DEX 22, p. 491-492; DEX 24).

54. On August 28, 2008, the Student returned to school in KR's Life Skills Classroom. (Baker Hearing, Tr. Vol. III, p. 607).

55. KR described the Student as he presented to her when he was first assigned to her classroom:

"... even from the meetings . . . prior to [the Student] coming on the very first day it was decided that he would need one-on-one adult support from the moment he arrived until the moment he left. He did have some good pre-learning skills such as he was able to sit in a chair, contract for reinforcers, scan and array. He still had difficulty with some pre-learning skills such as following directions. Pre-academic skills that he had difficulties with [were] matching, imitation, play skills, receptive. He had some receptive identification but it was less than 10 items. He was not independent in any daily living skills. He needed assistance with eating with utensils. He needed assistance with dressing if he had snaps on or engaging his coat, the zipper on his coat to zip it. He wasn't able to do buttons. In the area of grooming, brushing his teeth, brushing his hair. In the area of bathrooming, he came in a diaper and we worked on potty training. . . . We did modifications and accommodations so they had access to the general curriculum, and still the skill levels and things that we were working on were pre-learning."

(Baker Hearing, Tr. Vol. III, p. 614, lns. 6-25, p. 615, lns. 1-6).

56. On August 28, 2008 and September 2, 2008, the Student's Mother observed KR's Life Skills classroom while KR and Molly Pomeroy worked with the Student. (DEX 17, p. 393; DEX 22, p. 493; 498-499; DEX 22, p. 494).

57. On September 11, 2008, SS sent a letter to the Student's Mother which provided her with a copy of the draft IEP which was going to be discussed at the IEP meeting scheduled for September 16, 2008. (DEX 22, p. 508; DEX 10, pp. 109-126).

58. On September 12, 2008, the Student's Mother sent a letter to SS which indicated she had received the draft IEP sent on September 11, 2008, and enclosed a copy of "Questions, Comments and Suggested Changes to the Draft IEP." (DEX 22, p. 509; DEX 10, pp. 126c-126d).

September 16, 2008 IEP Meeting

59. On September 16, 2008, an IEP Meeting took place. Present at this meeting were: the Student's Mother; Jerry Keimig; District counsel Shellie Guin; SS; Mother's friend Sherri Tucker; LB; Patty Reynolds; KR; JT; SM; Molly Pomeroy; TW; Mother's counsel Lisa Sutherland (by phone); and Chrys Servic. During this meeting the participants discussed, among other things, the following:

(a) Student's Mother was given an opportunity to add a "Parent Concerns" section to the Present Levels.

(b) The IEP team agreed to add a language goal relating to receptive identification which was suggested by Molly Pomeroy.

(c) The Student's IEP team discussed the following Special Factors:

(1) The Student's Mother requested that the District provide the Student with an assistive technology device. Jerry Keimig stated that the District would provide a device.¹⁴

(2) Transportation accommodations were discussed. The Student's Mother requested that the Student be provided with a seat belt and she was not comfortable with the safety harness without looking at it. The Team agreed that the box indicating a need for accommodations will be marked to include a seatbelt.

(3) Adult support was discussed. The Student's Team agreed that the Student needed adult one-on-one support during transition times, to give specific directions for task completion, to be with him on the playground for safety and to teach him the rules and routines. The Team added a statement to the Present Levels section regarding adult assistance.

¹⁴ On October 1, 2008, the District sent a Springboard AT device for the Student to try out. (DEX 22, pp. 552-553). Two weeks later, KR took a Tango AT device to Student's home for Student to test. (DEX 17, p. 403).

(d) The Student's IEP Team discussed the Program minutes. The District personnel recommended that the Student transition to a full day program. The Student's Mother felt that a full day program was too much for the Student at this time. Molly Pomeroy suggested that the Student transition into a full day program and as appropriate the Student's time could be increased by writing an Addendum to the IEP. The Team agreed to initially extend the Student's time at school by one hour per day (five hours per week) at this time and reevaluate the Student's readiness for additional time in two to three weeks. KR explained the Student's current schedule and the special education and regular education minutes were totaled. The Team determined that initially the Student would have 1200 total minutes per week – with 925 minutes in Special Education, 150 minutes in Speech Therapy, 60 minutes in Occupational Therapy and 715 minutes in specialized instruction. (DEX 17, pp. 399-400).

(e) The Student's IEP Team discussed and completed the Regular Education Participation/Placement page of the IEP. The Student's Mother stated that she believed that the Student would disrupt the regular education classroom. The Team determined that the appropriate placement for the Student was Inside the Regular Education Setting less than 40% of the time. (DEX 17, p. 400).

The September 26, 2008 IEP Addendum

60. On September 26, 2008, an IEP Addendum was prepared which proposed a change to the minutes of participation for the Student consistent with the Transition Plan that had been agreed to by the Student's Mother. The September 26, 2008 IEP Addendum was transmitted to the Student's Mother by SS. (DEX 11, pp. 151-154). The September 26, 2008 IEP Addendum proposed the following changes in the Student's participation minutes:

(a) Increase the Total Minutes of participation for the Student from one thousand two hundred (1,200) minutes to one thousand seven hundred (1,700) minutes per week.

(b) Increase the Student's Minutes in Regular Education Classes from two hundred seventy five (275) minutes to three hundred seventy five (375) minutes per week.

(c) Increase the Student's Minutes in the Special Education Classroom from seven hundred fifteen (715) minutes to one thousand fifteen (1115) minutes per week.

(DEX 10, p. 127; DEX 11, pp. 152). The proposed initiation date for the change in participation minutes was October 6, 2008. (DEX 11, p. 152). The Student's Mother was provided with a Notice of Action indicating a proposed change in services and minutes on the current IEP. The Student's Mother signed the Notice of Action on October 1, 2008, and indicated she wished to waive the ten day initiation period. (DEX 11, pp. 153-154).

61. Between October 3, 2008 and January 9, 2008, the Student's Parents received six (6) written progress reports from JT and/or KR. (DEX 22, pp. 524; 534; 537; 546; 549; 555-556).

The October 21, 2008 IEP Addendum

62. On October, 21, 2008, a Parent-Teacher Conference was conducted concerning the Student. Present at this meeting were: KR, JT, LB, Tamara Asplund, SS, TW, the Student's Mother and her friend, Sherri Tucker. During the meeting KR and TW discussed the Student's progress on the goals in his IEP. During this meeting the District proposed the following changes in the Student's participation minutes:

(a) Increase the Total Minutes of participation for the Student from one thousand seven hundred (1,700) minutes to two thousand one hundred (2,100) minutes per week.

(b) Increase the Student's Minutes in Regular Education Classes from three hundred seventy five (375) minutes to four hundred seventy five (475) minutes per week.

(c) Increase the Student's Minutes in the Special Education Classroom from one thousand fifteen (1115) minutes to one thousand four hundred fifteen (1,415) minutes per week.

(d) The parties agreed that they would meet every month to review the Student's progress and the data collected on his goals. (Baker Hearing, Tr. Vol. III, p. 655).

(DEX 10; DEX 12, pp. 155-158; DEX 15; DEX 17, pp. 403-405). The proposed initiation date for the change in participation minutes was October 27, 2008. (DEX 12, p. 156). The Student's Mother was provided with a Notice of Action indicating a proposed change in services and minutes on the current IEP. The Student's Mother signed the Notice of Action on October 21, 2008, and indicated she wished to waive the ten day initiation period. (DEX 12, pp. 157-158). On October 22, 2008, SS sent a copy of the October 21, 2008 IEP Addendum home to the Student's Parents. (DEX 17, p. 404).

63. On October 24, 2008, the Student's Mother sent an email to SS raising questions concerning whether the Student should receive a grade card. (DEX 22, pp. 538-539). On October 30, 2008, SS responded to the email from the Student's Mother and addressed the questions she raised in her October 24 email. (DEX 22, p. 545). SS stated the reason why the Student did not receive a regular grade card as follows:

“Students that receive intensive support due to their individual functioning levels frequently have the grade card marked as ‘see IEP’. This is due to the student's individual needs and their ability to work on grade level curriculum. [The Student's] progress was reviewed using his IEP goals.”

SS's e-mail further stated:

“[The Student] will continue to have access to the general education curriculum while in the Special Education setting or the regular education setting, as determined by his IEP. [The Student] has access to grade level academic content this is based upon alternate achievement standards that link functional curriculum (his goals and objectives) to academic skills. Yes, the alternate standards set

different expectations for student mastery of grade-level content and the content may take the form of introductory or prerequisite skills, as in [the Student's] case where we are working on developmentally appropriate skills.”

(DEX 22, p. 545).

64. On November 18, 2008, a Parent-Teacher Conference was held with the following persons in attendance: KR, JT, LB, Tamara Asplund, SS, TW, the Parents and Sherri Tucker. During the Conference the following occurred:

- A. Progress on goals was shared by KR and the Student's Team reviewed correlation between the goals.
- B. The Student's Mother expressed concerns about information that had been provided to her concerning the Student's use of the Alternate Curriculum and ALT-GLE¹⁵ and why that was not in the Student's IEP. A Discussion was had concerning how the ALT-GLEs bridge the IEP and the Kindergarten curriculum.
- C. KR said she would prepare a list of Kindergarten curriculum to which the Student was being exposed in her room.
- D. The Student's Mother indicated that the Student knew all of his colors and 10 letters this summer. KR stated that the information provided by Molly Pomeroy indicated the Student knew 1-2 colors and 3 numbers. KR asked the Student's Mother to show her where Ms. Pomeroy's data indicated something different.

(Baker Hearing, Tr. Vol. III, p. 657; DEX 17, p. 406).

65. On November 20, 2008, KR called the Student's Mother to get more input from her on what she envisioned the Kindergarten Regular Education time to look like. The Student's Mother said she wanted the Student to be exposed to the Kindergarten curriculum. KR reminded the Student's Mother that she was working on Kindergarten skills in her classroom. The Student's Mother requested copies of the Kindergarten work sheets. KR said she would get extra copies of the Kindergarten work sheets for her.¹⁶ (DEX 17, p. 407).

Parent-Teacher Conferences

66. On December 17, 2008, a Parent-Teacher Conference was held with the following persons in attendance: KR, SM, SS, JT, Tamara Asplund and the Student's Mother. During the Conference the following occurred:

¹⁵ The acronym ALT-GLE stands for Alternative Grade Level Expectations.

¹⁶ KR sent the promised material. Student's Mother sent an email in response thanking KR and stated the information was what Mother wanted taught to Student at school. (DEX. 17, p. 407).

(a) Progress on goals and data collected on the progress was provided and discussed by the Student's Team.

(b) The Student's Mother was provided a copy of the Procedural Safeguards. (DEX 17, p. 408; DEX 18, p. 447).

(c) The Student's Team discussed the re-evaluation of the Student, prepared an Evaluation Plan and the Student's Mother signed the Notice of Action and indicated she wished to waive the ten day initiation period.¹⁷ (DEX 13, pp. 159-165).

(DEX 17, p. 408).

67. On January 27, 2009, a Parent-Teacher Conference was held with the following persons in attendance: KR, SS, JT, LB, Tamara Asplund, TW, the Student's Mother and Sherri Tucker. During the Conference the following occurred:

A. Progress on goals and data collected on the progress was provided and discussed by the Student's Team.

B. The Student's Mother expressed concern about the Student needing to be introduced to writing skills and academics. KR provided the Student's Mother with a copy of alignment of skills document which compared the skills the Student was receiving with the Kindergarten skill levels. KR stated that the Student was doing academics in her classroom – letters, numbers, shapes and colors – which are recorded on the data sheets and provided to the Student's Mother. (DEX 16, pp. 323-336).

(DEX 17, pp. 407-409).

68. On February 18, 2009, the Student's Mother wrote a letter to the Student's IEP Team which requested that copies of "relevant evaluative information" be provided to her prior to the March 3, 2009 meeting to discuss the results of the Student's re-evaluation. (DEX 22, p. 574).

69. On February 28, 2009, a Parent-Teacher Conference was held with the following persons in attendance: KR, JT, LB, Tamara Asplund, SS, TW, SM, the Student's Mother and Sherri Tucker. During the Conference the following occurred:

(a) Progress on goals and data collected on the progress was provided and discussed by the Student's Team.

(b) A report concerning the Student's progress on his Occupational Therapy goals were provided by LB.

¹⁷ The Plan makes reference to the use of ABLLS for testing in the areas of speech/language; cognitive; academic achievement; adaptive behavior. (DEX 13, pp. 160-164). Note Student's Mother did not request any cognitive testing of Student as part of the Evaluation Plan. (Wright Hearing Tr. IV, p. 859). She signed the Notice of Action which lists the areas to be tested. (DEX 13, p. 164).

(c) A report concerning the Student's progress on his Speech/Language goals were provided by JT.

(d) The Student's Mother shared information she had received from other agencies concerning the Student's ability to sort information.

(Baker Hearing, Tr. Vol. III, p. 658; DEX 17, p. 409).

Triennial Evaluation

70. On March 3, 2009, an evaluation staffing meeting was held with the following persons in attendance: SS, KR, JT, LB, SM, TW, Tamara Asplund, the Student's Mother and her friends, Sherri Tucker and Mrs. Burgess. During the meeting the following occurred:

(a) The Student's Mother was provided a copy of the Procedural Safeguards. (DEX 17, p. 410; DEX 18, p. 447).

(b) The Evaluation Report was provided and discussed. (DEX 13, pp. 167-219). The Evaluation Team determined that the Student qualified for the categorical disability of "Other Health Impaired." Student's educational disability was based on medical diagnoses of: Severe Oral and Verbal Apraxia by Dr. Zimmer, August 2006 and Autistic Disorder by Dr. Kanne, September, 2007.¹⁸ (DEX 13, p. 217).

(c) The Student's Mother was provided with a Notice of Action which documented the "Change in Diagnosis" and the Student's Mother signed the Notice of Action and indicated she wished to waive the ten day initiation period. (DEX 13, pp. 219-220).

(d) The Team scheduled a date for the review/revision of the Student's IEP. (DEX 17, p. 410).

71. The Evaluation Report contains the results of ABLLS-R dated March 3, 2009. (DEX 13, 178-197). The results in part:

(a) According to the ABLLS Basic Learner Skills Assessment, Student did not demonstrate, among others, the following skills: look to instructor for instruction; sort non-identical items; match pictures to objects; touch own body parts; imitation of head, mouth or

¹⁸ Note in the Parent Questionnaire section of the Report, the Parents did not disclose a gastrointestinal illness that Student's Mother claimed at the hearing is the basis of his toileting difficulties. (DEX 13, p. 212-213); (Wright Hearing Vol. II, pp. 363-364). Mother also did not bring up the issue at the subsequent IEP meetings in March and April 2009 – there is no reference to it in the IEP or the Parent Concerns. (DEX 14, pp. 246-272). She testified twice that she had provided information regarding this medical condition to the District. (Wright Hearing, Tr. Vol. II, p. 363; Vol. VI, pp. 1035-1036). KR, however, testified very credibly that this alleged gastrointestinal illness was never brought up to her by Mother in connection with Student's toileting issues. (Wright Hearing Tr. IV, p. 905).

tongue movements; imitation of blowing; adjust behavior based on changes in peer's reactions; sit appropriately in large groups; takes turns during instruction.¹⁹ (DEX 13, pp. 178-185).

(b) On the Academic Skills Assessment of ABLLS, Student exhibited no reading, math skills, spelling skills and the only writing skill was that he mastered putting a mark on paper. (DEX 13, 185-186).

(c) The results of the Self-Help Assessment showed that he had mastered: pulling pants up and down; unzipping a zipper; eating finger foods; drinking from a straw; drinking from a cup; feeding himself with a spoon or fork; drying hands; urinating in a toilet; remaining clean (bowel movement) on a toileting schedule. (DEX 13, p. 187). Emerging skills include: taking off and putting on shirts, pants, socks, coat; washing and drying his face; combing or brushing his hair; brushing his teeth; remaining dry (urine) on a toileting schedule; defecating in a toilet. (DEX 13, p. 187). In the Self-Help area, he did not demonstrate these skills, among others: use zipper on clothes; tie shoes; blow nose when needed; independently use familiar restroom for bowel movements.²⁰ (DEX 13, p. 187).

(d) Student showed a lack of the following skills, among others, in the Motor Skills Assessment of the ABLLS: catch a ball any method; ride a tricycle; walk sideways; kick ball at target; throw a ball underhand; bounce a ball; skip; jumping jacks; color within boundaries; cut across paper with scissors; fold a piece of paper; cut out shapes; replace lids of jars. (DEX 13, pp. 187-188).

March 26, 2009 IEP Meeting

72. On March 3, 2009, the District provided the Student's Mother with a Notification of Meeting for an IEP meeting to be held on March 26, 2009. (DEX 38, p. 1281).

73. On March 13, 2009, the District provided the Student's Mother with draft Present Levels Of Academic Achievement and Functional Performance. (DEX 38, pp. 1284-1285).

74. On March 25, 2009, KR had a conversation with the Student's Mother during which the Student's Mother told her that she was apologizing in advance because the IEP meeting on March 26, 2009 was going to be bad. During the same conversation, the Student's Mother also told KR that she was going to nominate her for "Teacher of the Year." (DEX 17, p. 411).

75. On March 25, 2009, SS sent an email to KR, JT, LB, SM, Tamara Asplund and Patty Reynolds and carbon copied Jerry Keimig. (Pet. Exh. 1.13.49). The email discusses: (1) how to handle the Parent Concerns of the proposed IEP; (2) whether some of the related services could be provided in the regular ed setting versus as pull out services and (3) suggesting that the participants refrain from asking for her approval but instead ask if she needs something clarified and (4) if Mother chooses to leave the meeting, they could proceed to complete the IEP without her. (Pet. Exh. 1.3.49).

¹⁹ The summary includes nothing about vocalization skills because of his apraxia which causes Student to be very far behind his peers in this area.

²⁰ Petitioners' expert Lisa Miller testified that he is not fully toilet trained. (Wright Hearing Tr. Vol. II, p. 355).

76. On March 26, 2009, an IEP Meeting took place. Present at this meeting were: the Student's Mother; friends of Mother, Sherri Tucker and Christi Burgess; SS; KR; SM; LB; JT and TW. (DEX 17, p. 419; DEX 38, p. 1282). During this meeting the following occurred:

(a) The District provided the participants with an Agenda for the meeting (DEX 17, p. 420; DEX 38, p. 1283), a draft IEP (DEX 38, pp. 1286-1304) and draft Goals and Objectives. (DEX 38, p. 1305). During the meeting the District provided the Student's Mother with Procedural Safeguards. (DEX 18, p. 447).

(b) The Student's Mother provided an update on the Student's current medications. (DEX 17, p. 415).

(c) The District personnel provided a data update to the Student's Mother, including monthly data sheets and progress notes, which described the Student's progress on his IEP goals and objectives. (DEX 17, p. 415).

(d) The Student's IEP Team discussed the Present Levels of Academic and Functional Performance including the following:

(1) Gross Motor Skills were discussed and the Student's Team agreed to add that the Student was able to participate in PE and access the building, but benefits from program adaptations or modifications to assist with motor planning difficulties.

(2) The Student's Mother did not agree with the statement regarding the Student's difficulty processing and comprehending curriculum because there was no testing that showed he was or was not able to comprehend the curriculum. The Student's Team stated they would keep these concerns in mind when they progressed through the IEP.

(3) The Student's Mother stated she wanted to wait to discuss her other concerns until the entire IEP was prepared as some of her concerns might be dealt with in that process. (DEX 17, p. 415).

