

**NOTICE OF HEARING OFFICER'S DECISION
KANSAS DEPARTMENT OF EDUCATION FILE #16 DP ____-001**

CHILD'S NAME:

E.C.

PARENT(S) NAMES:

_____ and _____
(Referred to as WC and KC for
confidentiality)

PARENT'S COUNSEL:

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Leah Gagne Law
225 North Market, Suite 100
Wichita, KS 67202

SCHOOL DISTRICT:

USD ____, _____, KANSAS and
_____ COUNTY SPECIAL
EDUCATIONAL SERVICES
INTERLOCAL # _____

DISTRICT'S COUNSEL:

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Kansas Association of School Boards
1420 SW Arrowhead Road
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HEARING OFFICER:

JAMES G. BEASLEY
601 Birkdale Dr.
Wichita, KS 67230

DATE:

December 18, 2017

PROCEDURAL STATUS

On March 31, 2017, the parents of E.C., filed a Notice of Parent's Request for Due Process Hearing, which was received by the District on March 31, 2017 by e-mail and followed by certified mail. On April 12, 2017, the present Hearing Officer was requested by the District and Cooperative # ____ (hereinafter referred collectively as Districts), without object of the parents, to preside over the Due Process Hearing and proceedings. Subsequently, the following procedural events occurred:

1. On April 24, 2017, the Hearing Officer sent a letter to the attorney for the parents and the Districts acknowledging appointment as Hearing Officer.
2. A Scheduling Conference was conducted by phone with the Hearing Officer, counsel, the parents and representatives of the Districts on May 3, 2017, and a Scheduling Conference Order was entered on May 4, 2017, setting dates for completion of discovery, filing motions, setting a Status Conference and setting the Due Process Hearing for June 26, 2017. Due to extensive issues regarding discovery and for good cause shown, the Due Process Hearing was re-scheduled to begin on June 25, 2017, to be held at the _____ County Special Education Interlocal # ____ offices in _____, Kansas.
3. The Due Process Hearing commenced on June 26, 2017. The hearing was heard on June 26, 27, and 28; July 12, and 14; August 23 and 24; and September 19 and 20, 2017. A parent was present at all hearings and with counsel, Ms. Leah Gagne, Attorney at Law. The District was represented by Ms. Sarah Loquist, Attorney at Law with the Kansas Association of School Boards and representatives of the School District.

4. It was determined that the parents would bear the burden of proof and proceed first with their evidence.
5. At the conclusion of the evidence the Hearing Officer requested counsel offer Proposed Findings of Facts and Conclusions of Law. The Hearing was very lengthy, 2,253 pages of transcript and 27 witnesses.

ISSUES TO BE RESOLVED

Issue 1: Did the Districts deny autism as the primary exceptionality for E.C., resulting in a denial of FAPE?

Issue 2: Did the Districts fail to provide appropriate services for E.C.'s autism diagnosis, resulting in a denial of FAPE?

Issue 3: Did the Districts fail to implement the behavior intervention plan, resulting in a denial of FAPE?

Issue 4: Did the Districts fail to ensure that the IEP provided FAPE?

Issue 5: Did the Districts refuse to provide a required IEP amendment?

Issue 6: If the Districts failed to provide FAPE, does that entitle E.C. to a residential placement at an undetermined location?

CHRONOLOGY AND EDUCATIONAL BACKGROUND

1. E.C. attended preschool programs at N Academy ("N"), P Children's Center ("P"), and H.C. Lutheran School ("H.C."), all in _____. His parents pulled him from N. because he was having issues there with aggressive behaviors, and they disagreed with how staff were handling him there. E.C.'s mother testified that in hindsight, that was the start of their problems with E.C. From N. , E.C. attended P, and his mother testified that at first, he did fine. She noted that it was a smaller program, and he was in a smaller classroom. However, almost overnight, they doubled his classroom size and hired

additional staff in that classroom. Thereafter, he started having problems with physical aggression. E.C.'s mother testified that the director let him go from the program and told her that she thought E.C. needed to be tested for Asperger's. She testified that before moving him to H.C., the family had several meetings to explain what had been going on, and staff there felt like they wanted to work with him and had interventions they thought they could use with him, like weighted backpacks. Therefore, E.C. attended H.C. for four-year-old preschool. E.C.'s mother testified that there were behavior issues there, but they never let him go from the program. *Tr., Vol. 2, at 518, ln. 20 - ln. 4, at 521.*

2. E.C. started kindergarten at H.C. after attending preschool there. He was let go from H.C. on the first day of kindergarten due to elopement issues and the school's inability to keep him safe. E.C.'s neighborhood school was _____ Elementary School ("_____") in _____, to which he was unable to transfer due to its all-day kindergarten program being full. Consequently, E.C. transferred to an all-day kindergarten program at M Elementary School ("M"). He started in the general education classroom, but a referral was made in the first month of school for special education services due to behavior and attachment issues, transition problems, anxiety, heightened sensitivity, and other issues. Specific issues noted in the report by the school counselor dated August 26, 2011 were that E.C. constantly chewed on his shirt and fingers, put objects in his mouth, looked tense and nervous much of the day, whimpered when he was unsure or stressed, had difficulty separating from his mother, felt upset and cried for his mother, tried to elope to find his mother, attached to the teacher and/or counselor, had difficulty transitioning, became over stimulated easily, panicked at changes in routine or sudden surprises, became disruptive or tense during transitions, made loud screeching noises or low whimpering sounds and wandered around in a panic during transitions, felt the need to be in control

of his environment at all times, and displayed other disruptive behaviors, such as screaming, running around, clearing off tables with the sweep of an arm, kicking at other students, taking things away from other students, throwing toys on the floor or at other students, and destroying other students' buildings/creations, when he was feeling upset, overwhelmed, or the need to be in control. Other school records noted that in 25 days between September - October of 2011, E.C. was in in-school suspension ("ISS") 17 times. The Evaluation Eligibility Report determining that E.C. qualified for special education services was issued on November 18, 2011, and his first IEP was dated the same date and included a Behavior Intervention Plan ("BIP"). Despite the IEP and special education services, E.C. continued to have troubles, and his parents noted that he spent a good majority of his kindergarten year in the ISS room in the office. An IEP meeting was convened on April 27, 2012 to discuss placement options, and it was decided to move E.C. to a self-contained classroom at S_____ for the remainder of the kindergarten year. A review of school records reflect at least 12 Seclusion and/or Restraint Intervention Reports completed by S_____ for the balance of E.C.'s kindergarten year. *Parent Ex. 1; Tr., Vol. 3, at 867, ln. 2-5; Parent Ex. 140; Tr., Vol. 2, at 521, ln. 5 - ln. 22, at 522, at 526, ln. 2 - ln. 20, at 530.*

3. E.C. continued at S_____ for his first grade year and was overall very successful in school that year in his general education classroom. A review of school records reflect only one Seclusion and/or Restraint Intervention Report completed by S_____ for E.C.'s first grade year, and it is noted that E.C.'s IEP for this school year did not include a BIP and included only 20 minutes 5 days per week of special education consulting services. The year was so successful that E.C.'s parents had multiple discussions with administration at S_____ and administration and H.C. about the possibility of E.C.

transferring back to H.C. the following year. S_____ and H.C. administration additionally had meetings of their own, and it was agreed that E.C. could transfer back to H.C. for his second grade year. *Parent Ex. 1; Tr., Vol. 3, at 867, ln. 2-5; Parent Ex. 140; Tr., Vol. 2, at 530, ln. 21 - ln. 7, at 532.*

4. E.C. attended H.C. until November of his second grade year, at which time he transferred back to S_____ due to behavior difficulties that H.C. was not equipped to accommodate. E.C. transferred back to the general education classroom with special education supports, and his IEP did not include a BIP and included only 20 minutes 5 days per week of special education consulting services. His second grade year was a struggle, but his general education teacher worked very hard with E.C. and worked very hard to maintain E.C. in her classroom. Despite her efforts, she at some point in time had to turn him over to the resource teacher, and a review of school records reflect that from February through May, the school completed 10 Seclusion and/or Restraint Intervention Reports and four Principal Referral Forms that resulted in a total of four days of ISS and six days of out-of-school suspension ("OSS"). E.C.'s IEP was redone in March to include a BIP and to increase special education services to include 235 minutes two days per week in the general education classroom, 130 minutes one day per week in the general education classroom, 190 minutes one day per week in the general education classroom, 175 minutes one day per week in the general education classroom, and 60 minutes five days per week in the resource room. Despite these efforts and changes, four of the Seclusion and/or Restraint Intervention Reports and all of the Principal Referral Forms that resulted in ISS and OSS disciplinary action occurred after the IEP was changed and the BIP was implemented. *Parent Ex. 1; Tr., Vol. 3, at 867, ln. 2-5; Parent Ex. 140; Tr., Vol. 2, at 532, ln. 8 - ln. 25, at 540, at 542, ln. 13 - ln. 6, at 543, at 544, ln. 6-15.*

5. E.C. started his third grade year at S_____ in a general education classroom. Prior to the IEP meeting that year, E.C.'s general education teacher completed two Principal Referral Forms that resulted in a total of 2½ days of ISS. The IEP put into place thereafter included 60 minutes five days per week of special education services in the general education classroom and included a BIP. Following the IEP meeting, and prior to the next IEP meeting less than one month later, there was an additional Seclusion and/or Restraint Intervention Report and a Principal Referral Form, all for the same incident, resulting in 1½ days of OSS. It was upon this incident that the S_____ principal called Officer H, and together they made a report to the Department for Children and Families ("DCF"), alleging abuse/neglect by the parents, which was later found by DCF to be unsubstantiated. The IEP team met on September 22, 2014, six days after the incident, to discuss concerns. It was agreed that a Functional Behavior Assessment ("FBA") would be completed, but no changes were made to the IEP. The IEP team met again on October 7, 2014. Between the two meetings, the school completed three Seclusion and/or Restraint Intervention Reports and five Principal Referral Forms that resulted in a total of seven days of OSS. At the October IEP meeting, the school gave E.C.'s parents three options for placement: _____ e-cademy, homebound, or P Special Day School ("P"). The parents didn't feel that they had any real option other than to choose P, as they both worked full-time jobs to support their family. They were additionally concerned about the increased use by the school of the SRO to deal with E.C.'s behaviors and were concerned that additional reports would be made to DCF. Sometime in October or November of 2014, E.C. was transferred to P. Prior to his transfer, S_____ completed one additional Seclusion and/or Restraint Intervention Report. *Parent Ex. 1; Tr., Vol. 3, at 867, ln. 2-5;*

Parent Ex. 140; Tr., Vol. 2, at 544, ln. 16- ln. 7; Tr., Vol. 3, at 546, at 578, ln. 8- ln. 8, at 581, at 582, ln. 11- ln. 12, at 591.

The IEP team met on May 28, 2015 to discuss the results of the reevaluation and Heartspring's recommendations. Heartspring staff also discussed at this meeting the recommendation for their BIP and the suggestion for E.C. to attend their summer camp program as part of an extended school year ("ESY") program, so long as the school district would provide para support during E.C.'s attendance. Heartspring explained that its Camp SSTAR was specifically for children diagnosed with autism and was an 8-week camp based on ABA principles. E.C.'s parents agreed to the summer camp, and the school district agreed to provide para support, so E.C. attended the Heartspring autism summer camp in 2015. *Parent Ex. 1; Tr., Vol. 3, at 867, ln. 2-5; Parent Ex. 140; Tr., Vol. 3, at 596, ln. 6 - ln. 25, at 603, at 606, ln. 11-19.*

6. E.C. had been receiving services through SC since approximately the second grade. Sometime in late 2014 or early 2015, his therapist at SC referred him out for psychological testing to clarify diagnoses. In February of 2015, Dr. Turner issued her Psychological Evaluation report pursuant to which E.C. was diagnosed with Autism Spectrum Disorder, without intellectual or language impairment; Criterion A requiring substantial support; Criterion B requiring support (299.00). Based on the new diagnosis information and the lack of success of the current and past school placements, E.C.'s parents requested a change in placement to Heartspring Day School in Wichita. The school district declined such placement but agreed to contract with Heartspring to conduct observations, testing, and records reviews and issue its findings and recommendations to the district. E.C.'s parents also requested that based on the new diagnosis information, that Autism be made E.C.'s primary exceptionality for his IEP and that Other Health be made his secondary

exceptionality. E.C.'s parents consented to the reevaluation the district indicated was required in order to consider the change in exceptionalities. *Parent Ex. 1; Tr., Vol. 3, at 867, ln. 2-5; Parent Ex. 140; Tr., Vol. 3, at 591, ln. 13 - ln. 7, at 594.*

PROPOSED FINDINGS OF FACT

A. Dr. Laura Turner

Dr. Turner is a licensed clinical psychotherapist through the State of Kansas and has bachelor's degrees in business administration and psychology, master's degree in clinical psychology and a Ph.D. in community clinical psychology. She completed her Ph.D. in 2008 and has been a licensed clinical psychotherapist since 2000. Prior to that, she was a licensed master's level psychologist since 1997. She has worked at New Perspectives since 2011, performing psychological testing on both children and adults and offering individual and family therapy. She has also performed psychological evaluations for Family Consultation Service, Sumner County and Cowley County. She estimated that she has done 70 evaluations on children since 2011 and that after she does psychological testing, she is licensed to give a diagnosis for the children she evaluates. She testified that she did psychological testing on E.C. in January of 2015 and produced the report presented as Parent Exhibit 113. *Tr., Vol. 1, at 26, ln. 5 - ln. 12, at 30.* She testified that as part of her testing on E.C., she administered the Wechsler Intelligence Scale, the Behavior Assessment System for Children, including a parent rating scale, a self-report of personality, and a teacher rating scale, the Childhood Autism Rating Scale – High Functioning, and the Childhood Autism Rating Scale – Questionnaire for Parents or Caregivers. *Tr., Vol. 1, at 31, ln. 10 - ln. 13, at 32.* Based on her testing, she testified that E.C. met the criteria for autism spectrum disorder. *Tr., Vol. 1, at 50, ln. 15-18.*

Dr. Turner only observed E.C. in her office. She did not review records from the school district and did not observe E.C. at school. (Tr., Vol. 1, at 55, ln. 25 – 56, ln. 6.) Dr. Turner admitted that the score for the CARS II could change, depending upon the environment or setting in which the child was observed. (*Id.* at 58, ln. 21 – 59, ln. 19.) However, the only information Dr. Turner had from the school district was the teacher rating scale for the BASC. (*Id.* at 59, ln. 20 – 60, ln. 1.)

Dr. Turner is “not well versed” in how schools classify issues for special education services. (*Id.* at 62, ln. 23 – 63, ln. 4.)

B. Kara Gibson

Ms. Gibson is an occupational therapist for Heartspring. (Tr., Vol. 1, at 64, ln. 21-25.) She has a master’s degree in occupational therapy and is licensed by the State of Kansas as an occupational therapist. (*Id.* at 65, ln. 1-8.) She is also registered with the National Board of Occupational Therapy Certification. (*Id.* at 65, ln. 9-12.) Ms. Gibson is currently the Director of Pediatric Services for Heartspring, as well as an occupational therapist. She has held the position as Director since 2016. (*Id.* at 67, ln. 2-8.)

Ms. Gibson did an evaluation of E.C. in 2015. (Parent Ex. 114; Dist. Ex. 41; Tr., Vol. 1, at 67, ln. 19 – 68, ln. 5.) She was asked to do an evaluation by the district. (Tr., Vol. 1, at 69, ln. 8-17.)

Dr. Turner had also noted in her Psychological Evaluation that E.C. struggles with fine motor skills, which may have contributed to his lower index score. Dr. Turner testified that those deficits are generally addressed with a referral to occupational therapists and specifically included a recommendation that E.C. be evaluated by an occupational therapist for interventions that may help him cope with his sensory

experience and may improve his fine motor skills. *Parent Ex. 113; Tr., Vol. 1, at 60, ln. 12 - ln. 17, at 61.* She additionally testified that occupational therapy could help with sensory issues and that sensory integration could help E.C. with the anxiety he experiences with transition and changes in his schedule. *Tr., Vol. 1, at 61, ln. 4 - ln. 6, at 62.*

Ms. Gibson made several recommendations in her report, including the following: (1) using a mechanical pencil to aid in managing pencil pressure; (2) using a pencil grip to tolerate a more functional grasp; (3) a controlled and less stimulating learning environment; (4) providing written instruction or pictures along with verbal instruction; (5) limit the amount of information or steps that are provided at one time; (6) reduce the volume of auditory stimuli; (7) eliminate background visual stimuli; (8) organize personal space to make things easy to pick out. (*Id.* at 85, ln. 6 – 88, ln. 11.) None of these recommendations require an occupational therapist to implement them. (*Id.* at 100, ln. 14 – 102, ln. 20.)

