

NOTICE OF HEARING OFFICER'S DECISION
KANSAS STATE DEPARTMENT OF
EDUCATION

FILE NO: IIDP .

CHILD'S NAME: x

PARENT NAME: B. and L.

PARENT'S COUNCIL: PRO SE

SCHOOL DISTRICT: USD KS

DISTRICT'S COUNSEL: TAMMY L. SOMOGYE Lathrop & Gage, L.C.
Building 82
Suite 1000
10851 Mastin Boulevard
Overland Park, KS 66210

HEARING OFFICER: JAMES G. BEASLEY 601 Birkdale Dr.
Wichita, KS 67230

DATE: January 23, 2012

PROCEDURAL STATUS

On May 26, 2010 the parents of x filed a Petition for Damages in the District Court of.

County, Kansas. The Petition, filed against USD and x⁵s fifth grade Teacher at USD , alleging claims for personal injury of x and seeking damages for alleged abuse by Ms. and against the District for negligence by retaining and failure to provide proper supervision of Ms. and failing to take reasonable steps to protect the safety of x. Motions were filed in the District Court by the Defendants USD and Ms. for dismissal of the Petition for failure to exhaust administrative remedies under the Kansas Special Education for Exceptional Children Act ("KSEECA"), K.S.A. 72-987, and the Individuals with

Disabilities Education Act ("IDEA"), 20 U.S.C. 1414(d)(2). on January 31, 2011, the District Court of. County, Kansas stayed the proceedings pending a Due Process Hearing pursuant to KSEECA and IDEA.

On March 16, 2011 USD (hereinafter referred to as the District), received a "Request for Due Process" from the parents of x a copy of which was e-mailed to the Kansas State Department of Education (KSDE). On March 29, 2011 KSDE appointed the present Hearing Officer to preside over the Due Process Hearing and proceedings. Subsequently, the following procedural events occurred:

1. On April 1, 2011 the Hearing Officer sent a letter to the parents and the attorney for the District notifying them of his appointment, On April 8, 2011 the Hearing Officer spoke by phone to Mrs. W., mother of x, regarding setting a scheduling conference and on April 10, 2011 the Hearing Officer sent forms for a scheduling conference to Mrs. W.
2. The parents requested that the Due Process Hearing be dismissed and were not claiming that the District failed to provide a free and appropriate education as required by IDEA but the tortious conduct of the teacher and the School District caused the child to suffer injuries and that the District should provide the student's educational expenses outside the District due to the emotional injuries and the student's inability to attend the public

school. The District argued that the student could be educated in their schools and that there was no provision for them to pay for education outside the District without having a Due Process Hearing. On April 13, 2011 the parties made their respective arguments by phone conference and on April 22, 2011 the Hearing Officer ruled that the parent's request be denied and the matter proceed to Due Process, The Due Process Hearing was set for May 16, 2011.

3. On April 14, 2011 the District filed a request to continue the Due Process from May 16, 2011 to June 6, 2011. On April 18, 2011 a scheduling conference was held by phone conference with Mrs. W., Tammy Somogye, attorney for the District and the Hearing Officer. Dates for the exchange of witness lists, outside experts that may testify, documents proposed to be used at the Due Process hearing and proposed issues of law and fact. The Due Process hearing was set to begin at 9:00 AM, June 6, 2011.

4. On May 3, 2011 the parents requested mediation. The District responded that they had attempted a resolution conference which was unproductive and refused to participate in mediation which would cause an unnecessary delay in the Due Process hearing and the prior failure of amicable resolution.

5. On May 17, 2011 a telephone conference was held with Mrs. W., Ms. Somogye and the Hearing Officer. The parties had filed respective objections to Motions to Compel and an

Order was entered on May 25, 2011 resolving those objections.

6. The Due Process hearing was commenced on June 6, 2011 and was heard on June 6, 7, 8, 9, 10, 15 and 16. One or both parents were present and appearing pro se, The District was represented by Ms. Tammy Somogye, Attorney at Law of the law firm Lathrop and Gage, L.C. and Ms. Director of Special Education for the District. 7. On September 19,

2011, the parents of x filed a "Notice of Errata" regarding errors in the transcripts. On October 12, 2011 a hearing was held in the office of the court reporter and the errors were corrected by Order of the Hearing Officer.

8. The Due Process was continued, for good cause May 16; June 6; August 20; November 21; November 28; December 19, 2011 and to January 23, 2012. Each continuance was necessitated by the complexity caused by the issues being deferred by the District Court, extensive testimony and issues with the transcript.

ISSUES TO BE RESOLVED

1. Whether the Individualized Education Program (IEP) offered to x reasonably calculated to enable him to receive some educational benefit as required under IDEA;
2. Whether the School District satisfied its obligation under IDEA to provide a free and appropriate education (FAPE) in the least restrictive environment (LIRE);
3. Whether the parents of x are entitled to reimbursement of educational and counseling expenses.

CHRONOLOGY AND FINDING OF FACTS

A. x'S PRE-SCHOOL AND EARLY INTERVENTIONS

1. x was diagnosed when he was three with PDD/NOS which is on the autism spectrum, x's parents hired a behavioralist who helped organize and set a program for a home team staff, The parents hired, managed and paid for the entire team of professionals that worked with x. (Mother, Tr. Vol. 1, 95: 9-10; Tr. 96:2-5).
2. Mrs. W stated that [x] "progressed extremely well from three to five years old. He made up one and a half years of speech delays when he was three and he made those speech delays up in three months, which •was incredible. And that is usually what you see when you provide this level of programming. And communication is a huge problem for children on

the autism spectrum so it is very critical that they have a good communication system.

Social skills is also a deficit that these children have". (Mother, vol 1, Tr. 96: 7-16).

3. "x worked vety hard. He works — you know, he still does. Seven days a week every day. We mix fun into it. It's just not grill and drill, It's fun. It is very generalized, community based, and work on other skills, social skills. Like I said, you know, other skills that other children take for granted x had a difficult time with. Just looking in someone's eyes, sitting still going to a performance, making friends, riding a bike, motor skills, Everything has to be broken down and taught to him." Tr. Vol. 1 96: 18-25; 97: 1-3,

B. x's RISING STAR ELEMENTARY SCHOOL (RISnG STAR) EXPERIENCE.

4. The Principal of is He has been the Principal at for five years and before that he was a student in the School District, a custodian, an educational aide, a substitute teacher, a summer school teacher, a summer school administrator, and a fifth grade teacher. (, Tr. Vol. V, 1038:4-23.)
5. Mr. does many things to ensure that is a safe, secure environment for the approximately 400 students who attend there, including approximately 50 students with IEPs. One of those things is that staff under Mr. supervision follow the Behavior Intervention Suppolt Team ("BIST") model, which is a behavior management system that is based upon the following two rules: (1) it's never okay to be hurtful, either emotionally or physically; and (2) it's never okay to be disruptive. (,Tr. vol. V, 1039:15-1040:4.) Mr. also holds a safety talk with students at the beginning of the year, explaining expectations. In addition, the general education Social Worker assigned to , teaches four friendship/bullying lessons in each of the classrooms. Ms, E is a Licensed Clinical Social Worker who has a bachelor's degree and master's degree in social work and 17 years of experience working with children and students. (Tr. Vol. II, 315:9-317:15, 317:24-318:5.) In the

friendship/bullying lessons, Ms. covers the building-wide bullying plan, which encourages students who hear something hurtful to ask the person to stop and report conduct to the teacher if that request is disregarded. There are stop signs in the classroom to act as a visual reminder of the plan. (Vol. V, 1040:4-18; Tr. Vol. VI,

1 162:8-13, , Tr. vol. 11,320:3-32

6. is an open-concept school. It does not have walls that go from floor to ceiling. Teachers can see in each other's rooms and hear what is going on in adjacent classrooms. Tr. Vol. V,1087:4-1

7. was x's special education teacher at Elemental' School from first through fifth grade, Ms. has a bachelor's degree in elementary education, a master's degree in special education and has 32 years of experience in the education field. (Tr. Vol. IV,636:10-6

8. Mrs. enjoyed working with x and x developed a special relationship with her. (Tr. Vol. IV, 637:13-18; Father, Tr. Vol. 1, 57:17-58:19.) x's mother expressed to Mrs. that she (Mrs.) understood x and knew what he needed. (Exhibit 23; Mother, Tr. Vol. 11,379:22-3

9. B W, x's father, testified that x "transferred to You know, basically I had a patient here at Medical Center who is a teacher in the building and she knew we were having problems with the staff at the school that he was in prior to that. And, you know, we were invited to come meet the principal and we met with them and it was a very welcome environment. And, you know, from day one we could sense that the first grade teacher that he had really understood what our concerns were. And,

you know, I would say, you know, each year was a little bit of a growing process for us and we had to bring teachers up to speed. But, you know, as Lisa mentioned in her opening statement there was a spirit of collaboration that was actually, you know, ideal for working with children on the autism spectrum. And, you know, we -- I think he made a

lot of progress and, you know, for the first four years he was in the building, you know in combination with our family and the team working together collaboratively we had some issues that we had to surmount as Lisa alluded to earlier. But, you know, we were able to sit down and work through them. And, you know, these were all things that were requested of us from the district. I mean, everything that happened, you know, with x's education program, you know, were requested by the district, the meetings that we had. And we were happy to comply because we knew that increased the likelihood that he would be successful." (Father, Tr. Vol. f 46: 7-25; 47: I-I1).

10. BW testified that x's first grade teacher was _____; and that x thrived in her classroom. _____ she really had a way of, you know, communicating with x that he responded to. I mean, she encouraged him to make friends in the classroom, involved him, just -- it's just -- and she -- her communication with us as a family was superb, She attended all of our team -- IEP team meetings, you know, "which -- which is a big -- you know, we've understood, you know, that that was taking the teacher out of the classroom. And so for us we really appreciated the effort that she put forth, you know, to come to these meetings and make sure that she understood x's education plan and how to implement it the first year." (Father, Tr. Vol. 1 52: 19-25; Tr.53: 1-6).

11. The third grade teacher was _____ a teacher with 35 years of experience. Ms.

_____ encouraged x socially and some of his friends today were met in the third grade through Ms. efforts. (Father, Tr. Vol. 1 54: 5-20).

12. During x's fourth grade school year, x's parents brought in an outside professional, _____, to observe

_____ x and provide recommendations about his programming.

(Father, Tr. vol. 1 56:2-57:9). Ms. provided some written materials to the School District, which addressed, in part, the amount of paraprofessional support x needed during the school day. (Tr. vol. IV, 637: Exhibit 8.)

. i 'written materials state:

[x] is beginning to express discontent with the adults in his school day: "Get away, please." "What are you doing here for?" This is developmentally appropriate and a good sign. It shows that [x] is aware of the individuals 'twho support him and that he desires and is ready for more independence. The team needs to develop an appropriate fade-out plan for certain periods of his day for paraprofessional involvement. Data collection is a must to determine if he is ready for this. Certain activities and modules of his day will require more levels of support and these areas are going to need to be identified. Removing paraprofessional assistance without an organized plan to do so is NOT recommended. Neither is allowing one-to-one support as it currently is being provided as he approaches middles (sic) school. . . . (Exhibit 8 at -01556; Mother, Tr. Vol. 11, 375: 11-22,376:25-3

14. The School District agreed with Ms. conclusion that x needed less paraprofessional support. (Tr. vol. 638:5-12; Tr. vol. 1298:1 1-

1300:3.) . iwritten materials also indicate that x "may not be able to read effectively the social cues that other children and adults Pi-ovide for him with their eyes, their facial expressions, their tone of voice, their choice of words, as ',vell as their body language." (Exhibit 8 at)01554.)

16. x used "fiddlesticks" at school during his early elementary years, The pafficular "fiddlestick" that he used was a plastic zip-tie. (Tr. vol. 664:1-10.) s.concluded that x's use of fiddlesticks increased his inappropriate behavior. (Exhibit 8 at 0

18. x's parents asked that x not use fiddlesticks near the end of fouth grader (Tr. vol. IV, 664: 1 1-21, 882:24-883:4; Exhibit QQ8 at p.60,)

19. In April of 2008, x's parents sent Mr. a letter regarding their concerns about a teacher. Mr. took action to resolve their concern and did not treat them any differently because they made that complaint. , Tr. vol. V, 1043:7-20, 1068:8-17•, Exhibit 121 (indicating the principal issued a reprimand to the teacher); Exhibit 117.)

20. During the last quarter of x's fourth grade school year, the School District met with the x's parents for more than ten hours regarding the IEP for x's fifth grade school year. (Tr. Vol. IV, 651:2-17. Seealso Tr. vol. VI,1247:19- Tr. Vol. VII, 1305:9-19.) Typically, [EP teams can arrive at consensus on an IEP in one hour to 90 minutes. (, Tr. vol. IV, 651:18-20.)

21. Mrs. sought the assistance of one of the School District's Special Education Coordinators, 5, Tr. Vol. VI,1247:9-1248:7, 1252:12-21.) Ms.