(e) The Goals and Benchmarks in the IEP were reviewed and discussed as follows:

(1) Early Math and Reading Goals were discussed. KR stated that the Student was a "whole-word" learner and has difficulty learning individual letters.

(2) Daily Living Goals were discussed. These goals were designed to target peer interaction/imitation skills – trying to make the tasks functional and related to daily activities with his peers. KR noted that the Student had improved interactions with other students since beginning her class.

(3) Language Goals were discussed. These goals were to focus Assistive Technology device skills on choosing more from the whole screen rather than just

the top row. JT indicated that speech activities were done every day while language tasks were rotated. The Team discussed the need to increase functional language. The Student's Mother stated that the Student often has spontaneous words but struggles with volitional speech.

(4) Occupational Therapy Goals were discussed.

(5) The Student's Mother stated she felt the goals were too low to bridge the gap with the Student's Peers. The Student's Mother did not agree with the goals but agreed to wait to see the entire IEP. (DEX 17, p. 415).

(f) The Student's Team reviewed and discussed the Consideration of Special Factors as follows:

(1) The Student's Mother questioned the Student's visual processing skills as visually impaired topic was reviewed. The Team discussed the Student's ability to visually attend and his difficulties with these skills.

(2) SM discussed the possible use of Visiwords as a program for "whole learners" which might be considered for the Student. KR discussed the use of Edmark, but stated that any program should use meaningful words for the Student. The Team pointed out that the Student had mastered potty training and had transitioned well to the building. (DEX 17, p. 415).

(g) The Student's Team reviewed and discussed the Modifications page as follows:

(1) The Student's Team changed the Sensory Strategies to daily as the Student benefitted from daily sensory breaks built into his routine.

(2) The Student's Team added Directions and Instructions given in a variety of ways. (DEX 17, p. 416).

(h) The Team reviewed and discussed the Minutes page as follows:

(1) Occupational Therapy Services. Student's Mother requested additional minutes for Occupational Therapy. The Student's Team agreed to continue the 60 minutes per week of pull-out OT services and agreed to add 20 minutes per week in-class OT services for the remainder of Kindergarten and First Grade years.

(2) Speech Language Services. The Student's Team agreed that speech services needed to continue to be provided on a daily basis. The Student's Mother wanted more emphasis on speech sounds. It was agreed that Speech Language services would be provided individually.

(3) Time in Regular Education Classroom. The Student's Team discussed centers time versus curriculum time. KR indicated that centers time is a better

time to work with the Student. The Student's Team discussed the amount of paraprofessional time versus the amount of time the Student had with the Special Education teacher. KR suggested "reverse inclusion" as a way to increase the amount of peer interaction with the Student and doing morning and afternoon centers time in the Kindergarten room as a way to increase time in regular education. The Student's Team determined that the time in regular education would be increased to seven hundred ten (710) minutes per week (including lunch). This would be 33.8% in regular education for a full school day. Regular education time in First Grade was estimated to be eight hundred twenty (820) minutes. The Student's Mother requested that the Student be with his peers as much as possible.

(4) The Student's Mother stated that she wanted to be more involved in the type of methodology that was used with the Student in the classroom. SS stated that the Student's Mother had been involved in monthly meetings where strategies and progress have been discussed. KR indicated that she compared the goals to the Kindergarten curriculum to choose tasks for the Student.

(i) Goals. The Student's Team discussed the goals and increased the letters goal to 50% of the letters (13 letters) rather than just 5 letters. (DEX 17, p. 416).

(j) The Student's Team returned to the Parent concerns in the Present Levels section of the IEP as follows:

(1) In response to a concern stated by the Student's Mother, SM recommended that "difficulty processing" be taken out and "comprehension of curriculum" be changed to "ability to independently participate in and complete grade level tasks."

(2) The Student's Mother stated she wanted to provide a statement of parental concerns for inclusion with the IEP. (DEX 17, p. 417).

(k) At the end of the meeting the Student's team summarized the status of the Student's IEP and determined that: (1) the goals and objectives were fairly complete with changes included as discussed; (2) the Consideration of Special Factors was complete; (3) the Modifications section was complete; (4) the Minutes section was complete, pending changes as the Student entered First Grade; (5) the Student's Team needed to complete Regular Education Participation/Placement Considerations and Decisions and the Extended School Year paperwork. The Student's Team agreed to continue the IEP meeting on Wednesday, April 1, 2009 at 1:00 pm.

(DEX 17, pp. 415-417).

77. On March 26, 2009, the District provided the Student's Mother with a Notification of Meeting Form for the April 1, 2009 continuation of the IEP Meeting. (DEX 39, p. 1308).

78. On or about March 27, 2009, KR sent an email to the Student's Mother which informed her about a sports opportunity for the Student. (DEX 22, pp. 585-587).

79. On or about March 27, 2009, the Student's Mother sent an email to SS which complained that the District did not have the right to paraphrase her parent concerns on the IEP. On March 27, 2009, SS responded to the Student's Mother by email and stated as follows:

“. . . the information we have been given regarding the “present level of Academic Achievement and Functional Performance” and the section that includes “concerns of the parent/guardian for enhancing the education of the child,” indicates that ***the PLAAFP section of the IEP is required to include information regarding the student's educational/school achievement in the school setting.*** Parent concerns need to also address educational concerns in this section. If a parent includes information that does not directly relate to the student's educational achievement (PLAAFP) performance – that information can be included in the student's record, but not required in the PLAAFP, due to the information is not impacting educational performance.” (emphasis added).

(DEX 22, pp. 588-589).

80. On or about March 30, 2009, the Student's Mother provided the District with Parent Concerns for the Student. (DEX 17, pp. 427-428; DEX 38, pp. 1306-1307). The next day, SS sent an email to Jerry Keimig asking if a Notice of Action was required to address the Student Mother's request for Parent Concerns to be included in the IEP if the other members of the IEP team concluded the requested Parent Concerns were inappropriate. (Pet. Exh. 1.3.50).

April 1, 2009 IEP Meeting

81. On April 1, 2009, the IEP Meeting that began on March 26, 2009, continued as agreed by the Student's IEP Team. Present at this meeting were: the Student's Mother, Sherri Tucker, Christi Burgess, SS, KR, SM, LB, JT, Tamara Asplund and TW. (DEX 17, p. 434; DEX 39, p. 1309). During this meeting the following occurred:

(a) The District provided the participants with an Agenda for the meeting (DEX 17, p. 433; DEX 39, p. 1310) and a Draft of the IEP as agreed at the March 26, 2009 IEP Meeting. (DEX 39, pp. 1312-1334). The Student's Mother was provided with a copy of the Procedural Safeguards. (DEX 18, p. 447).

(b) Parent Concerns. The Student's Mother provided Parent Concerns (DEX 17, pp. 427-428; DEX 38, pp. 1306-1307) and a Parent Agenda. (DEX 39, p. 1311). The Student's Team agreed to write parent concerns into the Present Level Parent Concerns section of the IEP and place the document which was provided in the Student's Education records.

(c) The Student's Mother stated that she believed that the placement determination for the Student had been predetermined. SS stated that the Student's placement would be determined by the Student's Team during the meeting. (DEX 17, p. 429).

(d) Goals/Objectives. The updated Goals and Objectives which had been agreed to at the March 26, 2009 IEP meeting were discussed as follows:

- (1) The Student's Mother provided information from Lisa Miller and other background data from 2006 which she said showed that the Student was capable of mastering harder goals.
- (2) The Student's Mother stated she believed that the goals were too easy and therefore had low expectations for the Student.
- (3) SS stated that the goals are written for the Student's current level and if he meets the goals the team can meet again and revise the goals. KR stated that she used data from Molly Pomeroy when the Student first entered her classroom and he had progressed from that point. KR stated that she had moved many of the goals from a one-on-one setting to include multiple environments and staff and that several of the goals have been expanded to create multiple ways of completing the tasks. The Student's Mother stated that she did not see the Student regressing or progressing, but that he was falling behind his peers.

(e) Minutes. The Student's Team revised the minutes page again. SS stated that the Student's placement will be determined by the number of minutes in each setting and the percentage of time as it fits on the placement continuum. KR proposed that the Kindergarten time be seven hundred twenty (720) minutes in the regular education classroom and one thousand three hundred eighty (1,380) minutes in Special Education, which meant the Student would spend approximately thirty four percent (34%) of his time in a regular education setting. KR explained that the Student would have two hundred seventy (270) minutes a week or fifty four (54) minutes per day in the Regular education classroom doing centers and curriculum time and the remaining time would be other regular education programming like physical education, art and music. KR also proposed that the First Grade minutes be eight hundred thirty (830) minutes in regular education which would mean the Student would spend approximately forty percent (40%) of his time in a regular education setting. The Student's Team reviewed the Kindergarten regular education minutes. The Student's Mother stated she wanted the Student to be in "tasks that are academically based" for three hundred thirty (330) minutes per week or sixty-six (66) minutes per day.

(f) Consideration Of Extent Of Participation In Regular Education. The Student's Team determined that there were several reasons that the Student should not be in regular education 100% of the time. The Student's Mother agreed that the Student needed one-on-one teaching time, but stated she thought the Student could learn without alternative materials or environment. The Student's Team agreed to mark items 3, 5 and 6 in Section 5 of the IEP and add a comment under "other" that the Student "requires small group setting."

(g) Review of Placement Considerations. The Student's Team considered options 1 through 4 on the Placement Continuum (DEX 14, p. 266) and chose option 2 (Inside Regular Class 40% to 79% of time) for First Grade and option 3 (Inside Regular Class less than 40% of time) for the remainder of his Kindergarten year.

(h) Review of ESY Information. The Team considered the Student to be eligible for Extended School Year services. The Team determined the following service minutes for ESY – Speech/Language – 90 minutes per week; OT – 60 minutes per week; Specialized instruction – 810 minutes per week. (DEX 17, pp. 429-430).

(i) At the conclusion of the meeting, the Student's Team determined that the Student's April 1, 2009 IEP had been completed. (DEX 39, pp. 1335-1359).

(DEX 17, pp. 429-430).

82. On April 1, 2009, following the conclusion of the IEP meeting, the Student's Mother sent SS an email which complained about the content of the Present Levels portion of the IEP that had just been developed. (DEX 41, pp. 1404-1406). On April 3, 2009, SS sent an email to the Student's Mother which responded to her letter. (DEX 41, p. 1408).

83. On April 2, 2009, the Student's Mother provided the District with written consent, and waived the ten (10) day waiting time for implementation, for the proposed changes in services, consideration of special factors, goals, minutes, accommodations and placement contained in the Student's April 1, 2009 IEP. The parent hand wrote the following statement on the signed consent form:

“I am not in agreement to the IEP in its entirety but am signing so my son receives some services. The IEP has low expectations in goals, some goals are even repeated from previous IEPs in this district. No methodology is stated even though requested and the district acknowledges my son is not a traditional learner. My son is not progressing academically. Measurements for goals are done by teacher observation only, no standardized assessments.”

(DEX 39, pp. 1360-1361)

84. On April 2, 2009, the Student's Mother provided a Special Needs Request form to the District which stated:

“[The Student] has apraxia and is non-verbal. It takes months for him to bond with a teacher. Valuable teaching time could be lost during those months. [The Student] cannot handle having different teachers and aides every year. Since he is already multiple years behind in grade level expectations, the decision of his teacher assignment becomes vital to [the Student's] success or failure in school.

He needs the same teacher and aide if it is within Prairie View's ability to provide it (i.e. teacher still works for district)."²¹ (emphasis added).

(DEX 41, p. 1407).

Progress Reports

85. On April 3, 2009, JT sent an email to the Student's Mother which reported on the Student's progress in her class. (DEX 41, p. 1409). The Student's Mother responded to that email on April 3, 2009. (DEX 41, p. 1409).

86. On April 3, 2009, TW sent an email to the Student's Mother concerning the Student's progress in her class. The email stated in pertinent part as follows:

"I wanted to share some exciting news with you. Over the last couple of weeks the boys and girls have noticed [the Student] saying more and more sounds and have been very excited about this. Yesterday when it was time for him to leave our class I said bye to him as I always do. It sounded as if he responded back saying bye. At first I thought it was just me thinking this and automatically the kids looked at me and a couple said "[The Student] was talking." They were absolutely delighted. So today we were getting ready to do our little kindergarten song with body movements. This is where the lady on the CD gives us a direction and we follow the action. I asked them if they wanted to wait for [the Student] to come in so he could do it with us and of course, they said yes. One little child looked at me and said "I wonder if [the Student] is going to talk again today." Then of course the rest of the class chimed in with encouragement for [the Student].

Another episode was in the morning class. I said something to [the Student] about grandma and papa because Julie had mentioned he had said something to her regarding papa. He responded back at that time with what sounded like "papa". I was so excited! I said it to him again but could not get him to repeat it that time.

Anyway, I just wanted to share this with you because our class has been so excited about this. The kids are so wonderful with [the Student] and it is wonderful to see how they work with him. We absolutely think the world of your little boy."

(DEX 41, pp. 1411-1412).

87. On April 5, 2009, the Student's Mother sent an email to KR which ended with the following:

²¹ While Student had a different regular education teacher when he advanced from Kindergarten to 1st Grade, he retained the same special education teacher, speech therapist and occupational therapist. (FF#46-48).

“[The Student] still can’t blow out the candles but everything else was much more ‘typical’ than it has ever been before.”

(DEX 41, p. 1410).

88. On April 14, 2009, SS sent an email to the Student’s Mother requesting to know if she wished to continue the monthly data review meetings.²² SS proposed that the meeting take place on May 12, 2009. (DEX 41, p. 1413). On April 21, 2009, SS sent an email to the Student’s Mother asking that she confirm whether she would be available on May 12, 2009 for a monthly data review meeting. (DEX 41, p. 1414). On April 21, 2009, SS emailed the Student’s Mother to confirm the date of May 5, 2009 for the data review meeting. (DEX 41, p. 1415).

89. On April 22, 2009, the Student’s Mother sent an email to JT concerning a model speech program. (DEX 41, pp. 1417-1420).

90. On May 5, 2009, a Parent-Teacher Conference was held with the following persons in attendance: KR, SS, Stacy Martin, JT, LB, Tamara Asplund, the Student’s Mother and Sherri Tucker. During the Conference, the District personnel shared the Student’s progress on goals and the data collected on the progress with the Student’s Mother. The Student’s Mother stated that she believed the Student was more frustrated at this time. SM shared some strategies for dealing with the Student. (DEX 17, p. 435).

Summer of 2009

91. On June 10, 2009, the Student’s Mother sent an email to JT regarding the Simons Simplex Collection Study. In the email, the Student’s Mother stated she felt that JT had “a well-established relationship with [the Student].” (DEX 41, pp. 1421-1423).

92. On June 18, 2009, JT sent an email to the Student’s Mother stating that she had received further information from the Simplex Collection Study. JT indicated that “. . . the tasks that would be required of [the Student] for the cognitive testing . . . were going to require more attention to task than [the Student] is exhibiting at this time. . . . So we determined that [the Student] may not be a fit for this particular study.” (DEX 41, pp. 1424-1425). On June 18, 2009, the Student’s Mother sent an email to JT and confirmed that she had spoken with the Simplex Collection Study personnel and had received information from them that they believed [the Student] would not be eligible for the study. (DEX 41, pp. 1424-1428).

93. On July 21, 2009, JT sent an email to the Student’s Mother stating that she had attended a conference with David Hammer who “made me feel really good about our speech goals/objectives and who shared some neat therapy/game ideas I’m going to incorporate.” (DEX 41, p. 1429).

²² Prior to sending the email to Student’s Mother on April 14, 2009, SS emailed SM discussing the monthly data meetings. (Pet. Exh. 1.3.51). SS expressed concern about the meetings taking time away from teaching and thus, alternate between having the meetings during and after school. (Pet. Exh. 1.3.51).

School Year 2009-2010

94. On August 12, 2009, KR telephoned the Student's Mother to invite her to the Meet The Teacher function. The Student's Mother indicated that the Student had a bad Summer with digestive issues and allergies. The Student's Mother also stated that Lisa Miller was now working with the Student through Kansas City Regional Center. (DEX 17, p. 436).
95. On August 14, 2009, the Student's Mother called KR concerning the Student's transition into school. The Student's Mother reported that the Student tapped his paraprofessional very hard to get her attention. KR explained that this week in the First Grade classroom the Student was required to sit with other students to hear the rules and procedures which was hard for him. KR told the Student's Mother that she would change his schedule to give him a 15 minute period in home room rather than a 30 minute period each day. KR proposed a transition plan to build the Student's time in Regular Education up to eight hundred thirty (830) minutes a week. KR said that she checked on the Student in the morning and he was fine – smiling and running around. (DEX 17, p. 436).
96. On August 14, 2009, the Student's Mother came to school while the Student was eating lunch. The Student's Mother stayed for approximately fifteen minutes and said she was leaving. The Student leaned into her, but did not kick or show aggression. The Student's Mother met separately with KR and agreed to transition the Student into regular education. The Student's Mother asked if the Student's paraprofessional could take the Student to use the swing in the OT's room. KR told her that he could use the swing in her classroom and he had other sensory opportunities there as well. (DEX 17, pp. 436-437).
97. On August 19, 2009, the Student's Mother sent an email to JT regarding the Student. (DEX 41, p. 1431). She described how excited the Student was to go to the Meet Your Teacher night. The Student's Mother stated that the Student "hugged K [R] like 4+ times so I know that he is happy with her." (DEX 41, p. 1431). That same day, JT sent an email to the Student's Mother regarding the Student's progress. (DEX 41, pp. 1431-1433).
98. On August 20, 2009, KR sent an email to the Student's Mother regarding the Student's progress which stated as follows:
- ". . . we were doing a "noisy story" about a bus and who could get on the bus. [The Student] was making some great sounds for the different characters, but the one he did best was the driver's "no."
- (DEX 41, p. 1436). On August 20, 2009, the Student's Mother responded to this email and stated: "That is great about [the Student's] sounds. He has been really good about responding verbally recently." (DEX 41, p. 1436).
99. On August 21, 2009, JT sent an email to the Student's Mother stating that she was going to make some changes to the AAC icons and goals for the Student. JT also stated as follows:

“Since [the Student] met the function ID goal over the Summer (I assessed him yesterday and he’s still maintained) I want to add a new set of pictures. Are there any directions given at home he’s having difficulty with I could maybe incorporate with that objective?”

(DEX 41, p. 1432).

100. On August 21, 2009, the Student’s Mother sent an email to KR stating she was “very concerned over [the Student’s] behavior this week.” (DEX 41, p. 1438). She was particularly concerned about a reluctance to go to SG, his paraprofessional (“para”). (DEX 41, p. 1438). KR testified that she was not seeing “the behaviors that she was saying that he was doing.” KR further testified:

“I actually was able to stand in our health room and actually observe out in the parking lot. I could watch when she got in her car and drove around and parked and walked him into the building. And the behaviors I was observing and the ones that she was saying that she was observing were not the same.” (Wright Hearing, Tr. Vol. IV, pp. 869-870).

KR testified further that at times, she observed the Student spinning around or walking backwards, but she did not see him physically pushing his Mother or see him with any tears or crying. (Wright Hearing, Tr. Vol. IV, p. 870).

101. On August 21, 2009, the same day that she complained to KR about her concerns for the Student’s behavior, she emailed JT and made no mention of her “concern” for the Student’s reluctance to go to his para. Rather, the Student’s Mother stated that her “biggest issue right now is having him follow directions when we are walking to the van or in the parking lot.” (DEX 41, p. 1432).

102. On August 25, 2009, SS sent an email to the Student’s Mother which provided the building policy for observations of the Student in the classroom. (DEX 41, p. 1441).