Ms. Gibson's testing indicated that E.C. was within the normal range on the BOT-2, indicating that occupational therapy services were not warranted in order to produce fine motor skills. (*Id.* at 98, ln. 13-23.) Likewise, with respect to the Beery VMI, E.C. was in the average range for two of the three categories, which did not indicate a performance deficit. (*Id.* at 98, ln. 24 – 100, ln. 13.)

The results of Ms. Gibson's evaluation appear in her Occupational Therapy Initial Evaluation presented as Parent Exhibit 114. She testified that from a sensory standpoint, it seemed as though there were a lot of stimuli within the environment that was difficult for E.C. to process in order for him to function appropriately within the learning environment. *Tr., Vol. 1, at 83, ln. 14-20.* She testified that based on the sensory profile she completed, E.C. would easily vacillate between avoiding sensory information and

seeking out additional sensory information and that when the evaluation results show "much more than others" in multiple categories, it would be helpful to continue to assess the child through observation, interaction, parent report, and teacher report to continue to formulate the most appropriate recommendation. She further testified that it would be helpful for an occupational therapist to continue to work with E.C. to complete those observations in order to formulate the best intervention. *Tr., Vol. 1, at 84, ln. 4-24, at 94, ln. 8-23.* With respect to fine motor skills, Ms. Gibson testified that she administered the Bruininks-Oseretsky Test of Motor Proficiency, specifically, the fine motor precision section, the fine motor integration, the fine motor control, and the manual dexterity, and E.C. scored in the 15th scaled score for fine motor integration, which gave him an age equivalence of seven years, eight months, when his current age at the time was eight years, ten months, so he was about one year behind. *Tr., Vol. 1, at 69, ln. 22 - ln. 25, at 70.* Ms. Gibson testified that in her report, she made specific recommendations regarding E.C.'s sensory processing pattern and his fine motor skills. *Tr., Vol. 1, at 84, ln. 25 - ln. 12.*

C. Beth Schneider

Ms. Schneider is a speech language pathologist, working for Heartspring. She holds a master's degree in communication sciences and disorders. (*Tr., Vol. 1, at 106, ln. 1-13.*)

Ms. Schneider did an informal evaluation of E.C. while he was at Heartspring. (*Id.* at 107, ln. 22 – 108, ln. 5.) Her report is reflected in the communications section of the October 21, 2016 IEP for E.C. (*Id.* at 109, ln. 10 – 110, ln. 17; Parent Ex. 91 at 10.) Ms. Schneider testified that another licensed professional, such as a social worker or licensed teacher, could carry out her recommendations. (*Tr., Vol. 1, at 119, ln. 17 – 120, ln. 1.*)

Goals one through four of the IEP addressed concerns that Ms. Schneider had regarding E.C.'s communication skills. (*Id.* at 120, ln. 2 – 121, ln. 5.)

D. Erin Coym

Ms. Coym was previously employed by Heartspring from July 2015 to July 2016. She is currently a classroom teacher for U.S.D. 259. She holds a bachelor's degree in history, a master's degree in special education, a master's degree in education and building administration, and is a licensed BCBA. (Tr., Vol. 1, at 128, ln. 11 – 129, ln. 21.)

Ms. Coym was part of the team that developed a behavior plan for E.C. at Heartspring. (*Id.* at 131, ln. 18-24.) She also “oversaw” E.C.'s academics while he was at Heartspring. (*Id.* at 133, ln. 11-12.)

Ms. Coym, as the BCBA, would act as the supervisor and the Registered Behavior Technicians (RBT) would work directly with E.C. (*Id.* at 133, ln. 13 – 134, ln. 1.) The RBTs had to complete training through online modules for the Behavior Analytic Certification Board and then complete a test with one of the BCBAs at Heartspring. If they didn't pass the first time, then the BCBA would tell them the areas in which they were weak and retest them again at a later date. (*Id.* at 134, ln. 2-25.) In addition, the BCBAs would train them on the children with whom the RBTs were working by talking with them extensively about the behavior plan and expectations. The RBTs were then gradually introduced to E.C. and started working with him. (*Id.* at 135, ln. 1-15.) The transition process for an RBT to start working with E.C. took place over a couple of days. (*Id.* at 135, ln. 16-21.)

Ms. Coym testified that behavior plans are written for the entire staff that works with E.C. and for the parents. Parents “have to be able to follow through with a lot of this at home.” (*Id.* at 139, ln. 13-22.)

Heartspring did provide a visual schedule for E.C., but it was not color coded. Although E.C.'s day was mapped out for him, it sometimes had to be changed on the spot. (*Id.* at 164, ln. 4 – 20.)

E.C. also had a token economy system while at Heartspring. Every 15 minutes, E.C. could earn a token which allowed him to earn a 30-minute break in the morning and a 30-minute break in the afternoon. At each of those breaks, E.C. could choose the preferred activity he wanted to do. If E.C. earned all his tokens, he got his break. If he did not earn his tokens, he did not get a break. (Tr., Vol. 1, at 165, ln. 1 – 166, ln. 17.)

E.C. also had a self-monitoring checklist for which he earned bonus tokens. Those bonus tokens could then be used to earn the community outing on Fridays. (*Id.* at 166, ln. 18 – 168, ln. 1.)

When E.C. engaged in aggression and property destruction at Heartspring, the first thing Heartspring staff did was give him verbal instructions to try to de-escalate him. Then, they would use restraint, and then move into a transport. (*Id.* at 181, ln. 14-25.)

Ms. Coym admitted that the day school side at Heartspring uses prone restraints, contrary to Kansas State Department of Education rules, but testified that she had nothing to do with the day school side. (*Id.* at 184, ln. 21 – 185, ln. 5.) Ms. Coym is not a trainer for CPI, MANDT, or any other similar seclusion and restraint program. (*Id.* at 184, ln. 16-20.)

Ms. Coym testified that E.C.'s peers on the ABA side at Heartspring included a "few" that functioned at a similar cognitive level as E.C. and others that did not. Likewise, there were "several" verbal and "several" non-verbal students on the ABA side with E.C. (*Id.* at 186, ln. 23 – 187, ln. 11.)

Most of E.C.'s academic work at Heartspring was done through an online program called A+. (*Id.* at 185, ln. 21-25.)

E. Ashley Bennett

Ms. Bennett is a BCBA and is currently employed with the Easterseals Capper Foundation in Topeka, Kansas. (Tr., Vol. 1, at 189, ln. 4-10.) Ms. Bennett was previously employed as a BCBA with Heartspring from August 2013 to March 2017. (*Id.* at 190, ln. 15-22.) She has a bachelor's degree in psychology with a specialization in ABA and a master's degree in psychology with a specialization in ABA. (*Id.* at 189, ln. 15-18.)

Ms. Bennett was part of the consultation team that worked with E.C. at Heartspring. (*Id.* at 192, ln. 6-13.)

Ms. Bennett also worked with N, BCBA for the Coop, during the summer of 2015, to write a behavior plan for E.C. (*Id.* at 197, ln. 19 – 198, ln. 16.)

Ms. Bennett testified that Heartspring wrote a plan to be implemented in the home, but that she never saw him in the home setting. (*Id.* at 199, ln. 2-12.)

Ms. Bennett did do some training of paras from the school district regarding the behavior intervention plan because it was important for everyone to be consistent. (*Id.* at 202, ln. 11 – 203, ln. 1.) “[A]s much as possible, we want everyone doing the same thing.” (*Id.* at 202, ln. 24-25.)

Ms. Bennett testified as follows regarding the behavior intervention plan set forth in Parent Exhibit 115:

Technically the behavior intervention plan that we looked at earlier was for the insurance company, and I always provided that to schools as long as parents' consent as part of a collaboration. There are some things you can do in a private ABA practice that you would not be able to do in a school setting, but we always hope to be as consistent as

possible and to work with school teams to be consistent across treatments so that we are not, you know, one person intervening in one fashion and one person doing something that might hinder their progress. (Tr., Vol. 1, at 214, ln. 13 – 215, ln. 1.)

Ms. Bennett also recognized that a private ABA facility, such as Heartspring, may be able to do some things that a school district cannot. For example, Ms. Bennett noted that school districts are subject to strict state laws regarding crisis management procedures. (*Id.* at 220, ln. 1-24.)

Ms. Bennett gave the following as examples of self-calming strategies that would have been taught at Heartspring: counting to ten, take 3 deep breaths, going for a walk, using fidget toys, getting up and moving around, and squeezing some thick putty. (*Id.* at 229, ln. 2-14.)

Ms. Bennett recalled that she collaborated with Ms. N regarding E.C.'s behavior and that she was willing to incorporate Ms. Bennett's suggestions into planning for E.C. at school. (*Id.* at 232, ln. 1-23.)

Ms. Bennett has never observed at H Special Day School, has no familiarity with how they collect data, and no idea how large their classes are. (*Id.* at 232, ln. 25 – 233, ln. 7.)

Ms. Bennett acknowledged that there are significant differences in how services can be provided in a private outpatient setting versus a public school. One example she acknowledged is that the private outpatient setting would rarely be more than 1:1, which would be less likely to occur in a public school setting. (*Id.* at 233, ln. 8-21.) Likewise, Ms. Bennett acknowledged that there was some concern in the state over whether hand over hand prompting constituted restraint, which could not be done in the public school. (*Id.* at 233, ln. 22 – 234, ln. 13.) In addition, Ms. Bennett noted that parents are required

to be very involved in outpatient services and receive parental training. She was not sure they would receive as much parental training in the public schools. (*Id.* at 234, ln. 17-25.) Ms. Bennett acknowledged there may be other differences she could not think of at the moment. (*Id.* at 235, ln. 1-4.)

Although Ms. Bennett had prepared a home reinforcement program for E.C., they were never in the home to help implement it. For a lot of children, they do go into the home to help implement such a program. Ms. Bennett could not remember why they did not go into the home for E.C. (*Id.* at 235, ln. 5 – 236, ln. 1.)

When she left in March 2017, the paras on the day school side at Heartspring were not Registered Behavior Technicians (RBT). (*Id.* at 239, ln. 17-24.)

Ms. Bennett further testified:

with any kid that inconsistency is probably going to cause problem behavior with one or both. The same way if Mom responded differently to the behavior than Dad, he is going to respond differently to Mom than Dad. So anytime people are responding to behavior or trying to prevent that behavior in different ways, you are going to see different levels of responding with problem behavior. (*Id.* at 238, ln. 17 – 239, ln. 1.)

F. Benjamin French

Mr. French works at Heartspring as the admissions coordinator. Prior to that, he worked as the administrative assistant for the group homes at Heartspring, and prior to that he worked there as a registered behavior technician ("RBT") for two years. He has a bachelor's degree in business administration with a major in marketing and finance. To become a RBT, he completed a 40-hour intensive ABA training through the Kansas Center for Autism Research Training and had to pass an exam at the end of the training program. He testified that he worked with E.C. as an RBT and that he had

worked as an RBT for approximately one year before being added to E.C.'s case. He worked on E.C.'s case for approximately one year and saw him for a minimum of three and one-half days per week up to five days per week. *Tr., Vol. 1, at 241, ln. 3 - ln. 6, at 245.*

Mr. French used the following self-calming techniques to help E.C. de-escalate: using a pause button, asking for a break, going for a walk, and shooting baskets for up to 4 minutes. (Tr., Vol. 1, at 264, ln. 5-15.) Mr. French also tried using deep breathing with E.C. and allowing him to request to go to the sensory room at Heartspring. (*Id.* at 250, ln. 10-19.)

G. Dr. Shelby Evans

Dr. Evans is a clinical psychologist, licensed at the doctoral level, and is nationally licensed as a BCBA at the doctoral level. (Tr., Vol. 2, at 283, ln. 13-18.) She holds a doctoral degree in child psychology, which included doctoral level applied behavioral analysis, a master's degree in general experimental psychology, and a bachelor's degree. (Parent Ex. 152; Tr., Vol. 2, at 282, ln. 22 – 283, ln. 9.) At the time Dr. Evans completed her doctoral work at KU, she completed both the developmental child psychology track and the applied behavior analysis track. (Tr., Vol. 2, at 284, ln. 11-21.)

Dr. Evans testified that one of the ways in which ABA can be used in a school setting is to address the function of behaviors. She explained as follows:

Looking at what is the function or purpose of that behavior. And if we know that, then we can say the probability that the behavior is going to occur in certain places, certain settings, certain times, and then we can make adjustments to hopefully get a different behavior to occur at that time, provide the appropriate reinforcement feedback, and strengthen that particular behavior.

(*Id.* at 288, ln. 11-20.) Dr. Evans further testified that the process of doing a functional behavior assessment involved a lot of observation and trial and error. (*Id.* at 292, ln. 8-11.)

Dr. Evans testified that behaviors will often get a lot worse before they get better when a new behavior plan is implemented. (*Id.* at 296, ln. 3-20.)

Dr. Evans previously worked at Heartspring for approximately five years and split her time between the outpatient side and the residential side. She was also acting as a BCBA during that time. (*Id.* at 298, ln. 15 – 299, ln. 6.)

Dr. Evans testified that she would not expect to see progress immediately with a new behavior plan because it usually gets worse before it gets better, but she would expect to see a “fair amount of progress within the academic year when [she has] been in a residential setting.” (*Id.* at 303, ln. 1-16.)

Dr. Evans testified that there are three levels of severity with autism spectrum disorders. Level I individuals require little support, have no speech problem, and no intellectual impairment. Level II individuals require some support. Level III individuals require substantial support. Dr. Evans refers to Level III autism as “classic autism.” Those individuals would not be very verbal and would have stereotypic behaviors. (*Id.* at 305, ln. 1-25.)

Dr. Evans did not agree with the way in which N wrote her May 2015 report on the CARS because N reported scores that were pre- and post-spring break and noted that E.C. might have qualified based upon the pre-spring break scores, but not based upon the observations by Ms. N after spring break. (Tr., Vol. 2, at 337, ln. 3 – 338, ln. 21.) Dr. Evans does not believe Ms. N is qualified to diagnose autism, although Dr. Evans does understand that eligibility for school purposes is different than a medical diagnosis. (*Id.*

at 334, ln. 23 – 335, ln. 9.) Dr. Evans believes the “gold standard for the industry” is to use the Autism Diagnostic Observation Schedule (ADOS), IQ testing, and adaptive behavior to diagnose autism. (*Id.* at 336, ln. 24 – 337, ln. 2.) However, Dr. Evans admits that a medical diagnosis does not necessarily mean that a student will be found eligible for services at school. (*Id.* at 340, ln. 17 – 341, ln. 5.)

Dr. Evans testified that ABA is not the only methodology used with children on the pediatrics side at Heartspring. Clinicians use strategies that are not just ABA. (*Id.* at 351, ln. 12-20.)

Dr. Evans also testified that when you are implementing an ABA program you have to have a RBT or equivalent providing the services in order to receive insurance reimbursement. (*Id.* at 354, ln. 12-20.)

Dr. Evans was originally contacted related to E.C.’s criminal case. (*Id.* at 360, ln. 4-10.)

Dr. Evans believes E.C. needs a residential placement because he was not doing well in a general education building, then went to Heartspring and his behavior improved, and then his behavior worsened when he returned to a general education building. While she acknowledged it was possible that they didn’t give it enough time, she still believes he needs a setting like Heartspring. However, Heartspring does not have higher functioning autistic students, so Dr. Evans believes he needs to attend on of a “plethora” of institutions on the coast. (*Id.* at 363, ln. 10 – 368, ln. 2.) Dr. Evans considered only residential placements because then there would be no issue of transporting E.C. and finding a place for him to live while attending a private day school facility. (*Id.* at 393, ln. 8-20.)

Although Dr. Evans was being paid for her testimony as an expert witness, she had not prepared an expert report. (*Id.* at 380, ln. 1-6.)

Dr. Evans agreed that the goals in the IEP would be appropriate to address E.C.'s social and emotional needs. (*Id.* at 383, ln. 21 – 384, ln. 4.)