 . has a bachelor's degree in elementary education, a master's degree in special education, 80+ hours in a variety of areas (mainly in Autism), certification in administration, and 36 years of experience in the education field. (, Tr. Vol. VI,

1240:8-20.) Based upon the information that Mrs. shared with Ms. Ms. became concerned about the demand that was being placed on Mrs. for just one student (x) and her ability to serve other students in addition to x,

Tr. Vol VI,1247:9-1

22. x's parents had input into the development of the IEP and the School District included accommodations that the School District professionals determined were unnecessary. (Tr. vol. IV, 651:2-655:4; Tr. Vol. VII,1305:24-
23. The IEP for x's fifth grade school year incorporated the suggestions of Ms. (Exhibit 8; Exhibit 10; Tr. Vol. IV, 538:8-640:19.) School District personnel particularly wanted to focus on decreasing x's dependence on a paraprofessional and for x to do things independently. (Tr. Vol. IV, 652: 1 1-20; J, Tr. vol VII, 1298: 1 1-1300:7.)
24. x had goals in the areas of social behavior, independent work habits, math, social skills and whole group instruction. (Exhibit 10; Tr. Vol. IV, 542:12-64:5:5.) One of the social skills he was working on involved understanding the perspective of the person to whom he is speaking. (i Tr. Vol. VI, 1273:3-22, The services included in x's IEP are summarized in Exhibit 9 and on "Page 3" of the IEP. (Exhibit 9; Exhibit 10; Tr. Vol. IV, 640:2-641 : 18 and 545:6-646:649:5.) Direct services included 50 minutes of daily instruction from a special education teacher (for math), and speech and language therapy for 30 minutes two times per week. (Id)
25. x's Occupational Therapy ("OT") services were for twenty minutes two times a month for the first quarter of fifth grade and 30 minutes one time per month for the remaining quarters covered by the IEP. (Exhibit 10; I, Tr. Vol. IV, 647:17-649:5.) The OT spent her time with the teachers and paraprofessionals, not the student. (t , Vol. VI, 1248:21-1249:17.) Changing the amount of an indirect related service after an IEP has been implemented for one quarter of a school year is not unusual because people get to know the child pretty well during that time and need less support from the related service provider. (Id See also : Tr. Vol. VII, 1293:4-1294: 16.)
26. x had several modifications and accommodations to support him during the school day, including paraprofessional support. (Exhibit 10; , Tr. Vol. IV,650:13-6 Tr. Vol. V, 991:20-992:20.) Particularly noteworthy is that those working with x were to establish eye contact with him before giving him directions. (Exhibit 10.)

27. x's IEP was not an "extended day IEP." That is, the services and accommodations were required within normal school hours and not during any extra-curricular activities occurring outside the school day. (Exhibit 10; Tr. Vol. IV, 655:5-23; , Tr. Vol. VI, 1246: 11-1247:18 5, Tr. vol. VII, 1337:6-20. See also , Vol. IV, 845:21-846:4; Exhibit 126 (indicating Mrs. L believed x did not need paraprofessional support to get to choir); Tr. Vol. V, 1042:1-12; Tr. Vol. V [I, 1338:15-20 (testifying that a paraprofessional for choir was not discussed when developing the fifth grade IEP).
28. x did not need paraprofessional support to get to or participate in choir and this accommodation was not included in his IEP. (Exhibit 10; Tr. vol. W, 655:20656:22, 845:21-846:4, 854:25-855:22; , Tr. vol. V, 993:18-994:12; Tr. vol. VII, 1338:15-20; Tr. Vol. VII, 1347:13-18; Exhibit 126.)
29. The School District professionals 'Who worked with x testified that the IEP prepared for x's fifth grade school year met his educational needs. (Tr. vol. IV, 656:23657: I (generally); , Tr. Vol. V, 1000:8-20 (regarding x's off-task behavior during whole^mgroup instruction , Tr. Vol. V, 1016: 1 1-18 (testifying that not all students with Autism are the same; what works for one student may not ,vork for another student); , Tr. Vol. 111,470:23-4
30. Mrs. testified that the IEP prepared for x's fifth grade school year was designed to provide him access to the general education curriculum. • Tr. Vol. IV, 657:2-4, Mrs. fillther testified that the JEP prepared for x's fifth grade school year was designed to address special needs that he needed to learn curriculum that was more difficult for him. (, Tr. Vol. IV, 657:5-8.)
31. The School District professionals who worked with x testified that the team expected

x to gain knowledge as a result of the implementation of the LEP prepared for x's fifth grade school year. (• Tr. vol. IV, 657:9-12. see also Tr. Vol. VI, 1262: 11- 1263: 18 (indicating that the team made great efforts to make sure that x had appropriate accommodations and modifications at all times); Tr. vol. WI, 1356:5-7.)

32. I-NPS parents consented to the IEP in Exhibit 10 on May 13, 2008* (Exhibit 11; j Tr. Vol. IV, 657:25-
33. The School District began implementing the IEP shortly after May 13, 2008 through the end of the fourth grade school year. (Tr. Vol. IV, 658:14-6
34. Mrs. reported x's progress on both IEPs that were implemented during his fourth grade year on May 27, 2008. There was "improvement noted" on all of x's goals. (Exhibit 12; Tr. Vol. IV, 6661:9.)
- 35, BW (x's Father) testified that the fourth grade year was "another great year". (Father Tr. Vol. 1 55: 23).

The 2008-2009 School Year - Fifth Grade

36. There were three fifth grade classes during the 2008-2009 school year. (• Tr. Vol. VI, 1178:16-21.) x was in homeroom class and was not the only student on the autism spectrum in that class. (, Tr. Vol. IV, 663:3-8., Vol. V, 930:23-931:3.) Mrs. has a bachelor's degree in elementary education, with some additional hours beyond that, and has been a teacher for 18 years. (Tr. Vol. VI, 1176:14- 1 177:2.) Ms. enjoyed working with x. (Tr. vol. 1203:3-5.)
37. The three fifth grade teachers at Elementary School departmentalized, i.e. one teacher taught each class a single subject and the students moved as a class to the teacher who is teaching that subject, instead of having one teacher teach all of the subjects throughout the day. (Tr. Vol. IV., 662:13-663:2.) The students spent approximately 30 minutes with the teacher who taught Language Arts, approximately 30 minutes with the teacher who taught Social Studies, , and approximately 30 minutes with the teacher who taught Science, , (Tr. Vol. IV, 663:3-25; : 16 (clarifying that Language Arts and Social

- Studies were 35 minute classes); i Tr. vol. VI, 1 179:10-12•, Exhibit 15).
38. x's parents did not want x to take Language Arts; they wanted him to spend that time in math and to teach him Language Arts at home and asked for an adjustment in x's schedule. (Tr. Volp V, 344:12-945:22.) The Principal believed that x needed to have the regular fifth grade schedule. (Id.)
39. BW, x's father, testified that he and x's mother noticed a difference in the atmosphere from the beginning of the fifth grade school year. [It] felt to me — when we went back to the school that year, you could just get the sense that there was a change in the building, in the staffs demeanor towards our family [The beginning thing that really to me was concerning was -- well, there were two things. The first thing was the math. The first day of school he gets a fifth grade math worksheet, and when it's clearly written all over his IEP that, you know, that's one of his biggest goals and he's clearly behind in math, and then told to do his best. I mean, it is almost as if, you know, the classroom teacher didn't even read his IEP or the resource room teacher, you know, didn't share, you know, where x was in math with her. And if she did, they — then she chose to disregard it for some reason, I'm not really sure why. So we -- I mean, that . opening salvo really soft of set the tone for the rest of the semester," (Father, Tr. Vol. I, 60; 3-25.)
40. BW further testified that, "you could sense the demeanor, that there were people coming to team meetings that hadn't been there before. You know, before it was just our building level team that was working on most of the day-to-day issues, the housekeeping things to help keep x successful. There was people that were coming to meetings that we never met before and it was just -- just the demeanor of the meetings was completely different and it felt like —it almost felt like we hadn't been there before in previous years." (Id.)
41. During fifth grade, x complained more, was more cranky and "snarly," and was less respectful than he had been previously. (Tr. Vol. 111, 511:13-24.)

42. Mrs. approached x's fifth grade school year somewhat differently than she had other school years because she had plans to retire at the end of that school year. She was concerned about continuity after she left; thus, she wanted to involve individuals who would be able to assist his new the case manager the following year. She tried to allow others to assume roles with x that she had taken in the past so that they could have the background knowledge to help her replacement. (Tr. Vol. IV,665:9-66
43. Before school started, Mrs. 1 spoke to Mrs. about x's IEP and what Mrs. would be working on with him. , Tr. Vol. IV, 676:10-13; Tr. vol. VI, 1177:19-1178:15, 1203:21-1204:4; Exhibit 124.)
44. At the beginning of the 2008-2009 school year, Mrs. gave the students in her home-room class a math pre-test. (Tr. Vol. IV, 676:15-25; Tr. vol. VI, 1182:181183:12.) Because Mrs. : taught x math, Mrs. asked Mrs. if it was appropriate to give the pre-test to x too. Mrs. thought it would be a good idea to give him the pre-test because it was a typical activity that he could do along with his peers and he had the skills to perform some of the computations on the pre-test. Tr. vol. IV, 676:14-677:12; Tr. Vol. VI,1183:13-
45. x's parents did not believe x should have been given the math pretest. (Father, Tr. Vol. 1, 59:21-60:19.) However, Mrs. testified that having x participate in the math pre-test did not harm him in any way. Tr. Vol. IV, 677:13-16; Tr. Vol. V,1008:25-
46. Based upon recommendations regarding fading paraprofessional support and the similarity of the routines in fourth and fifth grade, the professionals educating x wanted to utilize the paraprofessionals a different way than they had been used in the past. Specifically, they wanted x to focus on getting information from the teacher instead of turning to the paraprofessional to ask for information. The paraprofessional was still

present to assist x, i.e. the amount of time that the paraprofessional spent with x did not change. But, instead of answering his questions, they were to point to the teacher, encourage him to raise his hand, or look at his visual schedule to find out what

he needed to do next. (, Tr. Vol. IV, 679: 16-24; 691:25-693:22; , Tr. Vol. V, 992:21-24.) The professionals at the School District desired to change this methodology in order to teach x a skill that he needed so that he could be more independent, particularly with middle school approaching. (Tr. vol. IV, 692:2693: 19; ,, Tr. vol. V, 993:2-12.) Mrs. in particular, believed that x was ready for less paraprofessional support* (rr. Vol. IV, 850:12-22. see also

,Tr. Vol. VI, 1193:25-194:10 (testifying that x did not need a paraprofessional to assist in his morning routine because the teacher could assist him if there was a need);

Tr. vol. VII, 1298: (testifying x needed less paraprofessional support). x's mother did not want the way paraprofessionals were used to change and even though the School District did not agree with x's mother's position on the issue, it accommodated her request to utilize the paraprofessionals in the way they had been utilized in the past.

(- Tr. Vol. IV, 683:13-21;691:25-6

694:3-6•, , Tr. Vol. V, 993:2-17. see also Exhibit 26; Tr. vol. V, 994:13995: 10 (describing the communication to the paraprofessionals about the change in methodology); Tr. Vol.

VII, 1300:22-1301:5 (testifying that her experience with

x's parents was that it was difficult to remove any kind of paraprofessional support)•, Tr.

Vol. VII, 1339:9-21 (discussing LAV's parents' frequent disagreement with the School District's data).

47.The School District met with x 's parents for team meetings often and notes of those

meetings were kept by Mrs. (See e.g. Exhibit 24; I , Tr. Vol. IV, 683:22-

48. Mrs. [redacted] and Mrs. [redacted]; were two of the school personnel who attended the team meetings that were held on August 26, September 11, and September 16. (Exhibits 24, 30 and 31.)
49. x's parents could and did ask that topics be added to the team meeting agenda. ([redacted] Tr. vol. IV, 685:9-25, 734:25-735:16; Exhibit 46.) x's parents also could and did ask for items to be added to the minutes of the meetings. Tr. vol. V, 1012:11-1014:18.)
50. The School District decided to set a time limit on the length of the team meetings to one hour because they would last beyond the teacher's contract day or, if scheduled earlier, would take service providers away from serving other students. ([redacted] , Tr. Vol. IV, -707:1.see also Tr. Vol. VI, 1253:6-1254:5 (discussing advice to Mrs. [redacted] to limit the length and frequency of team meetings); [redacted] Tr. Vol. VII, 1303:19-1304:3 (discussing limits to team meetings); Exhibit 30.)
51. During the team meetings, x's mother stated her expectations of the school and expressed criticisms about what she believed was or was not occurring at the school. ([redacted] c Tr. vol. IV, 586:19-687:1. see also Exhibits 24, 27, 29, 31.) Prior to the team meeting held on December 2, x's parents did not mention that teachers were mistreating x. ([redacted] Tr. Vol. VI, 1261:16-1262:4.) Mrs. [redacted] testified that based upon her experience with x's mother, she believed that x's mother would not have withheld commenting on something if it was a concern. ([redacted] Y Tr. Vol. IV, 686:19-687:7. See also Exhibit 29 (noting mother's concerns about other things); 31 (identifying parents' concerns about other things); 42 (identifying mother's concern about lunch).
- [redacted] r. [redacted] believed that although the mission of doing what was best for x had not changed, the relationship and collaboration with L W 's parents was different in the fifth grade year

because there were more and different individuals involved in the meetings than there had been before and because a good deal of time was spent on a re-evaluation.

