

BEFORE THE SPECIAL EDUCATION DUE PROCESS HEARING OFFICER

IN THE MATTER OF THE DUE)
PROCESS HEARING FOR)
AND U.S.D. # AND)
SPECIAL EDUCATION)
)
)
)

Case: 15,,DP- .

NOTICE OF HEARING OFFICER'S DECISION

NOW on this 18th day of September, 2015, this matter comes before the Special Education Due Process Hearing Officer for decision. The term "Districts" will be used to include U.S.D. and Special Education Cooperative.

1. PROCEDURAL BACKGROUND:

The following represent significant dates in the procedural history of this matter:

- (1) November 19, 2014..... Complaint by Parents requesting Special Education Due Process Hearing.
- (2) December 5,2014.....Parents file formal State Complaint.
- (3) December 15, 2014 ...Parents file Second Complaint and Request for Due Process Hearing; Kansas Department of Education provide Notice that remaining issues filed on the formal state Complaint would be determined by the Due Process Hearing Officer.
- (4) January 6, 2015.....Due Process Hearing Officer issues Pre-Hearing Conference Scheduling Order.
- (5) January 20, 2015 Due Process Hearing Officer issues Interim Order
- (6) February 5, 2015 Due Process Hearing Officer issues Second Pre-Hearing Conference Schedule Order
- (7) February 19, 2015.....Due Process Hearing Officer issues Memorandum and Order No. 2; Due Process Hearing Officer issues Third Pre-Hearing Conference Scheduling Order
- (8) February 27, 2015.....Due Process Hearing Officer issues Fourth Pre-Hearing Conference Scheduling Order

- (5) Did the Districts complete the FBA in a timely manner? (Tr., Vol. 1 at 104, ln. 12-22.)
- (6) Did the Districts incorporate the FBA recommendations in the IEP?
- (7) Did the Districts consider doctor letters and other handouts submitted to the IEP team by the Parents?
- (8) Did the Districts deny FAPE by requiring a full-time placement in the August 2013 IEP?
- (9) Did the Districts deny , a FAPE by denying Parents' request for summer school?
- (10) Did the Districts fail to conduct a speech screening and, if so, did it deny . a FAPE? (Tr., Vol. 1 at 17, ln. 4-13 (amending this issue).
- (11) Was an IEP meeting conducted on February 13, 2014, and, if so, was proper notice provided?
- (12) Did the Districts deny FAPE by not completing an IEP earlier?

111. TIMELINE SUMMARY:

The following time table provides a summary of relevant dates as further discussed in the findings of fact:

- (1) January 10, 2013--Parents' letter to the Districts requesting I's return to public school and requesting an evaluation.
- (2) February 5, 2013--Districts received consent from 's mother for release of information.
- (3) March 1, 2013--Student Improvement Team meeting with parents to discuss relevant background information about .
- (4) March 12, 2013--Districts receives information from Dr. .
- (5) March 13, 2013--Districts receives information from the Center for Counseling and Consultation.
- (6) April 10, 2013--Student Improvement Team meeting with Parents reviewing evaluation by K.U. Medical Center; Parents provide consent for evaluation; Memorandum of Understanding discussed.
- (7) May 15, 2013--Districts meeting with Parents. I. was determined to be eligible for special education under category of other health impaired ("OHI"); Parents signed consent for to be placed in special education.

- (8) August 14 or 15, 2013--Informal meeting with Parents and District staff.
- (9) August 21, 2013--IEP meeting (. provided full day of services).
- (10) September 10, 2013-- "Threat Assessment."
- (11) September 18, 2013--IEP meeting; Parents request a shortened day; request for Functional Behavior Assessment ("FBA"); granted.
- (12) October 19-25, 2013-- hospitalized at WC Wheatland Hospital.
- (13) October 29, 2013--Parents request speech screening.
- (14) November 13, 2013--IEP meeting (. would attend school and receive special education services for three hours per day).
- (15) November 26, 2013--IEP meeting (FBA completed).
- (16) December 12, 2013--IEP meeting (Edgenuity online program instituted).
- (17) February 13, 2014--Informal meeting with 's therapist and District staff.
- (18) March 7, 2014--IEP Amendment f to attend school for 30 minutes per day at the Special Education office in .
- (19) April 3, 2014--IEP meeting (. will attend for 45 minutes after school has been dismissed to work on math).
- (20) April 14, 2014--IEP amendment (increasing time in service to 105 minutes in Special Education).
- (21) April 28, 2014--IEP amendment (increasing 's time in service to 150 minutes in Special Education).
- (22) May 1, 2014--IEP amendment (decreasing the time in service to 105 minutes in special education).
- (23) May 22, 2014--IEP meeting ('s time in service increased to 120 minutes in Special Education).

IV.FINDINGS OF FACT:

ELEMENTARY PRINCIPAL

1. Mr. is the elementary principal and assistant principal for the middle school for U.S.D. . . (Tr., vol. 1 at 27, ln. 12-13; Tr., vol. 1 at 41, ln. 7-13.) He has held those positions for the past fourteen years. (Tr., Vol. 1 at 41, ln. 14-18.) He has a total of twenty years of experience in education. (Tr., Vol 1 at 41, ln. 19-25.) He holds a bachelor's degree in elementary education from Bethany College and a master's degree from Pittsburg State University. (Tr., Vol. 1 at 42, ln. 1-5.) Mr. attended an

IEP meeting held for . on September 18, 2013, because he had been t's previous principal for two years. (Dist. Ex. 15; Tr., Vol. 1 at 32, ln. 13-16; Tr. Vol. 1 at 33, ln. 3-6.) He was there in case there were any questions he could answer to help . transition to middle school. (Tr., Vol. 1 at 38, ln. 7-9.)

2. Mr. testified that . had a few problems during his fifth and sixth grade years when struggled like he had in eighth grade. (Tr., Vol. 1 at 38, ln. 14-18.) Specifically,

Mr. stated:

Q: Yes. And before middle school, did (k.) have difficulties?

A: I'm glad you brought that up. He-his fifth grade year, he did. There was a few times or a couple days at the very beginning of school he struggled, kind of like he did at the beginning of his eighth grade year. It usually took about two or three days, and then once that happened, he had a great two years. He laughed, joked, had fun with other kids, made friends easily.

So that's why I was kind of surprised, you know, you know, and I was called by mother to say-to see if, if I could help in anyway, because I

know you wanted him in school and you felt like it was important, and that was the mother.

I'm sure you did as well, and Mr. had called me and said what could we do to make that transition better; so that's why I was asked to be at the meeting, to see if I could give any input if we could get, how we could make him more successful.

(Tr., Vol. 1 at 38, ln. 12-39, ln. 6.)

3. Mr. also attended a meeting with (mother), ., and prior to the start of the 2013-2014 school year, around the date of August 14, 2013. (Tr., Vol. 5 at 1028, ln. 23-1030, ln. 16.) During that meeting, they discussed 's school schedule and his grade level placement. (Tr., Vol. 5 at 1030, ln. 17-21.) Specifically, Mr. stated his recollection of the meeting was as follows:

I was in there with-Mr. , _i had asked me to come in and be with Mrs. during—is it—it's Mrs. correct? Mrs. : during the meeting, and we had discussed with her about since he had not been in the public schools his seventh grade year, how can we get some of those classes made up.

We discussed starting him as an eighth-grader, taking the core classes in the morning and then in the afternoon, up in the computer room, taking some of the seventh grade year classes, core classes, and if he had finished those afternoon classes, he would be able to be enrolled in the elective courses with his peers in the afternoon. So if it took him a week, two weeks, six weeks, he would be able to get him enrolled in those elective [eighth grade] classes that everybody else had in the afternoon. (Tr., Vol. 5 at 1030, ln. 23-1031, ln. 16.)

4. Mr. did not recall offering a copy of seventh grade records to 1 , middle school principal, during that meeting. (Tr., Vol. 5 at 1030, ln. 20-23.)
5. Mr. testified about 's demeanor during that meeting and Mr. 's treatment of . and his mother as follows:

A: At the beginning he came in, I mean, you know, kind of with his head down like this. I don't think he wanted to be there. The only time that he-I mean, he-when he, I think-when he had heard that we were able to start him out as an eighth-grader and maybe take some elective courses, I think when he got to the point where he was able to maybe finish his afternoon classes up in the special ed room, I believe, or resource room, he would-he was kind of-he changed his mood into a better mood,

in 1976 and obtained a school psychology degree from Wichita State University. In 2008, he was trained to become an autism specialist through the Kansas Center for Autism Research and Training in Kansas City. (Tr., Vol. 1 at 46, ln. 11-47, ln. 1.)

7. Mr. Leak completed a functional behavior assessment ("FBA") and a Student Crisis Plan for [redacted]. (Tr., Vol.1 at 51, ln. 4-11; Id at 52, ln. 10-11; Dist. Ex. 31.) Mr. Leak summarized the concerns he had during the FBA as follows:

Okay. You know, first, in looking at the Affective Regulation/Emotional Reactivity, you know, my primary concern in this situation was that [redacted] had just been released from a psychiatric unit for suicidal ideation. I believe he was still making statements such as, "I want to die," at that time that saw him.

He went through a medication change at the hospital, and then as soon as he was discharged, Dr. [redacted] recommended a cleanup period of tapered withdrawal from Lexapro and then a cleanup period of 10 days and then he starts the new medication. Dr. [redacted] had reported to his family that this would be a very difficult transition so, you know, my first recommendation was that great caution needs to be taken regarding a plan for [redacted], and we were still in a period of medical psychiatric transition so, I mean, that was the first area of concern.

The second area was that [redacted] seems to make many incorrect assumptions about how people will interact with him. He does not check perception and then he perseverates on events, and so I did recommend a goal for working on perception checking, and I was really very impressed with his private therapist, Dr. [redacted]. She was going to provide systematic desensitization for [redacted]'s anxiety about approaching school.

In my report there at Hypothesis Number 4, I was concerned about the discussion that was going on at home about school. There was really some very stressful discussions at home about school in front of [redacted L], and I really wanted to encourage the work of Dr. [redacted] about the environment at home being more positive.

Hypothesis-well, under Family Issues, I felt that there was a serious problem of reinforce control. There are many very highly motivating activities and, you know, opportunities for rewards at home; but it seemed like [redacted J]-[redacted] could get whatever he wanted at home and it didn't seem like there was, you know, a contingency on getting work done to obtain rewards.

You know, I'm looking at my notes here under Reinforcer Control and, you know, there was one week that [] attended school for four hours, or in a two-week, but he went over the weekend and got a new AirSoft gun, and even though he was ill, went outside in the freezing weather with an AirSoft gun. So, you know, one of my concerns was that, you know, the family work with Dr. . t was really critical, because it seemed like there was a high level of manipulation in [.I being able to get what he wanted.

In my concerns over reinforce control, the final paragraph there on the next page, you know, I did caution about the extinction burst, which is common in trying to change behaviors. If you have powerful behaviors in place and you try to change the reinforcers, things are going to get worse before they get better; but it did seem positive that there was work underway with Dr.

and she was going to work to help establish rewards and behavior plans at home.

Now, one of the-one of the aspects of the evaluation that was deeply puzzling for me, [] had exemplary ratings in State assessments in third grade reading, fourth grade reading. He was at the 75th percentile in fourth grade math, exceeds the standards in fourth grade science, a straight A student in fifth and sixth grades, and yet there was-there were really many questions about, you know, does [] have learning disabilities.

I, I did discuss, you know, with the family that a learning disability is a developmental disability. It's not something that you just acquire, you know, following a period of being an exemplary student, which I think really focused a lot of the concerns in this on, you know, the mental health issues that were occurring in that period of time.

One of the questions was about, you know, possible need for learning disabilities and dyslexia. I had [read out of a, a book at home and he was reading 127 words a minute correctly, so I really didn't see any indication of a learning disability or dyslexia in that history.

I also did the Beery-Buktenica Developmental Test of Visual Motor Integration. [was somewhat weak in this area, but he was in the low average range of the 23rd percentile. He was not in a disability range.

There was a question of [] J qualifying for occupational therapy. The teachers were not complaining to me about being unable to read his, his work, and I did obtain some samples of his work. His physical writing was awkward but legible. The teachers did not seem to count spelling against him, but I think [t] was frustrated and embarrassed over his poor spelling. He really has some advanced thinking skills but he could not spell and write at the level of his verbal ability, so I did have a recommendation for training to use voice technology on a computer or a tablet. I thought that would help him get his advanced thinking skills on paper.

We were discussing the use of an online program for []'s academic instruction. I'm looking through pages here, and there's also a recommendation for school counseling because of the repeated number of times [] was making statements, '(I want to die..

There's a significant list of positive behavioral supports, many of which were in place before I got there. I added some additional items from interviews with [] on some of the things that he thought would be reinforcing. I really felt it was important for I to learn the skill of

perception checking, because he seems to get upset over misperceptions quite easily. (Tr., Vol. 1 at 52, ln. 25-55, ln. 2; Id. at 56, ln. 12-59, ln. 1.)

8. had informed Mr. that his biggest concern was approaching school and just getting through the doors. (Tr., Vol. 1 at 59, ln. 6-14.) The Districts had addressed this issue even before Mr. conducted the FBA by having the counselor greet , at the door to the school and trying to help him get into the school. (Tr., Vol. 1 at 76, ln. 10-22.) In fact, Mr.

. testified that the school had "an extensive list of behavioral supports which had been offered" and "extensive records" documenting those supports which school staff had shared with him. (Tr., Vol. 1 at 85, ln. 4-11.) However, school staff cannot provide the behavioral supports if . does not come to school. (Tr., Vol. 1 at 85, ln. 17-23.)

9. Mr. testified that the recommendations from his FBA were included in the IEP developed for in December 2013. (Tr., vol. 1 at 59, ln. 15-60, ln. 11; Dist. Ex. 37.) Specifically, he noted that it included a program modification for voice-to-text, a goal on perception checking, and a plan for a gradual return to school. (Id.; Tr., Vol. 1 at 69, ln. 19-23.) He noted that ; would be encouraged to talk with school staff and counselors regarding his frustration and distress as part of the program modifications and accommodations in the IEP. (Tr., Vol. 1 at 71, ln. 3-13.) Mr. agreed that counseling services by the regular education counselor could be provided regardless of whether they were specifically listed on the IEP and, because the regular education counselor was not special education staff, counseling services from him likely would not be included in the IEP.

(Tr., vol. 1 at 76, ln. 23-77, ln. 3.) In addition, Mr. testified that the behavior intervention plan in the December 2013 IEP was almost exactly the same as the one he had written as part of the FBA. (Tr., Vol. 1 at 79, ln. 6-80, ln. 8.)

10. Mr. 's recommendation was not intended to call for a set time with a particular person every day to provide counseling services, but rather that someone needed to be checking in with to see if he was still suicidal. It did not have to be the same person every day

because some days he would respond better to different people. (Tr., Vol. 1 at 86, ln. 13-87,

11. Mr. never heard any request from the parents for homebound services and never saw any medical documentation indicating that it would be medically necessary for . to be placed on homebound service. (Tr., Vol. 1 at 91, ln. 5-92, ln. 20.) Although the Districts could have proposed homebound services, they could not have implemented such services without parental consent. (Tr., Vol. 1 at 94, ln. 15-95, ln. 2.) Typically, school districts require medical documentation before implementing homebound services because there must be a reason for placing the student in such a restrictive setting. (Tr., Vol. 1 at 97, ln. 7Mr. testified that it was his understanding that the "least restrictive environment" requirement meant that the school Districts had to try less restrictive alternatives before making the environment more restrictive and that this should be done in gradual steps. (Tr., vol. 1 at 97, ln. 14-98, ln. 12.)

c. , DIRECTOR OF SPECIAL EDUCATION

12. Ms. is the Director of Special Education for the Cooperative and has held that position for ten years. (Tr., Vol. 1 at 105, ln. 10-17.) Ms. has a Bachelor's degree in Psychology from the University of Kansas, a Bachelor's degree in Human Growth and Development from the University of Kansas, a Master's degree in Psychology from Fort Hays State University, and an Education Specialist Degree in school psychology from Fort Hays State University. She also has endorsements in school psychology, grades 7-12 building leadership, Districts leadership, school leadership, and director of special education. (Tr., Vol. 1 at 105, ln. 20-106, ln. 5.)

13. The parents first submitted a letter to the Districts on January 10, 2013, in which they discussed .'s struggles in attending school, their desire for him to return to the public schools the next school year, and requesting an evaluation of ____ (Tr., Vol. 1 at 198, ln. 7-17; Dist. Ex. 1.) This letter indicated that had been diagnosed with Asperger's syndrome, dyslexia, anxiety and depression. (Dist. Ex. 1; Tr., Vol. 1 at ln. 18-23.) With respect to dyslexia, federal special education regulations require the Districts to go through the response to intervention process to provide interventions and see how the student responds before evaluating for special education. The regulations also require the inclusion of classroom-based observations as part of the evaluation process. (Tr.,

Vol. 1 at 198, ln. 24-199, ln. 22.) After receiving the parents' letter, Ms. talked with the parents about the request, and the parents indicated that they wanted to see if would qualify for special education so that he could return to the public school in the fall. (Tr., Vol. 1 at 199, ln. 23-200, ln. 6.)

14. At the time that she received the parents' letter, was being home-schooled by his parents. (Tr., Vol. 1 at 200, ln. 7-9.) Ms. testified that the law does not require the public school to provide special education services to a student being home-schooled, but does require the school to evaluate home-schooled students for eligibility as part of the district's child find obligation under federal law. (Tr., Vol. 1 at 200, ln. 10-18.)
15. The districts received consent from •s mother for release of information from I.H.'s doctors and service providers on February 5, 2013. (Dist. Ex. 2.)
16. Ms. attended the Student Improvement Team meeting held with the parents on March 1, 2013, to discuss issues related to getting back into the school setting. (Tr., Vol. 1 at 106, ln. 21-108, ln. 3; Dist. Ex. 6.) At that point in time, the districts were looking at providing interventions prior to determining whether needed to be evaluated for special education. However, those supports would need to be provided in the educational setting. (Tr., Vol. 1 at 109, ln. 10-21.)
17. During the meeting held on March 1, the parents provided background information about to Districts' staff members. (Dist. Ex. 3; Dist. Ex. 6; Tr., Vol. 1 at 201, ln. 7-202, ln. 2; [d. at 203, ln. 2-12.) However, the districts had not yet received the requested information from .'s doctors. That information was not received until March 12 from Dr. and March 13 from The Center for Counseling & Consultation. (Dist. Ex. 4; Tr., Vol. 1 at 202, ln. 3-203, ln. 1.)

18. Although the parents claim that the school did not consider medical information at a meeting held with the parents on April 10, 2013, Ms. testified that the districts did consider the information provided by the parents and that it was used to discuss options and how they could work with through interventions. (Tr., Vol. 1 at 117, ln. 22-119, ln. 19. See also Parent Ex. 22; Dist. Ex. 9.)
19. One of the interventions tried by the school during March and April of 2013 was to have Mrs. one of 's previous teachers, try to reconnect with him, welcome him to the school, make him comfortable with coming back to school, and convince him to come up to the school for short periods of time to visit her. (Tr., Vol. 1 at 125, ln. 13—126, ln. 4.) This was not successful. (Id at 126, ln. 5-10.) In fact, Ms. sent a letter to the parents on March 18, 2013, stating that the teacher who had been assigned to visit . and invite him to work with her at school had stopped by the house and reported that . was open and excited about working with her at school. However, he did not come to school the following day and the principal reported that the parents had contacted the doctor's office. Staff at the doctor's office had informed the parents that it would not be a good idea to proceed with any intervention until .'s medication had reached a therapeutic level. In that letter, Ms. informed the parents that they could wait to implement the interventions or proceed with the evaluation. (Dist. Ex. 5; Tr., Vol. 1 at 204, ln. 4-25.) Ms. could not recall whether she received a response to this letter from the parents. (Tr., Vol. 1 at 205, ln. 1-6.)
20. Another meeting was held with the parents on April 10, 2013. At that meeting, the parents provided information from an evaluation by KU Med Center and the team discussed options. (Tr., Vol. 1 at 205, ln. 7-19; Dist. Ex. 9.) During that meeting, the team referred for a special education evaluation and the parents were presented the notice and consent for the evaluation. (Tr., Vol. 1 at 205, ln. 20-206, ln. 17; Dist* Ex. 7-8.) The parents did not give consent for the evaluation until April 13, 2013. (Tr., Vol. 1 at 206, ln. 18-22; Dist. Ex. 8.) Once the districts receive consent to evaluate for special education,

they have 60 school days in which to complete the evaluation. (Tr., Vol. 1 at 206, ln. 23-25.)

21. At the time of the meeting on April 10, 2013, was not a special education student, but rather was a regular education student. Regular education students are expected to attend full days of school. (Tr., Vol. 1 at 207, ln. 1-11.) Although the parents wanted , to only be required to attend an hour per day, the districts suggested half days in an attempt to get him into school as much as possible to try interventions with him. (Tr., Vol. 1 at 127, ln. 8-128, ln. 8; Dist. Ex. 9.)
22. During the meeting on April 10, 2013, Mr. , the principal, had presented a memorandum of understanding to the parents as an attempt to clarify what would be provided for during the evaluation period, but it became apparent that it was not going to facilitate the discussion and all further discussion of it was just dropped. The document was never signed by the parties. (Tr., Vol. 1 at 207, ln. 12-209, ln. 13; Dist. Ex. 67.)
23. When the parents brought information to the meetings, it was considered by the districts.
Staff members reviewed the information and there was discussion about it in the meetings. However, a team can consider the information provided by the parents even if they do not agree with the information. (Tr., Vol. 1 at 209, ln. 14-210, ln. 13.) In fact, the information from the KU Med Center, which was submitted during the April 10th meeting, was considered by the team and was included in the Social/Emotional section of the IEP written on August 21, 2013. (Tr., vol. 1 at 210, ln. 14-22; Dist. Ex. 13 at 7.)
24. Another meeting was held with the parents on May 15, 2013, at which time the parties reviewed the Evaluation/Eligibility Report. was determined to be eligible for special education under the category of other health impaired ("01-11"). The parents signed consent for him to be placed in special education the same day. (Tr., Vol. 1 at 210. ln. 23-211, ln. 25;

Dist. Ex. 10-12.) Although the Districts had a draft IEP that was discussed during the meeting on May 15th, they decided to wait to draft the IEP until August after they received parent input that the doctors were still making adjustments to _____'s medications. (Tr., Vol.