103. On August 26, 2009, the Student’s Mother sent an email to SS requesting to review the Student’s cumulative file. (DEX 41, pp. 1442-1444). On August 31, 2009, the Student’s Mother met with Tamara Asplund and SS to review the Student’s cumulative file. (DEX 41, p. 1448).

104. On September 2, 2009, KR emailed the Student’s Mother and requested that she make several changes to the icons on the Student’s AAC device. (DEX 41, p. 1445).

105. On September 7, 2009, the Student’s Mother emailed KR concerning the Student’s vocalizations at home as follows:

“ . . . [The Student] has continued to be a talking fool. Yesterday we went to [his Father’s] parents in the country. [The Student] was blabbing but at the end of the blab sentence he clearly said that word Daddy. Everyone in the room heard it and commented that he just said Daddy (8+ people). Then when we got home, his

small TV in the sunroom stopped working. We have a big TV downstairs in [his Brother's] room so we brought it up so he could still have his videos. Se he went from a small 13 inch TV to a 36 inch really big TV. He jumps into [Father's] arms and says " I love ...". We couldn't make out the last part but we heard the "I love." Then later that evening when it was time to go to bed, I asked him if he was ready to go to bed with Mommy. He said "No" plain as day."

(DEX 41, pp. 1446-1447).

Parent Observations

106. On September 9, 2009, SS wrote a letter to the Student's Mother and communicated a schedule for the school observation visits by the Student's Mother. (DEX 41, p. 1448).

107. On September 11, 2009, the Student's Mother observed the Student for 20 minutes while he was in RH's First Grade Classroom. Present with the Student's Mother was KR. (DEX 41, p. 1453; DEX 45, p. 1578). RH had her students select "just right" books out of a basket. (DEX 45, p. 1578; Pet. Exh. 1.16.1). Student worked with his para to pick out books which he looked at from page to page and would put back in the basket with guidance from the paraprofessional. (DEX 45, p. 1578; Pet. Exh. 1.16.1). While his communication device may not have been in the room, there was a communication board in front of him. (Pet. Exh. 1.16.1). Increased vocalization prompted KR to end Student's time in the regular education classroom. (DEX 45, p. 1578).

108. On September 15, 2009, the Student's Mother emailed SS to verify dates for her observation of the Student. (DEX 41, p. 1449).

109. On September 23, 2009, the Student's Mother observed the Student while he was in KR's Life Skills Classroom during Group time. Present in the classroom was KR, SG, two other paraprofessionals and five students, including the Student. The Student's Mother observed the classroom for approximately thirty minutes. (DEX 17, pp. 438-439; DEX 45, pp. 1579-1580; Pet. Exh. 1.16.2) KR taught the children fall leaves – big, small, identify different colors; the effect of the wind blowing leaves. (DEX 17, pp. 438-439; DEX 45, pp. 1579-1580; Pet. Exh. 1.16.2). They were also asked to sing a song dealing with leaves as well as use markers to color leaves in a book. (DEX 17, pp. 438-439; DEX 45, pp. 1579-1580; Pet. Exh. 1.16.2). There was nothing unusual about Student's behavior during this period. (Wright Hearing Tr. Vol. IV, p. 873-874).

110. On September 24, 2009, SS emailed the Student's Mother requesting that an IEP meeting be convened to discuss the concerns of the Student's Mother. (DEX 41, p. 1452).

111. On September 24, 2009, the Student's Mother came to school to view the Student's classroom. Present in the classroom were KR, the Student's paraprofessional and the Student who was receiving one-on-one instruction from his paraprofessional and from KR. The Student's Mother stayed approximately forty minutes. (DEX 17, pp. 440-441; DEX 45, p. 1581-1582; Pet. Exh. 1.16.3). Prior to the observation, KR advised the Mother that she might very well see an increase in behaviors because she was going to generalize some old skills and introduce new skills. (Wright Hearing Tr. Vol. IV, p. 874-875). In fact, Student exhibited typical behaviors – pulling his shirt up, trying to get in KR's lap, pushing the materials away but also a behavior that she had not seen before – he reached out to hit her. (Wright Hearing Tr. Vol. IV, p. 874-875). He showed, however, no behaviors rising to the level of a need for a functional behavior plan. (Wright Hearing Tr. Vol. IV, p. 875)

112. On September 25, 2009, the Student's Mother sent an email to SS which contained concerns about being denied the opportunity to observe the Student in his classroom setting. (DEX 41, pp. 1453-1454). On September 25, 2009, the SS sent an email to the Student's Mother regarding her concerns about the District's building policy for observations. (DEX 41, pp. 1452-1457).

113. On September 26, 2009, the Student Mother emailed KR concerning the use of reinforcers for the Student. (DEX 41, p. 1459).

114. On September 29, 2009, the Student's Mother sent a letter to Jerry Keimig stating her concerns about the Student's Educational program. The letter contains the following points:

- A. The Student attended "private school" at parent expense where he made progress. The Student has regressed while he has been in public school.
- B. The Student's IEP in pre-school had higher goals than his First Grade IEP.
- C. The Student's Mother did not agree to the "placement" of the Student in the Life Skills classroom because it was not appropriate for him.
- D. During all three observations the Student was "upset and crying" and "is no longer tolerating the program."
- E. The Student has failed to make meaningful progress.
- F. "... in 10 business days from your receipt of this letter, I plan to remove [the Student] from Prairie View and place him in a private school at public expense due to the district's inability to provide a free, appropriate public education (FAPE) to [the Student]."

(DEX 41, p. 1460).

115. On September 30, 2009, the District provided the Student's Mother with a Notification of Meeting Form for the October 14, 2009 IEP Meeting. (DEX 43, p. 1575).

116. On September 30, 2009, the Student's Mother emailed KR and stated that she felt the Student was "showing increased resistance to leaving for school in the morning." (DEX 41, p. 1462). KR responded that same day and stated that it was her belief that the Student was not feeling well that day as indicated by symptoms he exhibited in school that day, including: sneezing, nose dripping and a rash/redness across his stomach and face. (DEX 41, p. 1462).

117. On September 30, 2009, the Student's Mother sent a letter to Jerry Keimig stating her concerns about the District not being able to handle the Student's behavior, preparation and implementation of Functional Behavioral Assessment and Positive Behavior Support plan. (DEX 41, pp. 1464-1465).

118. On October 9, 2009, SS sent an email to the Student's Mother asking for her to provide input in advance of the October 14, 2009 IEP Meeting to the District about her concerns. (DEX 41, p. 1466).

119. On October 9, 2009, the Student's Mother met with Jerry Keimig to view the Student's Education records.

120. On October 12, 2009, the Student's Mother sent an email to Dr. David McGehee, the District's Superintendent, concerning complaints she had about Jerry Keimig. (DEX 41, pp. 1467-1468).

October 14, 2009 IEP Meeting

121. On October 14, 2009, an IEP Meeting was conducted by the Student's IEP Team. Present at this meeting were: the Student's Mother and Father; Mary Pechar; Betty Sharp; Sherri Tucker; Christy Burgess; Marilyn McClure; Jerry Keimig; Tamara Asplund; SM; KR; RH; JT; LB and SS. (DEX 17, pp. 443-444; DEX 43, p. 1576). During this meeting the following occurred:

(a) The District provided the participants with an Agenda for the meeting (DEX 17, p. 433) and the Student's Mother was given a copy of the Procedural Safeguards. (DEX 18, p. 447).

(b) District personnel discussed the progress the Student had made to that point in the school year as follows:

(1) JT reported that the Student had made progress in the following ways:

(A) Goal 10 – AAC Device. JT stated that she had changed the Student's AAC device to make it more functional for the Student. The new format allowed the Student to choose functions through pictures and a choice of two without pictures.

(B) Goal 11 – Verbal Directions and sorting. JT stated that was working with the Student on three skills – sorting pictures of items.

(C) Goal 13 – Vocalizations. JT stated that the Student’s vocalizations had increased, his bilabials and vowels were still hard, it was difficult to get jaw movement from him. JT also indicated that she was continuing to work on phonating with mouth open and gliding into sounds by targeting 3 to 4 sounds until the Student’s patterning improved.

(2) KR reported that the Student had made progress in the following ways:

(A) Goal 1, Objective 1 – Identification of colors. KR stated that the Student’s identification of colors was good.

(B) Goal 2, Objective 1 – Identification of shapes. KR stated the Student had mastered circles across sets and she had introduced squares and he was “moving fast” on this Goal its Objectives.

(C) Goal 3, Objective 1 – Identification of numbers. KR stated that the Student was still having difficulty with this Objective without cues from the teacher. The Student does not demonstrate an understanding of the meaning/concept of numbers.

(D) Goal 4, Objective 1 – One-on-one Correspondence, matching object-to-object. KR indicated she was trying to make this Objective more functional for the Student like giving each peer a plate.

(E) Goal 4, Objective 2 – One-on-one Correspondence, matching objects to numbers. KR stated that the Student was not quite ready for this Objective but was practicing and trying.

(F) Goal 5, Objective 1 – Receptive letter identification. KR stated that the Student was trying to attach meaning to the letters and was working with the Student on an array of two.

(G) Goal 8, Objective 1 – Imitation of peers with objects. KR stated that this Objective had been mastered by the Student.

(H) Goal 8, Objective 2 – Imitation of peers without objects. KR stated that the Student was 50% of the way to mastering this Objective.

(I) Goal 9, Objective 1 – Social Interactions with peers – sharing preferred object. KR stated that the Student now willingly gets up from his seat and shares an object with his peers.

(J) Goal 9, Objective 2 – Turning and facing peer when name called. KR stated that the Student has increased his skill in this area and turns to a peer when his name is called and waves at the peer.

(K) Goal 9, Objective 3 – Initiating with Peers. KR reported that the Student had a little regression on this Objective which resulted from the introduction of new peers and a new classroom environment at the beginning of his First Grade year.

(3) LB reported that the Student was making progress on his goals with her as follows:

(A) Goal 14, Objective 4 – Opening and Closing Containers. LB stated that the Student was progressing on this objective.

(B) Goal 15, Objective 3 – Tracing lines and circles with and without templates. LB stated that the Student was progressing.

(C) Goal 15, Objective 1 – Tracing name. LB stated that the Student was progressing on this Objective.

(D) Goal 15, Objective 2 – Using wooden pieces to form name. LB stated that the Student was progressing on this Objective.

(c) The Team discussed the expressed concerns of the Student's Mother that the Student was not in the least restrictive environment. The Student's Mother stated that she felt the Student was not in a regular education setting enough, that ABA strategies work the best for the Student; and he has not made progress in the public school setting. SM stated that the District's educational program for the Student was based on ABA principles – learning behaviors, reinforcements, prompts fading, modeling incidental teaching and shaping.

(d) The Student's Mother stated that she was requesting an outside placement that is appropriate for the Student's needs. Jerry Keimig stated that the District has ten days to respond but that the Team believed that the Student was progressing in his current placement. The Student's Mother indicated she liked ABC'n'D because she liked their data collection style, behavior programs and style of working with students like the Student. The Student's Mother requested that the District pay for an outside placement of the Student at ABC'n'D.²³

(DEX 17, pp. 443-444).

²³ After Student's removal from the District by his Mother on October 14, 2009, the Student did not attend the private school called ABC'n'D. (Wright Hearing Tr. Vol. VI, pp. 1027-1028). After Mother pulled the Student out of the District, he received one hour of ABA therapy per week and one hour of OT for the first several months. Student's Mother presented no evidence seeking reimbursement for any private educational services received by Student since he left the District. (Wright Hearing Tr. Vol. VI, pp. 1033-1034). Kansas City Regional Center paid for the services of Lisa Miller. (Wright Hearing Transcript Vol. II, p. 358).

122. Following the IEP meeting on October 14, 2009, the Student's Mother picked up the Student at the end of that school day and told SG, the Student's para, "this is our last day. We won't be back."²⁴ (DEX 17, pp. 442).

Complaints Filed with OCR and DESE

123. On October 15, 2009, the Student's Mother filed a Complaint with the United States Department of Education, Office for Civil Rights ("OCR"). (DEX 21, pp. 453-478). The Student's Mother alleged the following in the OCR Complaint:

(a) *Allegation 1:* The District discriminated and retaliated against her son (six year-old, first grade student) on the basis of his disability (severe oral and verbal apraxia, autism) by not using his communication device as directed in his Individualized Education Program (IEP); by not providing him which a report card alternative; and by placing him in the life skill's class without first conducting an assessment and/or an evaluation meeting because she advocated for her children and other children.

(b) *Allegation 2:* The District retaliated against the Complainant based on her advocacy and discriminated against her son at the Prairie View Elementary School by not allowing her to observe her son's classroom in September 2009, and by denying her access to her son's classroom when he was sick and vomiting until the classroom was cleared of all students; and

(c) *Allegation 3:* The Complainant's son and other disabled children are being treated differently than non-disabled students at the District's newly built aquatic center at the Summit Lake Middle School because disabled students have not been provided access due to time limits being restricted for disabled students, and disabled students must pay to use the facility.

(DEX 21, pp. 453-478).

124. On October 19, 2009, the Student's Mother filed a Child Complaint with DESE. (DEX 20, pp. 448-452). The Student's Mother alleged the following in the Child Complaint:

(a) *Allegation 1:* The District in violation of state and federal regulations implementing the IDEA, failed to include the parent in the decision to use alternate achievement standards for her son.

(b) *Allegation 2:* The District, in violation of state and federal regulations implementing the IDEA, failed to provide [the Student's] parent a report card that includes academic grades or a record of attainment of IDEA IEP goals.

²⁴ On October 22, 2009, the District sent a Progress Report to the Parents as well as Notice of Action rejecting Mother's request that the District change the Student's placement to a private placement. (DEX 40; DEX 44).

(c) *Allegation 3*: The District, in violation of state and federal regulations implementing the IDEA, failed to include goals related to academic content in [the Student's] IEP.

(d) *Allegation 4*: The District, in violation of state and federal regulations implementing the IDEA, failed to determine how [the Student's] progress on IEP goals will be determined or measured.²⁵

(DEX 20, pp. 448-452).

125. On December 8, 2009, DESE issued its decision on the Child Complaint filed against the District by the Student's Mother on October 19, 2009. (DEX 20, pp. 448-452). DESE made the following determinations:

(a) *Allegation 1*: The District in violation of state and federal regulations implementing the IDEA, failed to include the parent in the decision to use alternate achievement standards for her son.²⁶

Decision: State and Federal regulations implementing the Individuals with Disabilities Education Act (IDEA) require input be considered from all Individualized Education Program (IEP) team members when developing a student's IEP and also requires districts to take steps to ensure parents are present and given an opportunity to participate. In this case, [the Student's Mother] attended and participated in the September 16, 2008 and April 1, 2009 IEP meetings. During both IEP meetings the team determined [the Student] would not take state or district-wide assessments that he is currently in the first grade.²⁷ The team also developed goals that reflect functional curriculum and are consistent with the Present Level of Performance. Therefore, based on the foregoing, the District is found not out of compliance.

(b) *Allegation 2*: The District, in violation of state and federal regulations implementing the IDEA, failed to provide [the Student's] parent a report card that includes academic grades or a record of attainment of IDEA IEP goals.

Decision: State and Federal regulations implementing the Individuals with Disabilities Education Act (IDEA) require school districts to provide progress reports for students with disabilities in the manner set forth in the Individualized Education Program (IEP). The IDEA does not require the use of report cards. In this case, [the Student's] IEP called for quarterly reports using the IEP progress form. The quarterly progress reports

²⁵ Note none of the allegations filed with OCR and DESE included a failure by the District to provide Notices of Action for requests made by the Student's Mother.

²⁶ The correct term is alternative grade level expectations as developed by DESE, not alternate achievement standards as alleged here by Student's Mother. (Wright Hearing Tr. Vol. IV, p. 895).

²⁷ Note the District does not conduct State-wide or district-wide assessments on Kindergarten students. (DEX 48, pp.1765, 1768). The District conducts district-wide assessments on First Grade Students in April or May of each school year. If the Student had remained in the District, rather than being withdrawn by his Parents on October 14, 2009, the Student's new IEP, which should have been written on or around April 1, 2010, would have dealt with the question of whether the Student should take the District-wide assessments in the Spring of 2010. (DEX 48; Wright Hearing, Tr. Vol. III, pp. 694-696).

on the attainment of IEP goals were provided to [the Student's] parent. Therefore, based on the foregoing, the District is found not out of compliance.

(c) *Allegation 3*: The District, in violation of state and federal regulations implementing the IDEA, failed to include goals related to academic content in [the Student's] IEP.

Decision: State and Federal regulations implementing the Individuals with Disabilities Education Act (IDEA) require Individualized Education Program (IEP) teams to develop an appropriate IEP including measurable annual goals designed to enable the child to make progress in the general education curriculum. In this case, the IEP team developed, during the September 16, 2008 and April 1, 2009 IEP meetings, measurable goals that addressed academic and functional areas which allowed [the Student] to be involved in the general education curriculum. Therefore based on the foregoing, the District is found not out of compliance.

(d) *Allegation 4*: The District, in violation of state and federal regulations implementing the IDEA, failed to determine how [the Student's] progress on IEP goals will be determined or measured.

Decision: State and Federal regulations implementing the Individuals with Disabilities Education Act (IDEA) require Individualized Education Program (IEP) teams to determine how the child's progress toward meeting the annual goals will be measured. In this case, the IEP team determined that each of [the Student's] goals would be measured through data collection, observation charts and work samples. Therefore, based on the foregoing, the District is found not out of compliance.

(DEX 20, pp. 448-452).

126. On April 13, 2010, the United States Department of Education, Office for Civil Rights ("OCR") issued its decision on the OCR Complaint, which had been filed against the District by the Student's Mother on October 15, 2009. (DEX 21, pp. 453-478). The OCR made the following findings:

(a) *Allegation 1*: The District discriminated and retaliated against her son (six year-old, first grade student) on the basis of his disability (severe oral and verbal apraxia, autism) by not using his communication device as directed in his Individualized Education Program (IEP); by not providing him which a report card alternative; and by placing him in the life skill's class without first conducting an assessment and/or an evaluation meeting because she advocated for her children and other children.

Decision: ". . . OCR has concluded that the preponderance of the evidence supports a finding that the District did not discriminate or retaliate against the complainant or her son as alleged in this complaint. Therefore, OCR is closing allegation 1 as of the date of this letter." (DEX 21, p. 470).

(b) *Allegation 2*: The District retaliated against the Complainant based on her advocacy and discriminated against her son at the Prairie View Elementary School by not allowing her to observe her son's classroom in September 2009, and by denying her access to her son's classroom when he was sick and vomiting until he classroom was cleared of all students; and

Decision: “. . . Therefore, the evidence did not establish a *prima facie* case of retaliation and OCR is closing allegation 2 as of the date of this letter.” (DEX 21, p. 473).

(c) *Allegation 3*: The Complainant's son and other disabled children are being treated differently than non-disabled students at the District's newly build aquatic center at the Summit Lake Middle School because disabled students have not been provided access due to time limits being restricted for disabled students, and disabled students must pay to use the facility.

Decision: “. . . for the reasons stated in this letter, a preponderance of the evidence does not support a finding that the District failed to comply with either Section 504 or Title II as alleged in the Complaint. Since there are no remaining allegations appropriate for further complaint resolution, OCR is closing this complaint as of the date of this letter.” (DEX 21, pp. 477-478).