(Tr. Vol. V, 1044:17-1045:9, 1070:5-15•, Tr. Vol. VI, 1147:9-
Exhibit 129.)

53. Mrs. testified that the School District was not hostile toward x's parents during the team meetings that were held in fifth grade and that School District tried to make an effort to collaborate with x's parents. (Tr. Vol. IV, 687:8-11; 688:12-15; 704:12-23; 718:3-6.) However, she felt that although there was not a change in delivery of x's educational programming, x's parents seemed unhappy with the School District before school even started. (Tr. Vol. IV, 687:12-688:11; 689:8-691:18.) Mrs. received an email from x's mother that dictated when they would meet with the teachers before school started, instead of asking when the teachers were available. Mrs. testified that the implication of the email was that the teachers' schedule or time was not valuable. She felt this tone carried over into the team meetings, which was different than in years past. (Id See also Tr. Vol. IV, 704:12-15•, 924:7-21; Tr. V, 1014:19-1015:13; Exhibit 00.) Nevertheless, from x's parents' home program, was allowed to observe x at and have input into his school programming. (Tr. Vol. V, 927:17-928:1.) Observations by outsiders not conducting an Independent Educational Evaluation typically are not allowed for other students. (Tr. Vol. VII, 1364:13-1365:1; Exhibit 122 (indicating these types of observations are not allowed and can be disruptive to the elementary school setting). See also Tr. Vol. IV, 844:11-18; Exhibit 123 (indicating lengthy observations are demanding on staff, disruptive to other students and to x).)

54. Mr. met with x's parents in September 2008 to discuss x's educational programming; they did not mention any concerns that teachers were being mean to or mistreating x. (Exhibit 44; Tr. Vol. V, 1043:21-1044:16; Mother, Tr. Vol. 11,

-405:5. See also Exhibit C at p. 54 (indicating that x began saying teachers were mean in mid-November and x's parents had not taken any steps prior to receiving the December 1 email).

55. There had also been no mention of any concerns that teachers were being mean to or mistreating x at the team meetings that occurred in August or September. (Exhibits 24, 29, 30, 31 and 35; , Tr. Vol. VI, 1261:16-1262:4. see also Exhibit C at p. 54 (indicating that indicating that x began saying teachers were mean in mid-November and x's parents had not taken any steps prior to receiving the December I email).)

56, x's parents asked that x be able to use assistive technology in the classroom early in the 2008-2009 school year. (Tr. Vol. IV, Exhibit 24 at 00544.)

In order to add a service to a student's IEP, an evaluation must be conducted to determine student need. (Tr. Vol. IV, 702:6-10; Tr. Vol. VI, 1255:6-

; Tr. Vol. VII, 1339:22-1340:9.) Because x's three-year re-evaluation was due later in the 2008-2009 school year, the School District decided to combine the AT evaluation with the three-year re-evaluation. (Tr. Vol. IV, 702:19-22; , Tr. Vol. VI, 1254: 15-5.) Combining the evaluations was more efficient than evaluating at two separate times in the same school year. Tr. vol+ VI, 1255:3-5; ; Tr. Vol. VII, 1308:16-1309:1310:2; ; Tr. vol. VII, 1340:10-17.)

57. The IEP team had trouble coming to consensus on what should be evaluated. (Tr. Vol. IV, 702:23-3.) x's parents gave an unusually high level of direction regarding what should

be evaluated. (, Tr. Vol. IV, 709:7-10,) It took more than a month to come to consensus on the evaluation before it could even begin. (Tr. Vol. IV, 703:4-705:25; 707:2-708:16; 714:15-716:19; Exhibits 28, 29, 30, 31, 35, 36, 38.) This is was an unusual amount of time to plan for a re-evaluation. (Tr. Vol. IV, 715:22176:19.)

58. On October 1, 2008, x's mother observed x in class. She was also scheduled to come observe a social studies and science class on October 2, 2008, but she cancelled her observation. (Exhibits 21 (at 00307) and 37; Mother, Tr. Vol. 11, 406:22407:3.)

59. On October 3, 2008, the coordinator of x's home program, came to to observe x. In team meeting on October 8, 2008, Ms. identified areas in which x had improved since the past school year, including tolerating nonpreferred activities, involvement in classes, and interaction with peers. (Exhibit 38;

, Trr Vol. IV, 716:6-717:24.) She also said that there were significant improvements in all areas since last year. (Id.) No one raised a concern that x's teachers were mistreating him. (Id See also Tr. Voli VI,1261:16

60. x's parents consented to the re-evaluation on October 8, 2008. (Exhibit 36; 715:1224,

61. The progress report for x 's first quarter of fifth grade reflects improvement on all of his goals. (, Tr. Vol. IV, 718:13-723:10; Exhibit 10, Exhibit 40.) In fact, he exceeded the growth the School District expected during the first quarter of third grade on goal 1, 2, and 6 and satisfied the benchmark for goals 4 and 5. He was also very close to reaching the benchmark on goal 3 in math. (Id.) Mrs. stated that x made improvement on that goal because the content that the test covered was increasingly more difficult and he was maintaining his scores. (Tr. vol.IV, 722:23-723:11.)

62. Mrs. had a parent-teacher conference with x's parents on October 24, 2008. During this meeting x's parents did not mention any concerns that anyone was mistreating x. (, Tr. Vol. VI, 1187:19-1188:6; Exhibit 41).

63. In October of 2008, was involved in a fundraising event and the class that raised the most money for the charity got to pick the principal 's Halloween costume.
 's class raised the most money and the class voted on the principal's costume. x's idea for the principal's costume was that he should dress up as a baby, because he and his wife were expecting a baby at that time. The class did not choose his idea and he was very upset by that. (Tr. vol. IV,724:11-
64. On the morning of the vote (before Language Alts class), x talked to Mrs. about the class not voting for his idea. After their conversation, Mrs. • believed that the issue seemed to be pretty much resolved. (Tr. Vol. IV,724:11-
 Tr. Vol. V, 1015:14-21.)
65. Nevertheless, according to the notes taken by the Office of Civil Rights investigator and r. when x went to his Language Arts class on the day the Halloween costume vote was taken, he put his head on his desk. x did not respond to inquiries about whether he was okay or directions to sit up or take a break, so Mrs. moved the desk forward so that he could stand up and take a walk with his paraprofessional* (Exhibit 51 at L '00708 and)00715; Exhibit 117. see also Exhibit 21 at '00332 (noting that class discussed Mr. costume on October 27, 2008 and x took a break during Language Arts); Mother, Tr. Vol. Ill, 576:12-578:24 (testifying about what x told his mother on the day that Mrs. moved x's desk); Exhibit 53 (SRS interview of Mrs. at 02267-2270).
66. x's mother reported on x's note home for October 27 and 28, 2008 that he was "good." (Exhibit 21 at 400333 and '335.)
67. .A team meeting was held on October 28, 2008 — after Mrs. . moved x's desk.
 (Tr. vol. IV, 726:12-727:16; Exhibits 21 (at '00332) and 42.)
 x's parents did not mention in this meeting that the teachers were mistreating x. (Exhibit 42; Tr. Vol. IV, 726:18-727:16. See also Tr. vol. 1, 165:23-
 171 :21 (testifying regarding notes in preparation for and take during meetings that do not contain any references to x being mistreated by teachers); , Tr. Vol. 11, 265: 16-19 (testifying that nothing about teachers mistreating x was communicated in team meetings before December 2, 2008); Exhibit C at p. 54 (indicating that x began saying teachers were mean in mid-November and x's parents had not taken any steps prior to receiving the December I email); Exhibit K at p. 6-24 (containing Ms.
 notes).

68. Another team meeting was held on November 11, 2008. One of the topics of discussion was the OT services. Mrs. [redacted] believed that this discussion satisfied the IEP's requirement to review the OT services at the end of first quarter. (Exhibits 10 (at [redacted] 00173) and 43; [redacted], Tr. vol. V, 1003:1-1004:10, 1028:8-1029:11. see also [redacted], Tr. Vol. VI, 1249:21-1250:14 (regarding the OT's compliance with the IEP); [redacted] Tr. Vol. VII, 1304:17-1305:7 (same); Exhibit 54 (same).)
69. x's parents did not mention in this November 11, 2008 meeting that the teachers were mistreating x. (Exhibit 43; [redacted], Tr. vol. IV, 727:22-728:4. see also [redacted] Tr. Vol. I, 71 :21 (testifying regarding notes in preparation for and taken during meetings that do not contain any references to x being mistreated by teachers); [redacted], Tr. Vol. II, 265: 16-19 (testifying that nothing about teachers mistreating x was communicated in team meetings before December 2, 2008); Exhibit C at 54 (indicating that x began saying teachers were mean in mid-November and x's parents had not taken any steps prior to receiving the December 1 email).) Mrs. [redacted] believed that if x's parents had been concerned about teachers mistreating x, they would have mentioned it at the October 28 and/or November 11, 2008 team meetings. (1 [redacted] Tr. vol. 726:18-7
70. x's parents met with Mrs. [redacted] i on November 20. ([redacted] Tr. Vol VI, 1256:8-20, 263:18. Despite a letter sent to [redacted] Principal and Ms. [redacted] by the parents on December 18, 2008 (Exhibit 67) wherein Mrs. W. stating that they expressed concerns about teacher mistreatment during the November 20, Ms. testified that x's parents did not raise the issue of teachers mistreating x during that meeting. [redacted], Tr. Vol. VI, 1261:16-1262:4; [redacted] Tr. vol. 8/11, 1311:15-1313:13; See also Exhibit C at p. 54 (indicating that x began saying teachers were mean a couple of weeks prior to the December 2, 2008 meeting but the parents did not take steps to work with x on other ways to handle his perception since "normal children might say the same thing about their teacher's").

[redacted] did testify that she and the parents talked about x being unhappy at

school in general terms and Mrs. : talked about the mental health issues of disabled students going into fifth grade, indicating that x was at an age that he was realizing he was disabled and that depression is frequently seen in adolescents with autism. (Tr. vol. VI, 1256:8-1257:14, 1272:6-14; J, Tr. Vol. VII, 1311:15-1313:13).

72. Ms. investigated the concerns that x's parents did raise and testified that if they had raised teacher mistreatment as an issue, that issue would have been investigated too. (Tr. Vol. VI, 1257:15-1258:1, 1261:16-1262:4, , Tr. Vol. VII, -1305:7; Exhibit 54.) As part of her investigation, Ms. talked to Mrs. Mrs. testified that Mrs. did not mention any allegations of teacher mistreatment during their conversation about x's parents' concerns. (Tr. Vol. V, 983:23-7; Tr. Vol. VII, 1313:14-25).
73. Based upon the information Ms. learned during her investigation of x's parents' concerns, Mrs. believed that the School District was meeting x's needs. (, Tr. vol. VI, 1257:15-1258:5; Exhibit 54.)
74. There was nothing about Mrs. interactions with or observations of x from the first day of school through Thanksgiving break that gave her any reason to believe that he was not comfortable at school or that he felt unsafe at school. (Tr. Vol. IV, 732:19-733:5; Tr. Vol. V, 943:25-
75. x told Mrs. in November of 2008 that he did not want to go to Language Arts. Mrs. believed that he did not want to go because Mrs. made him work and write and he did not like to write. (Tr. Vol. VI, 1203:21 Exhibit 124).
76. Even Ms. one of x's home service providers, indicated that before December 1, 2008, no one on x's home team was working with him regarding "anxiety or anything like that." The home team professionals worked with him on academics and social skills. (Tr. vol. 111, 493:18-24.)

77. The first time that Mrs. heard anything about x being concerned about mean teachers was on December 2008 — the first day back from Thanksgiving break. That morning, during x's break, x's mother and x talked with Mrs. about "what he thought was meanness." rr. vol. IV, 733:11-734:19; Exhibits 13, 21 (at

00366), 46, 47, 48.) x's mother prompted him during the discussion. (Tr. vol. IV, 844:11-18; Exhibit 123 (at question 1 1)) x told Mrs. that his feelings had been hurt, but at the due process hearing she did not recall him giving any examples of what occurred to hurt his feelings. (Tr. vol. IV, 738:21-739:23. see also Tr. Vol. IV, 844:11-18). x did, however, tell Mrs. that he wanted "justice" and he wanted "Mrs, fired." (Exhibit 47; Tr. vol. IV, 735:22736:20).