1 at 212, ln. 1-15.)

25. The parents had signed consent for the evaluation on April 10, 2013, and the evaluation was completed on May 15, 2013; therefore, the evaluation was completed well within the 60 school days required by special education law. (Tr., Vol. 1 at 212, ln. 16-213, ln. 2.)
26. At the time of the IEP meeting on May 15, 2013, _____ was still being homeschooled, and the Districts would not have been required to provide an IEP to a homeschooled student. (Tr., vol. 2 at 317, ln. 10-23; Dist. Ex. 66.)
27. Ms. summarized the timeline as follows: the parent request was received on January 1, 2013; the parents gave consent for release of information from _____'s medical providers on February 5, 2013; the school staff met with the parents on March 1 (at which time, they had not yet received responses from the medical providers); the school staff met with the parents again April 10, 2013, at which time the parents signed consent for evaluation; and the evaluation was completed on May 15, 2013. (Tr., Vol. 1 at 213, ln. 3-16; Dist. Ex. 4 (responses from providers); Tr., Vol. 1 at 202, ln. 3-203, ln. 1 (regarding dates received responses from providers); Dist. Ex. 12 (date of consent for eligibility determination).) Ms.

_____ testified that this delay did not cause a denial of FAPE for _____. Because he was homeschooled at the time these meetings were taking place, they were trying to implement interventions with him as required by law, and FAPE would not be a consideration until after the student was found eligible for special education services. (Tr., Vol. 1 at 213, ln. 17214, ln. 4.)

28. Ms. did hear the parents ask Mr. _____ at the end of the May 15th meeting whether summer school was available and heard Mr. _____ respond that they do not offer summer school at Middle School. The parents did not request Extended

School Year ("ESY") services for . . . Even if they had requested ESY, . . . would not have been eligible because they had not yet provided services to him and had no data regarding regression. (Tr., Vol. 1 at 214, ln. 5-215, ln. 3.)

29. The IEP developed by the team on August 21, 2013, provided a full day of services for , which consisted of attending his core 8th grade classes in the morning and allowing him to work on 7th grade curriculum on the computer in the afternoon in the resource room. They believed , needed to cover the 7th grade core content because he needed to fill in gaps in his content knowledge. (Tr., Vol. 1 at 216, ln. 20-217, ln. 17.) Although the parents complained that the full day of services set forth in the August 21st [EP denied f, a FAPE, they did give consent for the placement set forth in that [EP. (Tr., Vol. 1 at 218, ln. 5-18.)
30. Ms. testified that it was realistic to develop an IEP for a full day of service for in August 2013 because they had put many supports in place for him. (Tr., Vol. 1 at 128, ln. 14-129, ln. 7.) Specifically, Ms. testified as follows:

I do believe with the supports that were in place, that we had discussed at the IEP meeting with having staff ready for him as he came in the door, having the availability of the resource room to-for extensive periods of time during the. day if he needed that, if he left, he was given the ability if he was in a regular classroom and was struggling, was feeling uncomfortable, that he could leave right away and go to the resource room. He could go to the resource room and be there with very few students or be there, you know, by himself to just calm down and still access curriculum there and have supports of school staff there, so I do believe with the supports in place and the accommodations and everything that were allowed in the IEP, that it was a realistic goal for him.
(Tr., vol. 1 at 128, ln. 17-129, 7.)

31. Ms. further testified that the August 21, 2013, IEP did not deny .FAPE as alleged by the parents because:

. . . the least restrictive environment is providing that service to the student for the duration of the school day, if at all possible looking at the placement in the regular education classroom for that core content, and the services that were also put into place included modifications and supports that would allow him to go to a resource room if that is something that he required. If he got too anxious, leave a classroom, regular classroom. Have supports there for

him during that day, whether its para support or teacher support, a counselor; so all those supports in place I felt were appropriate and necessary and met the requirements for FAPE.

(Tr., Vol. 1 at 219, ln. 5-18.)

32. Ms. testified that the least restrictive environment is "looking at and providing that service in the closest approximation to the general education setting as possible that's going to meet the student's needs, and with the least amount of supports possible to meet his needs." (Tr., Vol. I at 220, ln. 8-13.) The determination of the least restrictive environment for a student is a team decision "and looking at how a student is functioning within the current services or current environment and location of services, and then going from there." (Id at 221, ln. 9-14.)
33. In August 2013, the school staff had not seen much of the previous school year. Ms.

testified that she believed . could be successful with the services and supports provided for him in the August 21, 2013, IEP. (Tr., Vol. 1 at 221, ln. 19-222, ln. 4.) When considering the LIRE for a special education student, they are required to start with the least restrictive environment and move towards the more restrictive environment. (Tr., Vol. 2 at 320, ln. 21-321, ln. 7.)

34. The next IEP meeting was held on September 18, 2013. The parents submitted documentation of their concerns, which were considered by the team, as reflected in the staffing notes. (Tr., Vol. 1 at 222, ln. 11-224, ln. 8; Dist. Ex. 18.) The staffing notes also indicate that the parents requested a shortened day, and the teachers discussed how was doing in their classrooms. While the parents have input into IEP team decisions, the parents do not control the outcome. If the teachers on the team did not see a need for a shortened day, there would not have been consensus to make that change. Nonetheless, the districts did consider the parent request for a shortened day. (Tr., Vol. 1 at 224, ln. 9-225, ln. 8.)
35. During the September 18th meeting, the parents also requested a functional behavior assessment ("FBA"). The Districts granted that request. (Tr., Vol. 1 at 225, ln. 9-16.) TASN

was contacted regarding the request for a FBA on September 25, and the required paperwork was submitted to TASN on October 2. (Id at 225, ln. 17-227, ln. 1.) TASN came out to the Districts to consult on October 15, 2013, but . was not in school. They went ahead and met with the school staff members and •s mother. (Tr., Vol.1 at 227, ln. 2-20;

Dist. Ex. 61.) Specifically, TASN noted that the school had tried all of the following accommodations:

Allowing one on one instruction; allowing [.] to complete his seventh grade coursework online, while attending eighth grade level classes with his peers; take tests in a separate setting to reduce anxiety; be given extended time to complete assignments; having someone meet him immediately upon arrival to school; allowing mental health professionals Eo assist [at school; allowed to go to a the [sic] special education setting or location of choice to decrease his anxiety with a special education staff member throughout the day; return to general education setting was dependent upon [J P's readiness to join his peers. (Dist. Ex. 61 at 1-2.)

Due to the fact that they were unable to observe , the TASN personnel were unable to provide any additional suggestions for the school. However, TASN did suggest contacting Denny Leak for the FBA. (Dist, Ex. 61 at 2.) Ultimately, . was hospitalized at WC

Wheatland Hospital, which delayed the start of the FBA until after the IEP meeting held on October 29, 2013. (Tr., Vol. 1 at 228, ln. 17-229, ln. 9.) Furthermore, the parents did not sign consent for the FBA until November 11, 2013. (Tr., Vol. 2 at 237, ln. 12-238, ln. 1; Dist. Ex. 26.)

36. During the IEP meeting held on October 29, 2013, the parents requested a speech screening.

(Dist. Ex. 23 at 5.) When asked if a speech screening had ever been done, Ms.:

testified that

The speech pathologist was consulted and we had discussed the-a screener, a possible screener for social communication; and in these notes, we also discussed, as it talked about, qualifying for speech services in the meeting. I had stated that students qualify for speech services under four main areas, four areas, and those areas have to be significantly delayed in order to qualify for a service of speech and

language area, and that his scores would not demonstrate even a need for that. However, we would check with a speech language pathologist because the concern seemed to be more about social communication.

(Tr., Vol. 1 at 173, ln. 20-174, ln. 8.)

Ms. asked a speech language pathologist to look for a social language screener, and she did not find one. (Tr., Vol. 1 at 177, ln. 7-178, ln. 18; Dist. Ex. 79 and 80.) While they did not look specifically for an autism screening tool, Ms. noted that both Denny Leak and Dr. • both of whom work with autistic individuals, indicated that ___ has good communication skills. (Tr., Vol. 1 at 178, ln. 23-180, ln. 11.)

37. A need for speech services would be considered a developmental delay and would manifest much earlier than middle school, barring some traumatic event or medical condition. (Tr., Vol. 1 at 230, ln. 7-18.) Based upon her knowledge of s, Ms. testified that he would not qualify for speech services because:

[t]he areas that speech language pathologists determine students eligible in cover four areas of voice, fluency, articulation and language. There are several indicators from teacher observation and input from his special education teacher, previous evaluation measures of his verbal abilities, information from other professionals and doctors who have evaluated him in his ability to express himself verbally, communicate and make himself understood to others, and those were all within the average to high average and superior ranges.

(Tr., Vol. 1 at 230, ln. 19-231, ln. 8.)

Furthermore, Ms. testified that ___ had no need for speech services because there was no impact on his education, which is another factor to be considered in determining whether a student is eligible for special education services, (Tr., Vol. 1 at 231, ln. 9-15.) As a result, Ms. testified that ___ was not denied a FAPE because he did not receive a speech screening. (Tr., Vol. 1 at 231, ln. 16-19.) Finally, Ms. testified that the team did consider the information presented by the parents at the October 29, 2013, IEP meeting.

Cid. at 231, ln. 20-22.)

38. Due to ___'s hospitalization at KVC Wheatland, the team agreed to an IEP amendment on November 13, 2013, which provided that . would attend school and receive special education services for three hours per day. The parents signed consent for the IEP amendment the same date. (Tr., Vol. 2 at 238, ln. 2-22; Dist. Ex. 27-28.)
39. On November 14, 2013, Denny Leak sent an e-mail to ___ (school psychologist),

, and indicating that he had learned the doctors were again adjusting 's medications. (Dist. Ex. 82.) Mr. Leak stated that . was "showing very unstable emotions with broad mood swings and severe depression." (Dist. Ex. 82; Tr., Vol. 2 at 244, ln. 11-13.) He further stated that "[t]here is a serious level of brain chemistry being altered in the medical process right now." (Dist. Ex. 82; Tr., Vol. 2 at 244, ln. 21-23.)

Mr. Leak indicated this could "be quite a roller coaster as they decrease, discontinue, and initiate new meds." (Dist. Ex. 82; Tr., Vol. 2 at 245, ln. 9-10.)

40. On November 21, 2013, received another e-mail from Denny Leak in which he discussed completion of his interviews with school staff and concerns with how , twisted information he was sharing with his therapist. (Dist. Ex. 83.) Specifically, Mr. Leak

stated that:

[.] twists and turns things so rapidly. Two possible hypotheses: He is deliberately manipulating everyone to his game. Two, he is really in a serious state of mental illness, which includes delusional thinking and very poor perception of reality. An example is that he told her yesterday that no one at school seems to know how to help him monitor his progress and give him feedback on Edgenuity. False. He was at school with me on the 15th and he and Mrs. opened the Edgenuity program, looked at classes. His grades are posted on each page. He navigated between classes and could tell the difference between completed assignments and assignments that were not completed. He had no questions that were unanswered. The program was working just fine. Yet, he told Dr. 1 that the program did not work well, he had no feedback, and no one seemed able to monitor progress for him. (Dist. Ex. 83; Tr., Vol. 2 at 246, ln. 8-247, ln. 8.)

41. The FBA for , was completed in an IEP meeting held November 26, 2013. (Tr., Vol. 2 at 240, ln. 17-19.) The parents signed notice and consent for the conclusion of the FBA the same date. (Id at 240, ln. 25-241, ln. 10.)
42. On December 12, 2013, another IEP meeting was held to discuss potential changes to the

IEP as a result of the FBA and discussed using an online program called Edgenuity for his academics. (Tr., Vol. 2 at 242, ln. 4-16.) Although the parents allege that the school did not include the recommendations of the FBA in the December 12th IEP, Ms. pointed out portions of the [EP which came from the FBA, including a portion of the Social/Emotional section which ran from the bottom of page 8 to the bottom of page 9; goal 4 regarding perception checking came from the FBA; the Program Modifications and Accommodation section included access to the counselor and other school staff whenever he became frustrated and the use of voice-to-text technology; the behavior intervention plan was almost exactly the same as the one in the FBA; the attached crisis plan was written by Denny Leak as part of the FBA; and goal 1 addressed Denny Leak's third recommendation to make him more comfortable at school. (Tr., Vol. 2 at 248, ln. 13-251, ln. 22; Id at 254, ln. 21-255, ln. 17.) In addition, this IEP moved into a more restrictive environment in an effort to accommodate his needs after returning from KVC Wheatland. (Tr., Vol. 2 at 285, ln. 4-286, ln. 12; Dist. Ex. 37.)

43. On March 7, 2014, the parties amended the to allow . to attend school for 30 minutes per day at the special education office in This change was made because the parents had indicated that they no longer wanted . to attend school in or return to that building and the Cooperative still had an obligation to provide special education services. (Tr., Vol. 2 at 255, ln. 18-256, ln. 19; Dist. Ex. 39.) The parents signed consent for this IEP amendment on March 7, 2014. (Tr., Vol. 2 at 256, ln. 20-257, ln. 4; Dist.

44. Another IEP meeting was held on April 3, 2014, to try to have . re-enter a school building for services at Middle School. . would attend for 45 minutes after school had been dismissed, so that no other students were present, and work on math. (Tr., Vol. 2 at 257, ln. 5-258, ln. 10; Dist. Ex. 41.) The parents signed consent for this IEP amendment on April 8, 2014. (Tr., vol. 2 at 258, ln. 11-23; Dist. Ex. 42.)

45. On April 14, 2014, another IEP amendment was done to increase 's time in service to 105 minutes in special education. The parents signed consent for this on April 14, 2014. (Tr., Vol. 2 at 259, ln. 4-21; Dist. Ex. 44.) Another IEP meeting was held on April 17, 2014, to discuss .'s AIMS web testing which would indicate his current grade level at the time of the testing and to consider .'s progress and consider adding a general education class. (Tr., vol. 2 at 260, ln. 9-262, ln. 14; Dist. Ex. 47.)
46. Another IEP amendment was done on April 28, 2014, to increase .'s time in service to 150 minutes. The parents signed consent for this amendment on April 28, 2014. (Tr., Vol. 2 at 264, ln. 1-265, ln. 2; Dist. Ex. 49-50.)
47. On May 1, 2014, another IEP amendment was made which decreased the time in service back down to 105 minutes. The school had tried to integrate . more into the regular education setting, hut it did not work well for him. The parents signed consent for this amendment on May 1, 2014. (Tr., vol. 2 at 265, ln. 3-266, ln. 3; Dist. Ex. 51-52.)
48. Another IEP meeting was held on May 22, 2014. As part of that IEP, the school offered . atherapeutic component which involved the use of equine therapy, direct social skills training; small group interaction, flexible schedule, steps/levels based on progress, life skills training, positive behavior support, reward cost behavior system, and sensory breaks. This particular program was based on the Boys Town model. Although this was made available to . as part of the IEP and continued to be available to him, the parents did not want him to participate in the therapeutic part of the program. (Tr., Vol. 2 at 266, ln. 11-268, ln. 8; Dist. Ex. 55.) Although this IEP increased .'s time in service to 120 minutes, it was not a change of more than 25% and did not require parental consent. (Tr., Vol. 2 at 269, ln. 4-270, ln. 7.)
49. Ms. testified that , . did receive FAPE for the school year, 2013-2014. Specifically,
- Ms. stated:
I believe he received FAPE according to what a free appropriate public education is provided for and that he continued to progress throughout

the year. At the end of the year, he progressed in being able to attend, and attend on a more regular basis.

Q: Was he able to progress enough that he moved from eighth grade to ninth grade?

A: Yes, and we documented through AIMSweb data his ability to progress in his academics and be prepared for that.

(Tr., Vol. 2 at 270, ln. 12-21.)

50. The AIMSweb data demonstrated that made progress and did so within a relatively short amount of time as he had only been working with Mrs. special education teacher at Middle School for about a month, All of the AIMSweb testing was administered with 8th grade norms. (Tr., Vol. 2 at 271, ln. 14-273, ln. 14.) Although the testing indicated a decrease in ___'s reading fluency, it also showed an increase in his reading comprehension. Reading had not been an issue for , previously. Ms. , agreed with Denny Leak's hypothesis that the difference in his reading testing was likely due to his emotional state. Learning disabilities are developmental disorders and would not suddenly appear in middle school. (Tr., Vol. 2 at 274, ln. 9-277, ln. 4.) Ms, later reiterated her opinion:

I would say that, much as Mr. Leak put in his report, that his skills and how he demonstrates his abilities is affected by his emotional state, and that there were areas that Mr. Leak assessed him on where he was in the average range, but he felt like he could actually be higher in some areas on-or lower in some areas where he thought he could be higher, and he noted that that was most likely due to his emotional state, not necessarily a deficit.

So knowing from the staff that had worked with him and their reports that I've heard, I would say that his skills did not regress and then all of a sudden pick back up and make huge gains in the matter of three weeks. I would say that his emotional state does and currently does affect his performance.

(Tr., vol. 2 at 297, ln. 18-298, ln. 8.)

51. Although the parents asserted that . had a learning disability in the 4th grade that they had addressed, Ms. testified that

A parent has a right to take their child for tutoring, for assistance, however and whenever they might feel like that student or the child needs that. That does not, however, make it an issue that requires assistance in the school setting; and over time, he has had scores that are very much in the average, above average ranges for his academics on multiple different tests, whether it's State Assessment Tests, grades in school, and so that just because a parent is taking their child to have tutoring or some other kind of assistance does not mean that the child is eligible or would be eligible for services, special education services, under the criteria of a specific learning disability. (Tr., vol. 2 at 300, ln. 1-14.)

52. Ms. [redacted] testified that the Districts never received a request from the parents or doctor's documentation for homebound services. If they had received such a request, they would have considered it. (Tr., Vol. 2 at 270, ln. 22-271, ln. 13.)

53. Although the parents claimed an IEP meeting took place without them on February 13, 2014, Ms. [redacted] stated that this was not accurate. Rather, on February 13, 2014, school staff met with Dr. [redacted]'s therapist] after she had contacted me and said that she wanted to just meet with the school staff only. I explained to her that we don't do that without parents, and she said the parents know and understand and they're okay meeting without-us meeting without them, and she felt like we just needed to maybe have a time to sit down and brainstorm and maybe try and come together on some things that she could help facilitate with the parents.

(Tr., Vol. 2 at 277, ln. 14-24.)

They did not send out an IEP meeting notice, nor did they discuss or make any revisions to the IEP during this meeting. The Districts had a release of information to talk with Dr. [redacted].

[redacted] and believed she just wanted to discuss [redacted], with them. (Tr., Vol. 2 at 278, ln. 1—279,

ln. 6.)

54. Ms. [redacted] stated that the following occurred in the meeting with Dr. [redacted].

Q: Do you recall specifically what Dr. [redacted] discussed with district staff that day?

A: She talked about how it was a struggle to get [redacted] back into the school setting as she was working with him and that they were really struggling at home between the parents and [redacted] and there was a lot of arguing going

on. There was-she expressed frustration with that. She, when she came to the school to meet with the school staff, she said she had just come from the home and it was not a good situation. She said that it, you know, it tends to get physical at times between [] and the parents and she was concerned about that, and that's most of her concerns were regarding, you know, how things were going in the home.

Q: Did she make any statements during that meeting about the possibility of a PRTF?

A: A psychiatric residential treatment facility?

Q: Yes.

A: She commented on that and as she was not sure what, what else she could do to help him to work through the situation, but she felt like that was not something that she wanted to-she wasn't sure whether she wanted to recommend it at that time or not.

Q: Is a psychiatric residential treatment facility an option that is available to school districts?

A: As a school district, you cannot place a student in a PRTF. School districts at times have to provide services to students when they are in those locations or have to contact those locations in order to help students transition from that location back into a school setting, but school districts cannot refer a student to attend a PRTF or be placed in a PRTF. That has to come through a therapist who makes that referral,

CT., vol. 2 at 279, ln. 7-280, ln. 7.)

55. During the discussion with Dr. on February 13, 2014, Dr. stated that she was concerned about , and how he was doing at home. Dr. also indicated that it was becoming a dangerous situation for This caused the school staff to have concerns about whether a report should be made to the Department of Children and Families ("DCF") because the school staff members are all mandated reporters. As a result of this conversation, Principal made a report to DCF. (Tr., Vol. 2 at 281, ln. 14—282, ln.

18.)

56. Dr. i was supposed to provide information regarding the systematic desensitization therapy forl As Ms. testified, there is a substantial difference between the medical model of services and the educational model of services. The educational model is

intended to provide services that will allow a student to make progress on their IEP goals, not to cure a student's mental illness. (Tr., Vol. 2 at 280, ln. 19—281, ln. 13. See also Tr., Vol.

1 at 156, ln. 9-158, ln. 21.)

57. Although the parents allege that the Districts should have followed the recommendation of Dr, Matthew Reese, licensed psychologist, regarding a shortened school day in April 2013, Ms. : testified that there was no indication that Dr. Reese was a K-12 educator, he had never observed . at school, and they had no indication that Dr. Reese had any understanding of the requirements for least restrictive environment. (Tr. Vol. 2 at 282, ln. 24-283, In, 19. See also Parent Ex. 19.) When school districts receive such notes from doctors, they are required to consider the information, but they are not required to follow every recommendation. School staff members rely upon their professional judgments as educators to make decisions regarding the LRE for a student because they are the ones working with the student in the educational environment and they see how well the student is able to complete academic tasks and interact within the educational environment. (Tr., vol. 2 at 283, ln. 20-284, ln. 14.)

PRINCIPAL

58. was the middle and high school principal for USD ; for four years. He has a bachelor's degree in music education and a master's degree in educational administration. (Tr., Vol. 2 at 326, ln. 4-15.) He is licensed for K-12 music and 1<-12 educational administration. (Tr., Vol. 2 at 395, ln. 21-23.)
59. Mr. first met . as a seventh grade student. He attended school for a little while and then went to home school. The Districts later heard from the parents that they wanted . to return to school for the fall of 2013, and they began discussing options for reintegration. . returned to school briefly in the spring of 2013 and then returned to

home school. . started back at school in in the fall of 2013. (Tr., Vol. 2 at 396, ln. 2-11.)