Student's Progress under the April 1, 2009 IEP

127. The Student's April 1, 2009 IEP was effective between April 3, 2009 and October 14, 2009, when the Student was removed from school in the District by his Mother. (DEX 39, p. 1335). During that time period, the Student completed his Kindergarten school year – April 3, 2009 through May 26, 2009 (31 school days); attended an extended school year session from June 8, 2009 through July 30, 2009 (27 school days); and attended the first quarter of his First Grade school year from August 18, 2009 through October 14, 2009 (38 school days). (DEX 42, pp. 1469-1574). There were sixty-nine (69) regular school days during this period.

RH

128. From August 18, 2009 through October 14, 2009, Student was with RH, 1st Grade teacher for the regular education component of his April 1, 2009 IEP.²⁸ (Wright Hearing, Tr. Vol. I, p. 31). Her educational background includes the following: She has a Bachelor's degree in Elementary Education from Avila College and a Master's degree in Curriculum and Instruction from Baker University. (Wright Hearing, Tr. Vol. I, p. 147). She is certified to teach 1st-6th grades. (Wright Hearing, Tr. Vol. I, p. 108). She has taught either 1st or 2nd grades at PVE in the District for 12 years. (Wright Hearing, Tr. Vol. I, p. 147).

129. The following is a summary of RH's experience with the Student:

(a) He was with her for specials [art, music and PE]; recess; lunch; share time. (Wright Hearing, Tr. Vol. I, p. 31-32).

²⁸ She did not participate in the development of the April 1, 2009 IEP. (DEX 39, p. 1335).

(b) She thought that it was important for Student to be in her room to be with the other kids and socialize. (Wright Hearing, Tr. Vol. I, p. 37).

(c) During the time that Student was in her class, he had trouble communicating with the other kids – he had trouble focusing and making eye contact. (Wright Hearing, Tr. Vol. I, p. 38-39). She encouraged her students to go up and talk with him but Student did not respond. (Wright Hearing, Tr. Vol. I, p. 43). She would greet Student when he came to her class but he would not respond. (Wright Hearing, Tr. Vol. I, p.88).

(d) She saw no improvement in Student’s ability to line up independently, or with less assistance. (Wright Hearing, Tr. Vol. I, p. 53). For example, it was a struggle for Student to walk through hallways and follow other classmates. (Wright Hearing, Tr. Vol. I, p. 159-160).

(e) Student was not in share time [show and tell] very long because he had difficulty sitting in front of the class. (Wright Hearing, Tr. Vol. I, p. 56-57). She told KR that share time was not working for Student as a speaker.²⁹ (Wright Hearing, Tr. Vol. I, p. 59). She thought, however, staying in the class and listening to the other students was beneficial for him – helping him to focus. (Wright Hearing, Tr. Vol. I, p. 59-60). Unfortunately, he always tried to get up and made noises during share time. (Wright Hearing, Tr. Vol. I, p. 61).

(f) Student was in reader’s workshop one time – his mother did an observation on that day. (Wright Hearing, Tr. Vol. I, pp. 63-65). He could not do what was asked of the students --- to sit and focus, interact with RH, then go off with their book and practice what the teacher had just taught them. (Wright Hearing, Tr. Vol. I, p. 63-65).

(g) Student did not participate in math because he did not have the requisite first grade skills. (Wright Hearing, Tr. Vol. I, p. 65). He was not able to do the math worksheets so she stopped giving them to him. (Wright Hearing, Tr. Vol. I, p. 66-67). RH thought that it was just too frustrating for him. (Wright Hearing, Tr. Vol. I, p. 66-67).

(h) Student did not participate in Communication Arts, Spelling and Grammar in her classroom. (Wright Hearing, Tr. Vol. I, p. 69). He was scheduled to be in the SPED classroom during that time. (Wright Hearing, Tr. Vol. I, p. 69). She thought the SPED classroom was a better fit for him because he did not have the cognitive skills to work on spelling, punctuation, grammar, etc. (Wright Hearing, Tr. Vol. I, p. 70).

(i) She does not recall if he participated with the class at the computer lab – she was concerned that he could not sit quietly for 30 minutes. (Wright Hearing, Tr. Vol. I, p. 73). Student could only sit still for about 5 minutes. (Wright Hearing, Tr. Vol. I, p. 89).

(j) Student did not participate in writer’s workshop because she did not think that he had the requisite cognitive skills. (Wright Hearing, Tr. Vol. I, p. 76). Similarly, Student did not

²⁹ RH did not share this information with Student’s Mother but the first Parent-Teacher Conference was not scheduled until October 22, 2009. (Wright Hearing, Tr. Vol. I, p. 81).

participate in Science and Social Studies with the regular education class. (Wright Hearing, Tr. Vol. I, p.77).

(k) Student was not present during the dismissal activities when the class tended to be a little hectic and crazy – that would make him more upset. ((Wright Hearing, Tr. Vol. I, p. 80).

(m) Student made no progress in her class. (Wright Hearing, Tr. Vol. I, p. 98). Student got the same curriculum as the other 1st graders when he was in her class. (Wright Hearing, Tr. Vol. I, p. 99). He was not in her class during academic times because he was not able to do the work. (Wright Hearing, Tr. Vol. I, p. 99). Student exhibited none of the pre-learning skills needed for first grade: for examples, numbers and how to write them; how to identify letters and their sounds; some very basic science skills. (Wright Hearing, Tr. Vol. I, p. 150-151).

(n) She had responsibility for only Goal 9 (social interactions with peers) of his April 1, 2009 IEP. (Wright Hearing, Tr. Vol. I, p. 117). She shared the report card duties with the special education teacher. (Wright Hearing, Tr. Vol. I, p. 82).

KR

130. As noted earlier, Student was assigned to KR's Life Skills classroom for Kindergarten and again in 1st grade. The Life Skills Classroom does not have a curriculum of its own. Rather, the expectations for each student in the classroom are individually determined and set out in the student's IEP by the Student's IEP Team. (Wright Hearing, Tr. Vol. IV, p. 756). The students in the Life Skills Classroom are verbal and non-verbal with some students who speak in full sentences. (Wright Hearing, Tr. Vol. IV, p. 756). KR described her Life Skills Classroom as follows:

“In a life skills classroom, it doesn't apply to every single child because every child is individual and has their own unique needs and learning the child's abilities and strengths and weaknesses. But as a general overall statement, the children need more intense services, more structured support, more adult support, smaller class sizes. . . . [A] lot of the pre-learning and pre-academic skills, those are very difficult for them, so we're working on those. They often lack daily living skills and self-care skills, such as eating – or doing these things independently: Eating, bathrooming, grooming, dressing. They need tasks whether it's daily living or pre-learning or pre-academic or academic skills broken down into very small, incremental steps, and those steps are taught either forward chaining or backward chaining. The students even with modifications and accommodations still have a difficult time understanding a regular education curriculum.”

(Baker Hearing, Tr. Vol. III, p. 613, lns. 6-25; p. 614, ln. 1).

131 There is a difference between the learning resource room and KR's Life Skills Classroom. Students are assigned to these classrooms based on their functioning levels and adaptive behavior skills. (DEX 34, p. 1059). In the learning resource room the students “would be more independent functioning with daily living skills, able to be in the regular curriculum and

be successful for at least part of the day without support.” (DEX 34, p. 1059). The Student was originally assigned to the Life Skills classroom “based on his current functioning level, input from Molly Pomeroy, input from other district personnel and the other team members” including the Student’s Mother. (DEX 34, p. 1062).

132. Among the many challenges of working with Student, KR testified that the Student had great difficulty generalizing from one setting to another.³⁰ (Wright Hearing, Tr. Vol. IV, pp. 757-758). KR testified as follows:

“ . . . he could do the color blue with Molly at home with the blue bottle. But if Molly brought that blue bottle to school and sat with him in the school setting with the blue bottle, he wouldn’t be able to recognize that blue bottle. . . . He could do them in this setting over here at home, but may not necessarily be able to do those same skills in the school setting. Or even if she could do it with him, and then him doing it with me, he may not even generalize between people.”

(Wright Hearing, Tr. Vol. IV, p. 758, lns. 6-19).

133. The Student remained in the Life Skills Classroom between April 1, 2009 and October 14, 2009, when he was removed from school by his Mother. KR testified that the Student on or around April 1, 2009 continued to need one-on-one adult support for the entire school day and visuals to be successful. (DEX 39, p. 1336; Wright Hearing, Tr. Vol. IV, pp. 757-758).

134. KR also testified very credibly that the District staff was always using some kind of communication board with the Student.³¹ (Wright Hearing, Tr. Vol. IV, pp. 908-911).

135. KR testified very credibly that Student’s Mother did not want Student’s cognitive skills tested at the time of the re-evaluation in early 2009 . (Wright Hearing, Tr. Vol. IV, pp. 859). Ms. Radar also estimated Student’s IQ to be 50 or below.³² (Wright Hearing, Tr. Vol. IV, pp. 898-899).

Goals and Objectives Contained on April 1, 2009 IEP

136. The Student’s April 1, 2009 IEP contains fifteen (15) goals with forty (40) objectives for the Student. (DEX 39, pp. 1335-1359; DEX 40, pp. 1402-1403).

³⁰ Ms. Miller also testified that just because a student has mastered a skill, it does not necessarily mean he or she has the ability to generalize it. (Wright Hearing Tr. V. II, p. 295).

³¹ JT also testified that the Student used the AAC (Dynavox) device at least three days per week when he was working with her on goals and objectives. (Wright Hearing, Tr. IV, pp. 927-929, 934-935). Lisa Miller testified that he uses the device occasionally when she is working with him – probably uses the ACC device once per month. (Wright Hearing Tr. Vol. II, p. 356).

³² KR’s opinion is consistent with the cognitive testing results described in FF#35. Ms. Miller’s opinion that Student has a “pretty high level” of cognitive skills is totally at odds with the testing and the experience of the District staff. (Wright Hearing Tr. Vol. II, p. 312). Similarly, Ms. Miller’s testimony that Student has the ability to read is not credible. (Wright Hearing Tr. Vol. II, p. 312).

137. Goal Number 1 on the Student's April 1, 2009 IEP and its objectives were as follows:

Goal Number 1 – Goal Area: Early Math

[The Student] will increase early math skills by receptively identifying 5 basic colors with 80% accuracy on 3 consecutive data days.

Objective 1. [The Student] will receptively identify 5 basic colors with 80% accuracy on 3 consecutive data days.

Objective 2. [The Student] will receptively identify 5 basic colors by generalizing to at least 3 sets of materials with 80% accuracy on 3 consecutive data days.

A. KR had primary responsibility for working on this goal with the Student. She described how she implemented this goal with the Student as follows:

“. . . [H]e had [to] receptively [identify] five basic colors, and not just on one set, but to do it across three different sets of materials. Again, that generalization, which was very difficult for [the Student] in there. . . . Going back to the example of the blue water bottle, the blue pen, the blue cap, that he would realize that blue was blue was blue. And we tried to make it as natural as possible. Instead of, you know, teaching him a blue water, unless that was really purposeful for him. So get your blue coat versus getting the green coat. So get out the blue marker. So I tried to use more naturalistic.” (Wright Hearing, Tr. Vol. IV, p. 826, Ins. 6-20).

B. During the time period from April 1, 2009 through October 14, 2009, the Student had not mastered the Goal, but made progress on it as follows:

(1) The Goal Tracker data collection information for Goal Number 1 indicated that the Student met Objective 1 by receptively identifying five basic colors with 80% accuracy on 3 consecutive data days (September 8, 10 and 14, 2009). (DEX 40, p. 1386).

(2) The Progress Report for the Extended School Year session indicated that the Student was making progress on the goal. (DEX 40, p. 1362).

(3) The Progress Report for the regular school year indicated that the Student was making progress on the goal during the last quarter of his Kindergarten year (May 27, 2009) and during the first quarter of his First Grade year (October 16, 2009). (DEX 39, p. 1338).

(4) The Summary of Progress provided to the Student's Mother on October 22, 2009, indicated that the Student was making progress on the goal. (DEX 40, p. 1402; Wright Hearing, Tr. Vol. IV, pp. 880-881).

(5) KR testified that the Student was making progress on this Goal. (Wright Hearing, Tr. Vol. IV, pp. 887-888).

138. Goal Number 2 on the Student's April 1, 2009 IEP and its objectives were as follows:

Goal Number 2 – Goal Area: Early Math

[The Student] will increase early math skills by receptively identifying 4 basic shapes with 75% accuracy on 3 consecutive data days.

Objective 1. [The Student] will receptively identify 4 basic shapes with 75% accuracy on 3 consecutive data days.

Objective 2. [The Student] will receptively identify 4 basic shapes by generalizing to at least 3 sets of materials with 75% accuracy on 3 consecutive data days.

A. KR had primary responsibility for working on this goal with the Student. She described how she implemented this goal with the Student as follows:

“[The purpose of the goal was] for him to identify the shapes, and again identify them in cross sets, getting that generalization piece in there. . . [the skill was important because] it is one of those early . . . academic skills, colors, numbers, shapes, letters [and] . . . is a foundational skill to learn higher academics. . .” (Wright Hearing, Tr. Vol. IV, pp. 826-827).

B. During the time period from April 1, 2009 through October 14, 2009, the Student had not mastered the Goal, but made progress on it as follows:

(1) The Goal Tracker data collection information for Goal Number 2 indicated that the Student initially met Objective 1 by receptively identifying four basic shapes with 75% accuracy on 3 consecutive data days (August 20, 24 and 26, 2009) but was unable to continue to demonstrate mastery of the Objective. (DEX 40, p. 1387).

(2) The Progress Report for the Extended School Year session indicated that the Student was making progress on the goal. (DEX 40, p. 1363).

(3) The Progress Report for the regular school year indicated that the Student was making progress on the goal during the last quarter of his Kindergarten year (May 27, 2009) and during the first quarter of his First Grade year (October 16, 2009). (DEX 39, p. 1339).

(4) The Summary of Progress provided to the Student's Mother on October 22, 2009, indicated that the Student was making progress on the goal. (DEX 40, p. 1402; Wright Hearing, Tr. Vol. IV, pp. 880-881).

(5) KR testified that the Student was making progress on this Goal. (Wright Hearing, Tr. Vol. IV, p. 888).

139. Goal Number 3 on the Student's April 1, 2009 IEP and its objectives were as follows:

Goal Number 3 – Goal Area: Early Math

[The Student] will increase early math skills by receptively identifying numerals 1-5 with 80% accuracy on 3 consecutive data days.

Objective 1. [The Student] will receptively identify numerals 1-5 in an array of 3 with 80% accuracy on 3 consecutive data days.

Objective 2. [The Student] will receptively identify numerals 1-5 in an array of 3 by generalizing to at least 3 sets of materials with 80% accuracy on 3 consecutive data days.

A. KR had primary responsibility for working on this goal with the Student. She described how she implemented this goal with the Student as follows:

“[The purpose of the goal was] identifying numbering and identifying it across sets, even if you change the font of the numbers. Like if I had the number 178 in Times New Roman or wrote number 1 in my own handwriting or in Common Sans, he did not generalize across those.” (Wright Hearing, Tr. Vol. IV, p. 829).

B. During the time period from April 1, 2009 through October 14, 2009, the Student had not mastered the Goal, but made progress on it as follows:

(1) The Goal Tracker data collection information for Goal Number 3 indicated that the Student was able to receptively identify numerals 1-5 in a field of 2 with 80% accuracy on 3 consecutive data days (September 1, 4 and 8, 2009) but was unable to master the identification of the numerals in a field of 3. (DEX 40, p. 1388).

(2) The Progress Report for the Extended School Year session indicated that the Student was making progress on the goal. (DEX 40, p. 1364).

(3) The Progress Report for the regular school year indicated that the Student was making progress on the goal during the last quarter of his Kindergarten year (May 27, 2009) and during the first quarter of his First Grade year (October 16, 2009). (DEX 39, p. 1340).

(4) The Summary of Progress provided to the Student's Mother on October 22, 2009, indicated that the Student was making progress on the goal. (DEX 40, p. 1402; Wright Hearing, Tr. Vol. IV, pp. 880-881).

(5) KR testified concerning the Student's progress on this goal as follows:

“He was making progress, but it was very slow. Again, trying to . . . [tie] meaning to [the number] – You know, what was 1? We were doing it in a field of two. And, actually, ended up -- he wasn't able to get the numbers. We had irrelevant cues, so I wasn't even pairing it with a number, and then actually started pairing it with a number. So like, if it was a number and a ball, would he be able to get it? And then I was finally able to introduce it in a field of other numbers. It was slow progress, but he was making progress.” (Wright Hearing, Tr. Vol. IV, p. 890).

140. Goal Number 4 on the Student’s April 1, 2009 IEP and its objectives were as follows:

Goal Number 4 – Goal Area: Early Math

[The Student] will increase early math skills by showing one-on-one correspondence to 5 with 75% accuracy on 3 consecutive data days.

Objective 1. Given items, [the Student] will exhibit one-on-one correspondence to 5 by matching each member of one set to the member of an equal set (i.e. object to object, passing out materials, one dot in each square, one coat on each hook; one object on each number, etc. . .) with 75% accuracy on 3 consecutive data days.

Objective 2. Given items, [the Student] will exhibit connections between the concrete and symbolic representation of numbers with one-to-one correspondence to 5 by touching/pointing/moving only one item as they are counted and stopping when the last number in the set is counted (i.e. match numbers to objects; counting spaces on game board; making sets; counting sets; etc. . .) with 75% accuracy on 3 consecutive data days.

A. KR had primary responsibility for working on this goal with the Student. She described how she implemented this goal with the Student as follows:

“It was a basic counting goal. We were trying to attach meaning to numbers, so that the number 1 meant one object. Or, even, I had backed it up even one-to-one correspondence. If, . . . we were passing out papers or passing out . . . materials to friends, that each person would get one plate. So you would get one plate and you would get one plate and you would get one plate. That's a basic one-to-one correspondence. And, also, then come back and get three plates so each person had one.” (Wright Hearing, Tr. Vol. IV, p. 830).

B. During the time period from April 1, 2009 through October 14, 2009, the Student had not mastered the Goal, but made progress on it as follows:

(1) The Goal Tracker data collection information for Goal Number 4 indicated that the Student was making steady progress on Objective 1 of this Goal starting

with work on a counting jig, but had not totally mastered the Objective. (DEX 40, p. 1389).

(2) The Progress Report for the Extended School Year session indicated that the Student was making progress on the goal. (DEX 40, p. 1364).

(3) The Progress Report for the regular school year indicated that the Student was making progress on the goal during the last quarter of his Kindergarten year (May 27, 2009) and during the first quarter of his First Grade year (October 16, 2009). (DEX 39, p. 1341).

(4) The Summary of Progress provided to the Student's Mother on October 22, 2009, indicated that the Student was making progress on the goal. (DEX 40, p. 1402; Wright Hearing, Tr. Vol. IV, pp. 880-881).

(5) KR testified that the Student was making progress on this goal, as follows:

“ He was actually making progress on this. And I had described this earlier, trying to get the . . . application. What -- why do we use it? And making the phone numbers where I punched out the circle to correlate to touch points, which is an evidence-based practice. And using that . . . changed the skill sets to item slots on the counting jig. And he was actually doing well with that. And then we started working with getting that one-to-one correspondence with peers.” (Wright Hearing, Tr. Vol. IV, pp. 890-891).

141. Goal Number 5 on the Student's April 1, 2009 IEP and its objectives were as follows:

Goal Number 5 – Goal Area: Early Reading Skills

[The Student] will increase early reading skills by receptively identifying 13 of 26 letters with 80% accuracy on 3 consecutive data days.

Objective 1. [The Student] will receptively identify 13 of 26 letters by getting/touching/finding the requested letter in an array of 2 with 80% accuracy on 3 consecutive data days.

Objective 2. [The Student] will receptively identify 13 of 26 letters by getting/touching/finding the requested letter in an array of 3 with 80% accuracy on 3 consecutive data days.