Dr. Evans was not aware that E.C.'s mother had requested that he be removed from the classroom at H Special Day School and placed in a classroom 1:1 with a para and a teacher. (*Id.* at 384, ln. 5-23.) Dr. Evans also was not aware that his behaviors increased after that change was made. (*Id.* at 384, ln. 24 – ____, ln. 2.) Likewise, Dr. Evans did not realize that all of the videos she reviewed were dated after that change was made at E.C.'s mother's request. The only reason other students were present in the video was because E.C. had eloped from his 1:1 classroom. (*Id.* At ____, ln. 3 – 386, ln. 4.) Dr. Evans admitted that the change to the 1:1 classroom would have the potential to increase a student's behavior. (*Id.* at 388, ln. 15-23.)

Dr. Evans was not surprised that the arrest due to the incident at H Special Day School occurred shortly after E.C. started attending because it was a change in placement and behavior often worsens after a change in placement. (*Id.* at 386, ln. 24 – 387, ln. 8.)

Dr. Evans knew of the D School because she had worked with students who had been admitted to D from Heartspring and from Heartspring to D. (*Id.* at 392, ln. 1-8.) Dr. Evans was not familiar with other options in the Kansas City area, such as North Star Academy. (*Id.* at 392, ln. 9-17.) With respect to Partners in Behavioral Milestones in the Kansas City area, Dr. Evans was not aware they had a day school program. (*Id.* at 392, ln. 18 – 393, ln. 3.) Dr. Evans was also unaware of Sherwood Autism Center in the Kansas City area. (*Id.* at 394, ln. 10-11.)

Dr. Evans was familiar with Prairie View in N, but believed it to be a PRTF (psychiatric residential treatment facility) and was not aware that the day school was separate and contracted with school districts to provide special education for students.

Dr. Evans did not know whether that would be an appropriate placement for E.C. because she did not know the day school. (*Id.* at 394, ln. 12 – 395, ln. 12.)

Dr. Evans admitted that she is not a member of E.C.'s IEP team and had not discussed what his appropriate educational placement might be with any of the members of his IEP team other than his parents. (*Id.* at 395, 18-24.)

Dr. Evans was not sure whether E.C. had only returned to P Elementary for approximately one month before the incident which led to his arrest, but she agreed that the change in placement could have led to an increase in his behaviors. Dr. Evans could not say whether enough time had been allowed for the behavior plan to become effective. (*Id.* at 396, ln. 16 – 399, ln. 13.)

Dr. Evans agreed that the requirement for a RBT to provide services is an insurance requirement in an outpatient setting, not a requirement that would be placed upon the public schools. (*Id.* at 401, ln. 14 – 402, ln. 12.)

Dr. Evans has never worked at any of the facilities that she recommended to the parents, although she has colleagues that have worked in all of them. She also has no idea as to the cost of those placements. (*Id.* at 407, ln. 9-24.)

Dr. Evans reviewed the behavior intervention plan from E.C.'s current IEP and agreed that it was appropriate, as long as it was properly implemented. (*Id.* at 407, ln. 25 – 409, ln. 2.)

Dr. Evans admitted that E.C. would not have to be identified as autistic in order for the school to provide the special education services to meet his needs. He simply needs to be identified in one of the thirteen IDEA categories. (*Id.* at 409, ln. 3 – 410, ln. 7.)

Dr. Evans believes E.C. should have a residential placement because he would have 24-hour management of a behavior intervention plan, medication management, and

coordination with other providers. She does not believe this could be done in public setting. (*Id.* at 410, ln. 10 – 411, ln. 9.) Dr. Evans was aware that the Coop already had a BCBA on staff. (*Id.* at 411, ln. 10-13.)

Dr. Evans was not aware that the parents had refused consent for a reevaluation in November 2016. (Dist. Ex. 13; Tr., Vol. 2, at 416, ln. 7 – 418, ln. 12.) Dr. Evans also had no information about how frequently the H Special Day School staff met to review E.C.'s IEP. (*Id.* at 418, ln. 13-17.)

Dr. Evans would not expect an ABA methodology to be effective immediately. She stated that it depends upon the student, the environment, and the nature of the problem. (*Id.* at 427, ln. 7-14.)

Dr. Evans has only met with E.C. three times for a total of four hours. (*Id.* at 431, ln. 25 – 432, ln. 7.) Dr. Evans had noticed E.C.'s attachment to his mother and stated that he is a “comfort seeker.” (*Id.* at 433, ln. 12-23.)

Dr. Evans acknowledged that a medical diagnosis of autism does not necessarily mean the child will qualify for the eligibility certificate from the school. *Tr., Vol. 2, at 335, ln. 5-9, at 340, ln. 17 - ln. 5, 341.*

Dr. Evans testified of her experience in determining exceptionalities for children while she was employed by Heartspring. *Tr., Vol. 2, at 341, ln. 15 - ln. 1, 342.*

Dr. Evans additionally testified that she reviewed various records provided to her by the parents and dating back to E.C.'s time in kindergarten as part of her consult on this matter, including educational records, medical records, behavioral data, and school videos. *Tr., Vol. 2, at 309, ln. 5 - ln. 23, 310.* She testified that those records showed that as early as kindergarten, E.C. exhibited behaviors showing he had no coping skills, he didn't separate from adults, he didn't handle transition and wasn't able to go with the

flow, he didn't have good emotional regulation, he was unable to interact well with others, and he was unable to self soothe. She further testified that from her review of the records, over time, there had been no improvement in these behaviors, and it looked like the behaviors were worsening in intensity. She noted that by 2013, E.C. had begun aggressing towards peers, reflecting an even further escalation in behavior. Dr. Evans testified that all of those records would have been important to her in considering a diagnosis of autism and in making recommendations regarding E.C.'s placement and education. *Tr., Vol. 2, at 316, ln. 13 - ln. 2, 326, at 328, ln. 18 - ln. 8, 330, at 332, ln. 13-18, at 331, ln. 19 - ln. 2, 332, at 333, ln. 1-5; Parent Ex. 10-12, 24-35, 40-524.*

H. Lori Daly

Lori Daly is employed by SC Mental Health as the parent support in training. (*Tr., Vol. 2, at 437, ln. 16-22.*) She is the parent support worker for E.C.'s mother. (*Id. at 438, ln. 1-6.*) As the parent support provider, her role is to help parents connect with community resources, navigate the mental health system, identify barriers to receiving treatment. (*Id. at 439, ln. 2-6.*)

Ms. Daly attended an IEP meeting for E.C. on October 21, 2016, shortly after his first arrest, as support for both E.C. and his mother. (*Id. at 438, ln. 14-23.*) Ms. Daly testified that much of the discussion was about E.C. attending H Special Day School, which was in session 4 days per week instead of 5 days per week. Ms. Daly testified that several people at the meeting were concerned how E.C. would react to that change because he does not respond well to changes in routine. Specifically, the individuals who voiced that concern were: E.C.'s mother, Ms. Gagne, and Dr. Seberger. (*Id. at 441, ln. 1 - 444, ln. 17.*) By the end of the discussion, there was an agreement that H would provide something for E.C. for Fridays. (*Id. at 444, ln. 18-23.*) Ms. Daly later had a conversation

with E.C.'s mother in which E.C.'s mother represented that he was not going to be served by the school on Fridays. (*Id.* at 444, ln. 24 – 445, ln. 6.) Ms. Daly was not aware that the Districts actually provided services to E.C. on all the Fridays that he attended. (*Id.* at 448, ln. 6-13.) Ms. Daly did not recall whether Ms. Gagné was introduced as an attorney when she attended the October 21, 2016, IEP meeting. (*Id.* at 446, ln. 20 – 447, ln. 9.)

I. Kimberly Becker

Kimberly Becker is currently employed as a product manager with Raintree, Inc. She is assisting in developing ABA documentation and software for applied behavior analysis. (Tr., Vol. 2, at 449, ln. 17-24.) She has worked in this capacity since April 2016. (*Id.* at 450, ln. 1.) Ms. Becker is also an autism program consultant for Rainbows United and is a consultant for a school in Beijing, China. (*Id.* at 450, ln. 2-16.) Ms. Becker holds a master's degree in early childhood special education and a certificate in applied behavior analysis, which she obtained through an online program. She also holds an autism specialist certificate from that State of Kansas. She is not now, and never has been, a BCBA. (*Id.* at 450, ln. 17 – 451, ln. 20.)

Prior to her employment with Raintree, Inc., Ms. Becker was employed by Heartspring as the Director of Outpatient Services. (*Id.* at 452, ln. 18 – 453, ln. 1.) Ms. Becker left Heartspring in February 2016. (*Id.* at 453, ln. 17-18.) Ms. Becker testified that children in the residential program were typically those with a more severe diagnosis and cognitive delays, but she did not know about the students in the day school program who were bussed in from the surrounding area. (*Id.* at 455, ln. 4 – 456, ln. 10.)

In June of 2015, E.C. attended the SSTAR camp at Heartspring during the summer, along with two paras from the Coop. (*Id.* at 459, ln. 13-19; *id.* at 461, ln. 5-10.) At that

point in time, Heartspring was going through the process of getting everyone trained as a Registered Behavior Technician. (*Id.* at 462, ln. 11-20.)

Ms. Becker was called in many times as an observer during implementation of behavior plans to take data, keep time, or help with physical restraints, as may be needed. (*Id.* at 473, ln. 12-21.) Ms. Becker thought she probably had daily contact with E.C. during that first month of SSTAR camp and then it gradually decreased. (*Id.* at 474, ln. 1-9.) Law enforcement was never called on E.C. while he attended the SSTAR camp at Heartspring. (*Id.* at 475, ln. 18-20.)

Ms. Becker attended an IEP meeting at Heartspring in the fall of 2015 before E.C. started attending school at L Elementary in the structured learning program. (*Id.* at 477, ln. 8-19.) Ms. Becker stated that the principal from S_____ Elementary did not seem open to having E.C. return to S_____. (*Id.* at 479, ln. 19 – 480, ln. 25.)

E.C. ended up attending a structured learning program at L Elementary in _____ instead. The Coop paid for Heartspring staff who were RBTs to work with him at L Elementary. (*Id.* at 481, ln. 7-23.) However, he was not successful and returned to Heartspring after he had been out of school suspended for 10 days. (*Id.* at 481, ln. 24 – 482, ln. 15.) E.C. was then placed in a separate room where the Heartspring staff worked 1:1 with him using curriculum provided by the Districts. (*Id.* at 482, ln. 16-22.) At times, other students would be in the room as well, but they would also be working 1:1. (*Id.* at 482, ln. 23 – 483, ln. 13.) This arrangement was done on the pediatrics outpatient side of Heartspring and continued until Ms. Becker left Heartspring in February 2016. (*Id.* at 483, ln. 17 – 484, ln. 6.) Ms. Becker testified it was possible that the Heartspring staff were not properly implementing the behavior plan, but she also knew that behaviors are

inconsistent and unpredictable so staff may not have known the exact way to handle a situation that occurred in the school. (*Id.* at 486, ln. 12 – 487, ln. 1.)

Ms. Becker was also involved in the transition of E.C. from Heartspring to P Elementary around January 2016. It was planned as a very slow transition. (*Id.* at 489, ln. 6 – 490, ln. 2.) Ms. Becker left Heartspring before E.C. transitioned to P in Fall of 2016. (*Id.* at 490, ln. 15-18.)

While E.C.'s behavior was trending downward at SSTAR camp, there were no academic demands being placed upon him, as there would have been at school. (*Id.* at 502, ln. 25 – 503, ln. 9.)

During the entire time, she worked at Heartspring, E.C. was receiving ABA services that were billed to insurance in addition to the services provided during the school day, which were paid by the school district. (*Id.* at 506, ln. 3-20.)

Ms. Becker did not know that E.C. had choked another student at S_____ Elementary. (*Id.* at 508, ln. 1-3.)

The curriculum used by E.C. while at Heartspring was the A+ online program. (*Id.* at 508, ln. 8-16.)

E.C. was told he could not participate in the Care program, a social skills group at Heartspring, but Ms. Becker could not remember exactly when that happened or what the specific circumstances were. (*Id.* at 515, ln. 7-20.)

J. (a) _____ **and** _____

J.(a) _____

K. C. is the mother of E.C. (Tr., Vol. 2, at 517, ln. 2-6.) E.C. turned 11 years old on May 26. (*Id.* at 517, ln. 12-17.) She is married to E.C.'s father, W. C.. (*Id.* at 517, ln. 20-21.) E.C.'s parents have two other children, an older child, W, and a younger child, L. (*Id.*

at 517, ln. 22-24.) W is 12 and L is 10. (*Id.* at 518, ln. 2.) Mrs. C. is an attorney and Mr. C. is a pharmacist. (*Id.* at 518, ln. 5-14.) The family lives in _____, and that is their home school district. (*Id.* at 518, ln. 15-19.)

Mrs. C. testified at length regarding E.C.'s school history, going all the way back to pre-school, much of which was beyond the two-year statute of limitations in this matter. At the hearing, counsel for the Districts and counsel for the parents had the following discussion regarding counsel for the Districts' objection:

MS. LOQUIST: Again, I would like to renew my objection. This is all stuff that is outside of the two-year statute of limitations on the claims under IDEA.

HEARING OFFICER BEASLEY: Ms. Gagne.

MS. GAGNE: Your Honor, I am not -- my client isn't seeking any regress all the way back to 2011. I think her complaint makes that perfectly clear. I think these records are important for the court to consider because it identifies the same behaviors that we are seeing now just when he was in kindergarten. I think my client is just wanting the court to get a good picture of the fact that these are the same behaviors over and over again and that we have got to do something now because we have lost time with him.

MS. LOQUIST: I would say that it's less than clear that her client is only seeking claims going back within the two year statute of limitations because, even though they did amend their statement of problems so it only covers issues within the two-year statute of limitations, the original due process complaint went back, again, to the beginning of the student's school career. And so my concern is that either in briefing or on appeal they are going to go back and say, "Well, see. This has been going on all this time. So for all this time the school hasn't provided FAPE. And that's exactly what the two-year statute of limitations was put in place to prevent. And, you know, all day today we have had testimony and it truly has been trial by ambush. We had Shelby Evans come in here and testify without having provided an expert report so we had no idea what she was going to be testifying about. We have all these exhibits come in, which we didn't even get until Thursday at 5:00 p.m., and so, you know, you asked me yesterday whether my client has been disadvantaged. I think today is a perfect indication of how my client has been disadvantaged by the manner in which this has proceeded. So, again, I renew my objection.

MS. GAGNE: Your Honor, if I need to ask my client while she is on the stand if she is asking for a recourse from way back in 2011, I can do that, but I think her complaint is really clear that it's not asking for that. And these records are part of E's educational records held by Ms. Loquist's client. She had access to all of this information. She knows.

(Tr., Vol. 2, at 523, ln. 5 – 525, ln. 11.) The Hearing Officer then ruled that:

HEARING OFFICER BEASLEY: I'm going to allow her to testify only from the standpoint of the history of this child. These are not matters that violate any due process rights or anything under the Individual Disability Education Act because it does precede the two-year statute of limitations. But I will allow her to testify only from the standpoint of the history of this child and the conduct will not be considered in any way as being a violation of IDEA.

(*Id.* at 525, ln. 12-23.) Thus, any history of E.C. prior to the two year statute of limitations has not been considered by the Hearing Officer in determining whether there was a violation of the IDEA, but has only been considered as providing background history on the child.

E.C. was diagnosed with ADHD while attending M Elementary for kindergarten. (Tr., Vol. 2, at 522, 1-11.)

During E.C.'s second grade year, he started receiving services through SC Mental Health. (*Id.* at 540, ln. 9-17.)

In February 2015, E.C. was diagnosed with autism, and E.C.'s mother sent an e-mail to G with the Coop "demanding that his placement be changed to Heartspring." (Tr., Vol. 3, at 591, ln. 16-21.) As soon as she received the report, she forwarded it to G and asked that E.C. placement be changed prior to the IEP meeting held in March 2015. (*Id.* at 593, ln. 1-6.) At that point in time, Mrs. C. knew nothing about Heartspring or the level of children with whom they worked. She just knew they dealt with children who had autism and she did not believe E.C.'s current placement was working. (*Id.* at 593, ln. 7-17.) Mrs. C. was concerned about the school doing additional testing because she did not feel that the school accepted the diagnosis or that the school was trying to disprove the diagnosis. (*Id.* at 593, ln. 18 – 594, ln. 7.)