60. Mr. first met with the parents regarding . returning to school on March 1, 2013, but the parents did not want him to return to the school until the fall of 2013. Mr.

suggested having return to the school in small increments to let him get used to the environment and come back with success in the fall. (Tr., Vol. 2 at 396, ln. 13-397, ln.

20.) To that end, the school tried multiple interventions to try to get . to return to school. Specifically, Mr. testified:

We tried lots of things. We talked to him about giving him a map of the school if it made him feel more comfortable. We communicated with because we felt like she was a good go-between because she was teaching in our building, but she actually was his sixth grade teacher; so we thought that if we had her kind of get involved, make him feel comfortable that way. She even set up science experiments so that t.] could come up in the afternoon and just help set out like test tubes and things, just things that would make him feel comfortable and it was something that [.] enjoyed, science, so we thought that was a natural progression to help with that intervention.

(Tr., vol. 2 at 397, ln. 23-398, ln. 11.)

61. At the meeting on March 1, 2013, the parents provided background information regarding

., which was considered by the school staff. (Tr., Vol. 2 at 398, ln. 25-399, ln. 15; Dist. Ex.

3.) Likewise, the information from .'s medical providers was considered by the school staff during the meeting with the parents on April 10, 2013. (Tr., Vol. 2 at 399, ln. 16-400, ln. 11; Dist. Ex. 4.) Mr. further testified that, if something was discussed but not ultimately adopted, it did not mean that the team did not consider the information. (Tr., Vol.

2 at 401, ln. 6-18.)

62. During the April 10, 2013, meeting, the parents provided a copy of an evaluation from KU Med Center. (Parent Ex. 17; Tr., Vol. 2 at 403, ln. 1-21.) At the time of this meeting, ___ was a home school student and, if he had enrolled, would have been a regular education student. In , regular education students are typically required to attend a full day of classes. (Tr., Vol. 2 at 403, in. 22-404, ln. 7.) The statement referenced in the staffing

notes from this meeting that . "would need to attend a half day" was within the realm of Mr.

s authority over a student, such as ., who would have been a regular education student if he had enrolled. (Tr., Vol. 2 at 404, ln. 8-21.)

63. At the April 10, 2013, meeting with the parents, Mr. presented the memorandum of understanding set forth in The Districts' Exhibit 67. At that time, . was a home schooled student. The memorandum of understanding was created to try to get . back into school while they were trying to evaluate him for special education. (Tr., Vol. 2 at 333, ln. 12-335, ln. 25; Tr., Vol. 2 at 404, ln. 22-405, ln. 17.) The memorandum of understanding was never signed and never became effective. (Tr., Vol. 2 at 337, ln. 10-21.) Although the parents wanted . to attend for only one hour each day, the-school countered with a half day option, which was still a partial school day. It was never Mr. I's intent that the memorandum of understanding would be considered to be pre-determining the evaluation and services that would be provided to . Thus, Mr. testified that the team did consider the parents' request for a shortened school day. (Tr., Vol. 2 at 405, ln. 18-407, ln. 8.)

64. At the time the special education evaluation was completed, the IQ testing indicated that 's scores were all above average or average, and . was doing pretty well academically. (Tr., vol. 2 at 409, ln. 1-9; Dist. Ex. 11.)

65. Mr. recalled that the parents had asked him if summer school was available at the end of a meeting. Mr.. . replied that it was not because USD does not have summer school for regular education students. (Tr., Vol. 2 at 338, ln. 10-24; id. at 340, ln. 15-18.) Mr. stated that "summer school" is "an offering done by the school districts for students that are in the school and, specifically it would be regular

education students" who needed to finish an incomplete or do additional work to overcome a failing grade. (Tr., Vol. 2 at 416, ln. 24-417, ln. 7.) Summer school is different than extended school year ("ESY"). ESY would be offered to special education students who have shown regression upon returning from school breaks. (Id. at 417, ln. 8-22.) The parents did not request ESY services for . (Id. at 417, ln. 23-25.)

66. Mr. testified that the team did not finalize an [EP for . at the meeting on May 15, 2013, because the parents wanted to wait and see how the summer went and what was happening with medications. (Tr., Vol. 2 at 339, ln. 20-340, ln. 12; id at 410, ln. 2-13.)

67. Mr. testified that he considered all of the information provided by the parents, including the doctors, in the course of the evaluation. However, Mr. noted that none of those doctors were K-12 educators, none of them had ever observed in the school setting, and none of them would have been familiar with the school's requirement to provide services in the least restrictive environment. (Tr., Vol. 2 at 410, ln. 18-411, ln. 14.)

Mr. further testified:

If the least restrictive environment would be a regular education student at a full day of school, for us to jump so radically from a full day placement to one hour, think it would be hard for us to, to really to have a leg to stand on, as a school, to say we are going to switch to that drastic, because that would not be the least restrictive environment and certainly was not the opinion of all of the staff members and teachers that actually worked with him and saw success from him when he was in our building. (Tr., vol. 2 at 411, ln. 18-412, ln. 3.)

Based upon his experience as a principal, a school district would not normally jump from a placement full-time in regular education to only one hour per day. (Id at 412, ln. 4-11.) Furthermore, Mr. noted that the parents ultimately agreed that . would attend school for half days. (Id. at 412, ln. 24-413, ln. 6.)

68. . was briefly enrolled from April 11, 2013, to April 24, 2013, and then was exited to home school again at parent request. (Dist. Ex. 66; Tr., Vol. 2 at 413, ln. 7-25.) Mr. believes . may have attended "some" during that time period, but not regularly. (Tr., Vol. 2 at 414, ln. 4-8.) . was not enrolled at the time of the May 15, 2013, meeting. (Id. at 414, ln. 20-22.)

69, When returned to USD in August 2013, the Districts did not receive any documentation of grades or courses completed for his seventh grade year when he was home schooled, The Districts finally received a grade card for the fall semester of his seventh grade year on November 25, 2014—during the 2014-2015 school year. The Districts never received any documentation for the second semester of \.'s seventh grade year. (Tr., Vol. 2 at 419, ln. 4-420, ln. 8.) Although they did not provide any records for his seventh grade year, the parents did not want l. placed in the seventh grade because his younger sister was entering the seventh grade that year. (Tr., Vol. 2 at 420, ln. 23-421, ln. 7.) The Districts were concerned that had gaps in his content knowledge, so the solution they developed was to allow . to enroll as an eighth grader, take eighth grade core classes in the morning, and work on seventh grade core classes online in the afternoon in the special education classroom. (Tr., Vol. 2 at 421, ln. 8-423, ln. 5.)

70. Mr. testified that . was very down about the possibility that he might have to be placed in seventh grade when he came into the meeting before school started on August 14, 2013. . wanted to stay with his peers, so they laid out a plan in which would take his core eighth grade classes in the morning and work on recovering the content for the core seventh grade classes in the afternoon. .'s demeanor improved and his head was no longer down once he found out that he would not have to be placed in seventh grade and that he could move on to eighth grade classes that he might like better once he finished the seventh grade content for his core classes. (Tr., Vol. 3 at 561, ln. 2-563, ln. 11.) Mr. testified that Ms. never offered to provide him with grades from the

online school for the first semester of 's seventh grade year or home school grades for the second semester of his seventh grade year. He did not receive grades for the first semester of his seventh grade year until November 2014. (Tr., Vol. 3 at 563, ln. 12-564, ln.

2.)

71. On September 10, 2013, . came to school an hour and a half late and told multiple staff members that he wanted to die. Police were called to do a threat assessment. . was very calm during his conversation with police and was able to articulate precisely what his diagnoses were, what medications he took and the dosage for those medications. The police determined there was not an immediate threat of harm and left. (Tr., Vol. 2 at 423, ln. 17425, ln. 10; Dist. Ex. 69.)

72. The parents gave consent for the August 21, 2013, IEP on August 22, 2013, which was the first day of school. (Tr., Vol. 2 at 425, ln. 11-426, ln. 10; Dist. Ex. 14.) Mr.

testified that the Districts considered the parents' request for a shortened day on August 21, 2013, but the parents ultimately gave consent for the full day placement. (Tr., Vol. 2 at 426, ln. 11-21.) Mr. testified that he does not agree with the parents' assertion that the full day placement denied a FAPE because he felt the Districts had placed ___ in the least restrictive environment and that they were acting in his best interest to enable him to progress forward. If the team received additional information or observed that ___ was unable to be present in the building for the entire day, the IEP team could reconvene to make changes to the IEP. (Tr., Vol. 2 at 426, ln. 22-427, ln. 12.)

73. At the IEP meeting on September 18, 2013, the parents again requested a shortened day. This request was considered by the team, and the teachers responded to that request by indicating how ___ was doing in their classrooms when he was there. The teachers did not agree with the parents' request for a shortened day at that time because when he was in their classrooms he was able to interact, participate, and did quite well, (Tr., Vol. 3 at 503, ln. 7-506, ln. 2; Dist. Ex. 18.) During the same meeting, the parents requested that all of

's absences be excused as disability-related. The Districts did not agree to that because they often did not hear anything from the family regarding whether . would be in attendance or not. As an example, on September 10, 2013, was an hour and a half late to

school with no call from the parents. That hour and a half was considered unexcused, but his absences after the threat assessment were excused. (Tr., Vol. 3 at 506, ln. 3-508, ln. 21.)

74. testified regarding the steps he and his staff members took to help get into the building.

You know, I think for us, one of the strengths of our school is that it's a small school and we know every kid and we try to know their stories. For [.]when he first entered our building in seventh grade, I felt like we really tried to work with mom and dad, who I know were struggling to get I in the building. That included we tried to take our cue from them, so when they came with [.] and they were struggling in the, in the, in the front of the building, we came out and even to the van and said, "How can we help?"

I know that sometimes my role as principal made me not the good guy, and so as a team, and we approached this with a lot of situations as a team, we would say, "Who's the best to help this situation?" So sometimes I just, I stayed back, because it was Mr. maybe that he was communicating better with, so Mr. would go outside.

He would walk up and down the sidewalk with [,J, asking him, "Hey, you know, let's try to do this today." Talk to him. Talk to dad. Talk to mom. There were several times that mom said, "Could you come out here?" so we'd walk all the way out there by the car. There were other times that she said, "Why don't you guys stay back," so we'd say okay. There was a time specifically that mom said, "I am going to drop him off and I'm specifically going to drive away, so that way, he can try to make this effort to come into school," and we said no problem, and so she literally drove away and he stood there and then we had to try to help that.

The school counselor walked up and down the sidewalk with him and then walked all the way to I .l'q house on a time to talk to the family. We had staff members, i was one for sure. school nara, who hung around the front of the school along with ' so that when he came in, and I gave them very specific instructions. If he's ready to go to class, let's get him to class. If he's not ready to go to class, then let's get him upstairs. If he needs -

The classroom. And so really, we just tried to take our cue from [redacted] but we also tried to take our cue from the parents, and when we were struggling, we tried to do—we really tried to feel out what they were saying, and so if they said, "We need a minute," we just went back in the building all together, and then we tried to go out when we felt like it was appropriate to go out or they needed us to go out.

Again, that was an attempt to try to read the situation and work with them and a lot of times, I wasn't the one to go out. You know, I'd say, "Mr. [redacted]—you go out," who is the school counselor who talked, or [redacted] who worked with him, or who worked with [redacted] a lot during that time, and we would allow those folks to interact but, I mean, bottom line, when he was coming into our building, we had people ready to meet him. (Tr., vol. 3 at 512, ln. 17-515, ln. 5.)

75. Mr. [redacted] noted that while there were things the Districts could do to try to help get [redacted] to school, even possibly transportation, the Districts did not have the authority to go get [redacted] out of his house and into the school setting, (Tr., Vol. 3 at 591, ln. 23-592, ln. 4.)
76. Mr. [redacted] testified that the parents' request for a shortened day was granted through the IEP amendment on November 13, 2013, which reduced [redacted] L. s schedule to three hours per day—less than a half day. (Tr., Vol. 3 at 518, ln. 20—519, ln. 16; Dist. Ex. 27-28.)
77. All of the documentation provided by the parents prior to and during the September 18, 2013, IEP meeting was considered during the course of that meeting. However, the team did not necessarily agree with all of the information provided by the parents. (Tr., Vol. 2 at 427, ln. 13-431, ln. 11. see also Dist. Ex. 16-19.) on October 7, 2013, Mr. [redacted] sent the parents a letter responding to their request for a written response. In that letter, Mr.

[redacted] noted that the IEP and accommodations that had been provided for [redacted] were working when he attended school. From the Districts' point of view, [redacted] was able to be successful at school when he attended. (Tr., Vol. 2 at 431, ln. 22-432, ln. 25; Parent Ex. 42.) Mr. [redacted] enclosed a list of all the accommodations that had been made for [redacted] with his response. (Tr., Vol. 2 at 433, ln. 1-435, ln. 11; Parent Ex. 42 at 2-3.) In discussing those accommodations, Mr. [redacted] noted that staff members would even walk out to the minivan to help [redacted] get into the building; however, [redacted] was not always dropped off at school by car because they lived very close to the school and walked. (Tr., Vol. 2 at 434, ln. 3-7; id at 435, ln. 4-11.) The office staff at the school were able to see [redacted] walking to

school from his house, and there were days that they saw . walking toward the school and then turn around and go back home. (Tr., Vol. 2 at 435, ln. 12-18.)

78. Mr. does not believe that . was denied FAPE due to the alleged delay in providing him an IEP because he was still offered the opportunity to make progress toward high school. (Tr., Vol. 2 at 414, ln. 9-19.)

79. Mr. testified that . was a full-time student up until the meeting held on

October 25, 2014, because "he was doing eighth grade classes in the morning. He was doing seventh grade classes in the afternoon. The least restrictive environment was to put him as a full-time student," (Tr., Vol. 2 at 369, ln. 3-7.)

80. With respect to the discussion about the Edgenuity program at the December 2013 IEP meeting, Mr. testified that . would be able to work on assignments at home to build his content knowledge, but his grades and credits would be based upon quizzes, tests, or other assessments done at school with a staff member. (Tr., Vol. 3 at 527, ln. 5-528, ln.

2.) The discussion about . attending an online school if he was not able to return in January was intended to address ___'s ability to continue to make progress and move forward because Edgenuity is not an accredited online school. (Tr., Vol. 3 at 532, ln. 11-533, ln. 15; Dist. Ex. 36.) Mr. t also explained in detail the Edgenuity logs set forth in Districts Exhibit 62. (Tr., vol. 3 at 555, ln. 8-558, ln. 22; Dist. Ex. 62.) Mr. s review of Districts Exhibit 62 did not support the parents' assertion that 's time spent on Edgenuity dramatically dropped off after the December 2013 IEP meeting. (Tr., Vol. 3 at 558, ln. 23-559, ln. 9; Dist. Ex. 62.)

81 Although the parents claimed that they were given a deadline of January to get back into school based upon the comment referenced on page 5 of Districts Exhibit 36, Mr.

testified that he was simply trying to work with the parents, but the mark kept moving. (Tr.,

vol. 3 at 595, ln. 6-23; id. at 597, ln. 8-19; Dist. Ex. 36.)

82. Although the parents had asserted that the December 2013 IEP should have reduced the amount of time [redacted] was expected to attend school because it should have been apparent that he was not being successful with three hours per day, the Districts were well aware

that [redacted] had been undergoing changes in his medications and they had hoped that the changes in the medications would be stabilized soon. (Tr., Vol. 3 at 630, ln. 9-631, ln. 8.)

83. Mr. [redacted] testified that [redacted] received a FAPE for the 2013-14 school year because he made progress on his IEP goals when he was in attendance, he was promoted from eighth grade to ninth grade, and his IEP allowed him to progress. Even at times that [redacted] did not attend, the Districts remained ready, willing, and able to provide services to him. (Tr., Vol. 3 at 540, ln. 10-541, ln. 4.) Mr. [redacted] never received any documentation from a doctor or from the parents indicating that [redacted] required homebound services. If he had received such documentation, he would have contacted Ms. [redacted] about providing those services.

(Tr., vol. 3 at 541, ln. 5-13.)

84. Mr. [redacted] testified that there was not an IEP meeting held on February 13, 2014, as alleged by the parents. Rather, it was a meeting requested by [redacted]'s therapist, Dr. [redacted]. (Tr., Vol. 3 at 541, ln. 14-542, ln. 2.) This meeting was not requested by the District or the

Cooperative, was not noticed as an IEP meeting, and no changes were made to the IEP. (Tr., Vol. 3 at 542, ln. 10-19.) At the time of this meeting, Dr. [redacted] informed the Districts' staff members who were present that she had just left the parents' home, that the parents were not coming, and that Dr. [redacted] and the Districts' staff members were to go ahead and talk without them. During the course of the meeting, Dr. [redacted] expressed many concerns about the family and their situation. (Tr., Vol. 3 at 542, ln. 3-9.) Dr. [redacted] expressed that it was an unhealthy situation where members of the family were backing each other up into corners, lots of screaming, putting hands on one another. (Tr., Vol. 3 at 543, ln. 8-12.) Dr. [redacted]

[redacted] also mentioned the possibility of a psychiatric residential treatment facility ("PRTF"). Mr. [redacted] felt like the PRTF was something that would be within Dr. [redacted]'s power

to order, but not within the District's authority. When asked whether she intended to recommend a PRTF for' .. Dr. responded that she was not sure. (Tr., Vol. 3 at 543, ln. 13-544, ln. 12.) Mr. submitted a letter to the County Attorney the same day

as the conversation with Dr. because he was concerned about the statements regarding what was happening at home. (Tr., Vol. 3 at 542, ln. 20-543, ln. 7; Dist. Ex. 73.) Mr. felt that he had no choice but to make such a report because Dr. had referred to the home situation as both unhealthy and a dangerous situation. (Tr., Vol. 3 at 549, ln. 5-14.) Mr. I had asked Dr. whether she intended to make a report to DCF, because she is also a mandatory reporter, but she did not indicate she was going to do so and told the school staff to do what they believed was necessary. (Tr., Vol. 3 at 549, ln. 15-19.) Mr. explained at length the basis for all of the statements made in his

letter to the County Attorney. (Tr., Vol. 3 at 544, ln. 13-548, ln. 25; Dist. Ex. 73.) Mr.

s' s recollection of events was corroborated by the statements written by. • . , and -all of whom attended the meeting with Dr.

. (Dist. Ex. 70-72.)

85, The Districts tried to address . s anxiety with his physical approach to school, as well as his other issues with anxiety. Mr. testified that:

There's a list of 46 things that the school was doing as interventions and ways to help. Off the top of my head, you know, we had a faculty member waiting, a staff member by the, by the door. Had all of the individual supports. Had a place to go if he, if he felt stressed. He could always come talk to myself. He could always come talk to the counselor. If he wanted to be around people, he was permitted to go eat lunch with his friends. If he did not, he could have lunch brought up to him. We had people at the door. We helped walk out to the vehicle with the family to help him walk in.

Again, I feel like the physical approach, we were doing—that we were doing everything that we possibly could, and if there was something else that we could be doing, we were sure trying that. . . .

(Tr., Vol. 2 at 370, ln. 12-371, ln. 2. See also Parent Ex. 42 at 2-3(for list of 46 interventions) .)

86. is the mother of (Tr., Vol. 2 at 439, ln. 3-6.) She has a bachelor's degree in human services with an emphasis on youth services. She has worked for 15-20 years in youth-serving or youth-led organizations, primarily at-risk youth. (Tr. Vol. 2 at 439, ln. 1520.)
87. Ms. does not believe the Districts provided with FAPE during the 2013-2014 school year. She based this upon her belief that the "didn't meet him where his needs were at or where he was at and give him the opportunity that parents and psychologists and doctors and all sorts of studies suggest to incrementally increase the hours that he could tolerate." (Tr., Vol. 2 at 439, ln. 21-440, ln. 4.) However, when asked to define FAPE, Ms. had difficulty in doing so. In response to cross-examination, she stated that FAPE meant "providing education to students where they are at, wherever state in the U.S. they live in, or—I don't know." (Tr. Vol. 2 at 479, ln. 14-18.) She finally stated that, as applied to , FAPE meant "simply recognizing his disabilities and working with his disabilities with []. Finding accommodations to achieve free and public education that worked for his special needs." Tr., Vol. 2 at 479, ln. 14-480, ln. 19.)
88. Ms. stated that at a meeting held on April 10, 2013, the parents had submitted letters from .'s doctors, therapists, and K.U. Medical Center. She recommended that . start slowly and attend school for a hour a day, possibly during math. (Tr. Vol. 2 at 448, ln. 4-24,) She characterized Mr. 's response that he felt . would be fine attending a half-day of school as "this is pretty characteristic that I often felt and was given examples of Principal taking upon himself to know better that medical persons or special services persons or his parents or [.], and would be prone to diagnosing him or—it was very odd and peculiar. Very odd." (Tr. Vol. 2 at 449, ln. 16-21.)
89. Ms stated that it was a common occurrence at IEP meetings "I heard primarily from Principal what was and wasn't an option, I did not as often get to hear opinions and ideas necessarily from, say, with the Coop or the school psychologist or, or anyone like that that might be there. Everyone seemed to look at the head of the table for him to decree what could or couldn't be done in his domain, but it was

common for him to say no, no. Even if you saw one of the other ladies at the table raise their eyebrows like they could—have an idea or were going to interject, it would be deferred to him to rule." (Tr. Vol. 2 at 450, ln. 15451, ln. 1.)