A. KR had primary responsibility for working on this goal with the Student. She testified that the goal was designed to achieve “basic letter recognition” of one half of the alphabet. (Wright Hearing, Tr. Vol. IV, pp. 831-832).

B. During the time period from April 1, 2009 through October 14, 2009, the Student had not mastered the Goal, but made progress on it as follows:

- (1) The Goal Tracker data collection information for Goal Number 5 indicates that the Student was making steady on Objective 1 of this Goal, but had not totally mastered the Objective. (DEX 40, p. 1390).
- (2) The Progress Report for the Extended School Year session indicates that the Student was making progress on the goal. (DEX 40, p. 1366).
- (3) The Progress Report for the regular school year indicates that the Student was making progress on the goal during the last quarter of his Kindergarten year (May 27, 2009) and during the first quarter of his First Grade year (October 16, 2009). (DEX 39, p. 1342).
- (4) The Summary of Progress provided to the Student's Mother on October 22, 2009, indicates that the Student was making progress on the goal. (DEX 40, p. 1402; Wright Hearing, Tr. Vol. IV, pp. 880-881).
- (5) KR testified that at this goal was hard for the Student and he "was making progress, but it was very slow." (Wright Hearing, Tr. Vol. IV, p. 891).

142. Goal Number 6 on the Student's April 1, 2009 IEP and its objectives were as follows:

Goal Number 6 – Goal Area: Early Reading Skills

[The Student] will increase visual discrimination skills of likeness and differences by matching and sorting (i.e objects/pictures by type, size, shape color symbols: letters/words/numbers, etc. . . .) with 75% accuracy across 3 consecutive data days.

Objective 1. When presented with objects or pictures, [the Student] will match by visible likeness and differences with 75% accuracy across 3 consecutive data days.

Objective 2. When presented with objects or pictures, [the Student] will match by visible likeness and differences using 2 different descriptors with 75% accuracy across 3 consecutive data days.

Objective 3. When presented with objects or pictures, [the Student] will sort by visible likeness and differences with 75% accuracy across 3 consecutive data days.

Objective 4. When presented with objects or pictures, [the Student] will sort by visible likeness and differences using 2 different descriptors with 75% accuracy across 3 consecutive data days.

A. KR had primary responsibility for working on this goal with the Student. She testified as follows concerning the goal:

“Visual discrimination is one of those key early learning skills. And so you need to be able to see when things are alike, or when things are different. And kind of like the hierarchy, you want to start with matching an object to an object. And there's some debate, whether it's picture, picture/object, or picture/picture. Where all that falls on that hierarchy. And basically getting [the Student] to see how things are the same or different in his environment, which, of course, then helps you be able to discriminate words, if words look the same or different, if numbers look the same or different.” (Wright Hearing, Tr. Vol. IV, p. 832).

B. During the time period from April 1, 2009 through October 14, 2009, the Student had not mastered the Goal, but made progress on it as follows:

(1) The Goal Tracker data collection information for Goal Number 6 indicates that the Student mastered Objectives 1 and 2 of this Goal on September 25, 2009 but had not totally mastered the Goal. (DEX 40, p. 1390).

(2) The Progress Report for the Extended School Year session indicates that the Student was making progress on the goal. (DEX 40, p. 1367).

(3) The Progress Report for the regular school year indicates that the Student was making progress on the goal during the last quarter of his Kindergarten year (May 27, 2009) and during the first quarter of his First Grade year (October 16, 2009). (DEX 39, p. 1343).

(4) The Summary of Progress provided to the Student's Mother on October 22, 2009, indicates that the Student mastered Objectives 1 and 2 of this goal. (DEX 40, p. 1402; Wright Hearing, Tr. Vol. IV, pp. 880-881).

(5) KR testified that the Student mastered Objectives 1 and 2 and “we were moving on to sorting, which is the higher-level skill.” (Wright Hearing, Tr. Vol. IV, p. 891).

143. Goal Number 7 on the Student's April 1, 2009 IEP and its objectives were as follows:

Goal Number 7 – Goal Area: Early Reading Skills

[The Student] will increase early reading skills by receptively identifying 20 words with 80% accuracy on 3 consecutive data days.

Objective 1. [The Student] will receptively identify 10 words by getting/touching/finding the requested word in an array of 2 with 80% accuracy on 3 consecutive data days.

Objective 2. [The Student] will receptively identify 10 words by getting/touching/finding the requested word in an array of 3 with 80% accuracy on 3 consecutive data days.

Objective 3. [The Student] will receptively identify 20 words by getting/touching/finding the requested word in an array of 3 with 80% accuracy on 3 consecutive data days.

A. KR had primary responsibility for working on this goal with the Student. She testified that the goal was designed to help the Student “build up his visual perception of words . . . using . . . [the] Picture Exchange Communication System.” (Wright Hearing, Tr. Vol. IV, p. 834). KR further described the implementation of this goal as follows:

“How I developed it was getting him to also understand what those words meant. So . . . I worked with Mom. There's an e-mail . . . where I was asking Mom for input. I wanted words that were important to [the Student], words that were functional for him. And so Mom gave me family members, food, reinforcers, things that were important to him. And then I used a morphological prompting where we had the pictures with the word. And then the picture slowly got smaller, so it was just the word on the card. And then matching the word to the word, and then just doing a receptive ID of the word.” (Wright Hearing, Tr. Vol. IV, pp. 834-835).

B. During the time period from April 1, 2009 through October 14, 2009, the Student had not mastered the Goal, but made progress on it as follows:

(1) The Goal Tracker data collection information for Goal Number 7 indicates that the Student was making progress on Objective 1 of this Goal, but had not totally met the Objective. (DEX 40, p. 1392).

(2) The Progress Report for the Extended School Year session indicates that the Student was making progress on the goal. (DEX 40, p. 1368).

(3) The Progress Report for the regular school year indicates that the Student was making progress on the goal during the last quarter of his Kindergarten year (May 27, 2009) and during the first quarter of his First Grade year (October 16, 2009). (DEX 39, p. 1344).

(4) The Summary of Progress provided to the Student’s Mother on October 22, 2009, indicates that the Student was making progress on Objective 1 of the goal. (DEX 40, p. 1402; Wright Hearing, Tr. Vol. IV, pp. 880-881).

144. Goal Number 8 on the Student’s April 1, 2009 IEP and its objectives were as follows:

Goal Number 8 – Goal Area: Activities Of Daily Living

[The Student] will his ability to interact socially with peers by imitating actions of peers with 75% accuracy across 3 consecutive data days.

- Objective 1. When presented with a model and verbal prompt, [the Student] will imitate 4 actions of a peer with 75% accuracy across 3 consecutive data days.
- Objective 2. When presented with a model, objects, and verbal prompt, [the Student] will imitate 4 actions of a peer with objects with 75% accuracy across 3 consecutive data days.
- Objective 3. When presented with a model, objects, and verbal prompt, [the Student] will imitate 4 novel actions of a peer with or without objects with 75% accuracy across 3 consecutive data days.

A. KR had primary responsibility for working on this goal with the Student. She testified that “imitation is . . . one of the ways that all of us learn. It's a key learning thing for all children in everything. We learn to read, we learn to write, we learn to do math, by imitating and seeing either the teacher explain it or the peers doing it. (Wright Hearing, Tr. Vol. IV, pp. 835-836). The Student worked on this goal in the regular education classroom and in the KR's classroom, which she used “reverse inclusion” to bring non-disabled peers into the classroom to serve as models for the Student. (Wright Hearing, Tr. Vol. IV, p. 837).

B. During the time period from April 1, 2009 through October 14, 2009, the Student had not mastered the Goal, but made progress on it as follows:

- (1) The Goal Tracker data collection information for Goal Number 8 indicates that the Student met Objective 2 of this Goal and was making progress on the remaining two Objectives. (DEX 40, p. 1378).
- (2) The Progress Report for the regular school year indicates that the Student was making progress on the goal during the last quarter of his Kindergarten year (May 27, 2009) and during the first quarter of his First Grade year (October 16, 2009). (DEX 39, p. 1345).
- (3) The Summary of Progress provided to the Student's Mother on October 22, 2009 indicates that the Student was met Objective 2 of the goal and was making progress on the remaining two Objectives. (DEX 40, p. 1402; Wright Hearing, Tr. Vol. IV, pp. 880-881).
- (4) KR testified that the Student “met the imitation with the objects” which was Objective 2, but “had not yet done the actions or novel actions” which was Objective 3. KR explained that the imitation of novel actions was harder for the Student because “one day it might be within the math class building a tower [and] the next day it might have been in PE playing a game. So it was a new skill each day.” (Wright Hearing, Tr. Vol. IV, p. 893).

145. Goal Number 9 on the Student's April 1, 2009 IEP and its objectives were as follows:

Goal Number 9 – Goal Area: Activities Of Daily Living

[The Student] will increase his social interactions with peers by responding to and initiating 3 out of 4 opportunities across 3 consecutive data days.

Objective 1. When presented with a preferred object and a verbal cue to share from a peer, [the Student] will give the object to the peer 3 out of 4 opportunities across 3 consecutive data days.

Objective 2. When presented with a verbal cue, [the Student] will reference a peer by turning toward and facing a peer 3 out of 4 observed opportunities across 3 consecutive data days.

Objective 3. [The Student] will initiate interactions with a peer by using proximity 3 of 4 opportunities across 3 consecutive data days.

A. KR had primary responsibility for working on this goal with the Student. She testified that interaction with peers is “one of those early learning skills, looking at our peers, seeing what our peers are doing, being able to imitate our peers.” (Wright Hearing, Tr. Vol. IV, p. 837). KR used “reverse inclusion” to bring non-disabled peers into the classroom. The regular education peers helped the Student by serving as role models to teach him social skills, turn taking and appropriate ways to interact with other students. (Wright Hearing, Tr. Vol. IV, p. 838).

B. During the time period from April 1, 2009, through October 14, 2009, the Student had not mastered the Goal, but made progress on it as follows:

(1) The Goal Tracker data collection information for Goal Number 9 indicates that the Student was making progress on the Goal, but had not mastered the goal or its objectives. (DEX 40, p. 1379).

(2) The Progress Report for the regular school year indicates that the Student was making progress on the goal during quarters May 27, 2009 and October 16, 2009. (DEX 39, p. 1346).

(3) The Summary of Progress provided to the Student’s Mother on October 22, 2009 indicates that the Student was making progress on Objectives. (DEX 40, p. 1402; Wright Hearing, Tr. Vol. IV, pp. 880-881).

(4) KR testified that the Student was making progress on the goal. He experienced some regression at the beginning of his First Grade year, which was not surprising because the Student had to re-establish himself in a new classroom environment with new students. KR further testified that prior to being removed from the District, she saw the Student’s percentages on this goal begin to move upward as he was able to re-establish himself in the new classroom environment. (Wright Hearing, Tr. Vol. IV, pp. 893-894).

146. Goal Number 10 on the Student's April 1, 2009 IEP and its objectives were as follows:

Goal Number 10 – Goal Area: Language

Given his AAC device, pictures or objects, [the Student] will increase receptive language skills by identifying items named in a field up to 4 with 80% accuracy on 3 consecutive data days.

Objective 1. [The Student] will receptively identify correct item named from choice of two with 80% accuracy on 3 consecutive data days.

Objective 2. [The Student] will receptively identify concept/opposite labels on his device with 80% accuracy on 3 consecutive data days.

Objective 3. [The Student] will receptively identify up to four labels by function (Show me what you eat, where you sit, etc.) with 80% accuracy on 3 consecutive data days.

A. JT had primary responsibility for working on this goal with the Student. She testified as follows concerning the purpose of the goal:

“We picked a couple of simple, basic concepts that we felt were important. Boy, girl we felt were important to just the general schema of a kindergartner, telling the difference there. Happy, sad, we wanted him to be able to express his feelings and emotions, so those were important to us as well.” (Wright Hearing, Tr. Vol. IV, p. 927).

B. KR also worked with the Student on this goal. She testified that the purpose of the goal was to achieve:

“Receptive language skills. It's very important for children to understand basic things, to understand what a table is, what a chair is, to be able to understand what's being said.” (Wright Hearing, Tr. Vol. IV, p. 840).

C. During the time period from April 1, 2009 through October 14, 2009, the Student had not mastered the Goal, but made progress on it as follows:

(1) The Goal Tracker data collection information for Goal Number 10 indicates that the Student met Objectives 1 and 3 and was making progress Objective 2, but had not mastered the objective. (DEX 40, p. 1399).

(2) The Progress Report for the Extended School Year session indicates that the Student was making progress on the goal. (DEX 40, p. 1371).

(3) The Progress Report for the regular school year indicates that the following with respect to the Student's progress on this goal:

(a) The Progress Report states that Objective 1 was met by the Student on October 13, 2009. (DEX 39, p. 1347).

(b) The Progress Report states that the “layout choices” were changed to two per layout on August 28, 2009 on Objective 2. (DEX 39, p. 1347).

(c) The Progress Report states that the Student met Objective 3 on May 10, 2009 and had a successful maintenance check when he returned to school on August 20, 2009. (DEX 39, p. 1347).

(4) The Summary of Progress provided to the Student’s Mother on October 22, 2009, indicates that the Student met Objectives 1 and 3 was making progress on the remaining Objective. (DEX 40, p. 1403; Wright Hearing, Tr. Vol. IV, pp. 880-881).

147. Goal Number 11 on the Student’s April 1, 2009 IEP and its objectives were as follows:

Goal Number 11 – Goal Area: Language/Vocabulary

[The Student] will increase ability to identify object differences and sort pictures correctly with 80% accuracy on 3 consecutive data days.

Objective 1. [The Student] will sort pictures of two different types of items correctly with 80% accuracy on 3 consecutive data days.

Objective 2. [The Student] will sort pictures of three different types of items correctly with 80% accuracy on 3 consecutive data days.

A. JT had primary responsibility for working on this goal with the Student. She testified as follows concerning the purpose of the goal:

“ . . . basic language skills require understanding likenesses and differences. And we felt that this skill is going to be very important to acquire vocabulary. So we had pictures of several different types of paths or several different kinds of cars.” (Wright Hearing, Tr. Vol. IV, p. 929).

B. KR also worked with the Student on this goal. She testified as follows concerning the purpose of the goal:

“That is a goal that I worked on with him, but I was not the primary implementer. Again, JT was the primary implementer with that. And sorting the pictures would be, again, being able to see likenesses and differences, and that visual discrimination. . . . It’s more complex. And again, it’s that hierarchy of where you have that object to object. That’s kind of like that first step. And then to be able to match -- first you have matching before you have sorting. A child needs to be able to match before they can sort. And so he was matching object to object.

And then you go to object, picture, picture, object. And then matching picture, picture, and then you go back to sorting that.” (Wright Hearing, Tr. Vol. IV, pp. 842-843).

C. During the time period from April 1, 2009 through October 14, 2009, the Student had not mastered the Goal, but made progress on it as follows:

- (1) The Goal Tracker data collection information for Goal Number 11 indicates that the Student was making progress on the Objectives. (DEX 40, p. 1401).
- (2) The Progress Report for the Extended School Year session indicates that the Student was making progress on the goal. (DEX 40, p. 1372).
- (3) The Progress Report for the regular school year indicates that the Student made progress on the first Objective during the last quarter of his Kindergarten year, but was having difficulty with consistency on the Objective during the first quarter of his First Grade year. (DEX 39, p. 1348).
- (4) The Summary of Progress provided to the Student’s Mother on October 22, 2009, indicates that the Student was making progress on the goal. (DEX 40, p. 1403; Wright Hearing, Tr. Vol. IV, pp. 880-881).
- (5) JT testified that it was her recollection that the Student met Objective 1 and they had just started working on Objective 2 when he was removed from school. (Wright Hearing, Tr. Vol. IV, p. 930).

148. Goal Number 12 on the Student’s April 1, 2009 IEP and its objectives were as follows:

Goal Number 12 – Goal Area: Language/Auditory Comprehension

[The Student] will follow 4-6 1 step directions requiring independent movement in the building with 80% accuracy on 3 consecutive data days.

Objective 1. [The Student] will follow 1-step verbal directions with visual cue with 80% accuracy on 3 consecutive data days.

Objective 2. [The Student] will follow 1-step verbal directions with no visual cues with 80% accuracy on 3 consecutive data days.

A. JT had primary responsibility for working on this goal with the Student. She testified as follows concerning the purpose of the goal:

“We had started working on following directions. . . . We had four or five goals that the team decided would be useful for [the Student] to do and give him some mobility also, around the building. . . .the first step of that was to use the visual cue. And so one of the things was to take an object to TW, his kindergarten

teacher. He was very familiar with her by this point. Another thing, we took a book to the library. We would go to get a drink of water, put some water in a cup.” (Wright Hearing, Tr. Vol. IV, pp. 930-931).

B. KR testified as follows concerning the implementation of this goal:

“JT was the primary implementer, but I also worked on that. . . . The way that JT had did it and we were implementing -- . . . it had to do more with traveling, which is more complex than just being in one spot having to do it. . . . Requiring independent movement in the building. So he was having to travel. So he would hear the direction, then would need to travel to where the item was to complete the action. And so, for example, if they went to the drinking fountain, and even giving him a prompt of here's the cup. We're going to go to the drinking fountain and get some water. So he leaves the room and walks to the drinking fountain, or once he leaves the room, is that receptive instruction staying with him the time that it takes to leave the room to get to the fountain to know what to do. (Wright Hearing, Tr. Vol. IV, p. 843).

C. During the time period from April 1, 2009, through October 14, 2009, the Student had not mastered the Goal, but made progress on it as follows:

(1) The Goal Tracker data collection information for Goal Number 11 indicates that the Student was making slow progress on the goal. (DEX 40, p. 1402).

(2) The Progress Report for the regular school year indicates that the Student made progress on the first Objective. (DEX 39, p. 1349). The Progress Report states that “[the Student] has been successful with two out of three correct on this objective, but needs to continue on decreasing prompts. Always goes to Mrs. Wyckoff’s room successfully.” (DEX 39, p. 1349).

(3) The Summary of Progress provided to the Student’s Mother on October 22, 2009, indicates that the Student was making progress on the goal. (DEX 40, p. 1403; Wright Hearing, Tr. Vol. IV, pp. 880-881).

(4) JT testified that the Student was progressing on this goal. (Wright Hearing, Tr. Vol. IV, p. 931).

149. Goal Number 13 on the Student’s April 1, 2009 IEP and its objectives were as follows:

Goal Number 13 – Goal Area: Speech

[The Student] will increase ability to imitate oral motor actions/speech sounds at 80% accuracy for each on 3 consecutive data days.

Objective 1. [The Student] will imitate bilabials with 80% accuracy on 3 consecutive data days.

- Objective 2. [The Student] will imitate vowel sounds requiring different jaw movements with 80% accuracy on 3 consecutive data days.
- Objective 3. [The Student] will use appropriate speech sounds/movements to label 4 objects/pictures with 80% accuracy on 3 consecutive data days.

A. JT had primary responsibility for working on this goal with the Student. She testified as follows concerning the purpose of the goal:

“. . . one of [the Student’s] most challenging areas was the oral motor and the verbalization. So we spent a lot of time . . . trying to do some imitation of blowing and making just basic speech sounds. This was hard for him. . . .”
(Wright Hearing, Tr. Vol. IV, pp. 932-933).

B. During the time period from April 1, 2009 through October 14, 2009, the Student had not mastered the Goal, but made progress on it as follows:

(1) The Goal Tracker data collection information for Goal Number 13 indicates that the Student was making progress on Objective 1 of the goal. (DEX 40, p. 1398).