78. Mrs. • did not understand why the examples of "meanness" that were discussed in the December 1, 2008 meeting were so important or critical to x's mother and x.

(Tr. Vol. IV, 844: 1 1-18; Exhibit 123 (at question 11).) Before December 1 , 2008, x's complaints were similar to what other students would say and he talked with Mrs.

that day about the same kind of concerns. These concerns were not serious and "[n]othing was stated that anything that happened was abusive or inappropriate."

(Tr. Vol. IV, 844: 11-18; Exhibit 123 (at question 10).

79. Mrs. did not believe x was stressed in that meeting and did not hear anything in her conversation with x's mother and x to cause her concern about his safety at

school. (Tr. Vol. IV, 739:3-15; Mrs. c took x to talk to Mr.

80. After x's mother and x talked to Mrs, Tr. Vol. V,981:23-

.x told Mr. 1 that teachers were being mean to him. When Mr. asked for examples, x told him that after the class had come in from recess noisily, Mrs.

made the entire class re-do their entrance into the school from recess quietly.

When x's friend asked, "do you mean me?" Mrs. allegedly said something like, "Am I speaking Chinese here? Everyone has got to go down and come back up again."

and this hurt x's feelings. (Tr. vol, IV, 739:24-741:3; Tr. Vol. V, -1048:5; Exhibit 50. see also Mother, Tr. Vol. 11, 407:15-409:2.) x also told

Mr. that Mrs. asked him not to make noises and to stop doing things. (, Tr. Vol. IV, 741:10-16•, Tr. Vol. VI, 1104:10-1106: 12; Exhibit 50.)

81. Mr. testified that his meeting with Mrs. and x on December 1, 2008 was the first time he had heard any concern that teachers were treating him in a way he should not be treated. (, Tr. Vol. V, 1049:17-20.)

82, Mrs. believed that during x's conversation with Mr. x seemed bothered, not upset. In her opinion, he was less bothered than the day he talked to her about the class not voting for his idea for the Principal's Halloween costume. (, Tr. Vol. IV, 742:2-7

83. Mr. did not scold x during his conversation with x and Mrs. Moreover, Mr. 1 did not tell x he was not being bullied and he did not say to x, "How could you say such a mean thing about a teacher?" (Tr. vol. IV, 737:3-21; , Tr. Vol. V, 1049:6-16.) Instead, Mr. Mrs. and x came up with a plan for x to follow if he felt teachers were being mean to him. He could go to the office or to Mrs. to talk about it. (Tr. vol. IV, 737:22-738:7, 844:11-18; , Tr. vol. VI, 1162:23-1163:14; Exhibit 123 (at question 11).

84, Mrs. did not hear anything in her conversation with Mr. and x that caused her any concern about x being unsafe at school. (Tr. Vol. IV, 741:3-9•, 741:1722; 844:11-18; Exhibit 123 (at question 10),) MI', concurred that nothing described in x's meeting with him made him think that the teachers were being mean to x.

(Tr. Vol. V, 1048:23-1049:5. see also Tr. vol. V, 1065:5-9 (testifying that

he did not see any reason to remove x from his Language Arts and Social Studies classes). Nevertheless, Mrs. agreed to add "things that stress x" to the agenda for the December 2, 2008 team meeting. (Exhibit 46.)

85. During the evening hours of December 1, 2008, Mrs. N, the mother of a student who was in x's class taught by Mrs. , emailed Mr. regarding Mrs. 's alleged treatment of x. (Exhibit 49; Tr. Vol. V, 1049:21-1050:2.) Mrs. N's email

indicates that she got the information for her complaint from her son who told her that he observed Mrs. "screams at [x] every day and takes him into the hallway to scream some more. She takes away his 'fiddle-stick' which is something Mrs. M or Mrs. would never do. She gets in his face and leans into his face while yelling at him." (Exhibit 49), Mrs. N copied the email to the W 's the next morning,

86. After Mr. read the email from Mrs. N, he started an investigation of the complaints. (, Tr. Vol. V, 1051 13-1052:9.) That morning he met with Mrs. and x's mother, separately. (Id; Exhibit 51.)

87. Mr. 's notes of his discussion with Mrs. indicate that she told him that x was trying to sleep in her room, she asked him if he was alright, the para asked him to sit up and he would not move or work. He also recorded that Mrs. said she used an environmental choice to pull the desk forward a little bit; x sat up; she said, "let's go on" and he did. (Exhibit 51.)

88. Mr. testified that when he was finished with his meeting with x's mother, he did not see Mrs. rubbing x's back in the office as was alleged by Mrs. W. He believes he would have remembered any inappropriate interaction between x and Mrs.

in the office if it had occurred. (Tr. Vol. V, 1052:10-21; Exhibit 51.)

89. Mr. s investigation also included interviews of two paraprofessionals who were in Mrs. s classroom with x, per his IEP, some students whom he thought would give honest answers, and Mrs. , Tr. vol. V, 1052:22-1054:8, 1068¹.8-17;

Exhibit 51; , Tr. Vol. VI, 1104:2-5•, Exhibit 121.)

90. Mr. 's notes reflect that the paraprofessional who is in Mrs. s room with x for the first five minutes of Language Arts, told him that Mrs.is harsh, intense and negative. The notes indicate that Mrs. 1 repoted that Mrs.

:will first ask x to stop being disruptive in front of the class with a raised voice and if addressing something a second time, she would be in close proximity to x (in his face) when giving redirects, The notes further state that Mrs. described the classroom atmosphere as tense. (Exhibit 50 at)00710 and)00714.)

Mr.'s notes from his interview of i, the paraprofessional who is in Mrs, room with x for 30 minutes of Language Alts each day, reflect that she told him that Mrs. will get in x's face and talk direct to him, takes him out to the hallway to tell him to behave, and has stopped teaching the class to give him a redirect a few times. Mr. recorded that Mrs. mentioned the words "calm, soft spoken" and also indicated that Mrs, is a good teacher and the atmosphere is good.

, Tr. vol. VI, 1164:16-165:12, 1173:8-25; Exhibit 51 at)0710 and

00714.)

92. 's notes regarding his conversation with Mrs. reflect that she did not recall if she referred to talking in Chinese, but if she did, she did not mean to offend anyone. She also indicated that she did not remember "getting after [x] for biting his finger nails." (Exhibit 51 at 100716.)

93. x's parents attended a team meeting that had already been scheduled for December 2, 2009. During the meeting, x's father read the email from Mrs. N. (Tr. Vol. IV, 743:3-8; Father,

Tr. Vol. 1, Exhibit 52; Tr. Vol. IV, 844:1 1-18•, Exhibit 123 (at question I 1). This was the first time that x's parents had raised the issue of x being mistreated by teachers during a team meeting. (Tr. vol. 11, 265:16-19. see ^a, Tr. Vol. I, 165:23-171:21 (testifying regarding notes in

preparation for and taken during meetings that do not contain any references to x being mistreated by teachers); Exhibit C at p. 54 (indicating that x began saying teachers were mean in mid-November and x's parents had not taken any steps prior to receiving the December I email.) x's parents demanded that x no longer be in Language Arts with Mrs. or in Social Studies with Mrs. Tr. Vol. IV, 743:15-25•,

Tr. Vol. V, 1055:19-1056:7, 1068:8-17; , Tr. Vol. 1, 17311 1-14; Exhibits 52 and 121 .) x's parents also requested that school personnel call home or x be able to call home if he was upset. Tr. Vol. IV, 745:20-22; Mother, Tr. Vol. 111, 579:5-

94. x's parents' ultimate goal was for Mrs. to be fired. (Mother, Tr. Vol. 11, 435:13437:12; Exhibit 116.)

95. x's father testified that he knew that they could have requested permission to transfer x to another school or that they could have decided not to send him back to at the beginning of the second semester. (Father, Tr. Vol. I, 80:14-19, 86:16-19. See also Mother, Tr. Vol. I, 1 17:8-20 (testifying that they considered homeschooling x at semester). Nevertheless, he and x 's mother did not remove x from because they felt that the School District would do the right thing and make sure that x was protected from Mrs. , — by removing Mrs. from the building and/or firing Mrs. Other reasons identified for that decision were that x had emotional attachments to his friends, Mrs.

and some of the teachers from his previous school years and they didn't have "the resources" or "a plan in place" to home school him

(Father, Tr. Vol. 1, 54:24-66:11, 69:3-6•, Mother, Tr. Vol. 1, 113:15-23,113:15-

x still wanted to attend : after December 1, 2008. (Mother, Tr. Vol. I, 113:10-14.)

96. was shocked and distressed by the email Mrs. N wrote. Nothing in the email sounded like anything she had heard from x's parents on November 20, 2008. (, Tr. Vol. VI, 1258:12-23; j, Tr. Vol. 8/11, 1311:15-1313:13. see also Exhibit C at p. 54 (indicating that x began saying teachers were mean in mid-

November and x's parents had not taken any steps prior to receiving the December 1 email).)

97. Based upon the information x's parents had shared and x's explanation of what occurred with MI'S. removing x from Social Studies with Mrs. did not seem to be an appropriate resolution. (Tr. Vol. IV, 743: 11-744:8.) Nevertheless, the School District agreed to not have x taught by Mrs. and that he would be taught in the resource room instead. Tr. Vol. IV, 744:9-13; Tr. Vol. V, 1055:191056: 7, 1056:23-1057:6; Exhibit 55.) The School District also agreed to not have x taught by Mrs.: (

98. At the December 2, 2008 team meeting, the team discussed that when x returned to school the next morning he would meet with Mr. , who would assure him he was safe at school. (Tr. Vol. IV, 745:2-8; Exhibit 51 at 00715.)

99. Mr. and Mrs. had that meeting with x when he came back to school on December 3, 2008, Mr. assured x that he was going to be safe at school and they reviewed the plan that if at any time he didn't feel safe, he could come to the office or to

Mrs. and his family would be called. (, Tr. Vol. IV, 745:9-15; 746:10747: 1; Tr. Vol. V, 1056:1 1-19.) i 00. called SRS and reported x's parents' concerns. (, Tr. Vol. V, 1056:2023. see also Tr. Vol. VI, 1258:24-1259:16 (testifying that she advised Mr.

- to report the allegation to SRS); [redacted], Tr. Vol. VII, 1314:8-24 (same).)
101. On December 5, 2008, Mr. [redacted] wrote x's parents to inform them that he had investigated their concerns, he had addressed their concerns with the teachers and that he intended to continue to monitor their classrooms. In addition to the action items the School District agreed to at the December 2, 2008 meeting, Mr. [redacted] decided that the fifth and sixth grade teachers would be trained regarding working with autistic children [redacted] and regarding x's specific needs. (Exhibit 55; [redacted], Tr. Vol. V, 1056:24-1057:6.) All of the action items identified in the December 5, 2008 letter were completed. (Id. See also [redacted], Tr. Vol. VI, 1203:21-1204:4; [redacted] Tr. Vol. V, 1068:8-17; Exhibits 121 and 124 (indicating that Mrs. [redacted] attended training on December 17, 2008 regarding autism).)
102. Mr. [redacted] also wrote a Summary of Conference for Mrs. [redacted]'s file to document his conversations with her and make his expectations clear, He did not write the Summary of Conference because he believed she had done something wrong. (Tr. Vol. V, 1057:12-1058:3, 1070:5-15; Exhibits 56 and 129 (indicating he concluded that Mrs. [redacted] did not abuse or mistreat x). Moreover, he did not believe that Mrs. [redacted] should have been fired. ([redacted] Tr. vol. VI, 112:23-1113:12, 1163:25-1164:15. see also [redacted], Tr. Vol. VI, 1118:22-1119:20 (testifying that he if had felt discipline or termination was the appropriate route, he definitely would have pursued that).
103. When a social worker from SRS interviewed Mr. [redacted], he told her that he had investigated the complaints made by x's parents and he did not find any evidence of wrong doing on Mrs. [redacted] part. He said that Mrs. [redacted] slid x's desk forward gently a little bit; she did not yank or move the desk suddenly. He also stated that there was no information indicating that Mrs. [redacted] took objects away from x that he is

permitted to use in the classroom and there were no reports that she was not following school policy in regard to appropriate discipline techniques for x. (Tr. Vol. V, 1058:23-1059:13.) Mr. affirmed the veracity of the information he provided to the SRS Social Worker at the due process hearing. (Id.)

104. Mr. t did not believe that x was at risk to be harmed by either Mrs. or Mrs. , based upon the information he learned in his investigation. Tr. Vol. V, 1065:10-13.)

105. x never came to the office or to Mrs. after December 3, 2008 to tell them that he did not feel safe. (, Tr. Vol. IV, 745:16-19; Tr. Vol. V, 943:25- And, Mrs. . never saw him fearful of teachers, either. (Tr. Vol. IV, 839:5-8.)