90. Ms.) claimed that she offered .'s seventh grade records to Mr. twice

before the beginning of his eighth grade year. The first time was on the phone before the start of school and she alleged that Mr. "smoothed over that and arranged a date for us to meet and discuss [.]'s schedule. The second time was during a meeting between the parent, . Mr. and Mr. in August 2013 before school started. (Tr., vol. 2 at 451, ln. 2-452, ln. 19.) Ms. alleged that Mr. told . during

this meeting that he would be in seventh grade and that . had "giant tears dropping into his lap." (Tr., vol. 2 at 453, ln. 2-20.) Ms. stated that Mr. was bullying and belittling her son, but Mr. was not. (Tr., vol. 2 at 453, ln. 21-25.) Ms.

testified that it "much felt like negative, confrontational, angry, hostile bullying, flat-out bullying of my son, when he continued to ball and be belittled." Ms.) sent an e-mail to the same day as this meeting, but that e-mail does not indicate that will be placed as a seventh grade student or that Mr bullied . and made him

cry. (Dist. Ex. 76; Tr., vol. 2 at 454, ln. 8-455, ln. 20.)

91. Ms. also testified that Principal I had called her to pick up on September 10, 2013, after a threat assessment was conducted. Ms. testified :

I got a call from Principal saying that the police have been here because [.] said, 'I wish I were dead,' and the officer Principal said, was very cordial to and asked him questions to probe further and to find out if he was truly having suicidal ideation or not, and explained that [.]—he actually complimented [J at the time and said [.] did a good job explaining his diagnosis and his medications and what is his issues were and what was going on and so that the officer was able to ascertain that he was definitely not having suicidal ideation but merely having high anxiety and very uncomfortable at that time. (Tr. Vol. 2 at 473, ln. 8-20.)

Ms. lad testified previously regarding comments commonly made by [1.]:

It was known by anyone and everyone that worked with I J, his case manager that was , oh, both at the school and at home at times, his therapist at the time, the staff that we worked with, his para's, everyone who was at the school, that [J has certain things that when he's feeling anxiety he repeats, and he says, 'I want to go home,' even if he's at home, he says that, and then he says wish I were

dead' meaning not so much that he wants to be dead but that it was just he was invisible or could disappear or was anywhere but there. (Tr. Vol. 2 at 471, ln. 10-21.)

When the threat assessment was completed, Principal _____ told Ms. _____ that [_____'s] absences for the remainder of the day would be unexcused. However, in reviewing the attendance records, she admitted that the remainder of the day was marked as excused absences. (Tr., vol. 2 at 480, ln. 25-484, ln. 4; Dist. Ex. 60.)

92. Ms. _____ ' agreed that _____'s biggest difficulty is the physical approach to school, not necessarily doing the school work. She stated "well, absolutely. [_____] has a great amount of anxiety that becomes not just emotionally or psychologically debilitating, but physically so. The physical effect of it is pretty difficult to overcome." (Tr. Vol. 2 at 461, ln. 8-16.) She believes that the reception she received from _____ school to the problem of getting _____ in the school door was "not our problem. Don't want to hear about it. Not our issue. Not a problem. We don't want to hear anything about it," (Tr. Vol. 2 at 461, ln. 17-23.) She stated that the parents would sometimes attempt to get _____ to school two or three times a day, two or three times an hour. She stated as follows:

We would very [sic] degrees of our approach. Sometimes it would be in the car; sometimes it would be on foot; sometimes it would be with his dad; sometimes with his mom. We tried every sort of thing imaginable and that was suggested to us, and it was really difficult and it still is to this day because of this negative exposure throughout middle school. It's going to— it has continued to affect him." (Tr. Vol. 2 at 462, ln. 1-13.)

When questioned whether anyone from the school would come out to assist, she stated "a couple times, if _____ wasn't already in his class or somewhere, he would come out into the grass or by the van or whatever, but not—it wasn't set up that he do that and so it wasn't consistent or what not, you know. It was a couple of times that would be true." (Tr. vol. 2 at 462, ln. 14-22.)

93. Ms. _____ stated that there was an improvement when _____ went from _____ to _____ . She stated there was a complete change. "We spent a short time taking a—meeting with an autism teacher, Ms. _____, in School and then we went over to the

_____ Middle School and we were able to—they had us park at the end of the building that was closest to [_____]'s classroom so it was easy to get into; and then they usually had the same para, a very nice red-haired lady named Mrs. _____ and she would come out and [_____] loves her to this day." She commented on Mrs.'s efforts to get him in the school:

Not every time, no, maybe—gosh, it got better but at first we spent weeks, I am sure it is documented on the Middle School attempt somewhere with Mrs. _____ the special services teacher there, who oversees the para's that come out, but sometimes it was—well quite often, actually, it was both Mrs. _____ and Mrs. _____ out there, Mrs. _____ would come out for as long as she could. You know, maybe it was just 15 minutes or maybe it was 30 minutes that day to try to negotiate and cajole and smooth and comfort and reassure him to get out of the car and to come into the building, but then she would have to of course go back to class, but she—generally, it was Mrs. _____. Sometimes there was a para named Mrs. _____ as well out there, but primarily it was Mrs. _____ because [_____] and Mrs. _____ personalities seemed to mesh well and it was a good fit.

Ms. _____ further testified that there was a change when [_____] went from _____ I to _____ "well the length of the day and the flexibility of the classes and no more bullying, whether it was perceived or real, by administration and staff. The positive approach was different. The belief, that was really huge, that we believe in you, I, J, you're having anxiety. Everyone wants to be believed." (Tr. Vol. 2 at 462, ln. 23-464, ln.22.)

94. Ms. _____ believes the _____ staff took a positive approach by applauding any increment of movement toward the positive. "Instead, they applauded him for every baby step he took, and that helped smooth and make more comfortable to work with them." (Tr. vol. 2 ln. 6-13.) Ms. _____ contrasted the approach of the _____ school to that _____ received from _____ "Principal _____ most assuredly did not have any positive regard to him t J for him, and he felt intimidated and scared and ill-at-ease and anxiety and stomach aches and headaches and nausea and diarrhea and comments and all sorts of things more so that way. His acid-reflux was increased, and each time though that we would have these negative interactions with the

school, he would have more insomnia and stomach upsets and such." (Tr. Vol. 2 at 474, ln. 17-475 ln. 5.)

EXHIBIT, SCHOOL PSYCHOLOGIST

- 95 Ms. I is a school psychologist working for the Special Education Cooperative. She has held that position for ten years. She has a bachelor's degree in psychology, a master's degree in psychology, and an Educational Specialist degree. (Tr., Vol. 3 at 638, ln. 1-11.)
96. With respect to the notice and consent from the May 2013 IEP meeting, Ms. testified that she marked out the reference to the services to be provided in the draft IEP because "the team had recommended that we wait until prior to the start of the 2013-2014 school year to finalize the IEP, as there were possible changes to [J's medication and behavioral status, so we wanted it to be more updated so that it was adequate for his needs." (Tr., Vol. 3 at 644, ln. 13-20; Dist. Ex. 12.)
97. With respect to goal 4 of the December 12, 2013, IEP, Ms. testified that she was not involved with the perception checking goal because was not in attendance when she was in the building and they never received the information from Dr. regarding what they specifically needed to ask him for the perception checking. (Tr., Vol. 3 at 650, ln. 2-11.) The Districts did have some questions they knew they could ask, but they were trying to make it consistent with what Dr. was doing. (Tr., Vol. 3 at 650, ln. 12-17.) Ms. was not the only staff member who could perception checking with That could also be done by Mr. , counselor, and Mrs. , special education teacher. (Tr., vol. 3 at 669, ln. 7-15.)
98. Ms. testified that school districts do not provide mental health services, such as would be provided under a medical model. Under an educational model, the Districts would provide guidance counseling, career-focused counseling, and some meetings with students for crisis management to refer on to another provider. (Tr., Vol. 3 at 662, ln. 14-663, ln. 7.)
99. Ms. testified that the meeting with Dr. on February 13, 2014, was not an IEP meeting. It was a meeting requested by Dr. I, at which time Dr. I indicated that there was increased aggression and that safety, as well as the entire family, was at risk.

However, Dr. _____ stated that she was not going to report this to DCF. Dr. _____ represented at this meeting that Ms. _____ had been notified about the meeting and that she did not want to attend. (Tr., Vol. 3 at 663, ln. 8-665, ln. 9; Dist. Ex. 72.)

G. _____, SPECIAL EDUCATION TEACHER

100. Mrs. I is a special education teacher working for I Special Education Cooperative at the Middle School and High School. She has worked there since 2001. She has a bachelor's degree in education from Fort Hays State University and a master's degree in special education from Fort Hays State University. She is licensed in preschool or early childhood, K-8, and interrelated special education K12. (Tr., vol. 3 at 671, ln. 3-21,)
101. The parents submitted a letter in January 2013 asking for a special education evaluation in which they indicated that _____, had dyslexia. (Dist. Ex. 1; Tr., Vol. 4 at 807, ln. 5-13.) Dyslexia is considered a learning disability. Special education regulations require that the Districts try response to interventions before evaluating for special education eligibility. (Tr., Vol. 4 at 807, ln. 20-24.) It was ultimately determined that _____ did not have a learning disability. (Tr., vol. 4 at 807, ln. 25-808, ln. 2.
102. Mrs. _____ attended a meeting with the parents on March 1, 2013, in which they were discussing how to get _____ back into school in August 2013. (Tr., Vol. 3 at 712, ln. 19-713, ln. 11; Dist. Ex. 6.) At this meeting, they discussed doing general education interventions for _____ and developed a Student Improvement Plan, including having _____, one of _____'s previous teachers, work with him due to their good rapport. (Tr., Vol. 3 at 713, ln. 12-714, ln. 14.) Mrs. _____ testified that the Districts follow a Student Improvement Team ("SIT") process and try interventions in the general education setting before evaluating for special education. (Tr., Vol. 4 at 778, ln. 22-779, ln. 16.)

103. also attended the April 10, 2013, meeting with the parents. During that meeting, the parents indicated that they wanted . to attend for only one hour and the Districts countered with having him attend for a half day. Mrs. testified that, in her experience as a special education teacher, IEP team decisions are reached by consensus and the Districts are not necessarily required to do everything the parents requested. If the Districts do not agree with what the parents wanted, it does not mean that the parents' request was not considered. It simply means that what the parents requested was not chosen. (Tr., Vol. 3 at 714, ln. 19-716, 7; Dist. Ex. 9.)
104. Mrs. remembered discussion of the memorandum of understanding during the April 10, 2013, meeting, but she noted that it was not signed and did not believe it was ever implemented. She further testified that she did not consider anything from the memorandum of understanding as pre-determining or directing how she was going to evaluate She evaluated him just as she would any other student. (Tr., Vol. 3 at 716, ln. 10-717, ln. 11; Dist. Ex. 67.)
105. Mrs was responsible for conducting the achievement testing. Her results were reflected on page 5 of the Evaluation/Eligibility Team Report. was found eligible on the basis of Other Health Impairment, not due to a learning disability. (Tr., Vol. 3 at 717, ln. 12718, ln. 15.)
106. Mrs also participated in the IEP meeting held on August 21, 2013. She did not recall any disagreement from the parents regarding the IEP. She testified that would

have special education support from either a para or Mrs. for all of his eighth grade core classes, then he would spend the second half of his day with her in the special education room for the online classes for his seventh grade core classes. (Tr., Vol. 3 at 719, ln. 15-720, ln. 12; Dist. Ex. 13.) This IEP also contained a plan to address .'s anxiety. In the Program Modifications/Accommodations section, it stated as follows:

The Special Education Teacher will also provide crisis intervention when appropriate. This will consist of the SPED Teacher removing the student from the academic setting or [1.] removing himself when he is anxious or feeling stressed for a-period of time. Discussion, identification, and resolution of the problem will occur before the student is returned to the academic setting. If the problem cannot be resolved, removal from the general educational setting will be suggested until (1.) is able to cope with his anxiety. This may consist of time in the special education room or a location where [.] is able to decrease his anxiety and stress with a special services employee in order to be able to return to the general education setting. Once the crisis has passed, the student will return to the classroom setting. The IEP team and administration will work together to determine the time period for any extended removal.

[.] 1 may take tests in a separate location and may have tests read to him to decrease anxiety. He may be given extended time to complete academic tasks. This services [sic] will be offered on a daily basis as needed for [.]to remain in the educational setting.
(Dist. Ex. 13 at 15-16.)

Even though the parents had requested that . only attend one hour per day, they ultimately signed consent for the IEP. (Dist. Ex. 14; Tr., Vol. 3 at 721, ln. 6-19.)

107. Mrs. testified that the concerns raised by the parents in the September 18th IEP meeting, including the request for a shortened day, were considered by the team. (Tr., vol. 3 at 685, ln. 11-686, ln. 6; Dist. Ex. 17; Tr., vol. 3 at 725, ln. 15-19.) Each individual request listed by the parents in District Exhibit 17 was not listed individually in the notes, likely due to the reference in the notes to the "attached." (Tr., Vol. 3 at 686, ln. 7-19; id at 721, ln. 20-723, ln. 6; Dist Ex. 18.) The parents also requested an FBA during this IEP meeting and the Districts granted that request. (Tr., Vol. 3 at 725, ln. 4-19.)
108. Mrs. also attended the IEP meeting held on October 29, 2013, at which time the parents again requested a shortened school day. This request was also considered by the

team and ultimately was granted. (Tr., Vol. 3 at 726, ln. 12-23; Dist. Ex. 23.) The IEP amendment dated November 13, 2013, shortened . .'s school day. (Tr., Vol. 3 at 726, ln. 24-727, ln. 4; Dist. Ex. 27.)

109. Mrs. also attended the IEP meetings at which the FBA was discussed on November 26, 2013, and the IEP meeting on December 12, 2013, at which the new IEP was drafted. Mrs. testified that the FBA recommendations were incorporated into the December IEP. (Tr., vol. 3, at 727, ln. 5-734, ln. 13; Dist. Ex. 31; Dist. Ex. 37.) 110. Mrs. also maintained a log of what happened with throughout the fall semester of 2013 and into the beginning of 2014. (Dist. Ex. 69.) There were instances noted in the log regarding physical aggression. (Tr., Vol. 3 at 734, ln. 24-735, ln. 14; id. at 741, ln. 11-742, ln. 6.) Likewise, on September 6, 2013, . reported that he had a deal with his mother that he would only have to stay until lunch. At that time, he was supposed to be attending for a full day. (Tr., Vol. 3 at 735, ln. 21-736, ln. 10.) Mrs. testified that there had also been concerns from the parents that all of 's absences should be excused on the basis of his disability; however, they did not always call in, as was expected for any student to have an excused absence. (Tr., Vol. 3 at 736, ln. 11-737, ln. 11.) On September 12, 2013, .'s case worker reported to Mrs. that the case worker had been seeing the same issues as the school and that . had been given a mantra he was supposed to repeat to himself when he is upset. This mantra ended with "Mom and dad will find a new school that fits better." In Mrs. 's opinion, such a mantra would not promote a positive view of the school for . (Tr., vol. 3 at 737, ln. 12-738, ln. 25.) After l. left the IEP meeting on September 18, 2013, he informed his para, Ms. , that he wasn't supposed to come back to school. (Tr., Vol. 3 at 739, ln. 1-24.)

111. On September 23, 2013, . talked about his weekend trip to McPherson to play a magic card game.

He said there were about 30 people at the game. He explained that if his dad takes him to this event, dad watches movies in the car. If his mom takes him, she goes to the coffee shop next door and reads a book. I asked him how he is able to be alone in a room with many people and he could not be in a classroom with 12 friends. He said because it is something he likes to do. He says he does not like crowds, like the

lunchroom especially. He said he only knows five of the people at the card game.

(Dist. Ex. 69 at 7.)

112. On October 15, 2013, Mrs. [redacted] recorded one of the mother's statements about [redacted] as follows:

[redacted] I's mom informed the team, with tears in her eyes, that the only time [redacted] laughs or smiles is when they take him to McPherson for his card games. She was informed that I [redacted] was interacting with students and staff and smiled and laughed much of the time. She also asked about some other things that [redacted] has been telling her about as far as VPL, what happens at school, and his Learning Support time and what is going on in those times. It was obvious that she has not been given a true picture of the school day and what he does and can do during the day without visible stress and anxiety being present. (Dist. Ex. 69 at 12.)

113. On November 25, 2013, it was reported to Mrs. [redacted] that [redacted] was at the middle school basketball game even though he did not come to school and there was no call from the parents. (Tr., Vol. 743, ln. 5-20; Dist. Ex. 69 at 15.)

114. Mrs. [redacted] also attended the meeting with Dr. [redacted] t on February 13, 2014. She testified that it was not an IEP meeting, it had not been noticed by the school, and that they did not discuss revisions to the IEP during the meeting. (Tr., Vol. 3 at 744, ln. 17—745, ln.

16.) Dr. [redacted] I informed the staff present at the meeting that the parents were aware the meeting was taking place, but that they chose not to attend. (Id. at 745, ln. 17-20.)

During this meeting, Dr. [redacted] shared that she had been at the house and that things were escalating physically and emotionally, that she had concerns about it, and that she felt there was a question about whether there was a need to report [redacted] as a child in need of care.

While Dr. [redacted] stated that she did not intend to file such a report, Mrs. [redacted] felt that Dr. [redacted] was encouraging Principal [redacted] to do so. (Tr., vol. 3 at 745, ln. 21-746, ln.

17.) Dr. ; stated that it was becoming a dangerous situation and also mentioned the possibility of a PRTF. Mrs. • testified that they did have a release to allow them to talk with Dr. . (Tr., vol. 3 at 746, ln. 18-747, ln. 3.)

115. Mrs. testified that . made progress on the August 21, 2013 IEP on everything except the second benchmark of goal 1. The lack of progress on that one benchmark was due to the fact that . was not in attendance. (Tr., Vol. 3 at 747, ln. 12-748, ln. 1; Dist. Ex. 38.) However, was not making progress on the December 12, 2013 IEP while he was at Middle School simply because he was not in attendance. Mrs.

reviewed the progress report update done by I for the 4th nine weeks of the 2013-2014 school year and saw that . had made progress on the December 12, 2013 IEP.

(Tr., vol. 3 at 748, ln. 2-749, ln. 20; Dist. Ex. 59.)

116. Mrs testified that she believed f. did receive FAPE during the course of the 2013-2014 school year because:

We were trying to begin his career at, you know, when he came back, we wanted to get-try out and get the least restrictive environment we could get for him and then, you know, we had to work that back but, you know, our intentions were there and we had things in place for him, you know, to attend that would meet his needs.

Q: When L .] was in attendance at school, did he make progress on his

A: Yes.

Q: Was it within your power, as a special education teacher, to go to the home and ensure that he made it into the school building?

A: No.

(Tr., vol 3 at 749, ln. 21-750, ln. 16.)

H. , COUNSELOR

117. Mr. is the Director of Student Learning for U S.D. , which includes counseling.

He has been employed with U.S.D. for three years. He is licensed for 7-12 math and has a bachelor's degree in mathematics, secondary education. (Tr., Vol. 4 at 811, ln. 16-812, ln.

- 11.) Mr. [REDACTED] is not required to hold an endorsement for counseling in order to hold his position. (Tr., Vol. 4 at 850, ln. 19-21.)
118. Mr. [REDACTED] first met [REDACTED] during his seventh grade year in the fall of 2012. Mr. [REDACTED] met with [REDACTED] numerous times during his seventh grade year. Some of those were about attendance issues, but also about how to respond to other students about the reason for his absences, how to engage other students, and how to cope with his anxiety. (Tr., Vol. 4 at 851, ln. 6-852, ln. 13.)
119. Mr. [REDACTED] did not recall ever witnessing problems getting I. into the building during the seventh grade year, but he did recall that during [REDACTED]'s eighth grade year. (Tr., Vol. 4 at 854, ln. 12-23.) Specifically, he saw [REDACTED] having a hard time coming into the building and sometimes even getting out of the car was difficult. One time [REDACTED] was actually in the building but then left, and Mr. [REDACTED] followed him home. (Tr., Vol. 4 at 854, ln. 24-855, ln. 21.)
120. The first meeting Mr. [REDACTED] attended with the parents was the April 10, 2013, meeting. (Tr., Vol. 4 at 857, ln. 4-9.) At that meeting, the parents requested a shortened day. That request was not only considered but also was granted. The Districts agreed to shorten the
day to a half day—just not the one hour day that the parents wanted. (Tr., Vol. 4 at 870, ln. 8871, ln. 5.)
121. Mr. [REDACTED] attended the IEP meeting held on September 18, 2013. Although they did not have time to go through all of the parents' list of 27 concerns, they did discuss [REDACTED]'s anxiety, the parents' request for a shortened day, and several of the other parent concerns. (Tr., Vol. 4 at 858, ln. 2-860, ln. 4; Dist. Ex. 17; Dist. Ex. 18.) Mr. [REDACTED] believed the concerns cited in District Exhibit 17 were considered by the team. (Tr., Vol. 4 at 862, ln. 6-9.)
122. Mr. [REDACTED] also attended the IEP meeting on October 29, 2013, at which the parents again requested a shortened day. Mr. [REDACTED] stated that request was granted through the IEP amendment dated November 13, 2013. (Tr., Vol. 4 at 863, ln. 5-864, ln. 8.) Mr. [REDACTED] testified that the information provided by the parents at this meeting was considered by the team. (Tr., Vol. 4 at 864, ln. 9-17; Dist. Ex. 24.)
123. At the October IEP meeting, the parents also requested a speech language screening. Mr. [REDACTED]

reported that he never had any difficulty communicating with even when he was upset. Mr. • also observed . communicating with his peers, and noted that was able to communicate and interact when he had lunch in the lunchroom. Mr. was also aware that was able to ask question in class, work in small groups, and play games with other students. Based on all of this, Mr. • did not believe needed a speech language screener. (Tr., Vol. 4 at 871, ln. 6-872, ln. 15.)

124. Mr. ' also attended the meeting with Dr. on February 13, 2014. This was not an IEP meeting, but rather was requested by Dr. . Mr. testified that the parents had been made aware of the meeting, but that Dr. stated the parents were not going to attend. (Tr., Vol. 4 at 867, ln. 1-23; Dist. Ex. 70.) Mr. testified that:

It was a meeting to be about [to discuss kind of the situation with him and just even at home and so, you know, we were just trying—you know, she just wanted to talk through some of those things.