(2) The Progress Report for the regular school year indicates that the Student made progress on the first Objective. (DEX 39, p. 1350). The Progress Report states that “[the Student is] getting much better at producing /p/ and /b/ with lips” and “continuing to work on more open vowel phonation as well as gliding jaw movement.” (DEX 39, p. 1350).

(3) The Summary of Progress provided to the Student’s Mother on October 22, 2009, indicates that the Student was making progress on the goal. (DEX 40, p. 1403; Wright Hearing, Tr. Vol. IV, pp. 880-881).

(4) JT testified that she saw progress on this goal and that “we were working on bilabial sounds, lips together. . . . There were a few days that he had 100 percent days of imitation. He was very inconsistent with this. It was hard with him. We both did our best on this.” (Wright Hearing, Tr. Vol. IV, pp. 932-933).

150. Goal Number 14 on the Student’s April 1, 2009 IEP and its objectives were as follows:

Goal Number 14 – Goal Area: Activities of Daily Living

Given instruction, [the Student] will increase daily living skills by completing functional manipulation tasks with 100% accuracy on 3 out of 4 opportunities across 3 consecutive data periods.

- Objective 1. After instruction, [the Student] will independently engage a zipper with 100% accuracy on 3 out of 4 opportunities across 3 consecutive data periods.
- Objective 2. After instruction, [the Student] will independently fasten and unfasten medium sized buttons with at least 100% accuracy on 3 out of 4 opportunities across 3 consecutive data periods.
- Objective 3. After instruction, [the Student] will independently fasten snaps with at least 100% accuracy on 3 out of 4 opportunities across 3 consecutive data periods.
- Objective 4. After instruction, [the Student] will improve skills for accessing materials by opening and closing a variety of containers/packages with at least 100% accuracy on 3 out of 4 opportunities across 3 consecutive data periods (screw type lids; zip lock bags; snap containers; shipping packages with scissors).

A. LB had primary responsibility for working on this goal with the Student. She testified as follows concerning the purpose of the goal:

“This is a goal to address functional manipulation skills, fine motor skills. We had chosen fasteners, including zippers, buttons, snaps, and then we had also chosen a goal for different types of fasteners, such as snipping opening, opening a snap container, Ziplock bags, and a screw type lid.” (Wright Hearing, Tr. Vol. IV, p. 944).

B. During the time period from April 1, 2009 through October 14, 2009, the Student had not mastered the entire Goal, but mastered one Objective and made progress on the remainder of the Objectives as follows:

- (1) The Goal Tracker data collection information for Goal Number 14 indicates that the Student met/mastered Objective 4 of the goal. (DEX 40, pp. 1394-1395).
- (2) The Progress Report for the regular school year indicates that the Student made progress on the goal. (DEX 39, p. 1351).
- (3) The Summary of Progress provided to the Student’s Mother on October 22, 2009 indicates that the Student met Objective 4. (DEX 40, p. 1403; Wright Hearing, Tr. Vol. IV, pp. 880-881).
- (4) LB testified that she began working with the Student on Objectives 3 and 4 and the Student mastered Objective 4. With respect to Objective 3, LB testified that:

“When I originally started working with him, my hope was that he would snap a vest. That was difficult. He often didn't give visual attention to it. He had trouble lining them up and pushing them together. I backed up to a snapping task where he puts items and snaps them onto a board. He did better with that, but had not met the goal.” (Wright Hearing, Tr. Vol. IV, pp. 945-946).

151. Goal Number 15 on the Student's April 1, 2009 IEP and its objectives were as follows:

Goal Number 15 – Goal Area: Written Output

Given instruction, [the Student] will increase skills for written output by completing pre-writing tasks with at least 80% accuracy on 3 out of 4 opportunities across 3 consecutive data periods.

- Objective 1. After instruction, [the Student] will place wooden pieces on a template to form the letters of his first name with at least 80% accuracy on 3 out of 4 opportunities across 3 consecutive data periods.
- Objective 2. After instruction, [the Student] will use a template to form letters/numbers/shapes with at least 80% accuracy on 3 out of 4 opportunities across 3 consecutive data periods (Letters of his first name; phone number; line/circle shapes).
- Objective 3. After instruction, [the Student] will trace letters/numbers/shapes with at least 80% accuracy on 3 out of 4 opportunities across 3 consecutive data periods (letters of his first name; phone number; line/circle shapes).

A. LB had primary responsibility for working on this goal with the Student. She testified as follows concerning the purpose of the goal:

“This is what we would call a written output goal, attempting to get him to form letters and represent written things. We had chosen for him to do a template wooden pieces to form the letters of his name. Using a template to draw lines and letters and numbers, and then tracing lines and letters and numbers. I used a variety of materials to teach this goal. Sometimes we would do things on the chalkboard, a dry erase board, paper and pencil. The wooden pieces were a part of a handwriting with a tier set that we had. There was a template on the table. He would put plates of wooden pieces to form the letters of his name. The templates, I had a variety. I had cardboard ones that provided a lot of input and guidance. I had foam ones that gave less of a cue. I had a whiteboard with glue lines that provided even less of a cue for him to try to trace and to use the templates.” (Wright Hearing, Tr. Vol. IV, pp. 947-948).

B. During the time period from April 1, 2009 through October 14, 2009, the Student had not mastered the entire Goal, but mastered portions of one Objective and made progress on the remainder of the Objectives as follows:

(1) The Goal Tracker data collection information for Goal Number 15 indicates that the Student met/mastered portions of Objective 2 of the goal. (DEX 40, pp. 1396-1397).

(2) The Progress Report for the regular school year indicates that the Student made progress on the goal. (DEX 39, p. 1352).

(3) The Summary of Progress provided to the Student's Mother on October 22, 2009, indicates that the Student met Objective 4. (DEX 40, p. 1403; Wright Hearing, Tr. Vol. IV, pp. 880-881).

(4) LB testified as following concerning the Student's progress on this Goal:

“ . . . using the template to put the wooden pieces on his name was very hard for him. Again, he didn't always look at them. He would place pieces in front of him, but they were not oriented correctly to the templates. Using templates to draw and write with, he did better at. The thicker, more of a cue cardboard templates, he could draw the line and circle. And then the tracing was very difficult. Again, he didn't always look at it. The line was coming. Parts of the circle were coming.” (Wright Hearing, Tr. Vol. IV, p. 948).

Comparison of Minutes and Goals on Student's IEPs

152. KR prepared a Summary of Minutes of Instruction which are contained on the first page of the Student's IEPs. (DEX 50, p. 1786). The Summary indicates that the Student's percentage of minutes in Regular Education went from 23% on October 21, 2008 to 34% on the Student's April 1, 2009 IEP for the remainder of his Kindergarten year and to 40% on his April 1, 2009 IEP for his First Grade year. (DEX 50, p. 1786; Wright Hearing, Tr. Vol. IV, pp. 769-770).

153. The Student was routinely provided access to the general curriculum during the times that he was present in the regular education classrooms, including: TW's Kindergarten Classroom (DEX 36, pp. 1210-1212); Robin Hackett's First Grade Classroom (Wright Hearing, Tr. Vol. I, pp. 60-61; 99, Ins. 20-25); Stacie O'Neal's Art Classroom (DEX 27, pp. 725-729); Tracy Oliver's Physical Education Class (DEX 28, pp. 739-747); and Patricia Rick's Music Classroom (DEX 29). KR worked on elements of the Kindergarten and First Grade curriculum with the Student when he was in her Life Skills classroom and the curriculum was imbedded in the goals and objectives of the Student's IEP. (DEX 36, p. 2011; Wright Hearing, Tr. Vol. IV, pp. 756, 857-858).

154. The allegations by Student's Mother that the April 1, 2009 IEP contained goals that had already been achieved when he started back in the District in August 2008 are not correct. KR testified that she prepared a comparison of the goals and objectives in the Student's April 1, 2009 IEP with the Student's previous IEP educational goals and evaluation documents and determined that the skills necessary to master the goals and objectives in the Student's April 1, 2009 IEP had

not been achieved by the Student prior to April 1, 2009. In particular, KR made the following comparisons:

A. Comparison with the Student's March 3, 2009 Evaluation Report. KR compared the goals and objectives in the Student's April 1, 2009 IEP with the Student's March 3, 2009 Evaluation Report. KR determined that the goals and objectives on the Student's April 1, 2009 IEP required him to exhibit higher skill levels than he was reported to have on the ABLLS prepared as a part of his March 3, 2009 Educational Evaluation. (DEX 50, pp. 1784-1785; DEX 13, pp. 167-218; Wright Hearing, Tr. Vol. IV, pp. 853-854).

B. Comparison with the Student's September 16, 2008 Kindergarten IEP. KR compared the goals and objectives in the Student's April 1, 2009 IEP with the goals and objectives on the Student's September 16, 2008 Kindergarten year IEP. KR determined that the goals and objectives on the Student's April 1, 2009 IEP: (1) were totally different from the goals and objectives on his September 16, 2008 IEP; or, (2) were extensions of goals on the September 16, 2008 IEP that had not been completed. (DEX 50, p. 1783; DEX 10, pp. 127-146; Wright Hearing, Tr. Vol. IV, pp. 847-853).

C. Comparison with the August 2008 Baseline Report By Molly Pomeroy. KR compared the goals and objectives in the Student's April 1, 2009 IEP with the Baseline skills report prepared by Molly Pomeroy in August 2008. KR determined that the goals and objectives on the Student's April 1, 2009 IEP required him to exhibit higher skill levels than he was reported to have attained by Ms. Pomeroy in August 2008. (DEX 50, pp. 1781-1782; DEX 24, pp. 691-695; Wright Hearing, Tr. Vol. IV, pp. 824-847).

D. Comparison with the Student's May 28, 2008 Evaluation Summary from the Lee Ann Britain Center. KR compared the goals and objectives in the Student's April 1, 2009 IEP with the Student's May 28, 2008 Evaluation Report from the Lee Ann Britain Center. KR determined that the goals and objectives on the Student's April 1, 2009 IEP required him to exhibit higher skill levels than he was reported to have on the Evaluation from the Lee Ann Britain Center. (DEX 51, pp. 1798-1799; Wright Hearing, Tr. Vol. IV, p. 868).

E. Comparison with the Student's February 20, 2007 PEP-R Results administered by Lisa Miller. KR compared the goals and objectives in the Student's April 1, 2009 IEP with the results of the Student's February 20, 2007 PEP-R and determined that the goals and objectives on the Student's April 1, 2009 IEP required him to exhibit higher skill levels than he was reported to have on the PEP-R. (DEX 51, pp. 1793-1794; Wright Hearing, Tr. Vol. IV, pp. 867-868).

F. Comparison with the Student's Early Childhood Report Card (school year 2006-07). KR compared the goals and objectives in the Student's April 1, 2009, IEP Goals with the Student's progress during school year 2006-07. She determined that during school year 2006-07, the Student did not exhibit the skills that would be necessary to master the goals and objectives in his April 1, 2009 IEP. (DEX 50, p. 1780; DEX 15, pp. 273-277; Wright Hearing, Tr. Vol. IV, pp. 819-824).

G. Comparison with the August 4, 2006 Letter from Beverly Zimmer. KR compared the goals and objectives in the Student's April 1, 2009 IEP Goals with the information in the letter from Beverly Zimmer dated August 4, 2006, and determined that the goals and objectives on the Student's April 1, 2009 IEP required him to exhibit higher skill levels than he was reported to have in the letter. (DEX 51, pp. 1789; Wright Hearing, Tr. Vol. IV, pp. 865-866).

Cooperation by the District with Student's Mother

155. During school years 2008-09 and 2009-10, through October 14, 2010, the District worked cooperatively with the Student's Mother and provided her with timely and relevant information concerning the Student's program of special education and related services, as evidenced by the following:

(1) The Student's Mother frequently contacted SS. SS indicated that the Student's Mother contacted her more frequently than other parents with whom she was working. (DEX 30, p. 782). The Student's Mother frequently corresponded by electronic mail during the school year with District Personnel including KR, TW and JT, concerning the progress made by the Student. (DEX 22 and 41).

(2) The Student's Mother frequently contacted KR. KR testified that communicated with the Student's Mother "every single day . . . that [the Student] was at school. I either had a verbal conversation with her, multiple e-mails every day, . . . [and even] on days when he was home sick, I would receive information how he was doing." (Wright Hearing, Tr. Vol. IV, p. 786, DEX 41). KR also testified that 90% of her communication with parents would have been with Student's Mother during the time that KR had Student in her class. (Wright Hearing, Tr. IV, p. 901; 904).

(3) The Student's Mother frequently contacted JT. JT testified that the Student's Mother contacted her many more times that most of the parents of the other children with which she works. (Wright Hearing, Tr. Vol. IV, p. 918). The Student's Mother and JT also frequently emailed each other concerning the Student and his progress. (DEX 41, pp. 1408-1412; 1417-1433).

(4) Six IEP meetings in thirteen (13) months (September 16, 2008; September 28, 2008; October 21, 2008; March 26, 2009; April 1, 2009; and October 14, 2009) and one Evaluation Staffing (March 3, 2009) (Wright Hearing, Tr. Vol. IV pp. 759-760), which KR testified was a record number of IEP meetings for one child. (Wright Hearing, Tr. Vol. IV p. 761). KR also testified that Student's Mother bringing a Parent Agenda to the April 1, 2009 IEP meeting was the first time that had happened in her 23 years of teaching. (Wright Hearing Tr. Vol. IV, p. 903).

(5) Data conferences or Parent-Teacher Conference were held on a monthly basis with the Student's Mother. The District agreed to conduct these meetings to review the Student's progress and supporting data at the September 16, 2008 IEP meeting. (DEX 17, p. 398; Baker Hearing, Tr. Vol. III, p. 655). Thereafter, Parent-Teacher Conferences were held on: October 21, 2008 (DEX 17, pp. 403-405); November 18, 2008 (Baker Hearing, Tr. Vol. III, p. 657; DEX 17, p. 406); December 17, 2008 (DEX 17, p. 408); January 27, 2009 (DEX 17, pp. 407-409); and, February 28, 2009 (Baker Hearing, Tr. Vol. III, p. 658; DEX 17, p. 409) and began again in May, 2009. During these Conferences the District's staff discussed the Student's progress and sought input from the Student's Mother. (Wright Hearing, Tr. Vol. IV pp. 786-787; 918-919; 941-942).

(6) In January 2009, KR provided the Student's Mother with a copy of alignment of skills document which compared the skills the Student was receiving with the Kindergarten skill levels. This document was provided at the request of the Student's Parent. (DEX 16, pp. 323-336).

(7) The Student's Mother was provided with copies of the Kindergarten Classroom lesson plans (DEX 16, pp. 337-361) and Kindergarten classroom work sheets at the request of the Student's Mother. (DEX 17, p. 407). When the Student entered First Grade, the Student's Mother requested and received a copy of the First Grade Class Schedule from RH. (DEX 41, p. 1440; Wright Hearing, Tr. Vol. II, pp. 485-486).

(8) On a daily basis during school year 2008-09, District personnel provided the Student's Mother with a Daily Classroom Log which set forth information regarding the Student's day at school. (PETDEX 704-929). On a daily basis during school year 2009-10, through October 14, 2010 when the Student was removed from school by his Mother, District personnel provided the Student's Mother with a Daily Classroom Log which set forth information regarding the Student's day at school.³³ (DEX 42). Student's Daily Classroom Log was individualized for him and was more detailed than more generic Logs that were sent to parents of other students. (Wright Hearing Tr. Vol. IV, 900; 905).

(9) The District provided the Student's Parents with written notification for all meetings during school year 2008-09 through March 31, 2009. (DEX 9, pp. 97-97a; DEX 10, p. 108; DEX 13, p. 159; DEX 14, pp. 221-222). During the period from April 1, 2009 through October 14, 2010, the District provided the Student's Parents with written notification for all meetings. (DEX 38, p. 1281; DEX 39, p. 1308; DEX 43, p. 1575).

(10) The Student's Mother participated in all meetings concerning the Student which were scheduled from August 2008, through October 14, 2009. (See: Baker Hearing Panel Decision, DEX 46, p. 1633, ¶ 101(M)). At these meetings, the Student's Mother contributed written materials and was a vocal contributor. The

³³ The Logs were prepared by KR, JT and LB. (Wright Hearing, Tr. Vol. IV, pp. 788-791, 900).

Student's Mother was accompanied by various persons, including legal counsel, at nearly every meeting during the period which was held with the District concerning the Student, including:

- (a) August 18, 2008 IEP meeting: The Student's Mother was accompanied by Lisa Sutherland (Parent's attorney); Chrys Servic (KCRD Service Coordinator); Molly Pomeroy (private behavior therapist) and Sherri Tucker (Parent's friend). (DEX 9, p. 98; DEX 17, pp. 390-392).
- (b) September 16, 2008 IEP meeting: The Student's Mother was accompanied by Lisa Sutherland (by telephone); Chrys Servic; Molly Pomeroy and Sherri Tucker. (DEX 10, p. 126b; DEX 17, pp. 396-400).
- (c) October 21, 2008 Parent/Teacher Conference: The Student's Mother was accompanied by Sherri Tucker. (DEX 17, pp. 403-405).
- (d) November 18, 2008 Parent/Teacher Conference: The Student's Mother was accompanied by Sherri Tucker. (DEX 17, pp. 406-407).
- (e) January 27, 2009 Parent/Teacher Conference: The Student's Mother was accompanied by Sherri Tucker. (DEX 17, p. 409).
- (f) February 28, 2009 Parent/Teacher Conference: The Student's Mother was accompanied by Sherri Tucker. (DEX 17, p. 409).
- (g) March 3, 2009 evaluation staffing meeting: The Student's Mother was accompanied by Sherri Tucker and Christi Burgess.³⁴ (DEX 17, p. 410).
- (h) March 26, 2009 IEP Meeting: The Student's Mother was accompanied by Sherri Tucker and Christi Burgess. (DEX 17, pp. 411-419).
- (i) April 1, 2009 IEP Meeting: The Student's Mother was accompanied by Sherri Tucker and Christi Burgess. (DEX 17, pp. 431-434).
- (j) May 5, 2009 Parent/Teacher Conference: The Student's Mother was accompanied by Sherri Tucker. (DEX 17, p. 435).
- (k) October 14, 2009 IEP Meeting: The Student's Mother was accompanied by Sherri Tucker, Christi Burgess, Marilyn McClure, Mary Pechar and the Student's Father. (DEX 17, p. 419)

³⁴ Ms. Burgess attended a large part of the current due process hearing.