106, On days that x was upset about something that occurred at school, School District personnel called home in an effort to be transparent about whatever it was that upset him. The School District did not intend to belittle any of his behavior or that he was upset at school. (Tr. Vol. IV, 745:20-746:5; Tr. vol. VI, 1190:24-1191: 1 5•, Exhibit 136.)

107. It was not a reasonable expectation that Mrs. • and/or Mrs, would never cross paths with x at Tr. Vol. VI, 1166:i3-16. see also Exhibit 130 at

,901107; Mother Tr. vol. 1, 118:24-119:15 (assuming that Mrs. was present for choir rehearsal in an effort to get close to and scare x). Nevertheless, the School District took many measures to keep Ms. and Ms. separated from x as much as possible. For instance, the teachers put their weekly plans and worksheets in the office for the paraprofessional to retrieve before meeting with x for his instruction for those classes. The paraprofessional and Mrs. also graded the work for his

Language Arts and Social Studies classes. (• Tr. Vol. IV, 747:23-748:3. see also

_, Tr. Vol. IV, 844:1 1-18; Exhibit 123 (at question 14); Tr. Vol. VI, 1190:20-23 (testifying that the School District made every effort possible to keep x from interacting with Mrs. _____ and Mrs. _____ and 1190:24-1191:15; Exhibit 136 at _____ '02997.) They did not allow x to go to recess without a paraprofessional or Mrs. if Mrs. or Mrs. were on recess duty. (Tr. Volt IV, 844: 11-18; Exhibit 123 (at question 17); Tr. vol. V, 1056:24-1057:6; Exhibit 55; _____, Tr. Vol. VI, 1190:4-19, 1190:24-1191:15; Exhibit 136 at _____ '953 and 702963.) And, when Mrs. _____ Mrs. _____ and Mrs. _____ needed to speak about something during the school day, they would meet in a central location where they could still see their classrooms, but exchange the information that needed to be discussed. _____, Tr. Vol. VI, 1190:4-19.)

108. Mrs. _____ and Mrs. _____ were on field trips, including transportation to those _____ Field trips, because all of the fifth grade classes went on field trips at the same time. (Tr. Vol. VI, 1138:23-1139: 19.) It was not a reasonable expectation to have fifth grade students go on a field trip without their teachers. (Tr. Vol. VI, 1 166:17-20•, _____, _____, Tr. Vol. VI, 1222:23-1223:3. see also, Tr. Vol. VI, 1199:18- _____, _____, 1200: 1; 1227:18-1228:12 (regarding the fifth grade teachers' responsibility to support the choir teacher for school-day rehearsals). Nevertheless, school personnel had a plan for x to be supervised by someone other than Mrs. _____ and Mrs. _____ for these trips and other situations. (Tr. Vol. VI, 1140:16-1141:1.)

109. x made it difficult for Mrs. _____ and Mrs. _____ to distance themselves from him. He would wander into their classrooms and intentionally attempt to get close to them.

(Tr. Vol. IV, 844:11-18; Exhibit 123 (at question 16); , Tr. Vol. V, 1070:5-15; Exhibit 129 (at question 40); , Tr. Vol. VI, 1203:21-1204:4, 1226:21-1227: 1 1, 1190:24-1191:15; Exhibits 124 (at question 18) and Exhibit 136 at 02955-2957, ¶2966, 2969,)2970, •3004,)3009, 3010, 3012, and 3014. See also, Exhibits 117 and 119 (containing notes from interviews with Mrs. and Mrs. that are consistent with the information included in Exhibit 136.) On one occasion in December, x walked in a circle around and close to Mrs. making noises to get her to notice him. (Tr. vol. VI, 1190:24-1192: 14; Exhibit 136 (at -02945). See also, Exhibits 117 and I 9 (containing notes from interviews with Mrs. and Mrs. that are consistent with the information included in Exhibit 136).) Because x sought out Mrs, and Mrs. on several occasions, Mrs. did not believe that he was afraid of them, (Tr. Voli VI, 1190:24-1191:15, 1192:15-20, 1194:18-1195:9, 1197:21-1199: 13, 1215:24-1216:1; Exhibit 136 (at 1-02945,)-02980, '-02982 (asking Mrs. for permission to use the restroom, even though Mrs. was closer to him), 0 3, -02984,)-02998, '-03012, 1-03014 (asking Mrs. where the restroom was, despite others around who could have answered the question). See also I Tr. Vol. VI, 1 193:10-21 (testifying that x did not appear afraid to ride the bus to the Hero Assembly), 1 190:24-1191 : 15; Exhibit at!-02975 and •-02988, *-02994).

110. x received his Language Arts and Social Studies instruction from a paraprofessional in the resource room — where he already was receiving his math instruction. It was not a small room; nor was it a storage room. (, Tr. volt, IV, 785:19- Vol. V, 1056:24-1057:6; Exhibit 55.)

11 1. x did well on the assignments and tests that occurred after his parents asked him not to be taught Language Arts and Social Studies by Mrs. : and Mrs. His scores on the assignments

and tests demonstrated he was learning the material. (Tr. Vol. IV, 749:4-75-:2; 774:15-775: 11 , 785:9-18, 799:3-18, 801:14-22•, Tr. vol. V, 1008:21-24•, Exhibits 57, 73, 78, 88, and 89.)

112. Even though x was not in the general education setting for Language Arts and Social Studies, he could still work on goal 6 (a pre-requisite skill for attending to whole group instruction), which was not restricted to the general education classroom. Moreover, he could still work on goal 6 in his other general education classes. Mrs. • testified that reading was a good class in which to work on this goal because x was good at reading. She explained that working on a skill in an area where the student is not also learning content is a good teaching technique. It also complied with the recommendations in one of the resources x's mother provided to the School District to assist school personnel in working with x. (Tr. Vol. V, 995:11-999:5. see also Tr. Vol. V, 1024: (discussing the progression of learning new
113. On December 8, 2008, x accused Mrs. of "yanking" him when she assisted him to stand up for the Pledge of Allegiance. Mrs. : apologized if she startled x, but told him that she did not "yank" him. She felt it was important for him to have respect for the flag. x was not sent to the office for any conduct related to this event. However, Mrs. informed Mr. about the incident and he called x's mother to inform her of what had happened so that there would not be any misunderstandings. (Tr. vol. IV, 751:21-753:15; Tr. vol. V, 1059:14-1060:7; Tr. vol. VI, 1190:24-1191:15; Exhibits 58 and 136.)
114. At the December 9, 2008 team meeting, the School District requested that the parents sign a change order for the IEP to reflect their request that x not be taught Language Arts and Social Studies by Mrs. and Mrs. Tr. Vol. IV, 754:2-25•, Exhibit 60.)

115. On December 10, 2008, x was disruptive in the library. When asked to move to a different location, x kicked a chair and toppled it. Mr. and Mrs. met with x about his behavior and he seemed embarrassed by his behavior when reflecting upon it. He decided that he would apologize to the librarian and also the paraprofessional who was in the library with him. Mrs. was proud of x's efforts in working through the problem, accepting responsibility for his actions and deciding to apologize to make it right. The discussion with Mr. would have been expected of any student engaging in this behavior and turned out to be a good learning tool for x, (Tr. Vol. IV,

6-757:8;Exhibit 62.)

116. After the conversation with x, Mr. went to call x's mother to inform her about the incident. She was already at school so she came to the office to discuss it with him. After x's mother discussed the incident with Mr. she came into the conference room with Mrs. and x to discuss it with x. Mrs. saw x's mother pull her chair up close to x and pulled him up so that her legs were outside of his and she took his hands and held them and got close to him while they discussed it and she asked him questions. The questions she asked of x were similar to, "Did that make you feel upset? Were they being mean to you? Did you want to be in there anymore?" and Mrs. felt that x's mother's intense demeanor and body language was conveying how she felt about the situation. (Tr. vol. IV, 757:22-759:2. see also

Tr. Vol. V, 1017:8-23 (indicating that x's mother did not limit her actions to those she had recommended to obtain x's attention). x did not end up apologizing to the teacher or the paraprofessional that day, as he had planned. (Tr. Vol. IV, 759:12-18.)

117. Mrs. was disappointed that x did not get to follow up on his plan to apologize. She was also upset about what she observed because she felt like a boy in fifth grade should be

spoken to chair to chair and not so close. She stated that his mother undermined the School District's efforts to teach him about the appropriate way to respond when he makes a mistake and that he lost the opportunity to learn from his mistake. (Tr. vol. IV, 760:2-20).

118. On December 18, 2008, the W 's, x's parents, sent a letter to and , confirming their desire and agreement set forth at the December 2, 2008 team meeting that because of the allegations of the email received from Mrs, N, that x "will not receive any curricular or extracurricular instruction from either or .

„Additionally, "these teachers are not to have verbal or written contact with x in any setting during the school day nor should they ever be within close physical proximity," (Exhibit I -12, p. 24).

119. In addition, x's parents alleged that the "harassment by these teachers is so severe, pervasive, and objectively offensive that it effectively bars [x's] access to an educational opportunity or benefit," that he was "not being provided with a free appropriate public education," and that "he is denied access to the least restrictive environment" because he works one-on-one with a para in an isolated setting." (Exhibit 67.) x's parents indicated that x's "current situation is not acceptable and needs to change to meet his individual needs with his IEP services and placement fully implemented." (Exhibit 67.) They suggested that the teachers be removed from the building and that anyone who works with x should be ttained regarding his individual needs. (Exhibit 67.)

120. The School District provided x's parents with a progress report for x's IEP on or around December 19, 2008. x was exceeding the benchmarks set for goal 1 , 2, 3, and 6, meeting the benchmark set for goal 4, and one social skill below the benchmark set for goal 5. Mrs. testified that x was making progress on his IEP as of December 2008. (Exhibit 66; , Tr. Vol. IV, 769:5-771:16. see also Tr. Vol. VI,

1259:25-1260: I O (testifying that x was making progress in the general education curriculum and independence in his routines).

121. In January of 2009, x told his physician that he was not afraid to go to school. And, x's mother reported to one of x's treating physicians that he continued to go to school willingly. (Mother, Tr. Vol. II, 449:8-450:25willingly. (Mother, Tr. Vol. II, 449:8-450:25. See also Exhibit C at p, 71 (indicating that x told a physician that he likes to go to school and feels safe around teachers other than Mrs. and Mrs.
122. On January 12, 2009, Mrs. sent x's parents a notice of a meeting to review the re-evaluation that the School District had conducted. (Exhibit 70; Tr. Vol. IV, -772:11.see also ExhibitNN at p. 30.)
123. There was a team meeting on January 22, 2009, during which those in attendance discussed x's placement for Social Studies and English, the need to return the change order form, the parents' requests that the team stop having team meetings, that if x has any concerns to discuss that the parents be present for the discussion, and that staff not talk to x about his diagnosis or autism because he had not learned about his diagnosis. (Exhibits 74 and 75; , Tr. vol. 1, 175:12-22. see also Exhibit 79; Tr. vol. IV, 777:1-13; Tr. vol. VI, 1272:6-14•, Exhibit 125; Tr. Vol. VI, 1190:24-1191 Exhibits 79, 125, 136 at.' 2959-60, and C at p. 78.)
124. The IEP team also met to review the results of the thorough and detailed re-evaluation on January 22, 2009. The data collected demonstrated, among other things, that the assistive technology that x's parents had hoped to use with x was not helpful and it was not as beneficial as they thought it might be. There were also issues with using the assistive technology in a way that did not violate copyright laws. (Tr. Vol. IV, 772:18-773:9, 878:21-879:2; Tr. vol. VII, 1306:8-1308:7; Exhibit 71 at 0190.)

125, At the team meeting or the re-evaluation review meeting on January 22, 2009, there was not any discussion about any concerns that Mrs. or Mrs. were coming near x in violation of the restriction that had been placed on them. (, Tr. Vol. IV, 72: 18-773:16, 778:21-25; 878:21-879:2; I, Tr. Vol. VII, 1306:8-1308:7; Exhibit 71 at 100190, 74 and 75. See also Exhibit 79 (letter from x's parents summarizing the January 22, 2009 meeting and omitting any reference to the teachers violating the restriction to stay away from x); Exhibits 21, F, G and H (omitting same). Moreover, there were no concerns expressed that x was getting any assignments or homework with Mrs. ['s name on the paper. (, Tr. Vol. VI, 1 167:22-1168: 1 ; Exhibit 79 (letter from x*s parents summarizing the January 22, 2009 meeting and omitting any reference to getting homework or assignments with Mrs.

es name on the paper). See also Exhibits 21, F, G and H (omitting same),

126. x's parents were not satisfied with the re-evaluation that the School District conducted and requested an independent evaluation. x's parents indicated, in writing, that if the School District would not grant an independent evaluation, they would need the form for a due process hearing. (Exhibit 75;, Tr. vol. IV,778:23-

127. The School District agreed to pay for an independent evaluation. (Exhibit 80 and 13; ¹, Tr. Vol.VII, 1363:13-1364:12.)