It came up that, you know, the-and I have this documented but, you know, at home was, was—continued to be a struggle, and it just was not, I said not a healthy situation, and so she, uh, you know, she-we even started talking about, um, you know, is—is the home, is that the best place for I] to be? And so, you know, like she talked about, um, possibly having that be removed, I I be removed from the home, and so we discussed that, um, and it basically came to the district needed to do what they thought would be, uh, in the best interest of the student, so in light of, you know, it being a difficult situation if we needed to-if we thought that was necessary to act, then we should go ahead and do that.

Q: And what type of action were you discussing?

A: Basically like a, a care facility, like a PRTF-type facility.

Q: Did the district have the authority to refer a student to a psychiatric residential treatment facility?

A: I don't believe so.

Q: Was any other action discussed at that meeting, that the district could take?

A: That we could call like DCF.

Q: Is that the Department of Children and Families?

A: Correct.

Q: And what would you tell DCF?

A: Basically, you know, the home situation, safety; kind of like a child in need of care.

Q: Okay. Did anyone from the district or the co-op ask Dr. Kinlen during that meeting whether or not she intended to report to DCF? A:

Yeah. I believe her answer was she-that wasn't going to happen.

(Tr., vol. 4 at 868, ln. 1-869, ln. 16.)

125. There were times that was not able to attend classes, but there were also times that he was able to attend classes. For those times that he felt unable to attend classes, -'s IEP provided a plan for several different places he could go if he felt anxious. He could go to Mr. 's office, the special education classroom, or even to the restroom. (Tr., Vol. 4 at 860, ln. 5-862, ln. 5.)

126. When asked whether was able to receive an education due to his social emotional state, . ' responded:

I believe that he was able to receive an education. There was definitely it was not easy, and there were times where he would come out of the classroom, but in my thinking, with those supports and accommodations, socially he was able to still receive an education. (Tr., Vol. 4 at 824, ln. 13-18.)

127. Mr. ' testified that . was able to come to his office and see him at any time. This would allow to express his anxiety in a safe location away from other students. (Tr., Vol. 4 at 831, ln. 2-6.) Mr. testified that:

We would talk about scheduling of the day, even just how to go from one step to the next step, you know. We would talk about his feelings, how he felt, how to work through some of that, different coping mechanisms. Also, just how to interact with students so, mean, that was before, I would say. Afterwards, after [the FBA], it was I'd say very much similar to that. Those services would still be in play. Those accommodations, all the supports that were in the IEP would-or as we-as that changed, you know, those things were all in place. (Tr., vol. 4 at 837, ln. 22-838, ln. 8.)

Mr. also did perception checking with . right from the beginning, even before the FBA was done. (Tr., vol. 4at 839, ln. 4-17.)

128. Mr. testified that both the August 21, 2013, IEP and the December 12, 2013, IEP provided a FAPE for . because, even though it was not easy for to attend class, they had provided the accommodations and supports to enable him to make progress when he attended. (Tr., Vol. 4 at 872, ln. 16-873, ln. 7.) It was not within the District's authority to physically go to 's house, bring him out of the house, and get him to school. (Tr., Vol. 4 at 873, ln. 8-11.) Nonetheless, Mr. ' was one of the staff members who could welcome . when he arrived at school and sometimes even went outside of the building to meet and help him get into the building. (Tr., Vol. 4 at 873, ln. 12-874, ln. 1.)

1, SPECIAL EDUCATION TEACHER

129. Ms. is a special education teacher. During the 2013-2014 school year, she worked at Middle School. During the 2014-2015 year, she worked at the High School. She has a bachelor's degree in elementary education. She also has endorsements in special education K-6 and 6-12. (Tr., Vol. 4 at 888, ln. 16-889, ln. 2.) She has worked for the ' Special Education Cooperative for five years. (Tr., Vol. 4 at 913, ln. 23-914, ln. 4.)

130. Ms. has worked with . since April 4, 2014. (Tr., vol. 4 at 889, ln. 9-11.) The first day that she met ,

He was anxious. He came into school to meet me for the first time and tour. That was prior to the 4th and he was accompanied by Mrs. , who had been working with him for a couple weeks at School, just to see the location, and he became agitated and actually began to cry, and that was prior to the first, the first full day. We were able to visit after a little bit of time and he was able to calm down and I felt like he became more comfortable and his anxiety seemed to lessen. (Tr., Vol. 4 at 889, ln. 14-24.)

131. When ___ first started working with Ms. u, it was important for him to attend in small periods of time because that seemed most appropriate for him. As ___ felt more comfortable, they were able to increase his time in service. (Tr., Vol. 4 at 890, ln. 23-891, ln.

9.) At first, they started having ___ attend after school to allow him to have success at entering the ___ building when there was less likelihood of running into other students.

(Tr.,

vol. 4 at 896, ln. 17-897, ln. 4.)

132. When . is experiencing symptoms of anxiety, Ms. uses positive language with him, reassures him that things will be fine, and talks back and forth to problem solve with him. (Tr., Vol. 4 at 891, ln. 18-892, ln. 2.) Her general approach with , is to use positive reinforcement. (Tr., Vol. 4 at 892, ln. 3-11.)

133. During the time that Ms. has worked with him, has had periods of time when he would have perfect attendance and other times that it has been very difficult to get him to attend school. (Tr., Vol. 4 at 892, ln. 17-893, ln. 1.) Ms. I's overall opinion is that

His anxiety seems to be less and his attendance at school seems to be more often, at least especially through the beginning of this school year. I know that's not what we're discussing, though. Supposed to be the prior year.

So the end of May towards the end of the school year was difficult for , because activities had changed and schedules weren't running the same way, so the last couple weeks were, again, more difficult than, I would say for the most of April was fair. He had perfect attendance for a large part of that time. (Tr., Vol. 4 at 893, ln. 8-19.)

134. On April 14, 2014, the parents and the Districts agreed to increase t.'s time in service from

45 minutes per day to 105 minutes per day. (Dist. Ex. 44.) Mrs. attended an IEP meeting for . on April 17, 2014. During that meeting, she shared positive responses

about how . was doing and provided information which showed that l. was functioning in the average range. (Tr., Vol. 4 at 898, ln. 13-899, ln. 6; Dist. Ex. 47.)

135. On April 28, 2014, the parents and the Districts agreed to increase 's time in service to 150 minutes per day. (Dist. Ex. 50.) However, his time in service had to be reduced back down to 105 minutes per day on May 1, 2014. (Dist. Ex. 52.) Mrs. I testified that the increase to 150 minutes had included .'s participation in a general education class via

Skype into the special education classroom. Initially, t. had wanted to try it, but when it was time to start that, he became uncomfortable and started having more anxiety.

This resulted in the decision to reduce his time in service back down to 105 minutes.
(Tr., Vol. 4 at 902, ln. 3-19.)

136. Another IEP meeting for . was held on May 22, 2014. (Dist. Ex. 55.) While much of the language in the IEP was somewhat different than the previous IEP, the same ideas or strategies were being utilized. (Tr., Vol. 4 at 904, ln. 17-21.) Specifically, Mrs. explained the difference between the two behavior plans as follows:

Overall, I would say that the difference between the two documents is in part the structure in which the first document was, the prior IEP was written, and it clearly defines the information that was received from Denny Leak and the reward system that he recommended.

At the time that f - started with me at the middle school, didn't-[.] was expressing that he did not want the reward system that had previously been used in the prior IEP, and therefore, we were using a different system. We were using similar strategies and we were also using this very similar ideas, but [f.] expressed that he was not interested in earning the specific magic cards anymore and that he didn't feel that that was something he really wanted to discuss at school because it would more than likely be over our head, and that's kind of [f.] language. That's—that was what he shared. (Tr., vol. 4 at 906, ln. 9-907, ln. 2.)

137. 's academics had improved over the course of time that he had worked with Ms.

. (Tr., vol. 4 at 907, ln. 11-17.) f. "was able to show growth even from the meeting that was held to discuss his current level and placement when we did the screening tools to the end of May, when we used the full AIMSweb assessments to display his growth, so he was making forward progress." (Tr., Vol. 4 at 907, ln. 18-22.)

Ms. testified that when . "is being assessed and is having a rough day or seems to be more anxious, his test scores are much lower." (Tr., Vol. 4 at 907, ln. 25—908, ln. 2.) Ms. testified that made academic progress from the time he started attending in

. to the

end of the 2013-2014 school year. (Tr., Vol. 4 at 908, ln. 3-6.)

138. Ms. wrote the May 22, 2014, IEP and included that they would attempt to use equine therapy with . for the 2014-2015 school year. (Tr., Vol. 4 at 908, ln. 7-22.)

However, has refused to participate in that, stating that he is not comfortable doing that.

(Tr., vol. 4 at 926, ln. 15-927, ln. 1.)

139. During the 2014-2015 school year, [redacted] has made good progress on the May 22 IEP. Up until shortly before the hearing in this matter, they thought he might be able to finish an entire year's worth of courses in the short time that he was attending school. (Tr., Vol. 4 at 909, ln. 2-8.) [redacted] continued to make progress throughout the 2014-2015 school year as well. (Tr.,

vol. 4 at 910, ln. 18-24.)

140. Ms. [redacted] explained the outcome of the AIMSweb testing at length. (Tr., Vol. 4 at 914, ln. [redacted] ln. 24; Dist. Ex. 56.) Mrs. [redacted] explained that [redacted] made progress in all of the areas except the reading fluency. She was not sure why his scores would have decreased on that portion of the assessment, but it could have been location of the testing, his mood or anxiety, the test material was more difficult, or increased anxiety due to the fact the test was timed. (Tr., Vol. 4 at 918, ln. 12-24; id at 919, ln. 25-920, ln. 13.) Ms. [redacted] attributed

[redacted]'s progress to becoming more comfortable, understanding the assessments better, and a decrease in his level of anxiety. (Tr., Vol. 4 at 920, ln. 14-24.)

141. Ms. [redacted] testified that she had difficulty getting additional data points for the AIMSweb testing because there were times when [redacted] was unable to enter the building. (Tr., Vol. 4 at 914, ln. 14-21.) On the times when that happened, if [redacted] was unable to be verbally prompted or coaxed out of his vehicle in the parking lot, either myself or a staff member working directly under me would go out to [redacted]'s vehicle and prompt him, whenever possible, to try to exit the vehicle using small direct steps, like start with taking off your seat belt. Now, can you open the door?

Now that you've got the door open, can you go ahead and stand outside of the car? So just making things very small and incremental in trying to help him take the steps to enter the school building. If that was still unsuccessful, then we would provide instruction to [redacted] in the car or close by, if he was unable to come in the building.

(Tr., vol. 4 at 914, ln. 24-945, ln. 12.)

142. During the time Ms. worked with , he made progress on his IEPs. (Tr., Vol. 4 at 922, ln. 6-931, ln. 13; Dist. Ex. 59 (progress report for 12/12/13 IEP); Dist. Ex. 64 (progress report for 5/22/14).) On goal 1, benchmark 2, of the December 2013 IEP, . had nearly met that benchmark and was at 79%. (Dist. Ex. 59 at 1.) On goal 2, benchmark 2, . had made progress, as well. (Dist. Ex. 59 at 2.) Although he had not come to school enough to meet with the counselor, he did work with Ms. on this goal. (Tr., Vol. 4 at 922, ln. 25-923, ln. 12.) On goal 3, benchmark 2, Ms. testified that . had been completing core academic work in the classroom at 75% or above. (Tr., Vol. 4 at 923, ln. 1325; Dist. Ex. 59 at 3.) On goal 4, benchmark 2, had not been taught perception checking by Dr. , as had been anticipated at the time the December 2013 IEP was written, but Mrs. testified that she worked with . on perception checking and that he was accurate at least 25% of the time as required by this benchmark. (Tr., Vol. 4 at 924, ln. 2-12; Dist. Ex. 59 at 4.)

143. During the time that Ms. . worked with him on the 12/12/13 [EP, the fEP was not changed in any way other than time in service. (Tr., Vol. 4 at 925, ln. 2-8.) While at , never expressed a desire to visit with a counselor. (Tr., Vol. 4 at 925, ln. 9-14; id. at 926, ln. 3-5.) had been offered voice-to-text technology, but he had refused to use it on multiple occasions. (Tr., Vol. 4 at 925, ln. 15-19.)

144. With respect to the May 2014 IEP, . had made progress during the first semester of the 2014-2015 school year too, On goal 1, was at 100% use of self-calming strategies for the 2 occasions of anxiety that happened during the first benchmark period and 80% use of self-calming strategies for the 5 occasions of anxiety that happened during the second benchmark period. This goal was very similar to one of the goals on the December 2013 IEP, but it removed perception checking because he was not doing that with Dr. . (Tr., Vol. 4 at 927, ln. 8-928, ln. 17; Dist. Ex. 64 at 1.) On goal 2 of the May 2014 IEP, was at

100% and 90%, respectively, on the benchmarks for responding appropriately to corrective teaching. (Tr., vol. 4 at 928, ln. 18-929, ln. 3.)

145. did well attending at Middle School from April 4 until April 29. (Dist. Ex. 65 at 1.) on April 25, 2014, ___ told Ms. and her para that the court case with was over and charges would be dismissed at the end of the year. (Dist. Ex. 65 at

1.) On April 29 started having difficulty entering the building again and yelling at his mother. This continued for the remainder of the school year. (Dist. Ex. 65.)

146. They had proposed extended school year services for the summer of 2014 just to continue to have a relationship with and continue working on his math skills, but he did not attend beyond a two week period of time. (Tr., Vol. 4 at 934, ln. 4-11; id. at 935, ln. 4-16.)

The proposal for extended school year services was to run from June 2, 2014, to June 26,

2014, and provide 60 minutes of service per day. (Tr., Vol. 4 at 934, ln. 12-935, ln. 3; Dist.

Ex. 58.)

147. During the 2014-2015 school year, .'s attendance was good. He had shown academic progress and much less anxiety. He was having social interactions with other students and was able to laugh and joke. However, he had started having difficulty attending school again near the time of the hearing. (Tr., Vol. 4 at 930, ln. 3-14.) . was on track to have earned five out of seven credit hours for the 2014-2015 school year at the time of the hearing. (Tr.,

Vol. 4 at 933, ln. 5-22.)

148. Mrs. testified that a free appropriate public education is a free appropriate public education is a right given to all students with-that are labeled to have disabilities or have been identified in that way; and "appropriate" is typically the word that's most difficult to describe, but what's looked at is does the student receive something that is individualized to their needs in order to be sure that they are receiving the education that best meets their ability to show progress towards goals. (Tr., Vol. 4 at 935, ln. 17 -936, ln. 4.)

149. Mrs. testified that received a free appropriate public education for the 2013-2014 school year. Although . has difficulty dealing with his anxiety, he was able to access his education with the supports that were in place for him. (Tr., Vol. 936, ln. 5-17.) ...made sufficient progress to allow him to be promoted to ninth grade. (Tr., Vol. 4 at 936, ln. 18-937, ln. 2.) Her opinion was based on both her work with and the progress reports for the first part of the 2013-2014 school year. (Tr., Vol. 4 at 942, ln. 3-19.)
150. . had been receiving special education services in varying amounts of time for nearly a year at the time the team decided to try 45 minutes per day. (Tr., Vol. 4 at 937, ln. 3-17.)

, PARAPROFESSIONAL

151. Ms. • is a paraprofessional working at High School. She has worked there for 14 years.
152. Ms. worked with . when he was at Middle School. Ms. testified that .'s typical day varied depending upon how his morning went before he got to school. If everything started well, he would usually have good day, would answer questions for teachers, and interact with the students. If it did not start well, he would cry and be upset, so she would talk with him and, eventually, they would either go into the special education room or into the general education classroom. (Tr., Vol. 4 at 944, ln. 21-945, ln. 8.) When . started showing signs of anxiety, they would remove him from the situation. (Tr., Vol. 4 at 945, ln. 14-17.)
153. Ms. attended the IEP meeting held on September 18, 2013, and saw leave the meeting early because he was upset. She followed him out and he told her that he "wasn't supposed to have to come back to this school." (Tr., Vol. 4 at 949, ln. 19-950, ln. 22.)

Ms, also heard the team begin discussing the parents' list of concerns before she stepped out of the September 18, 2013, meeting. (Tr. Vol. 4 at 961, ln. 5-15; Dist. Ex. 17.)

154. Ms. • spent most of the school day with . when he came to school. She never noticed that had any problem with his speech or language. There were no problems with grammar, sentence structure, articulation, or vocabulary. (Tr., Vol. 4 at 961, ln. 16-962, ln.

3.) When he was in the general education classroom, was able to raise his hand, interact with students, and ask other students if he didn't understand something or where to look for an answer. He had no difficulty communicating with or interacting with the other students. (Tr., Vol. 4 at 963, ln. 14-23.) When he went into the lunchroom, Ms. – observed him cracking jokes and socializing with the other students. (Tr., Vol. 4 at 963, ln.

24-964, ln. 7.)

155. Ms. was one of the people who welcomed . into the building in the mornings. She went outside to meet him a couple of times, as well. Ms. stated that .. typically had a good day if he was able to make it into the building. (Tr., Vol. 4 at 963, ln. 2-13.)

K. , FATHER

156. Mr. • described .'s anxiety levels by referencing a MRI and brain scan that I. had previously completed.

"It lists the atypical findings of .'s brain function. It affects his learning, his emotions, his anxiety, how his brain is not functioning typically, and these disabilities have a profound physical effect on .. as well, When his anxiety is high, he has sweating, digestive problems, headaches, body aches. (Tr., vol. 5 at 983, ln. 20-984, ln. 3., Dist. Ex. No. 4.)

157. Mr. ' believed that the Districts did not evaluate in a timely manner and that this led to additional stress and anxiety for . (Tr., Vol. 5 at 992, ln. 25-993, ln. 23.) Mr.

also believed that the Districts did not take the parents' reports of what was happening at home seriously enough. (Tr., Vol. 5 at 1001, ln. 19-1002, ln. 8.) Mr. further testified that the December 12, 2013, was "a failure waiting to happen" because the

progress report indicated that [redacted] did not make progress on the first benchmarks. (Tr., Vol. 5 at 1012, ln. 49.) This lack of progress was largely due to [redacted]'s failure to attend school during that time period. (Dist* Ex. 59.)

158. Mr. [redacted] was also angry regarding the way the school handled [redacted]'s threat to kill himself on September 10, 2013. He did not believe it was appropriate for them to call police for a threat assessment. This caused [redacted] to be very embarrassed and angry, leading to a

"horrible day" at home the next day. (Tr., Vol. 5 at 994, ln. 13-995, ln. 25.)
Mr. [redacted]

testified that he felt the police were called before qualified school personnel were consulted, stating: "You know, statements of "I want to die" should be addressed. Calling the police and not involving a qualified school personnel in the problem I consider to be wrong." (Tr. Vol. 5 at 995, ln. 22-25.) "We felt that it was important that a school psychologist, a school counselor, someone follow-up on these statements; that if a child is making statements of harming themselves, that it should be followed up, it should be addressed, and to just call the police and then walk away and forget about it is not only dangerous to the child, it is dangerous to the school." (Tr. Vol. 5 at 996, ln. 5-12).

159. Mr. [redacted] testified that the parents provided written parental input on September 18, 2013 (Exhibit 17). The parents requested a shortened day but, "we were told no, there was not going to be a shortened day. We are not going to consider a shortened day. It's never going to happen. Don't even think about it; the teachers come in one after another stating that

[redacted] doing good. doing fine. I feel that [redacted] was not portrayed accurately at the meeting. (Tr. Vol. 5 at 998, ln. 5-11). Referencing the log taken that day, Mr. [redacted] noted that the log stated:

Ms. [redacted] saw [redacted] and he was very angry. The parents were at the meeting for another hour after [redacted] left. I thought he'd calm down but when we got home, he was like a powder keg. He was, oh, he was so, so angry and so upset and the first thing he said when we came in the door is "they aren't going to do anything are they?" and they weren't, and he was right, and he had every reason to be upset and he had every reason to be angry, and it was difficult for everyone in our house that evening. (Tr. Vol. 5 at 998, ln. 17-999, ln. 3.)

Mr. [redacted] described in his testimony the challenges faced by [redacted] through his involvement with the software Edgenuity program:

So in November we've changed the hours to three hours a day and we are going to just special ed services and we are going to try to get] back into school. Edgenuity is brought in at this time as a way of giving f.] a program that he could do at home on the days he couldn't make it and at school when he could make it, and we were very thankful for that, you know, they finally cut back on the time and that they were going to, you know, have a bridge in between that he could work on and not be behind when he was at—couldn't go—and that he had something to do there.

(Tr. Vol. 5 at 1004, ln. 1-12.) r. further testified on the problems of having , work on the Edgenuity program wher. . knew he would not receive credit at home:

"I could not describe the hours that we spent trying to get [.] to do the Edgenuity program. In November, we started it and it was his only academics from November to when we left • l in March. In December he is told he is not going to get credit for that, what he does at home." (Tr. vol. 5 at 1006, ln. 6-11.) r.] went on to testify:

You know, the only education, the only academic program that (had from November to March was Edgenuity. The District has said ' .] didn't—didn't do enough to keep track of it, You know, that was the only academics that he had at that time, and yet they didn't even put it in his record and I just think back to those times I told I.] 'try to do it, try to do it' and he would tell me 'you are an idiot, I'm not getting any credit' and I would say you know 'it's the joy of learning, it doesn't matter if you get credit. If you do enough, if you do well, you will get credit, you know. (Tr. vol. 5 at 1009, ln. 11-23).

[.] did 225 assignments. did 7 labs, I .] did 42 quizzes. [did 8 tests and this is a child whose told he's not going to get credit for this, and it speaks to [*'s] desire to learn and the desire to do good 'cuz you are telling him you're not even going to get credit for it, and if you harp on him enough he's going to try it and he's going to do it.' (Tr. Vol. 5 at 1011, ln. 412.) (Dist. Ex. 62.)

160. Mr. stated that the time period . was in was a painful, horrible time, and in fairness, I can't say it's all the school. I mean, this was a kid who has severe emotional and behavioral problems, and it would have been a difficult time even in the best of circumstances. I can't blame everything on the school. I think those problems would have been there with or without the school. (Tr., Vol. 5 at 1017, ln. 21-1018, ln. 4.)