Mrs. C. testified that she signed in agreement with the reevaluation report, dated May 28, 2015, which included Ms.N 's recommendations because it was part of a larger meeting including things other than just the autism exceptionality, because the Districts offered the Heartspring camp for ESY, and because she didn't know that the whole IEP team could discuss the exceptionality and that it was supposed to be a team decision. (Dist. Ex. 37; Tr., Vol. 3, at 597, ln. 12 – 600, ln. 5.) Mrs. C. also testified that she “never really read the report [N's report] at the time.” (Dist. Ex. 39; Tr., Vol. 3, at 604, ln. 3-8.)

Mrs. C. testified that there was no regular education teacher present at the meeting on May 28, 2015, noting that E.C. “hadn't been in a regular ed classroom.” (Tr., Vol. 3, at 602, ln. 13-16.) Parents' counsel then asked Mrs. C., “You understand that at IEP meetings there has to be a representative that's a regular ed teacher?” (*Id.* at 602, ln. 17-19.) To which Mrs. C. replied, “Yes.” (*Id.* at 602, ln. 20.) This testimony is contrary to the IDEA, which requires that the IEP team include “not less than 1 regular education teacher of such child (***if the child is, or may be, participating in the regular education environment***).” 20 U.S.C. §1414(d)(1)(B)(ii)(emphasis added). Mrs. C. claimed that no one told her she could request a “full IEP team meeting to discuss the evaluation report.” (Tr., Vol. 3, at 602, ln. 21-24.) Mrs. C. claimed that she did not learn she could have asked for a full team discussion regarding the evaluation until she started doing more research this academic year. (*Id.* at 603, ln. 5-16.)

Once Mrs. C. did read N's report, she was critical that it appeared to have only looked at a couple of weeks' or months' worth of time and did not appear to have gone back and reviewed his previous educational records. In her opinion, Mrs. C. thought N should have looked at his previous records as well. (Tr., Vol. 3, at 604, ln. 10-20.) Mrs.

C. did not believe that Dr. Turner's report regarding E.C.'s diagnosis was reviewed at all during the May 28, 2015 IEP meeting. (*Id.* at 604, ln. 21-24.)

Mrs. Coulis believes it is important for E.C. to be "properly identified" as autistic as that he can get "proper services." (*Id.* at 605, ln. 8-10.) She doesn't believe the school's assertions that the label doesn't matter and they will provide the services E.C. needs and she believes it is necessary that he be identified as autistic for any future potential manifestation determinations. (*Id.* at 605, ln. 10 – 606, ln. 10.)

Mrs. C. believed that the Heartspring camp had been a positive experience for E.C. She believed his behaviors were getting better while he was there, but they didn't see any change at home at that point. (*Id.* at 607, ln. 14 – 608, ln. 5.) She wasn't getting calls about his behavior like she had been when he was attending P Day School. (*Id.* at 608, ln. 12-17.)

Mrs. C. attended another IEP meeting for E.C. in August 2015. (*Id.* at 609, ln. 1-6.) Staff from Heartspring, staff from S_____ Elementary, staff from L Elementary, and LA from the Coop were all present for this IEP meeting. (*Id.* at 609, ln. 7-24.) Mrs. C. was fine with E.C. attending L Elementary. E.C. wanted to return to S_____ Elementary because he had met a friend at the Heartspring summer camp, and she was fine with that at the beginning of the meeting but she didn't feel like the principal at S_____ was willing to try it. (*Id.* at 610, ln. 12 – 611, ln. 15.) Mrs. C. did not believe P Day School was appropriate for E.C. because Heartspring felt he was modeling his behavior on that of other students at P and that was why E.C.'s behavior had been getting worse. (*Id.* at 612, ln. 1-8.)

Mrs. C. testified that the August 2015 IEP is the only one which lists E.C.'s autism diagnosis and his general anxiety disorder diagnosis. (Parent Ex. 70; Tr., Vol. 3, at 612, ln. 16 – 613, ln. 4; *id.* at 614, ln. 1-4.)

While at L Elementary, E.C.'s behavior resulted in a recommendation to exceed a cumulative total of ten days of out of school suspension. This resulted in a manifestation determination meeting being held. (*Id.* at 617, ln. 1-13.) At the manifestation determination, it was determined that the behavior was a manifestation of E.C.'s disability due to the school's failure to properly implement the IEP. (*Id.* at 623, ln. 1-3.)

The behavior plan from the August 2015 IEP was not the same as the one drafted by Heartspring. Mrs. C. believes the Heartspring behavior plan should have continued to work if it had been properly implemented with appropriate staff. (*Id.* at 621, ln. 20 – 622, ln. 16.)

After the manifestation determination meeting, another IEP meeting was held. At that time, the Districts offered to place E.C. at H Day School and then slowly transition him back to S_____ Elementary. Mrs. C. did not want that because she felt that P Day School had not worked for E.C. and she did not want him to return to S_____ Elementary after the way the principal had acted at the previous IEP meeting. This halted the IEP meeting, but G later contacted her and offered a placement at Heartspring with 1:1 services and Mrs. C. accepted that. (Tr., Vol. 3, at 624, ln. 8 – 626, ln. 8.) He started back at Heartspring in November 2015. (*Id.* at 631, ln. 5-7.)

Mrs. C. was never called about E.C.'s behavior while he was at Heartspring, and E.C. was never suspended from Heartspring. (*Id.* at 631, ln. 11-17.) Mrs. C. felt like she didn't need to worry about E.C. when he was at Heartspring because she knew they were

capable of handling him and taking care of problems that would arise with him. (*Id.* at 632, ln. 16-21.)

E.C. started transitioning back to a general education building in January 2016 at P Elementary, another school in the _____ school district. (*Id.* at 634, ln. 1-8.) Mrs. C. met informally with the principal, Ms. J, prior to E.C.'s attendance at P. Mrs. C. felt it was a positive meeting. They discussed that Ms. J had a daughter with autism, so Mrs. C. felt that Ms. J understood the issues, and they discussed ideas Ms. J had to help E.C. integrate with the other students more quickly. (*Id.* at 634, ln. 9 – 636, ln. 6.)

E.C. started at P with just 30 minutes a day and gradually increased over the course of the spring semester. Mrs. C. remembered signing amendments to increase the number of minutes, but she did not recall how long he was at P by the end of the year. (*Id.* at 636, ln. 10-18.) While at P, E.C. had a staff member from Heartspring with him, either Ben French or Taylor Miller. (*Id.* at 636, ln. 19-24.)

Mrs. C. attended an IEP meeting in August 2016 in which she was “blindsided” because she was not aware that Heartspring would not continue to provide staff to work with E.C. for the fall of 2016. (*Id.* At ____, ln. 5-22.) This decision was shared with the IEP team by Dr. Wayne Piersel from Heartspring. (*Id.* at 648, ln. 15-21.)

In addition, E.C. was moved from the pediatrics side of Heartspring to the day school side in August 2016. Mrs. C. later learned that E.C. was being served in a Heartspring classroom with all non-verbal students. (*Id.* at 640, ln. 3-10.) Mrs. C. wasn't worried about his academics at that point because E.C. has always been on grade level. Her biggest concern has always been the possibility that E.C. could be arrested. (*Id.* at 640, ln. 11-22.) When E.C. was at Heartspring, Mrs. C. felt that E.C. was “safe,” meaning that he would not be arrested. (*Id.* at 640, ln. 24 – 641, ln. 3.)

Neither Ben French nor Taylor were still working for Heartspring at the time E.C. started transitioning into P in the fall of 2016. (*Id.* at 649, ln. 7-10.) Mrs. C. was concerned that E.C. would not have the same level of success at P without Heartspring staff with him. (*Id.* at 647, ln. 13-21.)

In August 2016, E.C. was attending the Heartspring day school full-time. (*Id.* at 650, ln. 12-14.) In September, E.C. started attending P for three (3) hours per day. (*Id.* at 650, ln. 15-23.)

Mrs. C. testified that Heartspring staff would not be returning to P with E.C. because the Coop's contract had ended in June 2016, and it was utilizing too much of Heartspring's resources to provide 1:1 support for E.C. If one of E.C.'s Heartspring staff members called in sick, then Heartspring would have to cancel sessions with other children, so Heartspring was not going to renew that contract. That is another reason why they wanted to transition E.C. to the day school side of Heartspring. (Tr., Vol. 3, at 818, ln. 4-21.)

In the August IEP meeting, Mrs. C. testified that the team had discussed placing E.C. at Heartspring for thirty (30) days, rather than making him undergo another transition so soon after transitioning to the day school side at Heartspring, and then review the data and determine whether they would go ahead and add hours at P Elementary. (*Id.* at 818, ln. 24 – 819, ln. 12.) When they reconvened in September, they went ahead and added 3 hours at P Elementary to begin transitioning E.C. back to the school. (*Id.* at 819, ln. 17-20.)

Mrs. C. complained in her testimony that Parent Exhibit 85, the IEP from the September 2016 IEP meeting, was missing several pages and she did not discover it until

her preparation for the hearing. However, she admitted that the copy of the IEP she received at the meeting had those pages in it. (Tr., Vol. 3, at 820, ln. 18 – 821, ln. 13.)

On October 19, 2016, Mrs. C. received a phone call informing her that there had been a problem at school, E.C. had been taken to the _____ Police Department, and she could pick E.C. up there. (*Id.* at 834, ln. 11-20.) Mrs. C. stated that, once she arrived at the police department, she had to wait at least ten minutes for them to bring E.C. out to her and that E.C. was in handcuffs when they did bring him out. (*Id.* at 835, ln. 5-10.) Mrs. C. testified that she was in an “emotional state” because she was upset her son had been handcuffed and she was in a hurry to leave. (*Id.* at 835, ln. 19-25.)

On October 21, 2016, an IEP meeting was held, and Ms. J, the principal, stated that she did not feel E.C. could remain at P because other students were in danger due to E.C.’s physical aggression. (*Id.* at 836, ln. 14-24.) According to Mrs. C., the only other option discussed for E.C. was to place him at H Special Day School. Mrs. C. was concerned about placing E.C. there because P Day School had been an inappropriate placement for E.C. and she felt it was the same program. However, LA shared that it was a more therapeutic placement and that the school had not called law enforcement on a student in 18 months, so that made Mrs. C. feel that E.C. would be “safe” there and she agreed to the placement. (*Id.* at 837, ln. 9 – 838, ln. 10.)

E.C. attended H for only six (6) days before he was arrested for hitting LA in the face. (*Id.* at 840, ln. 6-20.) Mrs. C. was told that E.C. was being taken to juvenile detention, but she drove to the _____ County Sheriff’s Office in _____ and was able to see E.C. before he left. E.C. was taken to juvenile detention in Hutchinson, but the facility had received his release papers before he had even arrived there. Nonetheless, the _____

County Sheriff's Office would not transport him back to _____, so E.C. had to wait in Hutchinson for Mrs. C. to arrive to pick him up. (*Id.* at 841, ln. 2-22.)

The _____ County Attorney's Office filed charges on both the P incident and the H incident at the same time. Although Mrs. C. had an attorney friend who was able to convince the judge to release E.C., one of his conditions was that E.C. not return to school until after his initial appearance. (*Id.* at 843, ln. 6 – 844, ln. 10.) Mrs. C. could not remember if it was two days or a week and two days between that date and E.C.'s initial appearance. (*Id.* at 844, ln. 13-18.)

E.C. was out of school from November 1, 2016, until the Monday before Thanksgiving because Mrs. C. did not feel like it was "safe" for him to return to H Special Day School. E.C. could have returned after his initial appearance, but Mrs. C. chose to keep E.C. home longer than that. (*Id.* at 845, ln. 2-17.)

Mrs. C. testified that she believed the video from November 1, 2016, showed that E.C. was not fully calm when Ms. A came into the seclusion room and E.C. was asked to clean up the mess he made. Mrs. C. also believes that Mr. S should not have been in the seclusion room with E.C. because he would have de-escalated more quickly if he had been alone. (*Id.* at 848, ln. 16 – 849, ln. 24.)

In January 2017, Mrs. C. received a phone call from the school informing her that E.C. had hit a peer and that the other parent was on their way to the school. (*Id.* at 854, ln. 11-20.) At that point, Mrs. C. asked the school to place E.C. in a 1:1 classroom because he was already facing criminal charges from two incidents and she did not want him to be arrested for anything else. (*Id.* at 854, ln. 25 – 855, ln. 8.) Mrs. C. admitted that E.C.'s behavior did not get any better after he went into the 1:1 placement. (*Id.* at 855, ln. 12-13.)

Mrs. C. was not asked to sign an IEP amendment at the time. (*Id.* at 856, ln. 17 – 857, ln. 1.) Mrs. C. stopped sending E.C. after spring break because she had been told that she needed to sign an amendment for him to continue to remain in the 1:1 setting or E.C. would need to return back to the classroom setting. (*Id.* at 857, ln. 2-24.) Mrs. C. did not sign the IEP amendment because the school would not put anything in it about Fridays for E.C. (*Id.* at 857, ln. 25 – 858, ln. 15.) Mrs. C. never withdrew E.C. from school. Instead, she just stopped sending E.C. (*Id.* at 861, ln. 23 – 862, ln. 1.)

Around the middle of April, Mrs. C. attended another IEP meeting to discuss Extended School Year (ESY). E.C. was approved for ESY, but he did not attend because Mrs. C. did not feel like he was “safe” at H. During the April IEP meeting, Mrs. C. requested access to the online curriculum E.C. had used at Heartspring. (*Id.* at 862, ln. 4-24.)

Mrs. C. had intended for her original due process complaint to serve as a demand letter, but she felt things went downhill so quickly after she filed the ESI complaint and the Coop was refusing to put Fridays in the IEP amendment, leaving her with no choice but to file the due process complaint. (*Id.* at 862, ln. 24 – 863, ln. 11.) Given the ESI complaint, the due process complaint, and the two arrests, Mrs. C. does not feel that E.C. is “safe” at H. (*Id.* at 863, ln. 13-17.)

Mrs. C. does not believe the staff were following E.C.’s behavior plan on several of the videos in question because he was simply out of his assigned area (the 1:1 classroom that the parent demanded to prevent him from having any opportunity to hit other peers). Likewise, even though there is no audio on the videos, Mrs. C. believes staff members were talking to E.C. when his behavior plan indicates they should not have been talking to him. (*Id.* at 864, ln. 3-25.) Furthermore, Mrs. C. viewed the reflection room as E.C.’s

safe place, and she did not believe E.C. should ever have been placed in the reflection room when the seclusion room already had a student in it. (*Id.* at 865, ln. 10 – 866, ln. 15.)

Mrs. C. admitted that the school had offered to conduct a reevaluation of E.C. but she declined. Her rationale was that the school had already done a reevaluation in May 2015, and she did not believe it was credible because it did not include a review of E.C.'s prior educational records. Mrs. C. also had been told that N would be on the re-evaluation team, and Mrs. C. did not believe that would be worthwhile because Ms. N would just do the same thing again. Mrs. C. was also told that H would be on the re-evaluation team, and Mrs. C. just does not trust Ms. H. Mrs. C. believes there is more than enough information to show that E.C. meets the eligibility criteria and she did not believe another evaluation was necessary. (*Id.* at 878, ln. 5 – 879, ln. 11.) Mrs. C. refused to sign for the FBA for the same reasons. (*Id.* at 879, ln. 12 – 880, ln. 7.)

Mrs. C. never asked for a residential placement for E.C. prior to filing her due process complaint. (*Id.* at 880, ln. 8-20.) Mrs. C. believes E.C. needs a residential placement so that he can receive an intensive program that will “speed up his progress so that he can come back faster and go to a normal school.” (*Id.* at 881, ln. 1-8.)

Although Mrs. C. had originally asked that E.C. be sent to the D School, she had changed her mind and wanted him sent to the M Institute by the end of her testimony during the hearing. No testimony was provided regarding the appropriateness of the program at either the D School or the M Institute during the course of the hearing. (*Id.* at 884, ln. 12 – 885, ln. 1.)

Mrs. C. does not believe Prairie View would be appropriate for E.C. because he does not have a psychiatric illness. (*Id.* at 885, ln. 24 – 886, ln. 7.)

Mrs. C. is requesting attorney fees and expenses, including fees for her own time because she has done some of the legal work in lieu of having her attorney do it. (*Id.* at 886, ln. 8 – 887, ln. 6.)