128. The School District reported x's progress on his IEP again in March of 2009. This progress report is the fourth progress report for the March 28, 2008 IEP and addresses whether x met the goals included in that IEP. x consistently met goals 1, 2, 3, and 6 and made progress on goals 4 and 5, (Exhibit 83; Tr. Vol. IV,793:8-7

129. The JEP team met in March of 2009 to discuss a new IEP for x to cover the last quarter of fifth grade and the first three quarters of sixth grade. The School District had not

received the results of the independent evaluation before that meeting. C, Tr. Vol. IV, 798:21-799:2; 799:24-800:16; Mother, Tr. vol. 11, 427:16-429:6; Exhibit 86, 96.)

There were no concerns expressed that x was getting any assignments or homework with Mrs. 's name on the paper. (Tr. Vol. VI, 1 167:22-1168: 1.)

130. During a meeting in March, 2009, IN's parents asked Mr. to apologize to x for not keeping him safe at school and/or for the "abusive behavior." MI', told x's parents that he could not apologize for something that he did not do. He also told them that he did want to make sure x felt safe and secure at school and he wanted to put his energy toward making that happen. Mrs. agreed with Mr. 's assessment that he could not have apologized for something that he did not do. (Tr. Vol. V, 989:11-990:25, 1019:9-1020:7; Tr. Vol. V, 1070:5-15•,1071:25-1073:1; Tr. Vol. VI, 1130:18-1131:10, 1133:20-1135: 11; i, Tr. Vol. VI, 1195:14-1 Father, Tr. Vol. 1, 67:7-16•, Exhibits 129 and 136 (at)-02990). See also , Tr. Vol. II, 242:24-243:5 (indicating that x's parents wanted an apology to x that "this isn't what school is like, this is what you're not supposed to experience,"); Tr. Vol. 111, 545:4-15; Exhibit 139 (indicating that at x's parents' request, Mr. assured them that he was safe); Exhibit 1 16 (seeking remedy of "Apology of all those involved with acknowledgement that behaviors occurred."); Exhibit 136 at)-02990 (indicating that x 's parents asked Mr. and Ms. to apologize to x for bullying). According to Mrs. makes every effort to ensure that students feel safe at school. (Tr. Vol. IV, 737:18-21,) Mrs. worked toward that goal as well. (Tr. Vol. VI, 1226:3-12.) . Again, there were no concerns expressed that x was getting any assignments or homework with Mrs. 's name on the paper. (Tr. Vol. VI, 1167:22 Because x's parents did not get the apology they requested, they decided not to have

any further team meetings for the 2008-2009 school year. (Father, Tr. Vol. I, 67:7-68;

131. On April 20, 2009, x accused Mrs. of being mean to him because she asked

him to pick up his trash that missed the trash can. (, Tr. Vol. VI, 1196:7-

1197:20, 1238:9-19; Exhibit 136 (at -03001). see also j Tr. Vol. VI,

1234:1-10 (testifying that children accuse adults of yelling at them if the adult uses a firm

voice to instruct them to stop doing something and that this interaction with x was similar

to that type of situation).

132. The School District received the report from the independent evaluator on April 22, 2009.

(, Tr. Vol. IV, 79904-800:16; Exhibit 96; Tr. Vol. VI, 1190:241191:15; Exhibit

136 at .0007.)

133. After the School District received a copy of the independent evaluation report, the team considered the recommendations of the independent evaluator. (Tr. Vol. IV,

800: 17-24.)

134. The School District had some concerns about some of the data contained in the independent evaluation report. For example, Mrs. testified that during one of the times that an individual working on the independent evaluation was observing x, he was "putting on a show" — intentionally pointing to wrong answers or writing something incorrectly and checking to see if Mrs. or the observer was noticing. This affected the results of the comprehension checks. (t, Tr. Vol. V, 999:8-1000:7; 1037:2-12, Exhibit 96. See also ¹, Tr. Vol. VI, 1263:24-1264:11 and Tr. Vol. VII, 1316:7-

1317:1 (discussing x's refusal to answer comprehension questions during the School District's re-evaluation); Tr. vol. VI, 1190:24-1191:15; Exhibit 136 at -02997 and 2999.)

135. Another concern that the School District had was that the independent evaluators did not use the same recording technique that the School District used when recording off-task behavior, which made it difficult to make a good comparison. Specifically, the School District measured IOW's off-task behavior using end-of-interval recording, which records the data that they saw at the end of every 10 seconds during the observation period. The independent evaluators measured x's off-task behavior using total interval recording, which records one minute of off-task behavior if at any time during that minute there was

10 seconds of off-task behavior. The total interval recording naturally will result in a higher level of off-task behavior, inflating the data collected, (I, Tr. Vol. VI, 1264:23-1268:4; I, Tr. Vol. VI, 1341:2-1342:24; Exhibit 96. see also Exhibit CC3 (email from Ms. I indicating that it is difficult to know when x is off task and that there are "plenty of times" during which x may appear to be off task, but actually attending). Regardless of the discrepancy, the School District was not resistant to the idea that x was having some difficulties in this area and agreed to address this issue in the IEP for LAW's sixth grade school year. (Id) The School District wanted to work with x 's parents in an effort to stay out of a due process hearing regarding the IEP.

, Tr. Vol. VII, 1341:2-1342:24, 1354:22-1355:13.)

136. the School District's Autism Specialist, contacted the independent evaluator to collaborate and seek additional information, in part because ideas that were suggested by the independent evaluator were better received by x's parents than ideas

suggested by the School District. (Exhibit 90; Tr. Vol. IV, 3-22. see also, Tr. vol. VI, 1190:24-1191 :15, Exhibit 136 at 3007 (regarding snacks).)

137. The independent evaluator provided additional information, which the School District considered in drafting an IEP for x. (Exhibit 98; Tr. Vol. IV, 803:4-801, Tr, Vol. VI, 1268:5-8.) In fact, recommendations from the independent evaluation report were included in the IEP that the School District proposed for x. Tr. Vol. VI, 1268:5-12; Exhibits 96 and 93. see also Exhibit CC3 (regarding

's recommendations for reducing off-task behavior).)

138. The IEP team met again on May 7, 2009 to discuss x's draft IEP. (Exhibits 87 and 92;

Tr. Vol. IV, 804:8-19; 805:6-806:18.) The proposed goals addressed social

behavior skills, math, and attention to task. (Exhibit 92.) The School District also proposed that x's YEP include the following services:

- 60 minutes per day of the indirect service of Case Management through March of 2010
- 120 minutes per day of supplementary/alternate instruction in a special education setting through the end of May 2009 and 60 minutes per day of supplementary/alternate instruction in a special education setting from May of 2009 through March of 2010
- 60 minutes per week (30 minutes 2 days per week) of speech and language therapy through March of 2010
- 30 minutes per week of indirect service from the speech and language therapist through March of 2010
- 90 minutes of supplementary/alternate instruction in a general education setting through the end of March 2010
- 90 minutes (45 minutes 2 times per month) of indirect service from the Autism Consultant through the end of March 2010
- 30 minutes of indirect service from the OT each quarter through March 26, 2010

(Exhibit 92.)

139. Compared to the IEP implemented during x's fifth grade school year (before the change order removing x from Social Studies and English), the IEP proposed on May 7, 2009 included an increase in indirect Case Management services of 30 minutes per day, a decrease in indirect services from the Occupational Therapist from 30 minutes per month to 30 minutes per quarter, a decrease of 30 minutes per month of indirect service from the Autism Consultant, elimination of indirect consultant services from the resource teacher of 20 minutes one time per week and a change in para support from an accommodation (in the regular education setting/when not being served by a direct service provider) to 90 minutes per day in the regular education setting.

(Exhibits 10 and

92.) In addition, the draft IEP includes a behavior intervention plan to address inappropriate protesting and off-task behavior. (Exhibit 92.)

140. x's parents were given the opportunity to give their input into the IEP at the May 7, 2009 meeting. (Tr. Vol. IV, 805:3-5; , Tr. Vol. VII, 1305:24

1354:11-1355:13; • Tr. Vol. 111, 545:22-546:9; Exhibit 140.) x's mother indicated that x needed more time than he was getting for math. (, Tr. Vol. III, 545:22-546:9; Exhibit 140.) She also expressed that goal 3's expectation that x answer 70% of comprehension questions correctly (addressing whole group instruction) was not high enough; she wanted it to be set at 90%. (Id.) The IEP team did not come to consensus on the IEP at that meeting. (Id.) Moreover, there were no concerns expressed that x was getting any assignments or homework with Mrs. 's name on the paper.

(Tr. Vol. VI, 1167:22

141. Mrs. met with x's parents on May 19, 2009 for a parent-teacher conference, They discussed math, what had happened in fifth grade, what his summer math program should cover and what to expect for sixth grade. Mrs. also asked x's parents about whether x would be coming back to for sixth grade. x's parents reported that x would be coming back. (Tr. vol. IV, 808:10-810:7; Exhibits 101, 102.)

142. On the same day as the parent-teacher conference, all of the fifth graders were going on a field trip. x came to the conference room where Mrs. and his parents were meeting and said he wanted to ride the bus, instead of having his mother drive him.

x's mother (not x) was talking about x being afraid of the mean teachers and questioning if he really wanted to go. x's father told x to get on the bus, while x's mother continued the questioning. Mrs. left to hold the bus until a decision was made. x did ride the bus to the field trip that day. (Tr. vol. IV, 839:9-8

See also Tr. Voli V, 982:21-983:2 (testifying x was not conflicted about riding the bus); Tr. Vol. VI, 1190:24-1191 1272:6-14•, Exhibit 125 (at question

16) and Exhibit 136 (at)3014 (indicating that after x's mother asked x if he was sure he would be ok riding the bus to school from the field trip, she told Mrs.

that she thought x would be ok.)

143. On May 20, 2009, the IEP the School District team met again to discuss x's IEP. (Exhibit 93, 94 and 107; Tr. Vol. IV, 812:6-22.) Exhibit 93 (minus the handwriting) is the draft IEP that was being discussed at that meeting. (Id See also Exhibit 141; Tr. Vol. Ill, 546:23-548:18.) The service minutes were very similar to what was previously proposed, but Assistive Technology consultant services were also included. (Id)

144. The IEP team did not get to discuss the IEP in great detail because x's parents told the School District that they were withdrawing x from

school at the end of fifth grade — only eight days later. (Tr. vol. IV, 819:12-17;823:19-824:10; 824:22-825:10;

Mother, Tr. Vol. 11, 433:11-434:13; Exhibits 13, 105, 141.) The letter that x's parents presented at the May 20, 2009 meeting states, "Please regard this letter as our 'written notice' that we intend to place our child, [x], unilaterally in a private educational program at public expense beginning 10 days from this date, May 20, 2009." (Exhibit 105.) The letter does not mention that x was being removed because Mrs. and Mrs. were violating the restriction against coming near x or that x's homework or assignments had Mrs. name on it. (Ids)

145. Mrs. testified that the IEP the School District proposed on May 20, 2009 (Exhibit 93) would have met LAV's needs for this sixth grade school year. (Tr. Vol. IV, 3-823:13 (generally); Tr. Vol. V, 1000:8-23 (regarding x's off-task behavior); Tr. Vol, V, 24-1001:20 (regarding goal 3 performance on comprehension checks).) Mrs. also testified that that IEP was appropriate for

Tr. vol. VI, 1268:25-1269:8.)

146. Based upon Mrs. 's observations of x during his fifth grade school year, she did not believe any social work goal, such as for anxiety, was appropriate for x's sixth grade IEP. (Tr. Vol. IV, 823:14-18; 830:7-10. see also Vol. VI, 1200:7-10 (testifying that she did not see any behavior that caused her to consider whether x needed social work services on his IEP).)

147. Mrs. did not observe any change in x's behaviors during her instruction/class after the "abuse allegations." (Tr. Vol. VI, 1222:15-19.) 148. The School District reported x's progress on his

March 28, 2008 IEP again in May 2009, sending home a progress report to x's parents. He was still consistently meeting goals 1 , 2, 3 and 6 and he made progress on goals 4 and 5. (Exhibit 104; , Tr. vol.

IV, 825:20-828:5.)