161. Mr. admitted that the parents had received a copy of the parent rights with the August 2013 IEP and the December 2013 IEP. (Tr., vol. 5 at 1020, ln. 10-1021, ln. 6; id. at 1022, ln. 13-1023, ln. 6; Dist. Ex. 13 (August 2013 IEP); Dist. Ex. 37 (December 2013 IEP).) Mr. testified that he had given consent for the August 2013 IEP and that he never revoked consent for that IEP. He claimed that he did not know he could revoke consent until asked about it during his testimony, even though it explicitly states that consent can be revoked on the notice and consent that he signed. (Tr., Vol. 5 at 1021, ln. 7-1022, ln. 12; Dist. Ex. 14.)

162. Mr. testified that was on the December 2013 IEP when he started attending in I and that the only changes made to that IEP were with respect to the time in service. No other substantive changes were made to that IEP until the May 2014 IEP was written. (Tr., Vol. 5 at 1023, ln. 15-1026, ln. 9.)

L. , SCIENCE TEACHER

163. Ms. is the middle and high school science teacher for U.S.D. She has held that position for nine years. (Tr., Vol. 5 at 1035, ln. 14-25.)

164. was briefly one of her students during his seventh grade year, as well as being one of her students during his eighth grade year. (Tr., Vol. 5 at 1036, ln. 9-14.) Ms. -

attended the September 18, 2013, IEP meeting for . Ms. recalled the list of parent concerns and recalled that they were discussed during this meeting. (Tr., Vol. 5 at 1036, ln. 15-1037, ln. 17; Dist. Ex. 17.) Ms. discussed how was performing when he was in her class during the September 18th meeting. She recalled that the parents requested a shortened school day during the meeting, and the teachers discussed what they saw in their classes. In her opinion, Ms. did not believe . needed a shortened day at that time because he seemed to do fine when he was in her class and when he was in the lunchroom. (Tr., Vol. 5 at 1037, ln. 21-1039, ln. 20.) In her class, . participated in

verbal discussion. There was times he raised his hand to answer questions without even being prompted to. He usually finished his worksheet and would ask questions if it was something

he didn't understand, (Tr., Vol. 5 at 1040, ln. 5-9.)

165. Ms. had a separate room at the back of her classroom that could be used by , and he knew that he could go back there with his Mrs. without asking. (Tr., Vol. 5 at 1040, ln. 11-24.) She also accommodated by allowing him to leave the classroom without asking permission. ___ could work in the special education classroom if he wanted and always had Mrs, with him. Ms. was aware that had different options for lunch—he could eat in the lunchroom with his peers, eat in the office, or eat in the special education classroom. (Tr., Vol. 5 at 1040, ln. 25—1041, ln. 20.)
166. Ms. had lunchroom duty for the middle school. When . was in the lunchroom, he always sat with a friend or group of friends and seemed to do okay. (Tr., Vol. 5 at 1039, ln. 21-1040, ln. 3.)
167. Ms. ,lso recalled that the parents requested a functional behavior assessment during the September 18th meeting and that she had talked with Denny Leak about it. (Tr., vol. 1038, ln. 11-1039, ln. 5.) Ms. reviewed the comments attributed to her in Denny Leak's FBA report and stated that those accurately reflected her comments to him. (Tr., vol. 5 at 1042, ln. 16-1043, ln. 19; Dist. Ex. 31.)
168. . made progress in her class during the brief time that he was there. Ms. never saw any problems with 's language or communication skills when he was in her class or when she saw him in the lunchroom. He was able to interact with his peers and never had any problem interacting with her. (Tr., Vol. 5 at 1041, ln. 21-1042, ln. 15.)

169. Mr. I is the social studies teacher for the seventh, eighth, and tenth grade students at U.S.D. He has a bachelor's degree in education and a master's degree in history, both from Pittsburg State University. He has held his position with U.S.D. for two years. (Tr., Vol. 5 at 1049, ln. 5-15.) ____ was his student in eighth grade. (Id at 1050, ln. 2-4.)
170. Mr. *ttended some IEP meetings for ____ The first IEP meeting he attended was the August 2013 IEP meeting. At that time, he was just learning about ____ and some of the accommodations they should make for him. Those accommodations included letting leave the class to go to the bathroom or to the counselor's office to calm down and having a para with him in the general education classes. ____ was not required to ask permission before leaving the classroom. Mr. ____ also had preferential seating for ____ and placed him in a group of students that ____ knew and with whom he worked well. (Tr., Vol. 5 at 1050, ln. 5-1051, ln. 19.)
171. Mr. also remembered that there was discussion during the August 2013 IEP meeting that would have his core eighth grade classes in the morning and seventh grade core classes in the afternoon. (Tr., Vol. 5 at 1052, ln. 9-1053, ln. 5.) Mr. I did not think it would be possible for a student to skip the entire seventh grade and successfully move on to the eighth grade because he would be missing the foundations for the next school year. For example, his eighth grade class relies on the foundation set in seventh grade geography for eighth grade geography. (Tr., Vol. 5 at 1053, ln. 6-23.)
172. Mr. also attended the September 18, 2013 IEP meeting. He recalled that they discussed the list of concerns from the parents during this meeting. One of those requests was for a shortened school day. Mr. ____ thought it would be really difficult for ____ to try

to take eighth grade classes without the seventh grade core classes and that is what would have happened if they had shortened his school day. (Tr., Vol. 5 at 1054, ln. 1-1055, ln. 13.)

In response to the parents' request, Mr. _____ shared what he was seeing with respect to _____'s performance in his class. (Tr., Vol. 5 at 1055, ln. 14-1056, ln. 5; Dist. Ex. 18.) At that point in time, he did not believe _____ needed a shortened day. (Tr., Vol. 5 at 1056, ln. 6-9.)

173. Mr. _____ also recalled that the parents requested a FBA at the September 18th meeting and that the request was granted. Mr. _____ reviewed the comments attributed to him in Denny Leak's report and testified that those comments accurately reflected what he told MR. Leak. (Tr., Vol. 5 at 1056, ln. 10-1057, ln. 24.) One of his comments to Mr. Leak was that had "one day he couldn't be quiet, and that's actually a positive thing. That was because he was so involved in the discussion, and here it kind of makes it seem like it washe was an issue, but he wasn't." (Tr., Vol. 5 at 1057, ln. 9-13,) When _____ was in class, he participated in class discussions a lot. (Tr., Vol. 5 at 1057, ln. 18-19.)

174. _____ also attended the IEP meeting on October 29, 2013, to discuss _____'s return from KVC Wheatland Hospital. At that meeting, the parents again requested a shortened day, but _____ could not remember whether that request was granted. (Tr., Vol. 5 at 1058, ln. 3-1059, ln. 17.) He did not see _____ again after this meeting. (Tr., Vol. 5 at 1059, ln. 20-22.)

175. When _____ was in Mr. _____'s class, [h]e did excellent. _____ mean, he did the work. Nothing that was subpar from the rest of the group. I mean, he was right on the ball. Again, like I said, he volunteered answers. It wasn't like I had to pry them out of him. He talked in class. He communicated with his classmates like a normal eighth-grader would. There wasn't really anything that, you know, any red flags that popped up at me whenever I saw him in class.

Q: You said he volunteered answers?

A: Mm-hmm.

Q: Was he generally correct when he volunteered answers?

A: Generally, and then even sometimes when he was incorrect, you know, which wasn't very often, because he was pretty knowledgeable whenever he did that. Whenever he was incorrect, he'd like-like you know, I'd say, "Well, you're kind of right but, you know, here's, here's what the exact answer is," and he'd like, "Oh, okay," and then he'll kind

of brush it off. It wasn't like it was a major issue. Q: Did [J ever give his opinion in class?

A: Yes, he did.

Q: Did you ever have the kids work on group projects together?

A: Yes, I did.

Q: Did [] participate in those?

A: Yes.

Q: Did you ever see any problems with [-.]'s language or his ability to communicate or interact with peers?

A: Never saw any of that.

Q: Did he ever have any difficulty interacting or communicating with you?

A: No.

Q: Did he make progress when he was in your class?

A: For the short time he was with me, I feel like he made progress.

Q: When he turned in his work, what were his grades like, if you recall?

A: I do remember them being pretty good, 'cause he would complete his work. There was only that one time where he did not complete his assignment and that was where, you know, we had that situation; but outside of that, you know, he came to school with his work done and ready to go, and in class he worked on his assignments and usually got all-got most of them done in class, so there wasn't really much homework for him to do, and they were usually generally correct. Q: And do you recall if (had any legibility issues with his handwriting?

A: No, there was no legibility issues.

Q: You were able to read whatever he turned in?

A: Mm-hmm.

(Tr., vol. 5 at 1059, ln. 24-1062, ln. 2.)

176. Mr. felt that received a free appropriate public' education because [w]e received requests. We, we did feel like we did what was best for IJ and tried to do what was best for [] by making sure he did the seventh grade year and also his eighth grade year core classes, and we made accommodations for him. Especially in my class, you know, he was able to go to the counselor if he needed to. I set him with people he knew and was comfortable with, and I know he had a para also that came around, and she was a really nice lady and really helped him out when he

needed it, which actually wasn't really too often in my class, 'cause he had a pretty good grasp on things, but I feel like he did. (Tr., Vol. 5 at 1062, ln. 3-20.)

177. Based upon his attendance at the IEP meetings, Mr. testified that issues raised by the parents were discussed in the meetings and considered by the team. (Tr., Vol. 5 at 1062, ln. 21-1063, ln. 1.)

N. MATH TEACHER

178. Ms. is the middle school math teacher at U.S.D. and has held this position for twelve years. She has a bachelor's degree from Emporia State University. She is licensed to teach K-9 elementary education and middle school math. She has been teaching math a total of 24 years. (Tr., Vol. 5 at 1066, ln. 9-24.) ___ was her student in seventh grade math for a brief time and in eighth grade math. (Tr., Vol. 5 at 1066, ln. 25-1067, ln. 7.)

179. Ms. t attended the August 2013 IEP meeting for (Tr., vol. 5 at 1071, ln. 4-10.) At that meeting, there was discussion about whether could be placed in eighth grade algebra. She recommended that he take eighth grade math instead and take the online course for seventh grade math because he had not attended much during his seventh grade year. (Tr., vol. 5 at 1072, ln. 9-22.) Ms. recalled that the parents requested a shortened day at this meeting and that it was discussed by the IEP team. (Tr., Vol. 5 at 1074, ln. 22-1075, ln. 4.)

180. Ms. was not able to attend the September 18, 2013 IEP meeting due to volleyball practice, but she did send an e-mail to with her input. (Tr., Vol. 5 at 1073, ln. 2-1074, ln. 14.) She did not attend any other IEP meetings for (Tr., vol. 5 at 1074, ln.

181. When . was in her class, he was able to talk and work in groups. He participated in group discussions. He did not seem to have a problem talking to other students. He listened when she lectured and took notes. [f he ever got nervous, he was able to get up and leave without asking permission. (Tr., Vol. 5 at 1075, ln. 5-18.) Ms. testified that . did not have any problem communicating with her or with other students. (Tr., Vol. 5 at 1076, ln. 61077, ln. 7.)

182. Ms. reviewed the comments attributed to her by Denny Leak and testified that they accurately reflected her comments to Denny Leak. (Tr., Vol. 5 at 1077, ln. 8-1078, ln. 12,) 183. When.. was in Ms, ; class, he made progress and did well on the assignments he turned in. (Tr., vol. 5 at 1078, ln. 13-16.)

N. , ENGLISH TEACHER

184. is the English teacher for grades 7-9 with U.S.D. She has a bachelor's

degree in Secondary Education English and is licensed to teach English to grades 5 through

12. She has worked for the District for 20 years. (Tr., Vol. 5 at 1081, ln. 2-13.) Ms.

had . as a student for both seventh and eighth grades. (Tr., Vol. 5 at 1081, ln. 17-1082, ln. 9.)

185. Ms. attended the IEP meeting held on August 21, 2013, for She recalled that they were discussing returning to school, making him more comfortable in school, and what gaps he had from seventh grade because they had no records for his seventh grade

year. (Tr., Vol. 5 at 1083, ln. 1-15.) . was going to be taking online courses to recover

course work he missed in the seventh grade because the eighth grade curriculum

builds on what was covered in the seventh grade curriculum and they wanted to ensure

that he did not have any gaps. (Tr, Vol. 5 at 1084, ln. 4-13.) Ms. recalled the parents

requested a shortened day and did not want him doing the online seventh grade course

work because he had been homeschooled; however, the parents ultimately agreed to

doing eighth grade courses in the morning and seventh grade courses online in the

afternoon. (Tr., Vol. 5 at

1084, ln. 14-1085, ln. 2.)

186. Ms. also attended the September 18, 2013, IEP meeting for She recalled the list of concerns presented by the parents and testified that those concerns were considered by the team. (Tr., Vol. 5 at 1085, ln. 8-1086, ln. 1.) She also recalled that they discussed the parents' request for a shortened day at this meeting. Ms. did not agree that he needed shortened days. He needed to

be there in the mornings for his core classes and he needed the afternoons to catch up what he had missed from seventh grade. (Tr. Vol. 5 at 1086, ln. 8—1087, ln. 5.) She also recalled that the parents requested a FBA in this meeting and that the request was granted. She knew it had been granted because she talked to

Denny Leak about it. (Tr., Vol. 5 at 1088, ln. 21-1089, ln. 6.)

187. When . was in class, he did very well. In fact, she stated that she was surprised that he raised his hand and contributed to the discussion of a novel they were reading, She was surprised because he had not attended much. had actually finished the novel before the rest of the class. (Tr., Vol. 5 at 1087, ln. 18-1088, ln. 8.) When . participated in class discussions, his answers were correct and he had no difficulty expressing himself. had no difficulty communicating or interacting with Ms. or his peers in her class. (Tr., Vol. 5 at 1088, ln. 9-20.) In her comments to Denny Leak, Ms. had expressed that she "was shocked by the quality of his writing. Graded for content he would be one of the top writers in class." (Tr., Vol. 5 at 1089, ln. 18-1090, ln. 3.) Again, she was surprised by the quality of his writing because he had attended school so little. (Tr., Vol. 5 at 1090, ln. 4-13.) Ms. testified that .'s vocabulary was age appropriate and that she had no concerns regarding potential speech or language delays. (Tr., Vol. 5 at 1090, ln. 22-1091, ln. 1.)

188. In the IEP meetings Ms. attended, the team discussed and considered requests from the parents. Furthermore, the team was willing to make accommodations for . Those accommodations included the ability to leave the classroom when he needed to without asking permission and go to the counselor's office, giving him time to make up missing work, having a para with him who also kept track of his assignments that were missing, having the para meet him at the door to the school to greet him, and allowing him to work in the special education classroom when he was unable to come to the general education classroom. (Tr., Vol. 5 at 1091, ln. 2-1092, ln. 25.)

189. . was making progress when he came to Ms. 's class. He was attentive, did his work, and received good grades. (Tr., Vol. 5 at 1093, ln. 3-9,) [n Ms. 's opinion, he

received a free appropriate public education because they accommodated him in any way possible and their goal was to get him to come to class and be comfortable there. (Tr., Vol. 5 at 1093, ln. 10-19.)

190. In the IEP meetings that Ms. [redacted] 1 attended, there were never any requests made for homebound services. If [redacted] had needed homebound services, the Districts would have provided those services. (Tr., Vol. 5 at 1093, ln. 20-1094, ln. 1.)

IV. CONCLUSIONS OF LAW:

A. OVERVIEW.

FREE APPROPRIATE PUBLIC EDUCATION

1. "Free appropriate public education" (or "FAPE") means:

Special education and related services that-- (A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State educational agency; (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and (D) are provided in conformity with the individualized education program.

20 U.S.C.1401

2. The U.S. Supreme Court expanded this definition in *Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982). The Court held further that a district satisfied this requirement by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction. The Court held further that such instruction and services must be provided at public expense, must meet the State's educational standards, must approximate the grade levels used in the State's regular education, and must comport with the child's IEP. In addition, the IEP, and therefore the personalized instruction, should be formulated in accordance with the requirements of the Act and, if the child is being educated in the regular classrooms of the public education system, should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade. *Rowley* at 203-04.

3. The U.S. Supreme Court went on to set forth a two-part test to determine whether the districts have complied with federal special education law: 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? *Id.* at 206-07.

In reviewing such cases to determine whether the above requirements have been met, the U.S. Supreme Court cautioned that courts must be careful to avoid imposing their view of preferable educational methods upon the States. The primary responsibility for formulating the education to be accorded a handicapped child, and for choosing the educational method most suitable to the child's needs, was left by the Act to state and local educational agencies in cooperation with the parents or guardian of the child. *Id.* at 207.

4. When the parents have raised issues alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies-- (I) impeded the child's right to a free appropriate public education; (II) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents' child; or (III) caused a deprivation of educational benefits. 20 U.S.C. §1415(f)(3)(E)(ii). "A procedural fault rises to this level when a school fails to conduct proper assessments and then provides inadequate services." *Dracut Sch.*

Comm. v. Bureau of Special Educat Appeals of the Mass. Dept. of Elem. and Second, Educ., 737 F. Supp. 2d 35, 49-50 (D. Mass. 2010). "Technical deviations from the requirements of [IDEA] . . . do not render an IEP entirely invalid; to hold otherwise would 'exalt form over substance.'" *Urban v. Jefferson County Sch. Dist. R-1*, 89 F.3d 720, 726 (10th Cir. 1996)(quoting *Doe v. Defendant 1*, 898 F.2d 1186, 1190 (6th Cir. 1990)).

PRE-DETERMINATION

5. The cornerstone of special education under the IDEA is the development of annual individualized education plans (IEPs) for each eligible child, developed in accordance with various procedures and requirements contained in the Act, including provisions that afford parents an active and meaningful role in the development of the IEP. 20 U.S.C. §§ 1401(14), 1414(d); see also *Honig v. Doe*, 484 U.S. 305, 311, 559 IDELR 231 (1988). Parents, for example, must be part of the team of decision-makers that develops, reviews, and revises the IEPs. 20 U.S.C. § 1414(d)(1)(B)(i). Schools must also ensure that parents are provided an opportunity to participate in each IEP team meeting. 34 C.F.R. § 300.322. In turn, a child's placement must be based on the IEP. 34 C.F.R. § 300.116(b)(2). Therefore, a school that pre-decides a child's placement or services before IEP

team meetings and parental involvement and input violates the requirement to afford parents a meaningful opportunity to participate and commits a procedural violation of the IDEA. See, e.g., *Knable v. Bexley City Sch. Dist.*, 238 F.3d 755, 767-70, 34 IDELR 1 (6th Cir. 2001).

6. Longstanding case law holds that procedural violations of IDEA can rise to the level of denying a child's right to FAPE in certain circumstances. *Board of Educ. of County of Cabell v.*

Dienelt, 843 F.2d 813, 559 IDELR 461 (4th Cir. 1988). A serious procedural violation that results in the loss of educational opportunities for the child can represent a denial of FAPE, See, e.g., *Gadsby*

v. Grasmick, 109 F.3d 940, 25 IDELR 621 (4th Cir. 1997); *Heather S. v. State of Wisconsin*, 125 F.3d

1045, 26 IDELR 870 (7th Cir. 1997).

7. In addition, a procedural violation that seriously or significantly infringes on the parents' right to meaningfully participate in the development of the IEP or placement decision can also rise to the level of a denial of FAPE. *W.G. v. Board of Trustees of Target Range Sch. Dist. No. 23*, 960 F.2d 1479, 18 IDELR 1019 (9th Cir. 1992); *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 994, 16 IDELR 1129 (1st Cir. 1990); *Hall v. Vance County Bd. of Educ.*, 774 F.2d 629, 635, 557 IDELR 155 (4th Cir. 1985).

8. In its reauthorization of the Act, Congress added a provision essentially codifying the majority of case law on this issue. 20 U.S.C. §1415(f)(3)(E)(ii). It states the following:

Procedural issues--in matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies--

(I) Impeded the child's right to a free appropriate public education;

(II) Significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents' child; or

(III) Caused a deprivation of educational benefits.

9. If school staff unilaterally pre-decide a child's IEP services or placement prior to actual IEP team meetings that include the parent, and then ignore or prevent parental

input at the meeting, there is a procedural violation of the IDEA that seriously infringes a parent's right to meaningfully participate in the IEP process and constitutes a denial of FAPE. The predetermination claim has been recognized by federal courts since the late 1980's. See *Spielberg v.*

Henrico County Pub. schs., 853 F.2d 256, 441 IDELR 178 (4th Cir. 1988); *w.G. v. Board of Trustees of*

Target Range Sch. Dist. No. 23, 960 F.2d 1479, 18 IDELR 1019 (9th Cir. 1992); *Doyle v. Arlington County Sch. Bd.*, 806 F. supp. 1253, 19 IDELR 259 (ED. Va. 1992).

10. When the public school system "pre-selects" the special education programming or placement for a child with a disability, prior to and despite the discussion at the IEP team meeting, the school district has effectively "predetermined" the outcome of the IEP process.

In 2007, the Ninth Circuit Court of Appeals stated it this way:

...[P]redetermination occurs when an educational agency has made its determination prior to the IEP meeting, including when it presents one placement option at the meeting and is unwilling to consider other alternatives.

H.B. ex rel P.B. v. Las Virgenes Unified Sch. Dist., 239 Fed. Appx., 342 (2007), on remand 52 IDELR 163 (C.D. ca. 2008), *aff'd* 54

[DELR 73 (9th Cir. 2010):

11. In *Deal v. Hamilton County Bd. of Educat*, 392 F. 3d 840 (2004), *cert.*

denied, 110 LRP 46999, 546 U.s. 936 (2005), on remand, 46 IDELR 45 (ED. Tenn.

2006), *aff'd*, 49 [DELR 123 (6th Cir.

2008), the 6th Circuit Court of Appeals analyzed the issue of predetermination when it first considered the methodology offered by the school for a student with autism:

The facts of this case strongly suggest that the School System had an unofficial policy of refusing to provide one-on-one ABA programs and that School System personnel thus did not have open minds and were not willing to consider the provision of such a program. This conclusion is bolstered by evidence that the School System steadfastly refused even to discuss the possibility of providing an ABA program, even in the face of impressive results. Indeed, School System personnel openly admired and were impressed with Zachary's performance (presumably attained through the ABA program), until

the Deals asked the School System to pay for the ABA program. Several comments made by School System personnel suggested that they would like to provide Zachary with ABA services, i.e., they recognized the efficacy of such a program, but they were prevented from doing so, i.e., by the School System policy. Deal at 858.