- (11) The District provided the Student's Parents with a finalized copy of the September 16, 2008 IEP on September 25, 2008. (DEX 10, p. 149).
- (12) Prior to the March 26, 2009, and April 1, 2009 IEP meetings, the District provided the Student's Mother with Draft copies of the Present Levels of Academic Achievement and Functional Performance and Goals and Objectives. (DEX 38, pp. 1284-1305; DEX 39, pp. 1312-1334). Prior to these meetings, the Student's Mother provided copies of Parent Concerns (DEX 38, pp. 1306-1307) and a Parent Agenda (DEX 39, p. 1311). The District added the Parent Concerns document to the Student's April 1, 2009 IEP. (DEX 39, pp. 1358-1359).
- (13) During the development of the Student's April 1, 2009 IEP, the Student's Mother provided input concerning the goals. The input provided by the Student's Mother caused the Student's IEP Team to make several changes to the IEP, including to the IEP's goals and objectives. (Wright Hearing, Tr. Vol. IV, pp. 816-818; DEX 17, pp. 423-431).
- (14) The Student's Mother provided written consent for services on September 16, 2008 (DEX 10, p. 148), October 1, 2008 (DEX 11, p. 154) and on October 21, 2008 (DEX 10, p. 158) and in all cases waived the ten (10) day implementation period. (See: Baker Hearing Panel Decision, DEX 46, p. 1633, ¶ 101(H)). The Student's Mother provided written consent for the change in the Student's educational diagnosis on March 5, 2009. (DEX 13, pp. 219-220).
- (15) The Student's Mother provided written consent for services on April 2, 2009 and waived the ten (10) day implementation period for the Student's April 1, 2009 IEP. (DEX 39, pp. 1360-1361).
- (16) The Student's Mother visited and viewed KR's Life Skills classroom and other classrooms where the Student was receiving educational services on at least six (6) occasions, including visits to KR's Life Skills Classroom on August 18, 2008 (DEX 17, p. 394); August 28, 2008 (DEX 17, p. 393, DEX 22, pp. 493-494); September 12, 2008 (DEX 22, pp. 498-499); September 23, 2009 (DEX 17, pp. 438-439; DEX 45, pp. 1579-1580); September 24, 2009 (DEX 17, pp. 440-441; DEX 45, pp. 1581-1582); and, a visit to RH's First Grade Classroom on September 11, 2009 (DEX 45, p. 1578).
- (17) On August 26, 2009, the Student's Mother sent an email to SS requesting to review the Student's cumulative file. (DEX 41, pp. 1442-1444). On August 31, 2009, the Student's Mother met with Tamara Asplund and SS to review the Student's cumulative file. (DEX 41, p. 1448).
- (18) On October 9, 2009, SS emailed the Student's Mother requesting that she provide a prioritized list of her concerns so the District staff would be fully prepared to address her questions at the October 14, 2009 IEP meeting. (DEX 41, p. 1466).

(19) During the period beginning on August 1, 2008 and through October 14, 2009, the District provided the Student's Parents a copy of the Procedural Safeguards on seven (7) occasions: August 18, 2008, September 16, 2008, December 17, 2008, March 3, 2009, March 26, 2009, April 1, 2009 and October 14, 2009. (DEX 18, p. 447).

CONCLUSIONS OF LAW

The Hearing Panel makes the following Conclusions of Law:

The Parties

1. The District is a Missouri Public School District which is organized pursuant to Missouri statutes.
2. The Student and his Parents are now and have been during all times material to this proceeding, residents of the District, as defined by Section 167.020 RSMo.
3. Article IX § 2(a) of the Missouri Constitution states in pertinent part that "[t]he supervision of instruction in the public schools shall be vested in a state board of education. . . ." The State Board of Education for the State of Missouri is the "State Educational Agency" ("SEA") for the State of Missouri, as that term is defined in the IDEA, 20 U.S.C. § 1401(28).

Due Process Complaints and The IDEA's Burden of Proof

4. If parents of a "child with a disability" believe that the educational program provided for their child fails to meet FAPE, they may obtain a state administrative due process hearing. 34 C.F.R. § 300.506; *Thompson v. Board of the Special School District No. 1*, 144 F.3d 574, 578 (8th Cir. 1998); *Fort Zumwalt School District v. Clynes*, 119 F.3d 607, 610 (8th Cir. 1997), *cert. denied* 523 U.S. 1137, 118 S.Ct. 1840, 140 L.Ed 2d 1090 (1998).
5. The Student and his Parents filed the due process complaint that initiated this matter on March 25, 2011. Petitioners' Amended Request for Due Process Complaint alleges (a) the District violated the procedural requirements of IDEA in the development of the April 1, 2009 IEP; (b) the April 1, 2009 IEP was not reasonably calculated to provide Student with FAPE in the least restrictive environment and (c) the District violated IDEA by not properly implementing the April 1, 2009 IEP.
6. The burden of proof in an administrative hearing arising under the IDEA is properly placed upon the party seeking relief. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528, 537 (2005). The standard of proof in this administrative proceeding, as in most civil cases, is proof by a preponderance of the evidence. *Tate v. Department of Social Services*, 18 S. W. 3d 3, 8. (Mo. App. E. D. 2000). The burden of proof in this case rests with the Student and his Parents.

Free Appropriate Public Education

7. The IDEA, its regulations and the *State Plan for Part B of the Individuals With Disabilities Education Act* (2007), ("State Plan") constitute regulations of the State of Missouri which further define the rights of the Student and his Parents and regulate the responsibilities of educational agencies, such as the District, in providing special education and related services to children with disabilities.

8. The purpose of the IDEA and its regulations is: (1) "to ensure that all children with disabilities have available to them a free appropriate public education that includes special education and related services to meet their unique needs;" (2) "to ensure that the rights of children with disabilities and their parents are protected;" and, (3) "to assess and ensure the effectiveness of efforts to educate those children." 34 C.F.R. § 300.1.

9. The IDEA requires that a disabled child be provided with access to a "free appropriate public education." ("FAPE") *See Board of Education of the Hendrick Hudson Central School District, Board Of Education, Westchester County v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034, 3049, 73 L.Ed.2d 690 (1982). The term "free appropriate public education" is defined by 34 C.F.R. § 300.17 as follows:

"...the term 'free appropriate public education' means special education and related services that--

- (a) Are provided at public expense, under public supervision and direction, and without charge;
- (b) Meet the standards of the SEA, including the requirements of this part;
- (c) Include preschool, elementary school, or secondary school education in the State involved; and,
- (d) Are provided in conformity with an IEP that meets the requirements of §§300.340--300.350."

A principal component of the definition of FAPE is that the special education and related services provided to the child with a disability, "meet the standards of the SEA" (State Educational Agency), and "the requirements of this part." 34 C.F.R. Part 300.

10. The FAPE requirement is satisfied if the child with a disability is provided with "personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." Likewise, the educational program must be provided at public expense and in the least restrictive environment. *Rowley*, 458 U.S. 176 at 203-204, 102 S.Ct. 3034.

11. The IDEA is designed to enable children with disabilities to have access to a free appropriate public education which is designed to meet their particular needs. *O'Toole by O'Toole v. Olathe District Schools Unified School District No. 233*, 144 F.3d 692, 698 (10th Cir. 1998). Note the *Rowley* requirement of consideration of the unique needs of the student with a

disability requires consideration of the child's capacity to learn. *Nein v. Greater Clark County School Corp.*, 95 F. Supp.2d 961, 973 (S.D. Ind. 2000). The IDEA requires the District to provide a child with a disability with a "basic floor of opportunity. . . which [is] individually designed to provide educational benefit to the handicapped child." *Rowley*, 102 S.Ct. 3034, 3047. In so doing the IDEA does not require that the District "either maximize a child's potential or provide the best possible education at public expense," *Rowley*, 102 S.Ct. 3034, 3049; *Fort Zumwalt School District v. Clynes*, 119 F.3d 607, 610 (8th Cir. 1997), *cert. denied* 523 U.S. 1137, 118 S.Ct. 1840, 140 L.Ed 2d 1090 (1998) and *A.W. v. Northwest R-1 School District*, 813 F.2d 158, 163-164 (8th Cir. 1987). Likewise, the IDEA does not require the District to provide a program that will "achieve outstanding results," *E.S. v. Independent School District No. 196*, 135 F.3d 566, 569 (8th Cir. 1998); that is "absolutely [the] best," *Tucker v. Calloway County Board of Education*, 136 F.3d 495, 505 (6th Cir. 1998); that will provide "superior results," *Fort Zumwalt School District v. Clynes*, 119 F.3d 607, 613; or, that will provide the placement the parents prefer. *Blackmon v. School District of Springfield, R-12*, 198 F. 3d 648 (8th Cir. 1999); *E.S.*, 135 F.3d 566, 569. *See also: Tucker*, 136 F.3d 495, 505; and, *Board of Education of Community Consolidated School District No. 21 v. Illinois State Board of Education*, 938 F. 2d 712, 716-17 (7th Cir. 1991).

Least Restrictive Environment

12. The IDEA requires that students with disabilities be educated in the least restrictive environment reflecting a strong preference that disabled students attend regular classes with non-disabled children and a presumption in favor of placement in the public schools. *T. F. v. Special School Dist. of St. Louis County*, 449 F.3d 816 (8th Cir. 2006). The regulations of the IDEA, 34 C.F.R. §300.114(a)(2), define the term "Least Restrictive Environment" as follows:

- "(2) Each public agency must ensure that --
 - (1) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and,
 - (2) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily."

Requirements for an IEP

13. Generally, an IEP is a written statement that must include, *inter alia*, the child's present level of academic achievement and functional performance, the child's special education needs, measurable annual goals, a procedure for progress reports, and any supplemental aids and services needed. 20 U. S. C. Section 1414 (d)(1)(A); *M. P. v. Independent School District No. 721*, 326 F. 3d 975, 977 n.1 (8th Cir. 2003). It is prepared jointly with school staff and parents, and is reviewed annually. *M.P.* , 326 F.3d at 977, n.1.

14. The Missouri State Plan for Special Education (2010) (“State Plan”) sets specific requirements for the content of an Individualized Education Program (“IEP”) for a child with a disability:

“Definition of IEP (34 CFR 300.320)

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 and must include:

A. a statement of the child’s present levels of academic achievement and functional performance, including 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 for preschool children, as appropriate, how the disability affects the child’s participation in appropriate activities, and for children with disabilities who take alternative assessments aligned to alternative achievement standards, a description of benchmarks or short term objectives;

B. a statement of measurable annual goals, including academic and functional goals designed to 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 (i.e., the same curriculum as for nondisabled children), or for preschool children, as appropriate, to participate in appropriate activities, and meeting each of the child’s other educational needs that result from the child’s disability. For children with disabilities who take alternative assessments aligned to alternate achievement standards, a description of benchmarks or short term objectives;

C. 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:

- 1) to advance appropriately toward attaining the annual goals;
- 2) to be involved in and make progress in the general education curriculum;
- 3) to participate in extracurricular and other nonacademic activities; and,
- 4) to be educated and participate with other children with disabilities and nondisabled children in the activities described in this paragraph.

This statement must specify whether the student needs transportation as a related service. If the IEP Team determines transportation is not necessary as a related service, the IEP document must reflect this.

- D. a statement of the child's participation in physical education;
- E. 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 letter C above;
- F. a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on state and district wide assessments. If the IEP Team determines that the child shall take an alternative assessment on a particular State or districtwide assessment of student achievement, a statement of why the child cannot participate in the regular assessment, and why the particular alternate assessment is appropriate for the child;
- G. the projected date for the beginning of the services and modifications described in letter C above, and the anticipated frequency, location, and duration of those services and modifications;
- H. a description of how the child's progress toward the annual goals described in letter B above will be measured, and 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;
- I. a listing of the individuals who attended the IEP meeting and their role (indicates attendance only not necessarily agreement with the IEP);
- J. a statement indicating the child's eligibility or ineligibility for extended school year services; and,
- K. a statement of the placement considerations and decision."

(State Plan, Regulation IV, pp. 43-44).

15. As we have detailed in the Findings of Fact section, the Student's April 1, 2009 IEP is in compliance with the IDEA, its Regulations, 34 C.F.R. § 300.320 and the State Plan, including but not limited to Regulation IV, pp. 43-44. Contrary to the allegations of Student and his Parents, the IEP is not vague and unclear.

Procedural Compliance with IDEA

16. An IEP does not violate the IDEA (a) if the procedures set forth in the IDEA are followed and (b) the IEP is formulated to enable the child to receive educational benefits. *Rowley*, 102 S. Ct. at 3034. The *Rowley* standard continues to be applicable, and not a higher standard, for determining FAPE under IDEA. *M. M. ex rel. L.R. v. Special School District. No. 1*, 512 F. 3d

455, 461 (8th Cir. 2008). Substantive violations of IDEA result in the denial of FAPE but procedural violations do not necessarily equate to a denial of FAPE. *See, e.g., A. K. ex rel. J. K. v. Alexandria City Sch. Bd.*, 484 F. 3d 672, 684 (4th Cir. 2007, *reh'g denied*, 497 F. 3d 409 (4th Cir. 207), *cert. denied*, 128 S. Ct. 1123 (2008).

17. Section 1415 of IDEA provides in cases alleging a procedural violation, FAPE is lacking only if the procedural inadequacies (I) impeded the child's right to a free public education; (II) significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of FAPE or (III) caused a deprivation of educational benefits. 20 U. S. C. Section 1415 (f)(3)(E). *See also* 34 C.F.R. Section 300.513 (a)(2). Minor technical procedural violations do not mandate a finding of denial of FAPE. *Independent Sch. Dist. No. 283*, 88 F. 3d 556, 557 (8th Cir. 1996).

18. In the development of a child's IEP, the IEP team, must consider (1) the strengths of the child; (2) the concerns of the parents for enhancing the education of their child; (3) the results of the initial evaluation or most recent evaluation of the child; (4) and the academic, developmental and functional needs of the child. 20 U. S. C. §1414(d)(3)(A).

19. The IDEA provides that parents of a child with disabilities must be afforded "an opportunity . . . to participate in meetings with respect to the identification, evaluation, and educational placement of the child." 20 U. S. C. Section 1415(b)(1). *See also Schaffer v. Weast*, 546 U. S. 49, 53 (2005) ("Parents and guardians play a significant role in the IPE process.")

20. If a school district disagrees with the opinion of the parents and their experts, this difference of opinion does not necessarily mean that the parents were denied the right to participate in the development of the IEP or that placement was pre-determined. *See e.g. P. K. ex rel. P. K. v. Bedford Cent. School District.*, 569 F. Supp. 2d 371 (S. D. N. Y. 2008).

21. Parents were not denied meaningful participation because some IEP team members may have had preparatory meetings or exchanged emails prior to the IEP meeting with the parents. *A. G. v. Frieden*, 2009 U. S. Dist. LEXIS 24887 at *25-26 (S. D. N. Y. March 25, 2009).

22. We conclude that the District did not violate the procedural requirements in its development of the April 1, 2009 IEP by having a draft prepared at the time of the March 26, 2009 and April 1, 2009 IEP meetings. *See, e. g., Brown v. Bartholomew Consolidated School Corp.*, 442 F.3d 588 (7th Cir. 2006); *Cerra v. Pawling Central School District*, 427 F.3d 186, 194 (2nd Cir. 2005); *B. B. v. State of Hawaii, Department of Education*, 483 F. Supp.2d 1042 (D. Haw. 2006); *Tracy v. Beaufort County Board of Education*, 335 F. Supp.2d 675 (D. S. C. 2004). The District had not predetermined placement and therefore, did violate IDEA procedural requirements.

23. The District took all reasonable steps to ensure that the Student's Parents were present for all IEP meetings, including but not limited to: (1) notifying the Student's Parents of the meetings early enough to ensure that they would be available to attend the meeting; and, (2) scheduling the meeting at a mutually agreed on times and places. (DEX 9, pp. 97-97a; DEX 10, p. 108; DEX 13, p. 159; DEX 14, pp. 221-222). The District provided the Student's Mother with appropriate and sufficient information which allowed her to participate in the decision making processes

involved with developing the Student's IEP. (FF#155). Thus, contrary to the arguments made by Student's Mother, the District did not significantly impede her participation in the development of the April 1, 2009 IEP.

24. Similarly, we find no violation of Mother's procedural rights for the District's alleged failure to send Notices of Action for Mother's identified concerns expressed at the March 26, 2009 and April 1, 2009 IEP meetings. *See Max M. v. Illinois State Board of Educ.*, 629 F. Supp. 1504, 1518(N.D. Ill. 1986)(School District's violation of student's procedural rights due to failure to provide written notice not a denial of FAPE where parent's was involved in developing student's educational program).

25. There is no competent evidence in the record that any act of the District either (a) impeded the Student's right to a free appropriate public education or (b) caused a deprivation of an educational benefit for the Student. Put another way, the District fully complied procedurally with IDEA.

Substantive Compliance with IDEA

26. A public school district is required to provide children with disabilities with "publicly funded education that benefits the student," *Fort Zumwalt*, 119 F.3d. at 613. "An individualized education program is appropriate under the IDEA if it offers instruction and supportive services reasonably calculated to provide some educational benefit to the student for whom it is designed." *Missouri Dept. of Elementary and Secondary Educ. v. Springfield R-12 School District*, 358 F.3d 992, 998, note 7, (8th Cir. 2004). *See also: Rowley*, 458 U.S. at 201, 102 S. Ct. 3034; *Blackmon*, 198 F.3d at 658-59; and *T.F. v. Special School Dist. of St. Louis County*, 449 F.3d at 820.

27. The determination of whether an IEP is appropriate and reasonably calculated to confer educational benefit must be measured from the time it was offered to the student. *Fuhrmann v. East Hanover Board of Educ.*, 993 F.2d 1031 (3rd Cir. 1993).

28. The Comments to the IDEA Regulations, *Federal Register*, Vol. 71, No. 156, p. 46662 (2006) confirm that the IDEA does not require that an IEP contain "explicitly defined" goals and/or a statement of how each goal will be "objectively measured." The comment follows:

“Comment: One commenter requested clarification as to whether IEP goals must be specific to a particular discipline (e.g., physical therapy goals, occupational therapy goals). One commenter recommended that goals be explicitly defined and objectively measured. Another commenter recommended requiring IEP goals to have specific outcomes and measures on an identified assessment tool. One commenter recommended clarifying that an IEP Team is permitted, under certain circumstances, to write goals that are intended to be achieved in less than one year.

Discussion: Section 300.320(a)(2)(i), consistent with section 614(d)(1)(A)(i)(II) of the Act, requires the IEP to include measurable annual goals. Further, § 300.320(a)(3)(i), consistent with section 614(d)(1)(A)(i)(III) of

the Act, requires the IEP to include a statement of how the child’s progress toward meeting the annual goals will be measured. ***The Act does not require goals to be written for each specific discipline or to have outcomes and measures on a specific assessment tool. Furthermore, to the extent that the commenters are requesting that we mandate that IEPs include specific content not in section 614(d)(1)(A)(i) of the Act, under section 614(d)(1)(A)(ii)(I), we cannot interpret section 614 to require that additional content.*** IEPs may include more than the minimum content, if the IEP Team determines the additional content is appropriate.” [emphasis added]

29. The Comments to the IDEA Regulations, *Federal Register*, Vol. 71, No. 156, p. 46663 (2006) state that no provision of the IDEA requires a child’s IEP goals to be aligned with the State’s alternate assessment or achievement standards. The Comments state as follows:

“Comment: One commenter recommended clarifying that goals and objectives must be aligned with the State’s alternate assessment.

Discussion: Section 612(a)(16)(C)(ii) of the Act requires alternate assessments to be aligned with the State’s challenging academic content standards and academic achievement standards, and if the State has adopted alternate academic achievement standards permitted under 34 CFR § 200.1(d), to measure the achievement of children with disabilities against those standards. Section 614(d)(1)(A)(i)(II) of the Act requires the IEP to include a statement of measurable annual goals, including academic and functional goals, designed to 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. However, ***there is nothing in the Act that requires a child’s IEP goals to be aligned with the State’s alternate assessment based on alternate achievement standards.*** Additionally, for some children, goals may be needed for activities that are not closely related to a State’s academic content and academic achievement standards.” [emphasis added].

30. The Comments to the IDEA Regulations, *Federal Register*, Vol. 71, No. 156, p. 46665 (2006) confirm that the IDEA does not require that an IEP contain a description of “specific instructional methodologies” for its goals and objectives. The comment follows:

“Comment: A few commenters recommended that the regulations clarify that the reference to “peer-reviewed research” does not require an IEP to include instructional methodologies. However, a few commenters recommended that the regulations require all elements of a program provided to a child, including program methodology, to be specified in the child’s IEP.