149. x earned the grades on his report card for the 2008-2009 school year. (Tr. vol. VI, 1202:24-2.) Mrs. testified that x's grade card for his fifth grade school year is indicative of a student who benefitted from his educational program. (Tr. Vol. IV, 838:11-18; Exhibit 114.) Ms, i also testified that she believed that x benefitted from his fifth grade IEP. (i^t, Tr. vol. VII, 1356:5-7.)
150. A student's MAP scores is one of the indicators that the School District looks at to determine whether a student is learning. (Tr. vo. IV, 782:25-784:17.) x improved his MAP scores in math and Reading over the course of his fourth and fifth grade school years. (Tr. Vol. IV, 708:07-711:7; 782:25-784:17; 789:19-18; , Tr. Vol. V, 1004:17-1005:10; Exhibits 32, 77, 81, 100, 103. See also Tr. Vol. V, 1005:11-1006:14 (discussing the reason x's math MAP scores were not as strong during his fourth grade school year).)
151. Another indicator that the School District relies on to determine whether students are learning is the Kansas State Assessments. In fifth grade, x met the Kansas Department of Education's standards in math and exceeded the Kansas Department of Education's standards in Reading. (Exhibit 81; Tr. vol. IV, 787:4-788:789:8.)
152. School District professionals, including x's Special Education Teacher, Principal, General Education Teacher, and the Special Education Coordinator for the West area of the School District, testified that x was, in fact, safe at Elementary School.
(Tr. vol. IV, 829:19-830:1; Tr. Vol. V, 989:24-990:25; Tr. Vol. V, 1073:5-1074:8; , Tr. Vol. VI, 1204:5-8, , Tr. Vol. VI, 1269:15

The 2009-2010 School Year - Sixth Grade

153. Mrs. a teacher with 32 years of experience in the education field, testified that the School District could have implemented the IEP the team had developed for his sixth grade school year. (, Tr. Vol. IV, 536:10-637:12, 832:6-16.) Ms. , Special Education Coordinator with 36 years of experience in the education field also testified that the School District could have implemented that IEP and that x would

- have benefited from that IEP. (, Tr. Vol. VI, 1268:24-1269:14, 1356:8-10.)
154. The only witnesses who testified that the IEP for sixth grade was not appropriate were x's parents and (Father, Tr. Vol. 1, 70:21-72:9, 81:5-7•, Mother Tr. Vol. 11,374:13-
155. Mrs. also testified that x would have been safe at during his sixth grade school year, Tr. Vol. IV, 832:17-21.) Mr. agreed with Mrs, adding that the sixth grade classrooms are in a completely different pod than the fifth grade classrooms and that the fifth and sixth graders and their teachers do not interact on a regular basis. (Tr. Vol. IV, 1073:5-1074:20.) Mrs. and Ms. also agreed with Mrs. on this issue. (Tr. Vol. VI, 1204:9-1204:2; ,Tr. vol. VI, 1269:15-21.)
156. x 's parents testified that they had been told that x had post traumatic stress disorder (PTSD). No professional was called to confirm that diagnosis. BW testified, however, that x had not been diagnosed with PTSD (Father, Tr. Volt 1, 70:15-16).
157. testified that she has diagnosed PTSD in her work as a clinician and based upon her education, experience and qualifications, could work throughout the school year with a student who has both PTSD and a disorder on the autism spectrum. (, Tr Vol. 11,338:19-339:24, 343:2-345:19.)
158. If x was diagnosed with PTSD, he would have been among other students with PTSD that the School District has successfully served (J, Tr, vol. VI, 1269:221270:12.)
159. x was enrolled in Virtual School (a public school) for his sixth grade school year. (Mother, Vol. 115 442:1-6; Exhibits 131 and II.) This means he is educated in his home, one-on-one with an adult or in a small group in an on-line class. (Exhibit II at p. 6.) He did not receive any instruction in a regular education classroom during his sixth grade year. (Exhibit II at p. 6 and 9,)

160. The • Virtual School IEP includes only 60 minutes of "direct real time instruction" per week and 20 minutes of indirect instructional support for his learning coach per month. (Exhibit 115.) This is far less than what was included in the IEP the School District proposed for x. (See Proposed Finding of Fact 138.)
161. Mrs. testified that the IEP that Virtual School created for x is incomplete, compared to the IEP that the School District proposed, and that the parts that are missing from the IEP (social skill goals, behavior plan, and more instruction) were critical for his continued development. (Tr. vol. IV, 841:15-844:10.)
162. Ms. also examined the Virtual School IEP and testified that it did not contain any goals on pragmatic language or social supports. She stated that the School District's IEP was more appropriate for x because it addressed the social, emotional and pragmatic issues. (Tr. vol. VI, 1270:13-1271:6. see also Exhibit 115 (stating, "the LVS home instruction environment does not allow for instruction on social communication skills."))
163. Even if the Virtual School IEP were appropriate for x, the School District could implement it. (Tr. Vol. VI, 1271:7-11.) This includes use of the ALEKS math program that Virtual School has designated on the IEP. (Tr. Vol. VII, 1366:23-
164. Over the course of the first three months of the school year at Virtual School, x increased the number of mastery skills needed for fourth grade math from 57 to 83. However, from January to March of 2010, he only increased the number of mastery skills needed for fourth grade math from 83 to 88. (Exhibit 115 at p. 5.) He did not meet his math goal — falling 70 mastery skills short of the target. (Exhibit JJ at p.4.)
165. In addition, x's testing scores in September and May, 2010 indicate little, if any, progress in the area of math during his sixth grade year while attending Virtual

School. (Exhibit HH7.)

166. x continued to be enrolled in Virtual School for his seventh grade school year. (Exhibit JJ.) He continued to be educated in his home, one-on-one with an adult or in a small group in an on-line class. (Exhibit JJ at p, 5.) He did not receive any instruction in a regular education classroom during his seventh grade year, (Exhibit JJ at p. 5 and 7.)
167. The IEP that Virtual School developed for x's seventh grade school year had the same deficiencies that the IEP that Virtual School developed for x's sixth grade school year. (, Tr. Vol. VI, 1272:15-23; Exhibits 131 and JJ.)
168. The IEP includes 60 minutes of direct real time instruction in math per week and 20 minutes of indirect instructional support for his learning coach per month. (Exhibit 131.)
169. The explanation that x's father offered for x not being able to attend school in the School District is that there's a possibility that x would not be safe if he were taught by a "marginal teacher." (Father, Tr. Vol. I, 72:7-73:5.)

CONCLUSIONS OF LAW AND DECISION

1. That the Hearing Officer has jurisdiction to decide the issues before him. K.S.A, 72972a.
2. That the issues are ripe for determination and that the due process hearing was held in accordance with the law. K.S.A. 72-973(b).
3. That the burden of proof is upon the parents.
4. That IDEA requires the local education agency (LEA) provide a free and appropriate public education (FAPE) to all children with disabilities emphasizing special education and related services designed to meet the child's unique needs and prepare them for employment and independent living. 20 U.S.C. 1400(d)(1)(A).
5. That the IDEA requires that the child be provided a FAPE and that such FAPE be provided in a least restrictive environment (LIRE) to the maximum extent appropriate, Murray v. Montrose County Sch. District, 51 F. 3d 921 (10th Cir. 1995). See also Urban v. Jefferson County Sch. Dist. R-1, 89F.3d 720, 722 (10th cir, 1996). The least restrictive

environment ("FAPE") component of providing a FAPE "dictates that the State should integrate a disabled child with non- disabled children whenever possible."

The Federal law requires:

[t]o the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. *Johnson v. Olathe Dist. Schs. Unified Sch. Dist. No. 233*, 316 F. supp. 2d 960, 963 (D. Kan. 2003).

6. To determine if a School District has satisfied the IDEA's substantive obligations, courts engage in a two-step inquiry: "First, has the State complied with the procedures set forth in the Act? And second, is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits?" *Bd. Of Educ v. Rowley*, 458 U.S. 176, 206-07 (1982). If the answer to both is yes, the school district "has complied with the obligations imposed by Congress and the courts can require no more." *Id.* at 207.
7. That IDEA's substantive provisions are violated if: (1) the LEA fails to provide a child with a FAPE; or (2) a FAPE is provided, but not, to the maximum extent appropriate. *LB and JB v. Nebo School District*, 379 F.3d 966 (10th Cir. 2004).
8. To meet IDEA goals, the law provides federal funding to state and local agencies and requires them to provide each child with an Individualized Education Plan (IEP), *T.S. v. Indep. Sch. Dist. No. 54*, 265 F. 2d 1090, 1091 (10th Cir. 2001).
9. An IEP is a written statement of: (1) the child's present performance level, (2) the annual goals and short term instructional objectives to be attained, (3) the specific educational services to be provided and the extent to which such child will be able to participate in regular educational programs, (4) the child's needed transition services, (5) the projected dates for initiation and completion of such services, and (6) the appropriate objective

criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the instructional objectives are being achieved. *O'Toole v. Olathe Dist. Sch. Unified Sch. Dist. No. 223*, 963 F. supp. 1000, 1003 (D Kan. 1997).

10. The IEP "is a snapshot, not a retrospective." *Roland M v. Concord Sch. Comm.*, 910 F.2d 983,992 (1st Cir. 1990), As a result, "the measure and adequacy of an IEP can only be determined as of the time it is offered to the student. Neither the statute nor reason countenance 'Monday Morning Quarterbacking' in evaluating the appropriateness of a child's placement," *O'Toole v. Olathe Dist. Schs.*, 144 F.3d692, al 701-02 (10th Cir. 1998); see also *Adams v. State of Oregon*, 195 F .3d 1 141, 1149 (9th Cir. 1999); "IEP's are not to be judged in hindsight, based on the progress enjoyed by the child, but based instead on the IEP's goals and goal achieving methods at the time the plan was implemented"; *Fuhrmann v. East Hanover Bd. Of Educ.*, 993 F,2d 1031, 1041 (3d Cir. 1993) .d l . [T]he appropriateness of a student's placement must be assessed in terms of its appropriateness at the time it is created and not at some later date when one has the benefit of the child's actual experience." The Court "must take into account what was objectively reasonable at the time the IEP was drafted.". *Roland M*, 910 F.2d at 992.

"The test is whether the IEP, taken in its entirety, is reasonably calculated to enable the particular child to garner educational benefits. Were the Law otherwise, parents could endlessly parse IEPs into highly particularized components and circumvent the general rule that parents cannot unilaterally dictate the content of their child's IEP." *Lessard v. Wilton-Lynde Paso Indep. Sch. Dist. v. Robert W.*, 898 F. supp. 442, 450 (W.D. Tex. 1995) (recognizing that "evidence of educational benefit is not limited to progress in a student's weak areas").

12. Under the IDEA, progress and educational benefit for students with disabilities must be gauged and measured in relation to a student's own intellectual and functional capabilities and not judged in comparison to the abilities of other students, in particular the abilities of their non-disabled students. See, e.g., *El Paso Indep. Sch. Dist. v. Robert w*, 898 F. Supp. 44m 449 (W.D. Tex. 1995) ("A child, an individual with

unique problems, cannot be held up and compared to non-disabled children. This is simply not a reasonable standard."). All students learn at different rates and the focus is on the student's individual ability to progress. See *Rowley* 458 U.S. at 202 stating that "[i]t is clear that the benefits obtainable by children at one end of the spectrum will differ dramatically from those obtainable by children at the other end, with infinite variations in between." *E.S. v. Indep. Sch. Dist., No. 196*, 135 F.3d 566, (8th Cir. 1998) concluding that even though the student's reading skills lagged behind her nondisabled peers, the record indicated that the student was making progress and that the proposed IEP would have provided an education benefit to her; *Bobby R.* 200 F.3d at 349 (affirming that "a disabled child's development should be measured not by his relation to the rest of the class, but rather with respect to the individual student, as declining percentile scores do not necessarily represent a lack of educational benefit, but only a child's inability to maintain the same level of academic progress achieved by his non-disabled peers.").