12. In reviewing whether the school system had an "unofficial policy" of refusing to consider the Lovaas style ABA methodology for students with autism and of "pre-selecting" the services for students, regardless of "individual needs," the Administrative Law Judge in the Deal case found the following important:

- ❶ A special education supervisor met with the parent prior to the IEP team meeting and outlined various programs for students with autism, omitting any reference to the Lovaas style ABA methodology.
- ❷ A school representative at an IEP team meeting told the parents that there were things she would like to provide the student but that the school system could not provide the same services for every child, and on one occasion stated that she wished people would "pay their taxes" so that the school could provide ABA for the student.
- ❸ The special education supervisor told the parents that they could not ask questions during an IEP team meeting.
- ❹ School personnel informed the parents that the "powers that be" were not implementing ABA programs

13. The question is whether the parents' opportunity to participate was "meaningful". In considering this issue, the Third Circuit Court of Appeals noted that meaningful participation was demonstrated in the following case when a public school district considered parents' suggestions and incorporated, at least in part, those suggestions into the IEP document, stating:

The [parents] were presented with a draft IEP at a meeting on August 16, 1990. The [district]'s draft IEP was discussed, and the [parents] made several suggestions as to how the plan might be changed ...The [district] considered the [parents]' suggestions and incorporated some into the IEP... Although the [parents] ultimately did not sign the revised IEP, there was clearly more than after-the-fact involvement here, The record indicates that the [parents] had an opportunity to participate in the IEP formulation process in a meaningful way.

Fuhrmann v. East Hanover Bd. of Educ., 19 IDELR 1065 (3d Cir. 1993), rehearing denied, 110 LRP 65930, No. 92-5218 (3d Cir. 1993) (emphasis added).

If the parents are denied the opportunity to ask questions during the IEP team meeting, or if the parents propose items for discussion that are summarily disregarded by school staff, such can constitute evidence that the parents have not been provided the opportunity to participate in the meeting in a meaningful way.

14. The school need not adopt every suggestion made by the parents to be able to

defend a claim of predetermination. As noted by the 8th Circuit Court of Appeals:

A school district's obligation under the IDEA to permit parental participation in the development of a child's educational plan should not be trivialized. See Rowley, 458 U.S. at 205-06 ("It seems to us no exaggeration to say that Congress placed every bit as much emphasis on compliance with procedures giving parents and guardians a large measure of participation at every stage of the administrative process . . . as it did upon the measurement of the resulting IEP against a substantive standard.").

Nevertheless, the IDEA does not require school districts simply to accede to parents' demands without considering any suitable alternatives. In this case, the record shows that the School District considered both the possibility of providing Grace with in-home instruction and the possibility of reimbursing her parents for the cost of educating her at home through the Institutes, but rejected these options on the ground that they would not provide her with sufficient interaction with other children. The School District's adherence to this decision does not constitute a procedural violation of the IDEA simply because it did not grant Grace's parents' request. For these reasons we agree with the hearing panel's determination that the School District did not deprive Grace's parents of their procedural rights.

Blackmon v. Springfield R-XII School District, 31 IDELR 132 (8th Cir. 1999), rehearing denied, 110 LRP 65933, No. 99-1163 (8th Cir. 2000).

LEAST RESTRICTIVE ENVIRONMENT

15. The IDEA, 20 U.S.C. § 1401, et seq., requires that FAPE be provided in the least restrictive environment ("LRE"). The LIRE means that:

To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are 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.”

20 USC.1415(a)(5)(A).

DID THE DISTRICT PROVIDE A FAPE TO L.H. FOR THE 2013-2014 SCHOOL YEAR?

1. In the present matter, there has been no suggestion that has not received special education and related services that (A) were provided at public expense, under public supervision and direction, and without charge; (B) met the standards of the State educational agency; (C) included an appropriate middle school education; and (D) are provided in conformity with the individualized education program. .’s parents have not claimed that they were charged for his educational services. His services were provided pursuant to an IEP which was based on the middle school curriculum and aligned to state standards. (Tr., Vol. 1 at 141, ln. 11-17.) In fact, the August 2013 [EP not only provided him with services based upon the eighth grade curriculum, but also attempted to help him recover the content knowledge that had missed during his seventh grade year. (Dist. Ex. 13 at 11; Tr., vol. 1 at 216, ln. 20-217, ln. 17; Tr., vol. 2 at 419, ln. 4-420, ln.

8; Tr., vol. 2 at 421, ln. 8-423, ln. 5; Tr., vol. 3 at 719, ln. 15-720, ln. 12; Tr., vol. 5 at 1052, ln. 91053, ln. 5; Tr., vol. 5 at 1053, ln. 6-23; Tr., vol. 5 at 1072, ln. 9-22; Tr, vol. 5 at 1084, ln. 4-13.)

2. Thus, the primary concern regarding FAPE in this matter revolves around the two-part test set forth in Rowley. The first part of the Rowley test is whether the Districts have complied with the procedural requirements of the IDEA. Many of the issues raised by the parents in this matter are procedural in nature and may more properly be considered sub-issues of this issue. However, the testimony in this matter was clear that the procedural requirements have been met, as will be discussed more fully below in response to each issue raised by the parents.

3. The second part of the Rowley test is whether the IEPs were reasonably calculated to enable . to receive educational benefit, i.e., whether . was able to advance from grade to grade. Rowley, 458 U.S. at 203-04, 206-07. The evidence clearly demonstrated that made progress on all of his IEP goals and benchmarks, except when he refused to come to school. (Dist.

Ex. 38; Dist. Ex. 59; Dist. Ex. 64; Tr., vol. 2 at 270, ln. 12-21; Tr., vol. 3 at 540, ln. 10-541, ln. 4; Tr., vol. 3 at 747, ln. 12-748, ln. 1; Tr., vol. 3 at 748, ln. 2-749, ln. 20; Tr., vol. 3 at 749, ln. 21-750, ln.

16; Tr., vol. 4 at 872, ln. 16-873, ln. 7; Tr., vol. 4 at 907, ln. 11-908, ln. 6; Tr., vol. 5 at 1041, ln. 211042, ln. 15; Tr., vol. 5 at 1062, ln. 3-20; Tr., vol. 5 at 1078, ln. 13-16; Tr., vol. 5 at 1093, ln. 3-19.)

As Denny Leak testified, it is impossible for school staff to provide the behavioral supports if . does not come to school. (Tr., Vol. 1 at 85, ln. 17-23.)

4. As indicated by the testing completed during his initial evaluation and the AIMSweb testing done later in the 2013-2014 school year, . functioned well academically. (Dist. Ex. 11; Dist. Ex. 56; Tr., vol. 2 at 409, ln. 1-9; Tr., vol. 2 at 271, ln. 14-273, ln. 14; Tr., Vol. 3 at 717, ln. 12-718, ln. 15; Tr., Vol. 4 at 914, ln. 9-920, ln. 24.) His primary issue is his anxiety, which is having an adverse impact on his education. (Dist. Ex. 11 at 8.) There was significant testimony that, once . made it into the building, the positive behavior supports and accommodations in his IEP enabled him to make educational progress. (Tr., Vol. 1 at 76, ln. 10-22; Tr., Vol. 1 at 85, ln. 4-11; Tr., Vol. 1 at 128, ln. 17-129, ln. 7; Dist. Ex. 61 at 1-2; Tr., vol. 2 at 431, ln. 22-432, ln. 25; Parent Ex. 42; Tr., vol. 3 at 747, ln. 12-748, ln. 1; Tr., vol. 3 at 749, ln. 21-750, ln. 16.)

5. During the testimony of several witnesses, the parents seemed to complain that the U.S.D. ; staff did not do enough to help . get into the building and seemed very complimentary of the efforts by staff at Middle School to work with at the car. Denny Leak, Autism Specialist, testified that , had informed him that his biggest concern was approaching school and just getting through the doors. (Tr. Vol. 1 at 59, ln. 6-14.) The principal at Middle School, Mr. , stated that staff members would walk out to the mini-van to help . get into the building; however, . was not always dropped at school by car because the family lived very close to the school and walked. The office staff at the school were sometimes able to see walking to school from his house and there were days when they saw . walking toward the school and then turn around and go back home. (Tr. Vol. 2 at 434, ln. 3-7; Id. at 435, ln. 4-11; Tr. Vol. 2 at 435, ln. 12-18.) The school counselor, recalled seeing . having a hard time coming into the building and sometimes even getting to the car was difficult. One time was actually in the building, but then left, and Mr. followed him home two blocks away, to work with him.

(Tr. Vol. 4 at 854, ln. 15-855, ln. 20.) paraprofessional testified that when . was at Middle School his typical day varied depending on how his morning went before he got to school. If everything started well, he would usually have a good day; would answer questions for the teachers and interact with students. If it did not start well, he would cry

and be upset so she would talk with him and, eventually, they would either go into the special education room or into the general education classroom. (Tr. Vol. 4 at 944, ln. 21-945, ln. 8.)

When .. started showing signs of anxiety, he would be removed from the situation. (Tr. Vol. 4 at

945, ln. 14-17.)

6. The parents' argument overlooks a fundamental distinction between Middle School and Middle School as Middle School was located only a few blocks from 's house. (Tr., vol. 2 at 434, ln. 3-7; id. at 435, ln. 4-11; Tr., vol. 2 435, ln. 12-18.) could, and did, simply leave the building and walk home. (Tr., Vol. 3 at 513, ln. 24-514, ln. 1; Tr., Vol. 4 at 854, ln. 24-855, ln. 21.) could not do that in Short of restraint or seclusion (neither of which would have been legal under the circumstances), there was nothing the school could do to prevent him from leaving. See K.A.R. 91-42-1, et seq., as modified by 2015 Kansas Laws Ch. 72 (H.B. 2170).

7. The Hearing Officer finds the testimony of the Districts' staff members credible and supported by documentary evidence. The Hearing Officer finds that the Districts provided a FAPE to during the 2013-2014 school year.

c. PID THE DISTRICT FAIL TO CONSIDER PARENTS' REQUEST FOR SHORTENED SCHOOLS N P
10 0 3

1. The Districts are required to consider parental input as part of an evaluation. 34 C.F.R. §300.305(a)(2); 34 C.F.R. §300.306(c)(1)(i). However, at this point in time, the Districts did not yet have consent to perform the evaluation. (Dist. Ex. 8.) During the April 10, 2013, meeting, the

Student Improvement Team referred . for a special education evaluation and the parents were presented the notice and consent for evaluation. (Tr. Vol. 1 at 205, ln. 20-206, ln. 17;

Dist. Ex. 7-8.) At the time of the meeting, was not a special education student but rather was a regular education student. Regular education students are expected to attend full days of school. (Tr. Vol. 1 at 207, ln. 1-11.) Although the parents wanted . be required to attend an hour per day, the District had suggested half days in an attempt to get him to school as much as possible to try interventions with him. (Tr. Vol. 1 at 127, ln. 8-128, ln. 8; Dist. Ex. 9.) During the meeting, Mr. . the principal, had presented a Memorandum of Understanding to the Parents as an attempt to clarify what would be provided for during the evaluation period, but it became apparent that it was not going to facilitate the discussion and all further discussion of it was just dropped. The document was never signed by the parents. (Tr. Vol. 1 at 207, ln. 12-209, ln. 13; Dist.

2. Regardless, the testimony from all of the staff members in attendance indicated that they did discuss and consider the parents' request for shortened days. (Tr., Vol. 1 at 127, ln. 8-128, ln. 8; Tr., vol. 2 at 398, ln. 25-399, ln. 15; Dist. Ex. 3; Tr., vol. 2 at 399, ln. 16-400, ln. 11; Dist. Ex. 4; Tr., vol. 2 at 404, ln. 8-21; Tr., vol. 3 at 714, ln. 19-716, ln. 7; Tr., vol. 4 870, ln. 8-871, ln. 5.) in fact, not only did the Districts consider it, they agreed to allow to attend half days. (Dist. Ex. 9 at 3.) While not as short a day as one hour per day as the parents requested, half days are still shortened days. (Tr., vol. 4 at 870, ln. 8-871, ln. 5.)

3. The Hearing Officer finds the testimony of the Districts' staff members to be credible and further finds that such testimony is supported by the documentary evidence. The parents' arguments on this issue are unsupported by the evidence. Accordingly, the Hearing Officer must rule in favor of the Districts on this issue.

D. DID THE DISTRICT FAIL TO CONSIDER THE PARENTS' REQUEST FOR SHORTENED SCHOOL DAYS ON SEPTEMBER 18, 2013?

1. Pursuant to 34 C.F.R. §300.324(a)(1)(ii), when developing an IEP, the IEP team must consider the concerns of the parents for enhancing the education of their child. In addition, the IEP team must consider information, as appropriate, from the parents when revising the IEP. 34 C.F.R. §300.324(b)(1)(ii)(C). Nowhere in the IDEA or the regulations does it state that the school must implement everything requested by the parents.

2. Nonetheless, staff members who attended the September 18, 2013, IEP meeting testified that the parents' concerns were discussed and considered. (Tr., Vol. I at 222, ln. 11-224, ln. 8; Dist,

Ex. 18; Tr., vol. 3 at 503, ln. 7-506, ln. 2; Tr., vol. 3 at 506, ln. 3-508, ln. 21; Tr., vol. 3 at 685, ln. 11-

686, ln. 6; Dist. Ex. 17; Tr., vol. 3 at 725, ln. 15-19; Tr., vol. 3 at 686, ln. 7-19; id. at 721, ln. 20-723, ln. 6; Tr., vol. 4 at 858, ln. 2-860, ln. 4; Tr., Vol. 4 at 862, ln. 6-9; Tr, vol. 4 at 961, ln. 5-15; Tr., vol. 5

at 1036, ln. 15-1037, ln. 17; Tr., vol. 5 at 1054, ln. 1-1055, ln. 13; Tr., vol. 5 at 1085, ln. 8-1086, ln.

1.) However, that did not mean that they agreed with everything the parents requested. (Tr., Vol. 1 at 224, ln. 9-225, ln. 8; Tr., vol. 2 at 401, ln. 6-18; Tr., vol. 3 at 714, ln. 19-716, ln. 7.) The Districts did grant the parent request for an FBA as a result of the September 18, 2013 IEP meeting. (Tr., Vol. 1 at 225, ln. 9-16; Tr., vol. 3 at 725, ln. 4-19; Tr., vol. 5 at 1088, ln. 21-1089, ln. 6; Tr., vol. 5 at 1056, ln. 10-1057, ln. 24; Tr., Vol. 1038, ln. 11-1039, ln. 5.) Ms.

testified that she attended the IEP meeting held on September 18, 2013, and saw . leave the meeting early because he was upset. Ms. followed him out of the meeting and t. told her that he "wasn't supposed to come back to the school." (Tr. Vol. 4 at 949, ln. 19-950, ln. 22.). testified that it was realistic to develop an IEP for a full day of service for . in August 2013 because they had put many supports in place for him. (Tr., Vol. 1 at 128, ln. 14—129, ln. 7.) Specifically, Ms. ; testified as follows:

I do believe with the supports that were in place, that we had discussed at the IEP meeting with having staff ready for him as he came in the door, having the availability of the resource room to-for extensive periods of time during the day if he needed that, if he left, he was given the ability if he was in a regular classroom and was struggling, was feeling uncomfortable, that he could leave right away and go to the resource room. He could go to the resource room and be there with very few students or be there, you know, by himself to just calm down and still access curriculum there and have supports of school staff there, so I do believe with the supports in place and the accommodations and everything that were allowed in the IEP, that it was a realistic goal for him. (Tr., vol. 1 at 128, ln. 17-129, ln. 7.)

4. Ms. further testified that the August 21, 2013, IEP did not deny . FAPE as alleged by the parents because:

... the least restrictive environment is providing that service to the student for the duration of the school day, if at all possible looking at the placement in the regular education classroom for that core content, and the services that were also put into

place included modifications and supports that would allow him to go to a resource room if that is something that he required. If he got too anxious, leave a classroom, regular classroom. Have supports there for him during that day, whether its para support or teacher support, a counselor; so all those supports in place I felt were appropriate and necessary and met the requirements for FAPE. (Tr., vol. 1 at 219, ln. 5-18.)

5. The Hearing Officer finds the testimony of the staff members credible, supported by the documentary evidence, and that the Parents were given sufficient opportunity to ask questions and provide information to the team. The Hearing Officer also finds that no attempt was made to summarily disregard questions, comments or opinions of the Parents. The parents' arguments on this issue are unsupported by the evidence. Accordingly, the Hearing Officer must rule in favor of the Districts on this issue.

E. DID THE DISTRICT PRESENT TO THE PARENTS A MEMORANDUM OF UNDERSTANDING ON APRIL 10 2013 AND IF SO DID THE MEMORANDUM OF UNDERSTANDING PREDETERMINE .'S EVALUATION PROCESS AND SERVICES?

1. Several of the Districts' staff members, as well as the parents, testified about the Memorandum of Understanding that was discussed on April 10, 2013. All of those Districts' staff members testified that the Memorandum of Understanding was never signed and never became effective. (Tr., vol. 3 at 716, ln. 10-717, ln. 11; Tr., vol. 2 at 337, ln. 10-21; Tr., vol. 1 at 207, ln. 12209, ln. 13; Dist. Ex. 67.) Mr. testified that it was his intent to try to get . back into school. (Tr., vol. 2 at 333, ln. 12-335, ln. 25; Tr., vol. 2 at 404, ln. 22-405, ln. 17.) This Memorandum of Understanding was not intended to predetermine the evaluation or services for

. (Tr., vol. 3 at 716, ln. 10-717, ln. 11; Tr., vol. 2 at 405, ln. 18-407, ln. 8.) Ms. testified that it had no effect on how she conducted the evaluation for .-she did it just like she would for any other student. (Tr., Vol. 3 at 716, ln. 10-717, ln. 11.)

2. While it would be improper for the Districts to predetermine services and placement, "[t]his does not mean . . . that district personnel should arrive at the IEP meeting pretending to have no idea whatsoever of what an appropriate placement might be." T.W. v, Unif Sch. Dist. Na 259, 136 Fed. Appx. 122 (10th Cir. June 6, 2005). In this matter, there is no evidence that the Districts' staff members failed to consider

information presented by the parents, nor is there any evidence that they predetermined the services or placement for ____.

3. The Hearing Officer adopts by reference the findings more fully set out in Section C.

above. During the meeting, Mr. the principal, had presented a Memorandum of Understanding to the Parents as an attempt to clarify what would be provided for __. during the evaluation period, but it became apparent that it was not going to facilitate the discussion and all further discussion of it was just dropped. The document was never signed by the parents. (Tr. Vol. 1 at 207, ln. 12-209, ln. 13; Dist. Ex. 67.)

4. The Hearing Officer finds the testimony of the staff members credible and supported by documentary evidence. The Memorandum of Understanding was never signed or implemented. Staff members testified that it was not intended to predetermine services or placement. Mrs. _____ testified that it did not predetermine her testing for I.'s evaluation or what she recommended.

5, Accordingly, the Parents' arguments on this issue are unsupported by the evidence and the Hearing Officer therefore rules in favor of the Districts on this issue.

F. DID_TUE DISTRICT COMPLETE THE FUNCTIONAL BEHAVIOR ASSESSMENT IN A TIMELY MANNER?

1. During the September 18, 2013, IEP meeting, the parents requested a Functional Behavior Assessment ("FBA"). The District granted the request. (Tr. Vol. 1 at 225, ln. 9-16.) TASN was contacted regarding the request for an FBA on September 25, 2013, and the required paperwork was submitted to TASN on October 2 (id at 225, ln. 17-227, ln. 1.) TASN came out to the District to consult on October 15, 2013 but ____ was not in school. TASN went ahead and met with the school staff members and _____'s mother. (Tr. vol. 1 at 227, ln. 2-20; Dist. Ex. 61.) The FBA for ____ was completed at an IEP meeting held on November 26, 2013. (Tr. Vol. 2 at 240, ln. 17-19.) The Parents signed Notice and Consent for the conclusion of the FBA on the same date. (Id. at 240, ln. 25-241, ln. 10.) Districts' staff members who were involved in drafting the December 2013 IEP testified that the recommendations from the FBA prepared by Denny Leak were incorporated into the IEP. (Tr., vol. 3, at 727, ln. 5-734, ln. 13; Dist. Ex. 31; Dist. Ex. 37; Tr., vol. 2 at 248, ln. 13-251, ln. 22; Id. at 254, ln. 21-255, ln. 17.) Even Denny Leak testified

that he could find the recommendations from the FBA in the December 2013 IEP. (Tr., Vol. 1 at 59, ln. 15-60, ln. 11; Tr., vol. 1 at 69, ln. 19-23; Tr., vol. 1 at 71, ln. 3-13; Tr., vol. 1 at 76, ln. 23-77, ln. 3; Tr., vol. 1 at 79, ln. 6-80, ln. 8.) Furthermore, a review of the documents in question clearly demonstrated that all of the recommendations from the FBA had been incorporated into the IEP in some manner. (Dist. Ex. 31 and 37.)

2. The testimony of the Districts' staff members on this issue is not only credible, but also is corroborated by the testimony of Denny Leak and the documentary evidence. The parents' arguments on this issue are not supported by evidence. The Hearing Officer finds that the Parents requested a Functional Behavior Assessment during the September 18, 2013, IEP meeting, that TASN was promptly contacted and came to the District to consult on October 15, 2013. The FBA for . . . was completed at the November 26, 2013, IEP meeting.

3. Accordingly, the Hearing Officer finds that the FBA was completed in a timely manner and that, the Hearing Officer must rule in favor of the Districts on this issue.