Mrs. C. testified that E.C.'s first school placement was at H.C. Lutheran School for kindergarten, which lasted one day. E.C. was kicked out due to elopement from the building and H.C. did not have extra staff they could put with him in the classroom. (Tr., Vol. 4, at 896, ln. 20 – 897, ln. 14.) E.C. had a lot of separation anxiety at that point in time. He would cling to Mrs. C. and not want to let go. He would run after her when she did leave, and he would often say that he wanted his mom. (*Id.* at 897, ln. 22 – 898, ln. 14.) E.C. continues to say that he wants his mom at the present time. (*Id.* at 898, ln. 15-17.)

E.C. ended up at M. Elementary for kindergarten, but things were not going well. That is when E.C. received his ADHD diagnosis. Mrs. C. testified that they got that diagnosis for him because they wanted him to stay in class as much as possible and get special education services. (*Id.* at 888, ln. 24 – 889, ln. 20.)

E.C. transferred to S _____ Elementary at the end of his kindergarten year and spent all of his first grade year there as well. E.C. did remarkably well during first grade. (*Id.* at 901, ln. 15-23.) As a result, E.C.'s parents pulled him out of S_____ Elementary after first grade and placed him back at H.C. Lutheran School for second grade. Mrs. C. testified that they did this because they wanted E.C. and his brothers to be together at the same school, even though E.C. would not be receiving special education services at H. C.. (*Id.* at 903, ln. 3-25.) That decision was made by E.C.'s parents. No one from the Districts told E.C.'s parents that he needed to enroll elsewhere. (*Id.* at 905, ln. 10-17.)

E.C. was only able to remain at H.C. Lutheran School for approximately the first quarter of his second grade year and then was enrolled back at S_____ Elementary around October or November. (*Id.* at 905, ln. 18-24.)

E.C. had two major incidents at S_____ Elementary on the playground. In October of 2013, E.C. pushed another student down on the playground and broke the other student's arm. In October of 2014, E.C. choked another student on the playground. After that incident, E.C. was placed at P Day School. (*Id.* at 906, ln. 14 – 910, ln. 7.)

Mrs. C. was told that P was a behavior school and that the goal was to reintegrate E.C. back into his general education building over the course of six to eight weeks; however, that six to eight weeks of transition did not start immediately. E.C. needed to be making progress with his behaviors first. (*Id.* at 910, ln. 18 – 911, ln. 21.) During the time E.C. was at Progress, he did have some positive days, but Mrs. C. did not know whether the behavior plan worked, and she could not recall whether she used it at home or not. (*Id.* at 911, ln. 22 – 912, ln. 13.)

On cross-examination, Mrs. C. admitted that the Districts had provided an occupational therapy evaluation of E.C. by contracting with Heartspring to have it done. (*Id.* at 912, ln. 19 – 913, ln. 13.) Likewise, Mrs. C. admitted that she had never asked for a neuro-psychological evaluation of E.C. and that no one had ever recommended a neuro-psychological evaluation of E.C. (*Id.* at 913, ln. 14 – 914, ln. 19.)

Despite claiming on direct examination that she was not aware the primary exceptionality was a team decision that should be discussed, Mrs. C. admitted that she had been provided a copy of her parent rights before and that she had read them. (*Id.* at 914, ln. 20 – 915, ln. 13.)

Mrs. C. admitted that Ms. N's report included a statement that "placement is a team decision," but stated that she was unaware she could disagree. (*Id.* at 915, ln. 14 – 917, ln. 9.) Mrs. C. also admitted that the reevaluation report included a statement that E.C.'s previous behavior could be considered when making the placement determination, but stated that she did not recall hearing that at the IEP meeting and she did not read the report at the time of the meeting. (*Id.* at 917, ln. 10 – 919, ln. 4.) Mrs. C. testified that she did not realize how important the issue of E.C.'s exceptionality was going to become. (*Id.* at 919, ln. 5-15.)

Mrs. C. testified that she "demanded" that E.C. be placed at Heartspring after receiving the report from Dr. Turner diagnosing him as autistic, even though she was aware that placement decisions were a team decision. (*Id.* at 919, ln. 16 – 920, ln. 6.)

Mrs. C. believed E.C.'s behavior was getting better while he was at Heartspring. Mrs. C. testified that they tried to implement the Heartspring behavior plan at home, but they were not very successful and did not see much improvement in his behavior at home. E.C.'s parents were not able to ignore his behavior at home like they could at Heartspring. They also had difficulty figuring out a good reward system to use at home because a lot of the rewards used at Heartspring were for things they do not restrict at home, like time on the iPad. (*Id.* at 920, ln. 12 – 922, ln. 4.)

Mrs. C. appreciated that she did not receive phone calls from Heartspring all the time regarding E.C.'s behavior. She did not like that she was regularly receiving calls from the public schools because she runs a business and that interfered with her business. Mrs. C. understood that the public schools were a different setting and had different requirements for contacting parents. (*Id.* at 922, ln. 5 – 923, ln. 8.)

Mrs. C. was aware that Coop staff had tried to intervene so that E.C. could return to school sooner after his arrest on November 1, 2016, but she still kept him out of school longer than required. Mrs. C. testified that she no longer trusted the school. Her trust was gone as soon as the school had E.C. arrested. This was true, even though Mrs. C. testified that she understood that no public school could guarantee that a child would not be arrested. (*Id.* at 923, ln. 9 – 924, ln. 13.)

While E.C. was at Heartspring, Mrs. C. believed that he was making behavioral progress. She was not concerned about academic progress because she had always been told that E.C. was on grade level. Mrs. C. believed E.C. was being provided appropriate academic instruction when he was on the pediatric side receiving 1:1 instruction, but she does not believe he was receiving appropriate instruction once he moved to the day school side at Heartspring. Her basis for this belief was that he had 1:1 staffing and she believed they made sure that E.C. completed all of his assignments through the A+ online learning program. (*Id.* at 924, ln. 14 – 926, ln. 10.)

Prior to filing this due process complaint, Mrs. C. had never requested that E.C. be provided ABA therapy by the Districts. (*Id.* at 926, ln. 11-14.)

Mrs. C. believes E.C.'s behaviors are more important than his academics or his need for socialization. Even though students with autism need to be taught social skills, Mrs. C. believed that should wait for E.C. until the behaviors were under control. (*Id.* at 928, ln. 1 – 929, ln. 2.)

Mrs. C. testified that H and other staff members had observed E.C. at Heartspring and had concerns regarding the academics being provided to E.C., the peer group, the supervision, and E.C.'s behaviors. Taking all of those concerns together, Mrs. C. did not

believe the day school at Heartspring was appropriate for E.C., but she still believed the pediatrics side was appropriate for him. (*Id.* at 930, ln. 12 – 931, ln. 9.)

At the September 21, 2016, IEP meeting, the team had discussed doing a new FBA on E.C., but Mrs. C. did not give consent for it to be done. (Dist. Ex. 19; Tr., Vol. 4, at 937, ln. 4-25.)

Mrs. C. remembered that she had taken a picture of a signature page for a prior written notice and e-mailed it back to the school. She at first could not recall which one it was, but it became clear that it was signature page from the prior written notice from the September 21, 2016 IEP meeting. (*Id.* at 939, ln. 24 – 942, ln. 23; Dist. Ex. 21; Dist. Ex. 49.)

After E.C. was arrested on November 1, 2016, Mrs. C. again requested that the Districts reconsider E.C.'s primary exceptionality. As a result, the Coop sent her a prior written notice seeking consent to re-evaluate E.C. to determine his primary exceptionality per the parents' request. Mrs. C. refused to sign it because she found out that N and H would be part of the team that would be involved in the re-evaluation. (Dist. Ex. 13; Tr., Vol. 4, at 946, ln. 8 – 948, ln. 18.) Mrs. C. claimed that she did not know that she could provide additional information for the team's consideration in the re-evaluation, even though she testified that she had always provided new information as soon as she received it. (*Id.* at 948, ln. 19 – 949, ln. 12.) Mrs. C. never told the Districts why she was refusing to sign the prior written notice to give consent for the re-evaluation. (*Id.* at 949, ln. 13-23.) Mrs. C. never requested that the Districts include an outside evaluator on the team conducting the re-evaluation. (*Id.* at 949, ln. 24 – 950, ln. 1.) Mrs. C. couldn't recall if the Districts had offered her an independent educational evaluation. (*Id.* at 950, ln. 2-5.)

Mrs. C. testified that she no longer trusted H because she had requested some changes made to the draft IEP that she received after the August 2016 IEP meeting, and Ms. H refused to make the changes because they would have required a team meeting. Mrs. C. disagreed and believed they could be changed without a meeting because it was Ms.H 's misinterpretation. Mrs. C. also distrusted H because Ms. H said that E.C.'s placement was at a day school, not necessarily Heartspring, and that it could be changed at any time. Mrs. C. didn't think that the Districts should have the right to move her child to another school without her consent. (*Id.* at 950, ln. 6 – 952, ln. 7.) Mrs. C. did not understand that there is a difference under the law between placement and location. (*Id.* at 952, ln. 8-11.) Mrs. C. never told the Districts that she did not trust H. (*Id.* at 952, ln. 12-15.)

In January 2017, there was an incident in which E.C. hit another student which caused Mrs. C. to tell the school that she wanted E.C. separated from all of his peers all day long. (*Id.* at 958, ln. 5 – 959, ln. 12.) Mrs. C. felt the highest priority was getting E.C.'s behaviors under control and his socialization could be worked on after that. Mrs. C. agreed that socialization goes hand in hand with the behaviors, but she believes the behaviors have to be under control first. (*Id.* at 959, ln. 13 – 960, ln. 19.)

Mrs. C. testified that she was not going to sign the IEP amendment for the separate 1:1 classroom unless the amendment included Friday services, even though E.C. was receiving Friday services. (*Id.* at 962, ln. 4-23.) H is only a 4 day per week school. (*Id.* at 963, ln. 5-12.)

Mrs. C. claimed not to remember how the discussion of Friday services came up in the October 2016 IEP meeting, which her attorney attended as her "friend" without informing anyone else that she was an attorney. Mrs. C. denied that she brought up her

need to have E.C. somewhere on Fridays. Mrs. C. did not think but “was not 100 percent sure” whether her attorney had said anything about the school needing to help her out on Fridays. (*Id.* at 964, ln. 22 – 967, ln. 25.)

E.C. became upset on one of his Friday community outings and had to be taken to his mother’s office. Once there, Mrs. C. testified that E.C. was “half-heartedly” kicking the two staff members who brought him to her office. Mrs. C. was upset because they were not following his behavior plan and ignoring E.C. kicking them. Mrs. C. could not remember if she was on the phone at the time, but she did intervene by putting her arm around him as a hug and drawing him away from the two staff members. Mrs. C. admitted that giving E.C. a hug when he is engaging in physical aggression is not part of his behavior plan. (*Id.* at 968, ln. 1 – 969, ln. 22.) Mrs. C. guessed that E.C. was back in her custody at that point, rather than in the custody of the staff members. (*Id.* at 969, ln. 23 – 970, ln. 6.)

E.C. did not return to school after spring break because the school would have put him back in the classroom with his peers, and Mrs. C. did not want that but also refused to sign the IEP amendment. (*Id.* at 971, ln. 10-24.)

Mrs. C. believes that a residential program will be better for E.C. if they find the “correct” school, meaning that the school uses ABA programming, has staff trained to implement ABA programming, and staff that understands the importance of consistency and using the same words with E.C. In the “correct” school, E.C. will “thrive” as he did in the Heartspring pediatrics program, according to Mrs. C.. (*Id.* at 974, ln. 8 – 975, ln. 8.) Mrs. C. does not believe the H staff are properly trained to implement E.C.’s behavior plan, although she has no idea what training they have had and has never been out to the school to observe. (*Id.* at 975, ln. 2-14.)

Mrs. C. had not asked for a residential placement prior to filing this due process complaint. (*Id.* at 971, ln. 25 – 972, ln. 3.) In fact, Mrs. C. has not determined in which residential program she wants E.C. placed. (Tr., Vol. 4, at 972, ln. 4-6.)

Mrs. C. does not think E.C. continues to experience separation anxiety from her, although she admits that he does still whine and say, “I want my mom.” (*Id.* at 975, ln. 15 – 976, ln. 20.)

E.C. does not get along very well with his two brothers. E.C. is physically aggressive toward his brothers. He often wants to play with them, but it has to be on his rules. E.C. has hit his siblings, but Mrs. C. testified that he has not injured either of them. (*Id.* at 976, ln. 21 – 978, ln. 21.) Mrs. C. does not implement the behavior plan at home because she cannot the way it is written. (*Id.* at 978, ln. 22 – 979, ln. 1.)

E.C. is not currently receiving ABA therapy because Mrs. C. does not think her insurance will cover 2:1 staffing for E.C. to prevent elopement, and Mrs. C. believes Heartspring is the only place in Wichita that offers ABA therapy. (*Id.* at 979, ln. 2 – 980, ln. 19.)

J. (b) _____

Mr. C is E.C.’s father. He and Mrs. C have two other sons, ____ and _____. (Tr., Vol. 9, at 2152, ln. 12-18.)

Mr. C testified that his understanding of the due process complaint was that they were requesting a residential placement because E.C. had “14 placements in six years since kindergarten.” (*Id.* at 2153, ln. 14-20.) The other big factor in why E.C. needs a residential placement is due to his two arrests. (*Id.* at 2153, ln. 25 – 2154, ln. 5.)

Mr. C never visited H, never talked to any of the teachers at H, and never observed at H. (*Id.* at 2156, ln. 8-15.)

Mr. C testified that he had used “some” of the behavior plan set forth in the IEP, specifically ignoring behavior, self-injurious behavior, whining, and ignoring profane language. (*Id.* at 2158, ln. 21 – 2159, ln. 6.) With respect to property destruction, Mr. C testified that they used the “parts that would apply to a home environment.” He did not believe the task-oriented portions would apply at home. (*Id.* at 2159, ln. 7-21.) Mr. C indicated they follow the behavior chain for aggressive behavior at home, with the exception of the token economy. (*Id.* at 2159, ln. 22 – 2160, ln. 3.)

When asked to apply the behavior chain to physical aggression between E.C. and siblings, Mr. C painted a picture of a rather compliant child. (*Id.* at 2160, ln. 13 – 2162, ln. 9.) He indicated E.C.’s behaviors at home are rather infrequent. (*Id.* at 2166, ln. 1 – 2167, ln. 8.) His descriptions did not match well with the descriptions Mrs. C had given in her testimony. The only physical aggression they ever see is mainly pushing and that is just with his siblings, not normally with his parents. (*Id.* at 2164, ln. 11-18.)

Mr. C testified that the Districts’ staff should never call police for E.C. hitting someone because the staff should have taken steps to prevent it from happening. (*Id.* at 2167, ln. 23 – 2168, ln. 7.) However, if E.C. were to bring a gun to school, then the staff should call the police.

Mr. C does not think E.C. has been provided a FAPE due to the multiple placements since kindergarten and due to his two arrests. (*Id.* at 2171, ln. 25 – 2172, ln. 4.) Mr. C stated that these have breached our trust of the facility that we entrust him to. (*Id.* at 2172, ln. at 5-8.)

E.C. is no longer receiving ABA services from Heartspring because insurance will not cover it. (*Id.* at 2172, ln. 17-22.) Mr. C did not know whether E.C. was still receiving services from SC Mental Health. (*Id.* at 2172, ln. 23 – 2173, ln. 1.) To his knowledge, E.C. was not currently receiving any services from a counselor. (*Id.* at 2182, ln. 6-8.)

Mr. C was not aware that E.C. had been enrolled back at _____. He thought it was still pending. (*Id.* at 2173, ln. 2-6.) At that point in time, E.C. was not even at home. He was with his grandparents in Topeka when the bus attempted to pick him up for school. (*Id.* at 2173, ln. 7-22.)

K. Stephen Perry

Stephen Perry is employed by Heartspring as the Director of Education. (Tr., Vol. 2, at 547, ln. 14-17.) He has held that position for approximately nine (9) years. (*Id.* at 547, ln. 18-20.) Prior to his current position, Mr. Perry was an assistant principal at Northwest High School, South High School, Hamilton Middle School. (*Id.* at 547, ln. 21 – 548, ln. 5.) He had also worked as a part-time administrator/teacher at Coleman Middle School and from 1991 to 2005 he was a classroom teacher. (*Id.* at 548, ln. 2-5.) All of his previous positions were with U.S.D. 259. (*Id.* at 548, ln. 6-9.)

Mr. Perry holds a bachelor's degree in education and a master's degree in administration in education. (*Id.* at 548, ln. 10-22.) Mr. Perry holds a K-12 administrative license and is licensed to teach grades 5-9 in social studies, government, and history. (*Id.* at 549, ln. 12-23.) Those licenses were issued by the Kansas State Department of Education, and he has taken the necessary courses to keep them current. (*Id.* at 549, ln. 24 – 550, ln. 7.)