13. "A school district satisfies its obligation to provide a FAPE by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." *Moseley v. Bd. of Educ. of Albuquerque Pub. Schs.*, 483 F.3d 689, 690 (10th Cir. 2007) (citation omitted).
14. In the Supreme Court's landmark IDEA case, *Board of Education v. Rowley*, 458 U.S. 176, 199 (1982), it was determined that "[t]he furnishing of every special service necessary to maximize each handicapped child's potential [is] further than Congress intended to go." Rather, the Court explained that a FAPE is "the requirement that the education to which access is provided be sufficient to confer some benefit upon the handicapped child." The Supreme Court further explained: "Almost as a checklist for adequacy under the Act, the definition [of FAPE] ... requires that such instruction and services be provided at public expense and under public supervision, meet the State's educational standards, approximate the grade levels used in the State's regular education, and comport with the child's IEP." *Id.* at 189. "Thus, if personalized instruction is being provided with sufficient supportive

services to permit the child to benefit from the instruction, and the other items on the definitional checklist are satisfied, the child is receiving a 'Tree appropriate public education' as defined by the Act." Id

15. "[c]ourts must defer to the state's proposal if that plan is reasonably calculated to provide the child with FAPE in the least restrictive environment, even if a parent believes a different placement would maximize a child's educational potential." *Ellenberg v. N.M Military Inst.*, 478 F.3d 1262, 1278 (10th Cir. 2007); see also *Lachman v. Bd. of Educ.*, 852 F.2d 290,297 (7th Cir. 1988) (rejecting students' claim that they have a right to choose where they will receive a FAPE). To be sure, the IDEA does not guarantee a particular type of substantive education," *Ellenberg* 478 F.3d at 1277 (citation omitted), or confer an entitlement to the best program at public expense, *MM v. Sch. Bd.*, 437 F.3d 1085, 1103 (11th Cir. 2006), nor require the School District "to utilize one proven teaching method over another," *O'Toole*, 963 F. Supp. at 1014. See also *Lachman*, 852 F.2d at 297 ("Rowley and its progeny leave no doubt that parents, no matter how well-motivated, do not have a right under the [statute] to compel a school district to provide a specific program or employ a specific methodology in providing for the education of their handicapped child. ") (citations omitted); *Pace v. Bogalusa Sch. Bd.*, 403 F. 3d 272, 291 (5th Cir. 2005). (A FAPE "need not be the best possible education nor one that will maximize the child's educational potential."); *Carlisle Area Sch. v. Scott P.*, 62 F.3d 520,534 (3d Cir. 1995) (School districts "need not provide the optimal level of services, or even a level that would confer additional benefits, since the IEP required by IDEA represents only a 'basic floor of opportunity.'"), *Gregory K. v, Longview Sch. Dist.*, 811 F.2d 1307, 1314 (9th Cir. 1987) ("An 'appropriate' public education does not mean the absolutely best or 'potential-maximizing' education for the individual child.") (citations omitted).
16. The IEP process is a collaborative effort between the school IEP team members And parents. See *Settlegoode v. Portland Pub, Schs.*, 371 F.3d 503, 511 (9th Cir,

2004) ("Writing IEPs is a dynamic, collaborative process, one that involves a group of parents, teachers and administrators working together to prepare an education program suitable for a disabled child."). The denial of a parent's "opportunity to participate meaningfully" in the creation of the child's IEP is a procedural violation of the IDEA. *Knable ex rel. Knable v. Bexley City School Dist.*, 238 F.3d 755, 767-70 (6th Cir. 2001). It does not follow, however, that parents did not have an active and meaningful role in their child's IEP merely because the program proposed by a school district is contrary to the parents' wishes. *Hjorfness v. Neenah Joint Sch. Dist.*, 507 F.3d 1060, 1066 (7th Cir. 2007); see also *Cerra v. Pawling Cent. Sch. Dist.*, 427 F.3d 186, 193 (2d Cir. N.Y. 2005) (concluding that the school district fulfilled the IDEA's procedural obligations where the parents had numerous opportunities to participate in meetings with respect to the identification, evaluation, and educational placement of the child throughout the school year). In addition, while a school district's obligation to consider parental views is implicit in the requirement that parents have an opportunity to participate in the process of evaluating and placing their child, the IDEA "does not identify any specific matters that must be 'discussed' at an IEP meeting", nor does it "contain any requirement that strategies or anything else be debated at IEP meetings." *T.B. v. Warwick Sch. Committee*. 361 F. 3d 82 (1ST Cir. 2004)

DECISION

The issues to be resolved, as stated above, are as follows:

1. Whether the Individualized Education Program (IEP) offered to x reasonably calculated to enable him to receive some educational benefit as required under IDEA;

2. Whether the School District satisfied its obligation under IDEA to provide a free and Appropriate public education (FAPE) in the least restrictive environment (LRE);
3. Whether the parents of x are entitled to reimbursement of educational and counseling expenses.
1. Whether the Individualized Education Program (IEP) offered to x reasonably calculated to enable him to receive some educational benefit as required under IDEA;

In the Rowley decision cited above, the Court adopted a two-part test for determining a school district's compliance with IDEA:

"First, has the State complied with the procedures set forth in the Act? And second, is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits?"

the
Procedural Compliance.

On the issue of procedural compliance, the Parents contended in Due Process Hearing that they did not have input in x's 6th grade IEP. While admitting that they attended IEP meetings, the IEP was "already developed" and they were told to "take it or leave it".

The District contends that the IEP team met in March 2009 to discuss a new IEP for x to cover the last quarter of x's fifth grade and the first three quarters of sixth grade. The School District had not received the results of the independent evaluation requested by the parents before that meeting.

The School District received the report from the independent evaluator on April 22, 2009. After receiving the report, the IEP team considered the recommendations of the independent evaluator although the school team had some concerns regarding the evaluation. The School District's Autism Specialist, contacted the independent evaluator to collaborate and seek additional information.

The independent evaluator provided additional information, which the School District considered in drafting an IEP for x. In fact, recommendations from the independent evaluation report were included in the IEP that the School District proposed for x. The IEP team met again on May 7, 2009 to discuss x's draft IEP. The proposed goals addressed social behavior skills, math, and attention to task. x's parents were given the opportunity to give their input into the IEP at the May 7, 2009 meeting. x's mother indicated that x needed more time than he was getting for math. She also expressed that goal 3's expectation that x answer 70% of comprehension questions correctly (addressing whole group instruction) was not high enough; she wanted it to be set at 90%. The IEP team did not come to consensus on the IEP at that meeting.

On May 20, 2009, the IEP the School District team met again to discuss x's IEP, Exhibit 93 is the draft IEP that was being discussed at that meeting. The service minutes were very similar to what was previously proposed, but Assistive Technology consultant services, requested by the

the parents, were also included. The IEP team did not get to discuss the IEP in great detail because x's parents told the School District that were withdrawing x from school at the end of fifth grade — only eight days later.

As noted in Conclusions of Law (16), [T]he IEP process is a collaborative effort between the school IEP team members and parents. As noted in the *Settlegoode v. Portland Pub. Schs.*, (cited above) "Writing IEPs is a dynamic, collaborative process, one that involves a group of parents, teachers and administrators working together to prepare an education program suitable for a disabled child.". The denial of a parent's "opportunity to participate meaningfully" in the creation of the child's IEP is a procedural violation of the IDEA. It does not follow, however, the parents did not have an active and meaningful role in their child's IEP merely because the program proposed by a school district is contrary to the parents' wishes. (See *Hjortness* case cited above). Other cases in COL 16 held that the school district fulfilled the IDEA's procedural obligations where the parents had numerous opportunities to participate in meetings with respect to the identification, evaluation, and educational placement of the child throughout the school year. In addition, while a school district's obligation to consider parental views is implicit in the requirement that parents have an opportunity to participate in the process of evaluating and placing their child, the IDEA "does not identify any specific matters that must be 'discussed' at an IEP meeting", nor does it "contain any requirement that strategies or anything else be debated at [IEP meetings]".

The record herein is replete with numerous meetings between the parents of x and the school personnel. Mrs. and Mrs. testified that Mrs. J 's caseload was greatly reduced due to the amount of time Mrs. had to spend on x and his parents.

The Hearing Officer finds the evidence presented at the Due Process Hearing does not establish, by a preponderance of the evidence, that the School District failed to comply with 20

the
U.S.C. Section 1415 (b) and (c) and 34 C.F.R. Section 300.503.

The second prong of the Rowley mandate: is individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits?

Was the proposed IEP reasonably calculated to enable x to receive
educational benefit as required under IDEA?

Exhibit 93 is the proposed IEP for x's sixth grade year. The Goals, Special Education, Related Services, and Supplementary Services, Program Modifications, Accommodations, Supplementary Aids for Students and Support for School Personnel and a Behavior Plan is set forth in Findings of Fact 138. The sixth grade IEP was an extension of the fifth grade IEP.

Compared to the IEP implemented during x's fifth grade school year (before the change order removing x from Social Studies and English), the IEP proposed on May 7, 2009 included an increase in indirect Case Management services of 30 minutes per day, a decrease in indirect services from the Occupational Therapist from 30 minutes per month to 30 minutes per quarter, a decrease of 30 minutes per month of indirect service from the Autism Consultant, elimination of indirect consultant services from the resource teacher of 20 minutes one time per week and a change in para support from an accommodation (in the regular education setting/when not being served by a direct service provider) to 90 minutes per day in the regular education setting. In addition, the draft IEP includes a behavior intervention plan to address inappropriate protesting and off-task behavior.

Mrs. testified that in May 2009 a progress report was sent home to x's parents. The progress report stated that x was consistently meeting goals 1, 2, 3 and 6 and he made progress on goals 4 and 5. x earned the grades on his report card for the 2008-2009 school year. Mrs.

the
further testified that x's grade card for his fifth grade school year is indicative of a student who benefitted from his educational program. Mrs. grades reflect that x received A's in Reading and Social Studies and a B in math for the last three quarters of x's 2008-2009 school year. Ms. also testified that she believed that x benefitted from his

fifth grade IEPi

Mrs. . testified that a student's MAP (Measures of Academic Progress) scores is one of the indicators that the School District looks at to determine whether a student is learning. x improved his MAP scores in math and Reading over the course of his fourth and fifth grade school years. Mrs. further testified that another indicator that the School District relies on to determine whether students are learning is the Kansas State Assessments. In fifth grade, x met the Kansas Department of Education's standards in math and exceeded the Kansas Department of Education's standards in Reading.

Mrs. , a teacher with 32 years of experience in the education field, testified that the School District could have implemented the IEP the team had developed for his sixth grade school year. Ms. a Special Education Coordinator with 36 years of experience in the education field also testified that the School District could have implemented that IEP and that x would have benefited from that IEP.

The Hearing Officer finds that the IEP dated March 27, 2009 with amendments at subsequent IEP meetings, is reasonably calculated to provide x a FAPE. It incorporated the appropriate annual goals, modifications and accommodations and an appropriate amount of special education services to allow x to make progress on those goals. The proposed IEP would provide x the basic floor of opportunity mandated by IDEA to receive educational benefit.

2. Whether the School District satisfied its obligation under IDEA to provide a free and appropriate education (FAPE) in the least restrictive environment (LIU); FAPE is broadly defined in the 2006 IDEA Part B regulations as 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 an appropriate preschool, elementary school, or secondary school education in the state involved; and
- (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of 34 CFR 300.320 through 300.324.

The contours of an appropriate education must be decided on a case-by-case basis, in light of an individualized consideration of the unique needs of each eligible student. Board of Education of the Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176 (1982). A free appropriate public education must be available to all children residing in a state between the ages of 3 and 21 inclusive, including children with disabilities who have been suspended or expelled from school, as provided for in 34 CFR 300.530(d). 34 CFR 300.101(a).

As pointed out in the Coult established the following two-part analysis that courts should use to decide appropriateness:

1. Has the state complied with the procedures set forth in the IDEA?
2. Is the IEP developed through the IDEA's procedures reasonably calculated to enable the child to receive educational benefits?

If this two-part analysis is satisfied, the High Court concluded that the state has complied with the obligation imposed by Congress, and the courts can require no more.

The first three points of the regulation are not in dispute. The fourth provision is in issue. As found in the prior issue, x was provided an individualized education program that was reasonably calculated to provide him with educational benefit. Additionally, when the school district was allowed to provide him with services, it was demonstrated that he did receive educational benefit.

After review of the law and facts of this case, the Hearing Officer finds that the school district did provide x with the free and appropriate public education as provided by law.

resource room (which was characterized as a "storage closet" by the parents). The District requested the parents sign a "change order" to formalize the change from the regular education classrooms to the resource room to be taught by a paraprofessional. The parents sent a letter (Exhibit 67) on December 18th confirming their demands and that the teachers have no contact with x during the remainder of the school year. The parents understood the implications of the placement wherein the December letter states that "Clearly, this arrangement is not an acceptable long-term solution as x's IEP has him placed in the general education setting his entire day except for math (which was also taught in the resource room)." The School District offered to let x return to his classrooms but the parents opted to have him remain with the paraprofessional in the resource room,

The Hearing Officer finds that the provision of IDEA requiring x be educated in the LRE is not violated because the School District was acquiescing to the request of the parents and not making a unilateral determination to place him away from the general education setting.

3. Whether the parents of WA are entitled to reimbursement of educational expenses, including costs of counseling and other services and accommodations not provided in his present placement at Virtual School.

The parents of x withdrew him from the School District on May 20, 2009. They had enrolled him in the Virtual School and did not wish to have him return to the School District. The District offered an IEP which the educational professionals testified would provide x with an educational benefit. The parents did not want to have x remain . . . even though his sixth grade classes would be in another part of the building well away from his fifth grade teachers. The parents have determined that they could not trust the educational professionals at , or any other "brick and mortar" building, despite x's first through fourth grade of believing the school was a "very welcoming environment", and that he continuously made progress.

The Hearing Officer finds that pursuant to 34 CFR 300.517, the Hearing Officer has discretion to allow the reimbursement of fees and expenses to the prevailing party. The Hearing Officer finds that the School District is the prevailing party and denies the parents request for expenses.

IT IS OS ORDERED this 23rd day of January, 2012.

Original signed by James G. Beasley

James G. Beasley

Special Education Hearing Officer

CERTIFICATE OF SERVICE

The foregoing Due Process Decision was electronically sent this 23rd day of January, 2012 to B. and L., parents of x, Tammy Somogye, Attorney for USD # _____ and Mr. Mark ward, Kansas State Department of Education.

s/ James G. Beasley _____

Special Education Hearing Officer