G. DID THE DISTRICT INCORPORATE THE FBA RECOMMENDATIONS IN THE IEP?

1, The Hearing Officer adopts by reference the findings more fully set out in Section F. above. As indicated above, the FBA for . was completed at an IEP meeting held on November 26, 2013. (Tr. Vol. 2 at 240, ln. 17-19.) The Parents signed Notice and Consent for the conclusion of the FBA on the same date. (Id. at 240, ln. 25-241, ln. 10.) Districts' staff members who were involved in drafting the December 2013 IEP testified that the recommendations from the FBA prepared by Denny Leak were incorporated into the IEP. (Tr., Vol. 3, at 727, ln. 5-734, ln. 13; Dist.

Ex. 31; Dist. Ex. 37; Tr., vol. 2 at 248, ln. 13-251, ln. 22; Id. at 254, ln. 21-255, ln. 17.)

2. The testimony of the Districts' staff members is credible and supported by documentary evidence. The parents' arguments on this issue are not supported by the evidence. Accordingly, the Hearing Officer must rule in favor of the Districts on this issue.

H. THE DISTRICT CONSIDER DOCTOR LETTERS AND OTHER HANDOUTS SUBMITTED TO THE IEP TEAM BY THE PARENTS?

1. The Districts' staff members who attended the IEP meetings during the 2013-2014 school year consistently testified that they considered the doctor reports and letters and other handouts from the parents. (Dist. Ex. 3; Dist. Ex. 6; Tr., Vol. 1 at 201, ln. 7-202, ln. 2; Id at 203, ln. 212; Tr., vol. 1 at 117, ln. 22-119, ln. 19; Tr., vol. 1 at 205, ln. 7-19; Tr., vol. 1 at 209, ln. 14-210, ln. 13; Tr., vol. 1 at 210, ln. 14-22; Dist, Ex. 13 at 7; Tr., Vol. 2 at 398, ln. 25-399, ln. 15; Tr., vol. 2 at 399, ln. 16-400, ln. 11; Tr., vol. 2 at 427, ln. 13-431, ln. 11; Tr., vol. 3 at 685, ln. 11-686, ln. 6; Tr., vol. 3 at 725, ln. 15-19; Tr., vol. 3 at 726, ln. 12-23; Tr., vol. 4 at 870, ln. 8-871, ln. 5; Tr., vol. 4 at 858, ln. 2-860, ln. 4; Tr., Vol. 4 at 862, ln. 6-9; Tr., Vol. 4 at 864, ln. 9-17.) Again, the law requires that parental input be considered-not that all parental concerns and input must be incorporated into the IEP.

2. The testimony of the Districts' staff members is credible and supported by documentary evidence. The parents' arguments on this issue are not supported by the evidence. Accordingly, the Hearing Officer must rule in favor of the Districts on this issue.

1. PID DISTRICT DENY 1.1--1, A EAPE REQUIRING A FULL-TIME PLACEMENT IN THE AUGUST 20131 IEP?

1. As noted above, the Districts are not only required to provide special education students with FAPE, but also must do so in the least restrictive environment (LRE). 20 U.S.C. § 1401(9); 20 USC. §1415(a)(5)(A). (See also Tr., Vol. 2 at 283, ln. 20-284, ln. 14.) While the District had agreed to allow . to attend half days while conducting the evaluation, . had only attended 4 full half days out of 10 days during that time. (Dist. Ex. 13 at 13 (baseline for goal 1).) However, the Districts were also aware that .'s medications were being adjusted at that time and needed to get to therapeutic levels. (Dist. Ex. 5.) Furthermore, had not attended at Middle School for his seventh grade year, and the Districts had no school records for the seventh grade year. (Tr., Vol. 2 at 419, ln. 4-420, ln. 8; Tr., Vol 5 at 1030, ln. 20-23.) Thus, the District had very little firsthand experience with . after he completed sixth grade.

2. In addition, Districts' staff members testified that the parents asked to wait to write the initial IEP because they wanted to see what happened during the summer, including what happened with .'s medications. (Tr., Vol. 2 at 339, ln. 20-340, ln. 12; id at 410, ln. 2-13;

Tr., Vol. 1 at 212, ln. 1-15; Tr., Vol. 3 at 644, ln. 13-20.) There is nothing in the record which indicates [redacted]'s medications were still being adjusted when the August 2013 IEP was written.

3. Given the legal requirements to place [redacted] in general education to the maximum extent appropriate, it was not unreasonable for the Districts to propose placing [redacted], in his eighth grade core classes for the mornings with special education supports and accommodations. Likewise, having no knowledge of what, if any, seventh grade instruction [redacted] had received, it was appropriate to attempt to recover the lost content knowledge by having [redacted] work on seventh grade core courses online in the special education classroom. At the time of the August 2013 IEP meeting, [redacted] had not yet received services in the special education classroom, and the Districts had no reason to believe [redacted] would not be successful in that environment.

4, It is also worth noting that the parents gave consent for the August 21, 2013 IEP and never revoked consent for it. (Dist. Ex. 14; Tr., Vol. 5 at 1021, ln. 7-1022, ln. 12.) While it is certainly understandable that the parents would be frustrated and upset with their perceived lack of sufficient progress, even Mr. [redacted] admitted that it would not be fair to blame all of that on the school. (Tr., Vol. 5 at 1017, ln. 21-1018, ln. 4.)

5. Given the Districts' lack of experience with [redacted] in the special education classroom and the very limited experience with him since the sixth grade, the Hearing Officer finds the testimony of the Districts' staff members to be credible on this issue. It was clear from their testimony that they were trying to create a program that would be most educationally beneficial to [redacted] and accommodate his anxiety, while still providing what they believed to be the LRE at the same time. Furthermore, [redacted] did make progress on his goals and benchmarks for the August 21, 2013 IEP, with the sole exception of the second benchmark on goal 1. (Dist. Ex. 38.) The only reason he did not make progress on that benchmark was due to his absences during the second nine weeks period, which also coincided with his hospitalization at WC Wheatland Hospital. (Dist. Ex. 38; Dist. Ex. 21 at 3.) The Hearing Officer further finds that the August 21, 2013 IEP was reasonably calculated to provide a free appropriate public education at the time it was written and that [redacted] made progress while served on the August 21st IEP. As a result, the Hearing Officer rules in favor of the Districts on this issue.

6. The testimony of the Districts' staff members is credible and supported by documentary evidence. The Parents' arguments on this issue are not supported by the evidence. Accordingly, the Hearing Officer must rule in favor of the Districts on this issue.

J. DID THE DISTRICTS DENY [] A EAPE DENYING PARENTS' REQUEST FOR SUMMER SCHOOL?

1. According to Mr. and Ms. who were apparently the only staff members who heard this exchange with Mr. , there was never a formal request for either summer school or extended school year ("ESY") services. Rather, Mr. • approached Mr.

. after the conclusion of the May 22, 2013, IEP meeting and simply inquired whether summer school would be an option for . (Tr., vol. 1 at 214, ln. 5-215, ln. 3; Tr., vol. 2 at 338, ln. 10-24; id. at 340, ln. 15-18.) Mr. responded to the question by stating that did not offer summer school. (Tr., Vol. 1 at 214, ln. 11-14; Tr., Vol. 2 at 338, ln. 10-24; id. at 340, ln. 1518.) Mr. did not inquire about extended school year services. (Tr., Vol. 1 at 214, ln. 15-17; Tr., vol. 2 at 417, ln. 23-25.)

2. Even if he had inquired about extended school year services, Ms. . testified that

. would not have been eligible for extended school year services. Not only did they not have data showing regression over school breaks, the special education staff had not even worked with yet. (Tr., vol. 1 at 214, ln. 18-215, ln. 3.)

3. Specifically, Ms. ; testified that:

The speech pathologist was consulted and we had discussed the-a screener, a possible screener for social communication; and in these notes, we also discussed, as it talked about, qualifying for speech services in the meeting. f had stated that students qualify for speech services under four main areas, four areas, and those areas have to be significantly delayed in order to qualify for a service of speech and language area, and that his scores would not demonstrate even a need for that. However, we would check with a speech language pathologist because the concern seemed to be more about social communication. (Tr., vol. 1 at 173, ln. 20-174, ln. 8.)

Ms. asked a speech language pathologist to look for a social language screener, and she did not find one. (Tr., Vol. 1 at 177, ln. 7-178, ln. 18; Dist. Ex. 79 and 80.) While they

did not look specifically for an autism screening tool, Ms. noted that both Denny Leak and Dr. ,

both of whom work with autistic individuals, indicated that. has good communication skills. (Tr., vol. 1 at 178, ln. 23-180, ln. 11.)

4. As Mr. testified, there is a difference between summer school and ESY services. Summer school is "an offering done by the school district for students that are in the school and, specifically it would be regular education students" who needed to finish an incomplete or do additional work to overcome a failing grade. (Tr., Vol. 2 at 416, ln. 24-417, ln. 7.) ESY would be offered to special education students who have shown regression upon returning from school breaks. (Ids at 417, ln. 8-22.)

5. ESY services are 'special education and related services that are provided to a child with a disability under the following conditions: (1) beyond the school term provided to nondisabled children; (2) in accordance with the child's IEP; and (3) at no cost to the parent or parents of the child." K.A.R. 91-40-1(x). Kansas regulations require each school district to ensure that extended school year services are available as necessary to provide FAPE to a child with a disability.

(2) An agency shall be required to provide extended school year services only if a child's IEP team determines, on an individual basis, that the services are necessary for the provision of FAPE to the child.

(3) An agency shall neither limit extended school year services to particular categories of disabilities nor unilaterally limit the type, amount, or duration of those services.

K.A.R. 91-40-3e1.

6. The Tenth Circuit Court of Appeals has adopted the recoupment-regression analysis set forth by the Fifth Circuit in *Alamo Heights Indep. Sch. Dist v. State Bd. of Educ.*, 790 F.2d 1153 (5th

Cir. 1986). Specifically, the Tenth Circuit has stated:

We prefer to adopt the Fifth Circuit's broad premise, as articulated in *Alamo Heights*:

The issue is whether the benefits accrued to the child during the regular school year will be significantly jeopardized if he is not provided an educational program during the summer months. This

is, of course, a general standard, but it must be applied to the individual by [those drafting and approving the IEP] in the same way that juries apply other general legal standards such as negligence and reasonableness.

790 F.2d at 1158.

The analysis of whether the child's level of achievement would be jeopardized by a summer break in his or her structured educational programming should proceed by applying not only retrospective data, such as past-regression and rate of recoupment, but also should include predictive data, based on the opinion of professionals in consultation with the child's parents as well as circumstantial considerations of the child's individual situation at home and in his or her neighborhood and community.

Johnson v. Indep. Sch. Dist No. 4 of Bixby, Tulsa County, Okla., 921 F.2d 1022, 1028 (10th Cir. 1990).

7. The Hearing Officer finds that the testimony of Mr. [redacted], Ms. [redacted], and Mr. [redacted]

is all credible on this issue. It is apparent that this was simply a miscommunication between the Districts and the parents. Nonetheless, the Hearing Officer finds there was no request for extended school year services and further finds that [redacted] would not have been eligible for ESY services for the summer of 2013 in any event. As Ms. [redacted] testified, the Districts had no data regarding [redacted]'s potential regression at that point in time. Likewise, the Districts did not have sufficient recent experience working with [redacted] to be able to predict whether there would be regression. Accordingly, the Hearing Officer finds that the failure to provide summer school for [redacted] during the summer of 2013 did not result in a denial of FAPE. The Hearing Officer rules in favor of the Districts on this issue.

K. **DID THE DISTRICTS FAIL TO CONDUCT A SPEECH SCREENING AND, IF SO, DID IT DENY I.H. A FAPE?**

1. During the October 29, 2013, IEP meeting, the parents requested a speech screening. (Dist. Ex. 23 at 5.) Ms. [redacted] indicated during the meeting that she did not believe [redacted] would qualify and discussed the criteria which must be met to qualify for speech services, but stated that she would check with a speech language pathologist to see if there was a social language screener. (Tr., vol. 1 at 173, ln. 20-174, ln. 8.) Ms. [redacted] did check with a

speech language pathologist who was not aware of such a screener. (Tr., Vol. 1 at 177, ln. 7—178, ln. 18; Dist. Ex. 79 and 80.) As a result, no such screening was performed.

2. Nonetheless, Ms. , other Districts' staff members, and even the parents' report from Dr. all indicated that did not have communication problems. (Tr., Vol. 1 at 230, ln.

19-231, ln. 8; Tr., Vol. 1 at 231, ln. 9-15; Tr., Vol. 1 at 178, ln. 23-180, ln. 11; Dist. Ex 4 at 2; Tr., Vol.

4 at 871, ln. 6-872, ln. 15; Tr., vol. 4 at 961, ln. 16-962, ln. 3; Tr., vol. 5 at 1041, ln. 21-1042, ln. 15; Tr., vol. 5 at 1059, ln. 24-1062, ln. 2; Tr., vol. 5 at 1075, ln. 5-18; Tr., vol. 5 at 1076, ln. 6-1077, ln. 7;

Tr., vol. 5 at 1088, ln. 9-20.)

3. This evidence is credible. Given that no evidence (other than the parents' request) indicated that . needed a social language screening, it cannot be a denial of FAPE that he did not receive a service he did not need. Accordingly, the Hearing Officer finds that there was no need for a social language screener and rules in favor of the Districts on this issue.

L. WAS AN IEP MEETING CONDUCTED ON FEBRUARY 13 2014 AND IF SO WAS PROPER NOTICE PROVIDED?

1. All of the Districts' staff members who attended the meeting on February 13, 2014, testified that it was not an IEP meeting. (Tr., Vol. 2 at 277, ln. 14-24; Tr., Vol. 3 at 541, ln. 14-542, ln. 2); No one from the Districts requested the meeting. Instead, it was requested by Dr. No notice was sent because it was not an IEP meeting. No revisions to the IEP were discussed. (Tr., vol. 2 at 277, ln. 14-24; Tr., vol. 3 at 542, ln. 10-19; Tr., vol. 3 at 663, ln. 8-665, ln. 9; Tr., vol. 3 at 744, ln. 17-745, ln. 16.) Dr. informed the Districts' staff members who attended that the parents had been informed of the meeting and chose not to attend. (Tr., Vol. 3 at 745, ln. 17-20; Tr., Vol. 4 at 867, ln. 1-23.) The information shared by Dr. caused the Districts' staff members to have concern whether a report should be made to DCF. (Tr., Vol. 2 at 279, ln. 7-280, ln. 7; Tr., Vol. 2

at 281, ln. 14-282, ln. 18; Tr., vol. 3 at 542, ln. 3-9; Tr., vol. 3 at 543, ln. 8-12; Tr., vol. 3 at 542, ln. 20-543, ln. 7; Dist. Ex. 73; Tr., vol. 3 at 549, ln. 5-14; Dist. Ex. 70-72; Tr., vol. 3 at 745, ln. 21-746, ln. 17; Tr., vol. 3 at 746, ln. 18-747, ln. 3; Tr., vol. 4 at 868, ln. 1-869, ln. 16.)

6. The Hearing Officer finds the testimony of the Districts' staff members, as well as their written summaries of the meeting, credible. Given that the IEP was not discussed and no changes to the IEP were considered, the Hearing Officer cannot conclude that the meeting on February 13, 2014, was an IEP meeting. Accordingly, the Hearing Officer rules in favor of the Districts on this issue.

M. DID THE DISTRICTS DENY [] A FAPE BY NOT COMPLETING AN IEP EARLIER?

Ms. [redacted], summarized the timeline as follows: the parent request was received on January 1, 2013; the parents gave consent for release of information from [redacted]'s medical providers on February 5, 2013; the school staff met with the parents on March 1 (at which time, they had not yet received responses from the medical providers) and tried to implement interventions; the school staff met with the parents again April 10, 2013 at which time the parents signed consent for evaluation; and the evaluation was completed on May 15, 2013. (Tr., Vol. 1 at 213, ln. 3-16; Dist. Ex. 4 (responses from providers); Tr., Vol. 1 at 202, ln. 3-203, ln. 1 (regarding dates received responses from providers); Dist. Ex. 12 (date of consent for eligibility determination).) Although the districts had a draft IEP that was discussed during the meeting on May 15th, they decided to wait to draft the IEP until August after receiving parent input that they were still making adjustments to [redacted]'s medications. (Tr., Vol. 1 at 212, ln. 1-15.) Ms. [redacted] testified that this delay did not cause a denial of FAPE for [redacted]. because he was home-schooled at the time these meetings were taking place, they were trying to implement interventions with him as required by law, and FAPE would not be a consideration until after the student was found eligible for special education services. (Tr., Vol. 1 at 213, ln. 17-214, ln. 4.) Ms. [redacted] testified that the law does not require the public school to provide special education services to a student being home-schooled, but does require the school to evaluate home-schooled students for eligibility as part of the district's child find obligation under federal law. (Tr., Vol. 1 at 200, ln. 10-18.) 2. As Ms. [redacted] and Ms. [redacted] testified, the Districts are required to try interventions in the general education setting before evaluating for special education. (Tr., Vol. 1 at 198, ln. 24199, ln. 22; Tr., vol. 4 at 807, ln. 20-24; Tr., vol. 4 at 778, ln. 22-779, ln. 16.) This accounted for some of the delay before the parents signed consent for the evaluation.

3. Furthermore, Ms. [redacted] testified that once the Districts receive consent to evaluate for special education, they have 60 school days in which to complete the evaluation. (Tr., Vol. 1 at 206,

In. 23-25.) Based upon the timeline reflected in the documents and the testimony, the Districts completed the evaluation within the required timeline.

4. Likewise, Mr. testified that he was simply trying to work with the parents, but the mark kept moving. (Tr., Vol. 3 at 595, In. 623; id. at 597, In. 8-19.)

5. In their first letter to the Districts, the parents had alleged that . had dyslexia, a learning disability. (Dist. Ex. 1.) With respect to evaluating for learning disabilities, federal law and regulations require districts to try response to interventions in general education prior to evaluating for special education and documentation of those efforts should be included as part of what is considered during the evaluation process. 34 C.F.R. §300.307; 34 C.F.R. §300.309; 34 C.F.R. §300.311. In addition, the districts are required to observe the student in the regular education classroom. 34 C.F.R. §300.310. Much of what the parents refer to as a delay was the result of the

Districts' efforts to comply with these legal requirements

6. The Hearing Officer finds that the testimony of Districts' staff members on this issue was credible. The Hearing Officer further finds that the IEP was completed within the timeframe allowed by law. At the time ___ was being evaluated, he was not enrolled in U.S.D. Rather, he was a home school student. As a home school student, the Districts were not required to provide an IEP for See K.S.A. 72-5392 (home schools not included in definition of school district or private school). The evidence shows that the parents had consistently requested that this process be completed in time for . to return to school for the 2014-2015 school year, and it was.

Accordingly, the Hearing Officer rules in favor of the Districts on this issue.

V. CONCLUSION & DECISION:

The Hearing Officer has determined through the weight of the testimony and exhibits that the Districts did not (1) impede .'s right to a free appropriate public education; (2) significantly impede the parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to 1.; or (3) cause a deprivation of education

benefits. Nor has the Hearing Officer found procedural violations that seriously or significantly infringe upon the Parents' right to meaningfully participate in the development of the IEP or placement decision. The parents have asked for multiple remedies on their various due process complaints, including an admission that the Districts denied a FAPE, implementation of specific policies, required training on special education law, requirement to make extended school year services available to students, acceptance of 's seventh grade records by U.S.D. reimbursement of legal fees related to the child in need of care case, and sending . to an unspecified social skills summer camp. No evidence regarding any of these proposed remedies was put forth by the parents during the course of this hearing.

As a practical matter, many of the parents' proposed remedies cannot be ordered by the hearing officer, such as the reimbursement of legal fees related to the child in need of care case and the implementation of specific policies. With respect to the social skills summer camp, no evidence was put into the record regarding which camp, how much it would cost, why the parents think it is necessary, or what benefit would derive from it. Furthermore, in the Tenth Circuit, "compensatory education is not an appropriate remedy for a procedural violation of the IDEA." *Erickson v. Albuquerque Public Schools*, 199 F.3d 1116, 1122-23 (10th Cir. 1999). While the Districts do not believe there were any procedural violations, the issues raised by the parents (with the exception of the FAPE issues) can only be categorized as procedural in nature and certainly do not rise to the level that they could have caused a denial of FAPE. Accordingly, the Districts believe a decision in their favor on all issues is required by the evidence and the law in this matter.

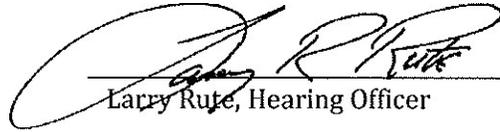
While the Hearing Officer has rendered a decision in favor of the Districts, nothing in this opinion should be taken as, in any way, disparaging the Parents' substantial involvement in promoting their son's education. Mr. testified that "unless you live through having a child with severe emotional and behavioral problems, I don't know if you could ever understand what it's like to go through. it is incredibly difficult; so incredibly exhausting." (Tr. Vol. 4, at 1003, ln. 3-6.)

Mr. correct, none of us can fully appreciate the struggles the parents have undergone in encouraging their son, someone with a significant anxiety disorder, to enter the school building. The parents have provided strong financial and emotional support for their son by seeking the opinion of experts and utilizing the assistance of a qualified therapist. In the Hearing Officer's experience, too few parents of special needs children have the ability to provide the financial and emotional support that these parents have provided for their son throughout the 2013-2014 school year. I believe it is fair to say that the

Hearing Officer, the Districts' Staff and the Districts' Attorney, commend both parents for their support and dedication, and wish every success in the future.

IT IS SO ORDERED.

____September 18, 2015____
Date



Larry Rute, Hearing Officer

CERTIFICATE OF SERVICE

I, Larry R. Rute, do hereby certify that I have provided a true and correct copy of the above and foregoing Notice of Hearing Officer's Decision upon the following parties:

Mr.
Ms.

Mr. Mark Ward
Special Education Services
Kansas Department of Education
120 SE 10th Avenue
Topeka, KS 66612-1182

Ms. Sarah J. Loquist
Kansas Association of School Boards
1420 SW Arrowhead Road
Topeka, KS 66604

by mailing the same by U.S. mail, postage prepaid and by e-mailing a copy to both parties, this 18th day of September, 2015.



Larry R. Rute, Hearing Officer