In Mr. Perry's current position at Heartspring, he oversees the classroom aspects, including curriculum, instruction, scheduling, and supervising teachers and other staff

members. Mr. Perry indicated that his position is essentially the superintendent, principal, and director of the school program at Heartspring. (*Id.* at 550, ln. 12-24.)

The day school program at Heartspring contracts with public schools to provide educational services and manage the IEPs of students. They use a standards-based curriculum, and the day school is accredited through the State of Kansas. (*Id.* at 551, ln. 3-17.) Most of the day school students are on the autism spectrum or have some sort of developmental delay. Their youngest student was 7 or 8 years old and the oldest was 22 or 23. (*Id.* at 552, ln. 1-6.) Heartspring has licensed special education teachers, and all of the related services for students at Heartspring are provided in the classroom. (*Id.* at 552, ln. 7-21.) Students are generally on 30-minute block classes, and Heartspring counts its lunch period as instructional time as well because so many of their students are learning to use utensils. (*Id.* at 552, ln. 22 – 553, ln. 8.)

No regular education students attend Heartspring and it is a very restrictive environment. Although they do not currently have any, they have had students in the past who were able to go off campus and return to the public school in U.S.D. 259 to receive some of their services. Mr. Perry testified that 95 percent of the students at Heartspring are non-verbal and require some type of communication device to express themselves. (*Id.* at 554, ln. 5-8.) Most of the Heartspring students are referred there due to significant behavioral issues. (*Id.* at 554, ln. 8-14.)

None of the teachers in the Heartspring day school are BCBAs and none of the paras in the Heartspring day school are RBTs. (*Id.* at 554, ln. 18-24.)

Mr. Perry is familiar with E.C. because he attended Heartspring's pediatrics wing and later attended the day school. (*Id.* at 555, ln. 2-8.)

Mr. Perry attended an IEP meeting for E.C. on September 21, 2016. (*Id.* at 555, ln. 15 – 556, ln. 18; Dist. Ex. 18.) Mr. Perry recalled that the school psychologist gave a report with concerns about the lack of sufficient supervision at Heartspring because staff were too busy handling the behavior of other students. (Tr., Vol. 2, at 556, ln. 19 – 557, ln. 22.) Mr. Perry also recalled that the main concern of E.C.’s mother appeared to be that she was being called about E.C.’s behavior and it was interfering with her work. Mr. Perry testified that E.C.’s mother said in that meeting that she did not care about the academics – she just liked that Heartspring did not call her when E.C. was in trouble. (*Id.* at 558, ln. 1-23.) Mr. Perry also recalled that there was discussion about whether Heartspring would be willing to provide services for E.C. on Fridays, but he did not recall what the outcome of those discussions were. (*Id.* at 558, ln. 24 – 559, ln. 20.) Mr. Perry also testified that the Heartspring teacher was not pleased with the A+ online program because E.C. seemed to have the ability to sabotage the program and then it would take quite a while to get the program back up and running. (*Id.* at 559, ln. 21 – 560, ln. 18.) Mr. Perry did not believe that Heartspring would be an appropriate placement for E.C. based upon his higher level of functioning. (*Id.* at 567, ln. 20-24.)

Heartspring normally uses the Unique curriculum or the Attainment curriculum, both of which are functional curriculums. (*Id.* at 568, ln. 7 – 569, ln. 5.)

L. BH

BH is a school resource officer (“SRO”) employed by the City of _____. He has held that position for four years. Prior to that, he was a patrol officer. He has been employed by the _____ police department for a total of nine years. (Tr., Vol. 3, at 653, ln. 17 – 654, ln. 9.)

Officer H is familiar with E.C. from “numerous contacts” in the course of his duties as an SRO within the _____ school district. (*Id.* at 654, ln. 10-18.)

No videos were supplied in response to a business records subpoena that was issued to the _____ police department. Officer H explained that the department’s servers had crashed and they had lost all videos on all cases prior to May 27, 2017. (*Id.* at 654, ln. 22, - 656, ln. 2.)

Officer H’s first contact with E.C. was in 2014 when he was called to S_____ Elementary. At that time, Officer H was advised that E.C. had been choking another student, pushed the student to the ground, and continued choking the other student until the other student was gasping for air. (*Id.* at 656, ln. 14 – 657, ln. 16; Dist. Ex. 69.)

Officer H was present at the _____ police station on November 21, 2014, for another incident involving E.C.’s transportation home in a Suburban. (Tr., Vol. 3, at 678, ln. 17 – 679, ln. 6.) The bus driver reported to Officer H that E.C. was in the third row of seats, kicking the back of the seat in front of him, releasing the lever and pushing the seat forward and backward while grabbing ahold of the seatbelt of the student in front of him to choke him. E.C. refused to stop, so the bus driver pulled into the police station parking lot. (*Id.* at 679, ln. 7 – 680, ln. 19.) Officer H reported that Mrs. C. was very uncooperative when she arrived. (*Id.* at 681, ln. 7-13.) She did not want to speak with Officer H, “walked in with a very angry breath,” made comments that him believe she was not very cooperative based upon previous interactions with her, and “stormed out” and “slammed the door open when she left.” (*Id.* at 681, ln. 20 – 682, ln. 5.)

Officer H’s next contact with E.C. was October 19, 2016, at P Elementary. At that time, he arrested E.C. after E.C. was kicking and hitting the principal. (Tr., Vol. 3, at 664, ln. 3 – 665, ln. 22.) Officer’s H’s report on this incident indicated that he was aware of

other incidents involving E.C., including the 2014 incident at S_____ Elementary, an incident at SC Mental Health involving criminal damage to property, and an incident of breaking another student's arm on the playground. (*Id.* at 666, ln. 4 – 668, ln. 3.)

Officer H testified that the principal at S_____ Elementary had informed him in 2014 that the parents were driving 1-2 hours a couple of nights per week for practices for other children and that E.C. was being left at home with the babysitter. (*Id.* at 686, ln. 10-23.)

M. Anissa Moore, BCBA

Ms. Moore has worked as an independent educational behavioral consultant for 16 years, sometimes full time and sometimes part time. She lives in the San Antonio area and contracts throughout the State of Texas and other states and consults in special education and with other students who have behavioral challenges. She has served as a clinical ABA therapist and served as the Director of Applied Behavior Analysis for Ability Pediatric Therapy in San Antonio. She began her career as a special education teacher and became a BCBA about ten years ago. She has received her educational administration certification. She served as the district coordinator over autism, life skills, and behavior programs for Northside Independent School District and later served as assistant director of special education for Harlandale Independent School District in San Antonio. She served at a region service center as a program specialist for three years and has also worked as an adjunct professor at Sam Houston State University, teaching courses in the language literacy and special population department. She has a bachelor's degree in English with a double minor in special education and sociology, a master's degree in special education, a master's level BCBA, post-graduate certificate in ABA, and Texas principal's certificate K-12, general education certificate K-12, early childhood certificate

in ages three through six, and special education teacher certificate. *Tr.*, Vol. 3, at 703, ln. 16 - ln. 24, at 708.

Ms. Moore is a certified special education teacher, a certified general education teacher K-12, and certified in early childhood ages 3-6. All of these certifications are current. (*Id.* at 708, ln. 20 – 709, ln. 2.)

As an independent educational consultant, Ms. Moore regularly does presentations. She regularly speaks at least once or twice a year for the conference for the Texas Council of Administrators of Special Education. She has been a speaker at the Texas State Autism Conference, Inclusion Works, and the Texas Early Childhood Coalition. She is often a speaker at conferences held by the regional educational service centers. (*Id.* at 709, ln. 6-17.) In addition, Ms. Moore regularly does presentations at local colleges for their teacher certification programs regarding applied behavior analysis, behavior modifications, and functional behavioral assessments. Ms. Moore also did a teleconference presentation for the Office for Civil Rights in conjunction with the Office of Special Education Programs at the national level. (*Tr.*, Vol. 3, at 709, ln. 18 – 710, ln. 6.)

Ms. Moore frequently provides staff development for school districts, whether campus-wide, administrators only, or for district special education staff. Often, the focus of these presentations is on working with students with ADHD or autism, how to program effectively for those students, providing behavior supports, applied behavior analysis and how that looks in the public schools. (*Id.* at 710, ln. 7-25.) In addition, Ms. Moore has done staff development on such topics as IEP facilitation and effective conflict resolution, toilet training, and sexual and puberty behavioral issues. Many of the issues for which

she provides training relate to behavioral issues for which applied behavioral analysis can be utilized. (*Id.* 711, ln. 1-13.)

Ms. Moore prepared her report after reviewing documentation and records related to this case and provided an opinion on issues any district should consider when looking at a residential placement for a student. Ms. Moore has personally been involved in residential placement decisions for several students. (Dist. Ex. 67; Tr., Vol. 3, at 711, ln. 25 – 712, ln. 19.) In preparing her report, Ms. Moore reviewed E.C.'s IEP, evaluation, progress reports, the due process complaint and district response, and e-mail correspondence with the parent. In addition, Ms. Moore also had the opportunity to speak with Coop staff members. (*Id.* at 712, ln. 20 – 713, ln. 24.) During those discussions, Ms. Moore was able to ask any questions she had regarding the timeline for schools in which E.C. had been served, his FBA, his behavior plan, the strategies that had been tried with E.C. and whether those had been effective, the progress he had made, and where the Coop staff believed E.C. was making the most progress. (*Id.* at 714, ln. 3-21.)

Throughout her report, Ms. Moore referred to ABA principles. Ms. Moore testified that ABA principles are “a framework, and it's a way of looking at strategies that apply to the environment for any kiddo, and you look to see if this is going to change a behavior.” (*Id.* at 715, ln. 12-15.) It can be used for any type of behavior – academic, social, as well as maladaptive behaviors such as physical aggression. (*Id.* at 715, ln. 16-20.) Examples of ABA principles that teachers may use with any student include: prompting, prompt fading, establishing behavior chains, and positive reinforcement. (*Id.* at 715, ln. 21 – 716, ln. 13.) In the schools, the biggest ABA principle is identifying maladaptive behaviors that are impeding learning and teaching replacement behaviors. (*Id.* at 716, ln. 13-19.) To that end, the IEP tea, has discussions about what strategies and supports should be included

in the behavior intervention plan to help the student be successful and what the review of the data indicates. (*Id.* at 716, ln. 20 – 717, ln. 6.) Ms. Moore testified that teachers often do not realize they are using ABA principles. One of the most common of these is positive reinforcement. Ms. Moore noted that E.C.’s IEP showed that he had several types of positive reinforcement, including a token economy and verbal praise, as well as the application of an extinction principle through the use of ignoring maladaptive behaviors. (*Id.* at 718, ln. 9-23.)

In the school setting, staff can use antecedent manipulation to try to prevent maladaptive behavior from occurring. They look to see what is driving the student’s behavior and then they plan strategies incorporating ABA principles related to the function of that behavior. (*Id.* at 719, ln. 14-24.)

The function of the behavior can change over time. For example, if the function of the behavior was originally task avoidance or escape and the student receives a lot of attention as a result of the behavior, the function could become attention seeking. That is why it is important to review the data. (*Id.* at 720, ln. 2 – 721, ln. 7.) The function of the behavior can change even after a functional behavior assessment has been done. (*Id.* at 721, ln. 11.) However, once a good functional behavioral assessment has been done and a behavior intervention plan has been put in place, staff have to allow sufficient time for the plan to work. Oftentimes, there is an “extinction burst” in which the behaviors get much worse before the behaviors start to improve. (*Id.* at 721, ln. 12-24.)

A change in placement can also cause a change in behavior because it is an environmental manipulation. It could make it better or it could make it worse. Environmental manipulation is textbook ABA. (*Id.* at 722, ln. 25 – 723, ln. 18.)

When Ms. Moore reviewed E.C.'s IEP she saw evidence of ABA principles being used with him, such as antecedent manipulation and consequence responses. More specifically, she saw that there was planned ignoring of certain behaviors, access to reinforcers and access to preferred items contingent on appropriate behaviors (something that is stressed in ABA as positive reinforcement for appropriate behavior), and pairing of a staff voice with verbal praise with the token or preferred item (so that eventually staff can fade out the token or preferred item and only use verbal praise). (Tr., Vol. 3, at 723, ln. 22 – 725, ln. 20.)

Ms. Moore had worked as a teacher and an administrator in the Texas public schools for a total of eighteen (18) years. The majority of that experience was with the fourth largest school district in Texas. During that time, she supervised their autism program and their elementary behavior program. At the time that she was the special education administrator, they had over 12,000 students on the autism spectrum and over 100,000 students total. Ms. Moore had supervised a team of behavior specialists and autism specialists who would go out and serve a cluster of campuses. Two of those staff members became BCBA's under Ms. Moore's supervision. (Tr., Vol. 3, at 726, ln. 4, - 727, ln. 15.)

Ms. Moore testified that there is a difference between the clinical model of ABA and the educational model. In a clinical model, much of what can be done is driven by the insurance companies. Everything the insurance company will allow is driven by the diagnosed disability. The insurance companies dictate that the service must be provided 1:1 in a clinic setting. The insurance companies refer to the sessions with the clinicians as therapy sessions and the clinicians refer to themselves as therapists. The clinicians typically will do their own assessments which may vary. Often, there is little collaboration

between the clinician and the educational team until after the fact. The ABA therapist does their own assessment and determines what they will work on based upon that assessment and a questionnaire completed by the parents with little or no input from the school. (Tr., Vol. 3, at 727, ln. 16 – 729, ln. 13.) In the educational model, everything is driven by the IEP and the team evaluation. There is also more emphasis on the present levels of academic performance. As a result, it is more of a team approach and the ABA principles are tied to the IEP goals and the behavior intervention plan. It is driven by educational need, rather than by a certain diagnosis. (*Id.* at 729, ln. 14 – 730, ln. 15.) “ABA was never ever meant to be the sole methodology and that's the only thing that works. ABA is supposed to be kind of the icing on the cake, the framework around that makes other teaching principles and structures work even better.” (*Id.* at 730, ln. 16-22.)

Ms. Moore agreed that educational staff do not give medical diagnoses. (*Id.* at 731, ln. 21-25.)

Based upon her experience both as a former administrator and as an independent educational consultant, Ms. Moore testified that methodology is not typically included in the IEP because methodology is left up to the district. Ms. Moore considers ABA to be more of a framework that should enhance the other strategies and methodology used with the student. (*Id.* at 732, ln. 4-24.)

Ms. Moore discussed the continuum of services that the Districts must provide which generally runs from full inclusion, partial inclusion, and then “down the road to a more self-contained environment,” which would involve removal from general education peers. (*Id.* at 733, ln. 20 – 734, ln. 10.) The further down the continuum you move from full inclusion, the more restrictive the environment becomes. (*Id.* at 734, ln. 11 – 735, ln. 23.) Typically, students who are moved to a day school setting have very significant

behaviors. One of the things that must be considered when thinking of moving a child to a more restrictive environment is whether the student is making progress in the student's current placement. If so, then you would not want to move the student to a more restrictive environment because it could be more detrimental to the student. (*Id.* at 737, ln. 9 – 738, ln. 5.) Ms. Moore testified that research indicates the more removed the student is from the general education classroom, the less exposed the student is to the general education curriculum as well. In E.C.'s case, he is currently on grade level, so continual removals further from the general education classroom could have an academic detriment to him. (*Id.* at 738, ln. 6 – 739, ln. 2.) In addition, E.C. has a need for social skills training, and it is important to have a goal of getting him back to his home campus so that he could have appropriate social skills role models. (*Id.* at 739, ln. 3-20.)

In general, a residential placement would be much more restrictive than a day school placement. While Ms. Moore could not say what the outcome would be for E.C., it would be a further removal from the home school district, from the community, and from his family. (*Id.* at 739, ln. 21 – 740, ln. 12.)

Ms. Moore testified that the data she reviewed showed that E.C. was making progress in his current educational placement at H Special Day School and the team wanted to continue working with him. She also noted that it appeared from the data that E.C. may be eloping from the self-contained room to try to be with his peers. Ms. Moore testified that, given the progress E.C. was making at the day school and the potential harmful effects of a move to a residential placement, "why would we consider moving him further to a more restrictive environment?" (*Id.* at 741, ln. 3 – 742, ln. 11.)