Discussion: ***There is nothing in the Act that requires an IEP to include specific instructional methodologies. Therefore, consistent with section 614(d)(3)(A)(ii)(1) of the Act, we cannot interpret section 614 of the Act to require that all elements of a program provided to a child be included in an***

IEP. The Department’s longstanding position on including instructional methodologies in a child’s IEP is that it is an IEP Team’s decision. Therefore, if an IEP Team determines that specific instructional methods are necessary for the child to receive FAPE, the instructional methods may be addressed in the IEP.” [emphasis added].

31. We conclude that the program of special education and related services in the Student’s April 1, 2009 IEP, was appropriate and was reasonably calculated to, and did provide him with educational benefit and a free appropriate public education in the least restrictive environment as defined by the IDEA, and its Regulations, 34 C.F.R. § 300.17. We also find that the April 1, 2009 IEP was properly implemented and a result, Student received FAPE.

Other Issues

32. Because the Student and his Parents failed to show beyond a preponderance of evidence that FAPE was denied either procedurally or substantively, we decline to address the remedy issue set out in FF#33.

DECISION

Procedural Compliance with IDEA

We first address whether the District complied with the procedural requirements of IDEA and if not, did a denial of FAPE result. The Amended Due Process Complaint alleges a laundry list of violations which can be distilled into these areas: (a) the placement decision had been predetermined based on prior emails exchanged by the District staff; (b) Mother’s input was not requested and not considered by the IEP team³⁵; (c) the meetings were not long enough³⁶; (d) District wide assessments were not used in the decision-making process; and (e) the District failed to provide Notices of Action for items that Student’s Mother requested during the March 26, 2009 and April 1, 2009 IEP meetings.

Predetermination

³⁵ Student’s Mother also raised the issue whether she had been provided sufficient information for her to understand what took place in the two IEP meetings. We totally reject this claim in view of her knowledge and experience in the IEP process as well as the wealth of information provided to Student’s mother on a regular basis. (FF#2; FF#155)

³⁶ This allegation is not in the Amended Due Process Complaint but was testified to by Student’s mother. (Wright Hearing Tr. Vol. VI, pp. 1032-1033). She thought the meetings needed to be longer than 1.5 hours – she wanted the District to allow 2.5 to 3.0 hours for Student’s IEP meetings. (Wright Hearing Tr. Vol. VI, pp. 1033).

Student's Mother points to certain emails exchanged on March 25, 2009 (described in FF#75) as indicative that the District staff had predetermined the placement for Student and did not welcome Mother's input. Having preparatory meetings does not mean that parents have been denied meaningful participation. *A. G. Frieden*, 2009 U. S. Dist. LEXIS 24877 at *25-26 (S. D. N. Y. March 25, 2009). There is a difference between being "open-minded" and being "blank-minded." *Doyle v. Arlington County School Board*, 806 F. Supp. 1253, 1262 (E.D. Va. 1992) A District can, and should have given some thought to an appropriate placement. *Id.* There is no predetermination just because the IEP team (other than Parents) disagreed with the Parents and decided on a different placement. *P. K. ex rel. P. K. v. Bedford Cent. School District*, 569 F. Supp.2d 371 (S.D.N.Y. 2008). We also find nothing improper about the District staff discussing its strategy in view of the long history of tension between the parties and particularly, considering the "apology" by Student's Mother directed at KR for the "bad" meeting that was scheduled for the next day on March 26, 2009. (FF#74).

Parental Participation

The meeting on March 26, 2009 lasted 2.5 hours. (DEX 17, pp. 415-417). Student's Mother attended along with two friends. (FF#76) The IEP team discussed in great detail Student's Present Level, a draft of which had been sent to Student's Mother nearly two weeks earlier.(FF#73). The Meeting Minutes reflect considerable discussion by Student's Mother and the other IEP team members regarding *inter alia*: (a) Goals – Mother thought the goals were too low and she did not agree with what was proposed; (b) Consideration of Special Factors, including Student's ability to visually attend and his difficulties with those skills; (c) Modifications page would be revised to include Sensory Strategies on a daily basis as well as Directions and Instructions will be given in a variety of ways and (d) Minutes for regular

education, OT and speech services were brought up for the rest of Student's kindergarten year and for first grade. (FF#76). Student's mother stressed her opinion that: Student needed more time in regular education; he shouldn't be held to meet a standard for material to which Student had not been exposed; she has not seen progress; she wanted to know the methodology. (DEX 17, p. 416). At the end of the meeting, the IEP team agreed that most of the IEP had been completed but they needed to meet again to complete Regular Education Participation/placement Considerations and Decisions and ESY paperwork. (FF#76). The team agreed to meet again on April 1, 2009 to finalize the IEP for Student. (FF#76).

When the IEP team met on April 1, 2009, Student's Mother was again accompanied by two friends. (FF#81). Student's Mother brought an Agenda and a document called Parent Concerns, which the team agreed to incorporate into the Present Level Parent Concerns. (FF#81). Included in the Parent Concerns was information from the District describing the Life Skills classroom targeting children with significant cognitive disabilities. (DEX 17, p. 427). Student's Mother indicated that this self-contained classroom was inappropriate for Student for two reasons: lowered cognitive expectations and lack of speaking peers. (DEX 17, p. 427). She again repeated her earlier objections to Student's proposed goals being too low as well as a statement in the IEP regarding the methodology to be used. (DEX 17, p. 428).

The IEP team discussed at length the balancing of 1:1 teaching time for Student as well as additional minutes in regular education as requested by Student's mother. (FF#81). Student's Mother thought Student could learn without alternative materials or environment. (FF#81). The Student's Team agreed to mark items 3, 5 and 6 in Section 5 of the IEP and add a comment under "other" that the Student "requires small group setting." (FF#81). The Student's Team

considered options 1 through 4 on the Placement Continuum³⁷ and chose option 2 (Inside Regular Class 40% to 79% of time) for First Grade and option 3 (Inside Regular Class less than 40% of time) for the remainder of his Kindergarten year. (FF#81). Thus, the team increased the regular education minutes for Student in first grade as Student's Mother requested. As noted earlier, the IEP team did not consider the results of any district-wide assessments because none are conducted in kindergarten. (FF#125, footnote 27).

The parties had two lengthy IEP meetings to discuss and develop the April 1, 2009 IEP, which is the subject of this action. The Student's Mother had considerable time to provide input, which was carefully considered by other members of the team. Changes were made to the draft of the IEP based on suggestions by Student's Mother. There was no evidence of predetermination of Student's placement (or any other part of the IEP). In short, parental participation was not stifled or compromised in any manner. *See e.g., R.R. ex rel. M.R. v. Scarsdale Union Free School*, 615 F. Supp.2d 283(S.D.N.Y. 2009) (Parents failed to show that placements and programs were finalized before the goals and objectives were developed.)

District-wide Assessments

Student's Mother objected that decisions regarding Student's April 1, 2009 IEP were not based on District-wide assessments. We have previously noted that none were administered to kindergarten students and none for first graders until the second semester. (FF#125, footnote 27). Even if standardized test scores were available, we question their reliability for this Student given his cognitive impairments. *See Jaccari J. v. Board of Educ.*, 690 F. Supp.2d 687, 698 (N.D. Ill. 2010)(Court stressed standardized test scores should not be the sole evaluation of progress for a student with a full scale IQ of 64).

³⁷ While the allegations of Student's Mother that *all* placement options were not considered is technically correct, it is obvious that certain placements such as a public or private residential facility did not need to be studied for this Student.

Notices of Action

The allegation of not receiving required Notices of Action is also without merit. A school district must provide parents with prior written whenever it proposes or refuses “to initiate or change the identification, evaluation or educational placement of the child or the provision of FAPE to the child.” 34 C.F.R.§300.503(a); *Missouri State Plan for Special Education*, Regulation V, p.60. While the District sent a detailed Notice of Action regarding the change of placement and changes in services (and for which Student’s mother signed consent and waived the 10 day implementation requirement), there was no Notice issued regarding the services requested by Student’s Mother and refused by the District.

Even if a Notice of Action was required under those circumstances, we conclude that the failure to issue a Notice of Action did not impede Student’s right to a FAPE.³⁸ Student’s Mother participated fully in the decision-making process and Student was not denied educational benefit. *See Max M. v. Illinois State Board of Educ.*, 629 F. Supp. 1504, 1518(N.D. Ill. 1986)(School District’s violation of student’s procedural rights due to failure to provide written notice not a denial of FAPE where a parent was involved in developing student’s educational program). Moreover, the purpose of a Notice of Action is to provide parents the opportunity to challenge the IEP team’s action regarding identification, evaluation, educational placement or the provision of FAPE. Student’s mother did just that with the timely filing of her (fourth)³⁹ Due Process Complaint on March 26, 2011.

In sum, the Student and his Parents have not shown by a preponderance of evidence that the District committed any procedural violations of IDEA.

³⁸ We again note that Student and his Parents did not raise this allegation about not sending the required Notices of Action in the Complaints filed with OSEP or DESE in the fall of 2009. (FF#124, footnote 25).

³⁹ She had filed three prior Due Process Complaints in the fall of 2010 and had a hearing on same before filing the current Complaint. (FF#8-12).

Substantive Violations of IDEA

We next consider whether the District complied with IDEA by proposing an IEP that was reasonably calculated to deliver FAPE or stated another way, whether the IEP was designed to confer some educational benefit: the second part of the *Rowley* test. *Rowley*, 458 U. S. 176, 102 S. Ct. 3034, 73 L. Ed.2d 690. We conclude that the IEP dated April 1, 2009 was reasonably calculated to provide the Student with FAPE in the Least Restrictive Environment. We also conclude that the April 1, 2009 IEP was properly implemented and provided FAPE. (See FF#136 & 137).

Vague and Unclear

Student and his Parents claim the IEP is vague and unclear in the areas of special education services and related services, accommodations, modifications, identifying assistive technology and its use, supports for school personnel, ESY and the extent to which Student will participate in the general curriculum. They cite no case or statutory law in support of their position that IDEA requires IEPs to be more specific than the April 1, 2009 IEP developed for Student, which we have found complies with the IDEA, its Regulations, 34 C.F.R. § 300.320 and the State Plan, including but not limited to Regulation IV, pp. 43-44. (Conclusions of Law “CL” #14 and 15).

In *K. E. v. Indep. Sch. Dist. No. 15*, 647 F.3d 795 (8th Cir. 2011), the Eighth Circuit rejected a challenge to IEPs because they failed to describe in specific terms (1) “the extensive modifications” used by her teachers and (2) the District’s use of staff to assist Student, including the frequency, location and duration of that support. *Id.* at 808-809. The Court noted:

[The Student] cites no authority for the proposition that a school district violates the IDEA if it does not set forth every detail about every adaption that could provide a child with an educational benefit.

Id.

Student's Mother contends that the alleged vagueness resulted in the District being unable to properly implement the IEP. As we have detailed in FF#136-151, the District implemented the IEP and the Student received educational benefit from same. We also note that at no time in the fall of 2009 did Student's Mother ever express orally or in writing to the District that the IEP was vague and clear. Similarly, there is an absence of this allegation in the Complaints filed with OSEP and DESE in the fall of 2009.

Present Level of Performance is Inaccurate

Student's Mother also complains the Present Level of Performance section ("the Present Level") of the April 1, 2009 IEP was not accurate or is incomplete because *inter alia*, it is not based on objective data and does not address the Student's strengths or present levels of academic achievement and functional performance.

IDEA requires that all IEPs contain "a statement of the child's present levels of academic achievement and functional performance, including: how the child's disability affects the involvement and progress in the general education curriculum. 20 U. S.C. §1414(d)(1)(A). The first paragraph of the Present Level contains details regarding the strengths of the Student. (DEX 39, p. 1336). The second paragraph describes changes in Student's functioning since the most recent IEP as well as what he could do in April 2009. (DEX 39, p. 1336). Areas of improvement are also discussed in paragraph two. (DEX 39, p. 1336). The third paragraph references the results from the triennial evaluation conducted earlier in 2009. (DEX 39, p. 1336). The impact of his disability affecting his progress in the general education curriculum is summarized as follows: "attending to directions; ability to communicate wants, needs and thoughts; self-care skills performed throughout the school day; handwriting/fine motor

manipulation; motor planning and ability to independently participate in and complete grade level tasks.” (DEX 39, p. 1337).

The purpose of the Present Level section is to assist educators in developing measurable goals and objectives for a student with a disability. *See e.g., Rachel M. v. Dep’t of Educ.*, 2007 WL 80814 (D. Hawaii 2007). Based on the Present Level here, Student’s IEP team was able to create fifteen (15) goals with forty (40) objectives in the April 1, 2009 IEP. (FF#136). We find that the Present Level satisfied the requirements of IDEA. Note also that Student’s Mother was present when the Present Level section was developed and added her input. A detailed Parent Concerns prepared by Student’s Mother was added document to the IEP. *See O’Toole by O’Toole v. Olathe District Schools Unified School District No. 233*, 144 F.3d 692 (10th Cir. 1998)(The Court rejected the argument of the parents that the IEPs contained insufficient present level and finding also that parents actively participated in the formulations of the IEPs during which the present levels were thoroughly discussed and explained).

Methodologies

Student’s Mother also contends that the IEP is deficient because it fails to state the methodologies to be used to accomplish Student’s goals. She offers no law for that proposition. The Comments to the IDEA Regulations, *Federal Register*, Vol. 71, No. 156, p. 46665 (2006) confirm that the IDEA does not require an IEP to contain a description of “specific instructional methodologies” for its goals and objectives. (CL#30).

Goals and Objectives

Student’s Mother argues the goals in the April 1, 2009 IEP result in a lack of FAPE: the goals are not challenging enough because they basically repeat what he had accomplished when

he started with the District in 2008. As we have analyzed in great detail in FF#154, the argument by Student's Mother is totally inaccurate.

The goals and benchmarks are very specific, capable of measurement and directly relate to Student's areas of weakness identified in the Present Level. They are not ambiguous or ill-defined rendering it difficult to know what the objectives are or when the goals have been achieved. The goals also indicate when progress will be reported and how progress will be measured. (DEX 39, pp. 1338-1352). The goals clearly complied with 20 U.S.C. §1414(d)(1)(A)(i) of IDEA.

The parents of a child with Down syndrome challenged a proposed IEP as not being rigorous enough in *J.D.G. v. Colonial Sch. Dist.*, 748 F. Supp.2d 362 (D.De. 2010). The parents argued very similarly as Student's Mother does here --- the District's responsibility is to introduce academic content to student. *Id.* at 381. In the *J.D.G.* case, the student had not mastered certain goals and objectives so the IEP team wanted to shift focus from rote memorization and repetitive drills preferred by the parents to more functional skills to be used in the school and community setting. *Id.* The Court upheld the hearing panel decision in favor of the school district. *Id.*

Least Restrictive Environment

The IDEA requires that students with disabilities be educated in the least restrictive environment reflecting a strong preference that disabled students attend regular classes with non-disabled children and a presumption in favor of placement in the public schools. (CL#12). Student's Mother argued for and received an increase in Student's time in the regular education classroom when he started in first grade in 2009.

Student's Mother has been very inconsistent on this issue. For example, at the last IEP meeting with the District on October 14, 2009, she expressed concern that Student was not in regular education enough but also wanted more ABA therapy for Student. (FF#121). Mother's own expert, Lisa Miller, testified that Student is very distracted by noise and movement. (Wright Hearing Tr. Vol. II, p. 320). Ms. Miller would expect to see a lot of distractibility in a very busy environment. (Wright Hearing Tr. Vol. II, p. 320). For teaching new concepts, Student definitely needs to be in a one-on-one setting according to Ms. Miller. (Wright Hearing Tr. Vol. II, p. 320-321). Thus, Ms. Miller's testimony clearly favors a more predominant placement in a small setting such as the Life Skills classroom, and not regular education. Additionally, we refer to the Findings in FF#71 detailing the Student's relatively low level of functioning at the time of his triennial evaluation in March 2009. Student's experience for six-eight weeks with RH's regular education first grade class at the beginning of the 2009-2010 school year undercuts Mother's claim that Student did not receive enough regular education minutes under the April 1, 2009 IEP (FF#129).

Courts have emphasized that mainstreaming in the regular classroom environment to the maximum extent possible is not required by IDEA but rather the Act mandates mainstreaming to the maximum extent appropriate. *See e.g., Pacht v. Seagren*, 453 F.3d 1064; 1067 (8th Cir. 2006); *A.W. v. Northwest R-I Sch. Dist.*, 813 F.2d 158; 163 (8th Cir. 1987). While including students in the regular classroom as much as is practicable is undoubtedly a central goal of IDEA, schools must attempt to achieve that goal in light of the equally important objective of providing an education appropriately tailored to each student's particular needs. *See Bd. of Educ. of Murphysboro v. Ill. Bd. Of Educ.*, 41 F.3d 1162, 1168(7th Cir. 1994)(stating that LRE

requirement “was not developed to promote integration with non-disabled peers at the expense of other IDEA educational requirements.”)

Ultimately, the allegations of Student’s Mother do not show that the April 1, 2009 IEP failed to provide an educational benefit tailored to Student’s unique needs. As Student’s Parent, she desires the best possible instruction for her child that will maximize his potential but an IEP developed under the IDEA is not required to guarantee maximization of potential. *Fort Zumwalt Scho. Dist. v. Clynes*, 119 F.3d 607, 610 (8th Cir. 1997), *cert. denied* 523 U.S. 1137, 118 S.Ct. 1840, 140 L.Ed 2d 1090 (1998). The record shows that the District has struggled mightily to meet Mother’s standards. (FF#155) Even if she is not satisfied with that effort, we conclude that the District has provided FAPE to Student in the least restrictive environment.

CONCLUSION

We unanimously conclude that the Petitioner has failed to carry his burden of proof to show that: (1) the District violated the procedural requirements of the IDEA in its development of the April 1, 2009 IEP for Petitioner; or (2) Petitioner’s April 1, 2009 IEP is not reasonably calculated to provide him with a free appropriate public education in the least restrictive environment or (3) the District failed to properly implement the April 1, 2009 IEP. Because the Petitioner failed to show by a preponderance of evidence that the District did not provide FAPE, we decline to address the remedy issue (set out earlier in the Findings of Fact section).

ORDER

The Due Process Complaint filed by the Petitioner is dismissed and judgment is entered against Petitioner and judgment is entered in favor of Lee’s Summit R-VII School District.

APPEAL PROCEDURE

PLEASE TAKE NOTICE that these Findings of Fact, Conclusions of Law, Decision and Order constitute the final decision of the Department of Elementary and Secondary Education in this matter and you have a right to request review of this decision. Specifically, you may request review as follows:

1. Proceedings for review may be instituted by filing a petition in the circuit court of the county of proper venue within forty-five days after the mailing or delivery of the notice of the agency's final decision....
2. The venue of such cases shall, at the option of the plaintiff, be in the circuit court of Cole County or in the county of the plaintiff or of one of the plaintiff's residence...

PLEASE TAKE NOTICE that you also have a right to file a civil action in Federal or State Court pursuant to the IDEA. See 34 C.F.R. §300.512.

Dated this 31st day of January, 2012.

_ /s/ _____
Pamela S. Wright, Chairperson

_ /s/ _____
Dr. Patty Smith, Member of the Hearing Panel

_ /s/ _____
Dr. Richard Staley, Member of the Hearing Panel

CERTIFICATE OF SERVICE

Copies of the foregoing Opinion were mailed via certified mail, receipt requested (and by electronic mail) to the attorneys and via regular U. S. Mail to Dr. Smith, Dr. Staley and Ms. Williams on this 31st day of January, 2012:

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