In response to questioning about whether calling law enforcement should be written into a behavior intervention plan, Ms. Moore testified that "The behavior

intervention plan for any kid should be a support. It should be what we do for a kid. And the student code of conduct is something that happens to a kid, which could involve law enforcement.” (Tr., Vol. 3, at 796, ln. 17-21.)

Ms. Moore testified that it would be very difficult for her to give a minimum amount of time that a behavior intervention plan should be in place before determining it did not work. She stated it would depend how long the student had been engaging in the problem behaviors as to how long it might take to promote behavior change. Ms. Moore further testified that staff could not give it just a week or two and expect the behavior to change due to the extinction burst. (Tr., Vol. 3, at 803, ln. 23 – 805, ln. 2.) Likewise, changing a student’s placement after implementing a behavior plan could cause either an increase or a decrease in behaviors, depending upon the situation. (*Id.* at 805, ln. 14-22.) Finally, even though a student may have a behavior intervention plan that is working, that is no guarantee that the student will stop having behaviors. (*Id.* at 805, ln. 23 – 806, ln. 11.)

N. Shelly Jones

Ms. J is the principal at P Elementary and has held that position for nine years. (Tr., Vol. 4, at 1043, ln. 11-24.) Ms. J started as a teacher in USD 259 Wichita for five years. Ms. J then worked for USD 266 Maize as a teacher for one year and then became an assistant principal for three years. Ms. J then served as a principal for USD 266 for nine years before moving to _____ to serve as the principal at P Elementary. (*Id.* at 1042, ln. 9-21.) Ms. J testified that she was starting her 28th year in education. (*Id.* at 1042, ln. 22-25.)

Ms. J holds a bachelor's degree in elementary education, as well as a master's degree in educational supervision and administration. (*Id.* at 1042, ln. 9-10; *id.* at 1043, ln. 1-6.) Ms. J is licensed to teach grades K-6 elementary education and holds an administrator certificate for grades K-6. (*Id.* at 1043, ln. 7-10.)

E.C. was a student at P beginning in January 2016. (*Id.* at 1044, ln. 2-7.) E.C. was part-time at P the last semester of the 2015-2016 school year. For the first month of the 2016-2017 school year, E.C. remained full-time at Heartspring due to a transition there. E.C. was then part-time at P again from September 24, 2016, to October 19, 2016. After that time, E.C. attended school at H. (*Id.* at 1044, ln. 8 – 1045, ln. 16.) P had been selected as the school to which E.C. transferred to give him a fresh start. (*Id.* at 1045, ln. 17 – 1046, ln. 14.)

During the last semester of his fourth grade school year (2015-2016), Ms. J had only positive interactions with E.C. and there was no need for any disciplinary action during that semester. (*Id.* at 1048, ln. 6-8.) At the end of that school year, Ms. J thought that E.C. would be returning to the combination placement of P and Heartspring. (*Id.* at 1048, ln. 13-19.)

Ms. J was present for the August 3, 2016 IEP meeting for E.C. At that meeting, they discussed that E.C. needed time to adjust to transitioning out of the pediatric program at Heartspring. They also discussed that Heartspring would no longer be sending aides to work with E.C. at P. Ms. J stated that this was a rather significant change from the previous year, but she had a paraprofessional on staff (MG) who she believed would work well with E.C. Ms. J had to change staffing assignments within the building to make MG available to work with E.C. (*Id.* at 1050, ln. 21 – 1054, ln. 4.) MG was sent

to Heartspring at least twice to build a relationship with E.C. and observe how the Heartspring aides worked with E.C. (*Id.* at 1054, ln. 1-7.)

Mrs. C. was very upset when she learned that Heartspring would no longer be sending aides to work with E.C. at P. Mrs. C. left the meeting for a period of time, and H stopped the IEP meeting until Mrs. C. came back. (*Id.* at 1054, ln. 8-22.)

Ms. J had observed E.C. at Heartspring and testified that it was an inappropriate placement for E.C. on multiple levels. E.C. was in a classroom with students who were all functioning on a much lower cognitive level. E.C. was placed in a corner of the classroom in a cubby with walls made of gym mats. His only academic work was an online computer program, but no one was supervising E.C. to ensure that his work was being done. (*Id.* at 1054, ln. 23 – 1062, ln. 6.)

Ms. J also attended the September 21, 2016 IEP meeting for E.C. At that meeting, they discussed what his placement should be. Ms. J believed that E.C. should be half day at P and half day at H based upon what she had seen in her observation because she believed Heartspring was inappropriate for E.C. Mrs. C. made a statement to the effect that she did not care about E.C.'s academic and social skills. Mrs. C. stated that she wanted E.C. at Heartspring because they did not call her all the time about E.C. (*Id.* at 1062, ln. 17 – 1065, ln. 17.) E.C.'s placement ended up being half a day at P and half a day at Heartspring, so as not to make too many changes all at once. (*Id.* at 1065, ln. 18-25.)

The first day E.C. returned to P was picture day, and he became upset. E.C. knocked everything but the computer off Ms. J's desk. Ms. J felt that E.C. was testing to see whether he would be sent home, but they were able to get E.C. calmed down and sent back to class for the rest of the time before he was scheduled to return to Heartspring. (*Id.* at 1066, ln. 1 – 1067, ln. 16.)

On September 26, 2016, E.C. had his first major behavioral incident. It started in P.E. when E.C. became upset because he thought he was going to be out in a game they were playing, so E.C. eloped from the building. Ms. J and MG were able to bring E.C. back into the building; however, E.C. escalated once they went into the detention room and grabbed two handfuls of Ms. J's hair at the root. Once Ms. J and Mr. G were able to pry his fingers loose from her hair, E.C. kicked Ms. J in the stomach. Ms. J and Mr. G were finally able to calm E.C., and he returned to class for the rest of the scheduled time. Again, Ms. J felt that this was a test. (*Id.* at 1067, ln. 17 – 1071, ln. 10; Parent Ex. 87.)

E.C.'s second major behavioral incident happened on October 12, 2016. (Parent Ex. 88; Tr., Vol. 4, at 1071, ln. 11-20.) On this day, E.C. punched a student in the face during practice for a music program after the other student told him to stop picking tape off the bleachers. E.C. willingly went to the detention room, but then became very physically aggressive with Ms. J and other adults, hit himself, banged his head against the wall, and tried to break a window. Ms. J had to call a male administrator from the middle school to take over because she was physically fatigued. Ms. J informed E.C. that he would no longer be participating in the music program or rehearsals and would not be able to attend the upcoming trip with his class to the Cosmosphere. (*Id.* at 1071, ln. 21 – 1075, ln. 11.)

Ms. J was out of the building for E.C.'s third major behavioral incident, but was present for the fourth incident on October 19, 2016. On that day, E.C. was working on math while everyone else was practicing for the music program. E.C. became upset over a math problem and eloped from the building. Both Mr. G and Ms. J went out after E.C. and attempted to convince him to return to the building. E.C. instead stood up and started punching Ms. J, requiring them to implement a two-person restraint to bring him back to

the building. About the time they got back to the door of the building, the P.E. teacher took over for Ms. J. E.C. was very aggressive, particularly toward Ms. J, so she tried to leave the room, but his behavior was so out of control that it required herself, Mr.G, and the P.E. teacher to be in the room. Ms. J had called for the SRO when E.C. left the building because she did not know if he would leave campus. By the time the SRO arrived, they had been attempting to calm E.C. for quite some time, but every time they released E.C., he would either try to harm himself or Ms. J. Ms. J finally determined that the SRO should take E.C. (*Id.* at 1076, ln. 10 – 1079, ln. 23; Parent Ex. 90.)

Ms. J attended another IEP meeting for E.C. on October 21, 2016. At that meeting, the team again discussed placement options, but the incident leading to E.C.'s arrest was also a large part of the discussion. Mrs. C. was very upset about the arrest. Ultimately, they determined that E.C. should be placed at H. (Tr., Vol. 4, at 1080, ln. 5 – 1082, ln. 9.) Ms. Gagné attended the IEP meeting with Mrs. C. Ms. Gagné was very upset and questioned why Ms. J had E.C. arrested. Ms. J replied that she was responsible for all the students at P Elementary and that she often has to make decisions quickly without waiting a day or two to see what happens. (*Id.* at 1085, ln. 7 – 1086, ln. 7.) Ms. J has approximately 460 students at P Elementary. (*Id.* at 1086, ln. 8-10.)

The only change made to E.C.'s IEP at the October 21, 2016, meeting was changing the placement to H Special Day School (*Id.* at 1087, ln. 6-16.)

Ms. J does not believe there needed to be any other changes to the IEP or the behavior plan at that meeting. Even though Ms. J testified primarily about the worst five events during E.C.'s time at P, there were many times that he was successful when they looked at the behavior data. Based on those successes, Ms. J believed the IEP and behavior plan were appropriate for E.C. (*Id.* at 1087, ln. 17 – 1090, ln. 9.) Ms. J testified

that the IEP was designed to meet E.C.'s academic, behavioral, and social skill needs. (*Id.* at 1090, ln. 19 – 1091, ln. 10.) Ms. J believes E.C. needs to be placed at H without interruption. (*Id.* at 1092, ln. 2-24.)

Ms. J believes E.C. may have learned some lessons from his arrest at P and H. Even though those were not positive experiences for him, they were opportunities for him to learn the consequences of his actions before he turns 18. (*Id.* at 1093, ln. 9-24.)

Ms. J testified that H has some things it can provide that P could not. H has much smaller class sizes than the class of 28 E.C. in which E.C. was served at P. H's staff has special training that the P staff does not. H has a seclusion room, while P does not. P only has a detention room, which was not set up to be a seclusion room. For example, it had more than one exit, and it had items that could be thrown. (*Id.* at 1094, ln. 14 – 1096, ln. 3.)

Ms. J testified that the IEP team took the concerns of the parent into consideration or E.C. would not have returned to Heartspring in August 2016. Likewise, if they had not considered the parent's concerns, E.C. would have been attending P full-time in September 2016. (*Id.* at 1138, ln. 24 – 1140, ln. 3.)

O. S

Ms. S has a bachelor's degree in organizational administration, a bachelor's degree in elementary education, and a master's degree in educational administration. She has a certification in English language learners and is licensed for K-6 elementary education with an endorsement in English language learners and K-12 building leadership. She is currently a fifth grade teacher at P in _____, a position that she has held for three years, and knows E.C. as a student in her classroom. Prior to that, she worked as a first grade teacher in Ulysses for two years and worked in Holcomb for a total of five years in various

positions, including fourth grade teacher, fifth grade teacher, and assistant principal. *Tr.*, Vol. 4, at 1157, ln. 25 - ln. 2, at 1160.

Ms. S testified that she enjoyed having E.C. in her classroom because he was eager to learn. E.C. was on grade level with a few gaps. He only worked on science and math during the portion of the day that he attended at P. (*Id.* at 1160, ln. 3-22.) E.C. also had a 1:1 para with him while he was at P. (*Id.* at 1160, ln. 23 – 1161, ln. 2.)

E.C. was excited to obtain his tokens (part of his behavior plan) because if he earned all of them he could have recess with MG, his para, at the end of his day at P. If E.C. earned all of his tokens for the week, then he could take some friends out for recess too. (*Id.* at 1161, ln. 3-25.)

Before E.C. came to her classroom, Ms. S reviewed the behavior plan piece by piece with Ms. J. They used the IEP to develop his schedule and the behavior plan to develop his token program. (*Id.* at 1163, ln. 10 – 1164, ln. 5.) E.C. could earn a total of six tokens each day. He started each day with three, and he could lose tokens for failure to cooperate so long as he was given advance notice. (*Id.* at 1164, ln. 6 – 1165, ln. 12.)

E.C. had a behavior incident the first day of school due to extended waiting on picture day, which required him to go to the office, but he was able to return to class and work the rest of the day without a problem. (*Id.* at 1165, ln. 13 – 1166, ln. 7.)

E.C.'s routine was much like that of the other students in Ms.S's class with the exception that he had short breaks built into his schedule. He started the day with science with the rest of the class at 8:35 a.m. E.C. then had a short break at 9:15 a.m. He would then meet the class for specials (art, PE, or music) at 9:25 a.m. After the specials class, he would have another 5-10 minute break and then join the rest of the class for whole group math. E.C. had another 5 minute break at 10:30 a.m., and then returned to the

class at 10:35 a.m. until 11:30 a.m. At 11:30, he would have the opportunity to shoot baskets or go to recess with MG if it had been a good day. If not, E.C. would head to the office to load up to return to Heartspring. (*Id.* at 1166, ln. 8 – 1167, ln. 24.) E.C. did not have any major behavioral meltdowns in Ms. S's room. He would leave the classroom before that happened. (*Id.* at 1167, ln. 25 – 1168, ln. 19.)

Ms. S attended the September 2016 and the October 2016 IEP meetings. At the October 2016 IEP meeting, E.C.'s doctor described the ideal setting for him as being with Ms. S, Mr. G and six other students. Ms. S stated that would not be realistic at P, but H could provide the smaller staff to student ratio and still challenge E.C. academically without all the disruptions to his daily routine that they had at P. This is why Ms. S supported the IEP team's decision to send E.C. to H. (*Id.* at 1170, ln. 24 – 1172, ln. 14.)

Ms. S did not believe any changes needed to be made to E.C.'s IEP or the behavior intervention plan at the October 2016 IEP meeting because she felt it was working well. The only time E.C. had a problem at P was when there was a change to his routine. Ms. S testified that E.C. was very reward-oriented and the behavior plan worked well with him. (*Id.* at 1172, ln. 20 – 1173, ln. 18.) Ms. S testified that H Special Day School was the appropriate placement for E.C. (*Id.* at 1173, ln. 19 – 1174, ln. 10.)

E.C. had small gaps in math where they had to go back and teach him how to do something. Ms. S testified that E.C.'s handwriting was fine and was legible, although he did struggle a little with cursive. (*Id.* at 1174, ln. 17 – 1175, ln. 10.)

Ms. S testified that E.C. was told about the music practice the day before. IT was not something he learned about the morning of the music rehearsal. (*Id.* at 1175, ln. 11-23.) Ms. S believed that there were times that E.C. was not as engaged after the incident

in the music rehearsal because E.C. had hit the student in front of his peers. (*Id.* at 1176, ln. 21 – 1177, ln. 6.)

P. N

Ms. N has a bachelor's degree in special music education and communicative disorders and sciences, a master's degree in communicative disorders and sciences, a certificate in autism from Pittsburg State, and a BCBA from St. Cloud, Minnesota. She is a licensed speech pathologist. She received her certificate in autism in 2009 and finished taking the BCBA exam at the end of 2016. *Tr., Vol. 5, at 1191, ln. 15 - ln. 11, at 1192.* She currently works as the autism specialist for the _____ County Interlocal and has held that position since 2009. Prior to that, she was a speech-language pathologist, a position she started in 2001. *Tr., Vol. 5, at 1197, ln. 1-13.*

Ms. N has a bachelor's degree in special music education, a bachelor's degree in communicative disorders and sciences, a master's degree in communicative disorders and sciences, an autism certificate from Pittsburg State University, and a BCBA license. (*Tr., Vol. 5, at 1191, ln. 15-25.*) Ms. N is a licensed speech pathologist and a licensed BCBA. (*Id.* at 1192, ln. 1-4.) She passed the test for her BCBA license at the end of 2016. She has held her autism certificate since 2009. (*Id.* at 1192, ln. 5-11.) Ms. N was a contributing author on the Brigance, which is a test for individuals with developmental disabilities to determine if they have the skills necessary to participate fully as an independent adult. (*Id.* at 1192, ln. 12-17.)

Ms. N regularly makes training presentations as part of her position with the Coop. She has also done presentations for a regional social work conference on autism strategies and behavioral strategies. She has presented to the Clearwater teacher training group (which is a group of para-educators) on basic autism strategies. In addition, she currently

runs a parent group for SC Mental Health in which they look at the foundations of behavior and consider other approaches to dealing with behavior. (*Id.* at 1192, ln. 25 – 1193, ln. 20.)

The presentations Ms. N does for the Coop include: basic autism strategies, which are based on the TEACCH methodology from the University of North Carolina, such as visual schedules and visual work systems; the behavior plans used by the Coop, which was written by Ms.N ; basic behavior behaviorism, which includes looking at antecedent-behavior-consequence (“ABC”); Discrete Trial Training, which is part of Applied Behavior Analysis (“ABA”) methodology, with early childhood groups; and more ABA training for Coop staff in general. (*Id.* at 1193, ln. 24 – 1194, ln. 24.)

To obtain her BCBA license, Ms. N was required to take coursework focused entirely on applied behavior analysis that was equivalent to a master’s degree. In addition, Ms. N had to work 1500 clinical hours that were supervised by a licensed BCBA and then pass the test. Kansas has just required state licensure for BCBAs within the past year. (*Id.* at 1195, ln. 19 – 1196, ln. 25.)

Ms. N has been the autism specialist with the Coop since 2009. Prior to that, she started work as a speech language pathologist for the Coop in 2001. (*Id.* at 1197, ln. 1-13.) In addition, Ms. N has been hired as a consultant by other school districts. (*Id.* at 1197, ln. 14 – 1198, ln. 12.)

Ms. N contracts with SC Mental Health to provide staff trainings to their case workers and Social Stars staff. In addition, she does a 5 to 6 week parent group and was going to do another session of that in the fall of 2017. (*Id.* at 1198, ln. 13 – 1199, ln. 1.)

Prior to 2001, Ms. N worked at Heartspring and received some of her initial training regarding behavior. She started working for Heartspring as a home para and

then moved into a position as a speech language assistant and did training with the speech language pathologist. Ms. N worked for Heartspring for 5-6 years in the late 1990s. (*Id.* at 1199, ln. 5 – 1200, ln. 2.) Ms. N started out working on the residential side at Heartspring, but later worked on both the residential and the education sides of Heartspring. (*Id.* at 1200, ln. 3-16.)

In her current position as the only autism specialist for the Coop, Ms. N serves all nine of the member districts within in the Coop. Ms. N is usually called in when things are not going well behaviorally for a student. Typically, she observes the student. She may or may not do a functional behavioral assessment (“FBA”), depending upon the situation, but she will always offer behavioral strategies. If it is a student who needs ongoing support, she will consult with the team, usually on a monthly basis, to train them to work with the student. Ms. N will also work with the team to write a behavior plan for the student. She has a few paras that assist her by following up with teams to ensure that data is being taken and plans are being run as they should be. Occasionally, Ms. N acts as a go-between with parties that are not getting along. (*Id.* at 1200, ln. 17 – 1202, ln. 22.)

The paras who assist Ms. N do not write any of the programs, but they have had the same training that she provides to the teams. The paras will sometimes stay with a team while they are first learning to run a plan and then step out once the team becomes familiar with it. The paras also check in to make sure everything is going well. If things are not going well, they will inform Ms. N and she will go over to that building within the next day or two. (*Id.* at 1203, ln. 1-18.) One of Ms. N’s paras has taken the coursework to become a Registered Behavior Technician. The para still has to do the supervision hours and take a test. Ms. N was not certain whether the para would decide to go forward with the supervision and test. (*Id.* at 1203, ln. 19 – 1204, ln. 18.)

Ms. N was asked to do an evaluation on E.C. in 2015. (*Id.* at 1205, ln. 22 – 1206, ln. 2.) She observed E.C. over multiple settings, including the classroom, a field trip to the Y, during both free play and work, and during in-school suspension (“ISS”). When Ms. N observed E.C., she did not see the violent behaviors that had been reported to her. At those times, E.C. looked like a normal student who interacted well with other peers. E.C. engaged in code switching, which means that he changed the way he communicated based upon who he was talking to. On one of the days Ms. N observed, there was a change in routine because lunch was ten minutes late, which meant math was extended 10 minutes longer. E.C. handled that change in routine well. Based upon the reports she had received, Ms. N was surprised by the high level of skills E.C. displayed. As a result, she decided to include an interview with the educational team to determine what they had been seeing prior to Ms. N’s observations. (*Id.* at 1206, ln. 19 – 1209, ln. 6.) The educational team reported that E.C. was unpredictable and “hard to read” and went from very calm to really out of control quickly. (Tr., Vol 5, at 1209, ln. 17-20.)

Ms. N gave E.C. the high functioning version of CARS 2 Test (Childhood Autism Rating Scale, 2nd Edition). (Tr., Vol 5, at 1210, ln. 22-25; *Id.* at 1212, ln. 20-21.) TASN stands for Tertiary Autism Support Network. (*Id.* at 1211, ln. 21-22.) TASN is a grant funded organization through the State of Kansas that works throughout Kansas to make sure people have the support they need for children with autism. (*Id.* at 1211, ln. 23-25.) The CARS is the instrument TASN recommends schools use to determine if further testing is necessary. (*Id.* at 1212, ln. 2-4.) According to Ms. N, the CARS test is “a starting step to look at eligibility [for autism].” (*Id.* at 1212, ln 4-5.) Ms. N was qualified to give the CARS as educational professionals with master’s degrees are qualified to give the CARS test. (*Id.* at 1227, ln 1-6.)

Ms. N stated that neither she nor anyone from the Coop would be qualified to medically diagnose E.C. (Tr., Vol 5, at 1215, ln 11 – 1216, ln. 2.) The educational exceptionality of autism is different from the medical diagnosis of autism. (*Id.* at 1219, ln. 2-22.) A child can have a medical diagnosis of an exceptionality, but not have an educational diagnosis because the child does not have an educational need. (*Id.* at 1219, ln. 9-24.) Ms. N explained: “In education, we have a set of criteria and in the State of Kansas it is listed out by the State of Kansas that there is a need in these areas. So the areas of need are social communication needs, behavioral, repetitive behavior. Those are listed. Does a kid meet this criteria?” (Tr., Vol. 5, at 1219, ln. 2-8.)

A student does not have to have the autism exceptionality listed as his exceptionality in the IEP to receive services for behaviors that may typically be associated with autism. (*Id.* at 1220, ln. 5-23.) Some students with intense needs are identified as other health impaired and not autistic. (*Id.* at 1220, ln. 17-23.) Ms. N explained that E.C. was really good at “the social things, the transitions, all of these things, he did not meet that autism criteria from what I saw with my eyes.” (Tr., Vol. 5, at 1223, ln. 17-22.) Ms. N presented her report that E.C. did not fit the criteria of autism at the IEP meeting on May 28, 2015. (*Id.* at 1229, ln. 16-19; Dist. Ex. 39.) When presenting her report, Ms. N started at page 8, which gave a summary of the behaviors she saw and a summary of what she learned from the interviews with the team members. Ms. N did not feel comfortable making a hypothesis about the function of E.C.’s behavior because she never observed it. Ms. N also included a recommendation about educational placement at the request of her supervisor. Ms. N believes that she summarized the recommendations section of her report, but stated that she normally would make a statement about placement being a team decision when presenting her report. (Tr., Vol. 5, at 1224, ln. 18 – 1226, ln. 13.) Ms.

N did not recall that Mrs. C. disagreed with her report at the time she presented it. (Tr., Vol. 5, at 1230, ln. 3-6.) The formal reevaluation report included information from everyone on the team. (Tr., Vol 5, at 1231, ln 12 – 1232, ln. 7; Dist. Ex. 37.)

The student's needs in the classroom determine the services a student receives in school, not the disability category listed on the student's IEP. (Tr., Vol. 5, at 1237, ln. 6-16.) Ms. N stated that as far as an educational placement, E.C. did not meet the criterion for the exceptionality of autism. (*Id.* at 1275, ln 12-18.) The reevaluation report combined her observations and testing with the educational team's information. (Tr., Vol 5, at 1282, ln 2-3.) According to Ms. N, the same services would be offered to E.C whether his exceptionality were determined to be OHI or autism. (Tr., Vol 5, at 1291, ln 13-14.)

Ms. N's recommendation to the team was that E.C. did not qualify for special education services under the autism exceptionality, but this was not concerning to her because he was already receiving services that met his needs under the exceptionality of OHI and an autism label would not change his day-to-day services. (Tr., Vol 5, at 1224, ln 1-11.) Ms. N acknowledged the autism diagnosis from New Perspectives in her report, although she had not received a copy of the report at the time she did her evaluation of E.C. (Tr., Vol. 5, at 1230, ln. 12-25.)

Ms. N has since reviewed the report from Dr. Turner at New Perspectives and testified that Dr. Turner's report would not change her report. (Tr., Vol. 5, at 1235, ln. 3 – 1236, ln. 3.) Ms. N explained that she can “only look at the kid that I saw and the information I got from the team and make judgments based on educational need about what I am seeing in that very moment.” (Tr., Vol. 5, at 1235, ln. 14-17.)

Following the meeting in May 2015, Ms. N write a behavior intervention plan with the school psychologist and then collaborated with Heartspring to seek their input.

Additional changes were then made when the team met with Mrs. C. (*Id.* at 1237, ln. 17 – 1238, ln. 16.) That behavior plan is incorporated into District Exhibit 32. (*Id.* at 1240, ln. 7-14.) Ms. N testified that the behavior plan was appropriate for E.C. She stated: “It’s one of the bigger behavior plans that I have been a part of. There are a lot of working pieces to it, but it addresses all of the concerns that I was aware of. And we had lots of additional staff to be carrying out all of those pieces.” (Tr., Vol. 5, at 1244, ln. 25 – 1245, ln. 9.)

Ms. N stated that the Coop requested a few times to do a reevaluation of E.C., but could not obtain the parents’ permission for a reevaluation to reconsider if his exceptionality was autism. (Tr., Vol 5, at 1290, ln 3-5.) Specifically, Ms. N testified that there was a request sent to the parent seeking consent for a reevaluation of E.C.’s primary eligibility after the October 14, 2015, IEP meeting that Ms. N attended. (*Id.* at 1299, ln. 12 – 1300, ln. 9; Dist. Ex. 29.) The parents did not sign consent for the reevaluation. (Dist. Ex. 29.)

Ms. N does not have the authority to determine eligibility on her own. That is a team decision. (Tr., Vol. 5, at 1303, ln. 22 – 1304, ln. 5.) Although she looked at the criteria while completing her report, Ms. N did not complete an eligibility certificate for E.C. That would have been done by the school psychologist, if it was done. (Tr., Vol 5, at 1304, ln. 21 – 1305, ln. 14.) When Ms. N walked through the state criteria for autism on redirect, she testified that she did not have evidence that E.C. met any of the factors to be considered. (Tr., Vol. 5, at 1306, ln. 3 – 1309, ln. 19.)

Q. J

Ms. J is a part-time school psychologist at P Elementary. (Tr., Vol. 5, at 1318, ln. 13-17.) She has worked as a school psychologist for 14 years and has been with the Coop for 10 of those years. (*Id.* at 1318, ln. 20-22.) Ms. J holds a bachelor's degree in education,

a master's degree in psychology and an education specialist degree. Ms. J is licensed as a school psychologist. (*Id.* at 1318, ln. 8-12.)

Ms. J attended the August 3, 2016, IEP meeting for E.C. and took the staffing notes. (*Id.* at 1319, ln. 11-23.) Ms. J recalled there was discussion about whether E.C. should be transitioned into P or whether he should remain at Heartspring. Ms. J testified the outcome of this meeting was that E.C. would remain at Heartspring for one month and then they would reconvene to review progress. (*Id.* at 1320, ln. 4-21.)

Ms. J observed at Heartspring at the end of August and the beginning of September, with approximately a week in between visits. Ms. J testified that it was “disheartening” to see that E.C. was so much higher functioning than the other students at Heartspring. Ms. J testified:

Half of the kids in the room were nonverbal, severely disabled, and it was very quickly apparent that it wasn't an appropriate setting. The kids were working on stories out of like a board book and working on stringing beads onto a string, pegboards, big thick puzzles. I saw those kind of activities, and that E was very isolated during that time. He would work in a corner of the room behind partitions on a computer, and there was just very little engagement. Very little interaction with him and students and him and staff. And it was very concerning to me.

(Tr., Vol. 5, at 1321, ln. 17 – 1322, ln. 8.) Ms. J shared her observation with Ms. J, principal at P. Ms. J went with Ms. J for the second observation, which was very similar to the first. (*Id.* at 1322, ln. 9-19.)

Ms. J also attended the September 21, 2016, IEP meeting. What stood out most to Ms. J from this meeting was that Mrs. C. stated that she did not want to be bothered at work and Heartspring would not call her to come pick E.C. up. (*Id.* at 1322, ln. 20 – 1324, ln. 1.) Ms. J shared her observations from Heartspring with the rest of the team at this meeting and the team felt it would be a disservice to continue E.C.'s placement there. As

a result, the team reached agreement to begin transitioning E.C. to P again. (*Id.* at 1324, ln. 2-16.)

During the September 21, 2016, IEP meeting, they had discussed that it would be helpful to conduct an FBA. As a result, Ms. J sent Mrs. C. a copy of a prior written notice requesting consent to conduct the FBA, but Mrs. C. never signed it and the FBA was never done. (*Id.* at 1325, ln. 18 – 1327, ln. 1; Dist. Ex. 19.)

Ms. J also attended the October 21, 2016, IEP meeting. She noted that Ms. Gagné attended that meeting with Mrs. C. (Tr., Vol. 5, at 1328, ln. 13-25.) Ms. J testified that Ms. Gagné “was not professional,” that Ms. Gagné “berated Ms. J,” and the “meeting was not productive as soon as she became involved.” (Tr., Vol. 5, at 1329, ln. 5-12.)

Ms. J testified that she provided a second prior written notice, which was not in evidence, in which the Districts refused to do an occupational therapy evaluation because they had done an occupational therapy screening report (Parent Exhibit 112), which indicated E.C. had adequate fine motor skills to access the general education curriculum. (Tr., Vol. 5, at 1334, ln. 21 – 1335, ln. 13.) Ms. J provided a copy of the screening report to Mrs. C. at the same time. (*Id.* at 1329, ln. 15 – 1330, ln. 16; *id.* at 1331, ln. 16 – 1332, ln. 10.) Although the prior written notice refusing the occupational therapy screening was not included in the Districts’ exhibit book, it was included in the Coop’s WebKIDSS program when Ms. J was preparing for the hearing. (*Id.* at 1338, ln. 5-7.)

R. HH

Ms. H H is a fully licensed school psychologist employed by the Coop. (Tr., Vol 5, at 1365, ln. 14-24.) She holds a bachelor’s degree in psychology, a master’s degree in

school psychology, and an educational specialist degree. (Tr., Vol 5, at 1365, ln 9-11.) She was the school psychologist at H Day School when E.C. was there. (Tr., Vol 5, at 1366, ln 14-16.)

Ms. H sent out another Prior Written Notice for Reevaluation and Request for Consent on November 22, 2016. (Tr., Vol. 5, at 1366, ln. 22 – 1367, ln. 1; Dist. Ex. 13; Dist. Ex. 61.) This reevaluation to determine whether E.C. met the criteria for the exceptionality of autism was again proposed by the Coop because Mrs. C. had requested it during a November 14, 2016 meeting. (Tr., Vol. 5, at 1367, ln. 5-17; Dist. Ex. 13; Dist. Ex. 61.) The parents again refused to sign this consent form for reevaluation. (Tr., Vol. 5, at 1370, ln. 18-25; Dist. Ex. 13.)

Ms. H also was responsible for sending Mrs. C. an IEP amendment regarding her request to have E.C. isolated from his peers in a 1:1 classroom setting. After multiple e-mails back and forth, she never received a signed IEP amendment. (Tr., Vol. 5, at 1370, ln. 1370, ln. 1-17; Dist. Ex. 60.)

Ms. H attended an IEP meeting for E.C. in April 2017 regarding Extended School Year (“ESY”). (Tr., Vol. 5, at 1372, ln. 3-25.) Mrs. C. agreed with the Districts that E.C. qualified for ESY services, but she did not agree with the proposed placement for ESY. (*Id.* at 1376, ln. 6-15.)

S. E

Ms. E has a bachelor's degree in social work and a master's degree in social work. She is licensed at the master's level in social work and currently works as a school social worker at H, a position she has held for four and one-half years. Prior to that, she worked as school psychologist for B for one year. Prior to that, she worked in foster care for approximately two years and outpatient mental health for approximately two years. She

has been a social worker for a total of 10 years. She knows of E.C. as being a student at H Day School. *Tr.*, Vol. 5, at 1390, ln. 17 - ln. 9, at 1393.

Ms. E testified regarding the manner in which behavior data is kept by staff. Each staff member has an iPod Touch or uses their cell phone to bring up a form in which they select the student name and then indicate what the student is doing at least every 30 minutes. The staff would keep data on a greater frequency if the student was in the seclusion room or the reflection room. (*Id.* at 1395, ln. 8 – 1397, ln. 7.) The following were the options that could be selected: On task, talking, distracted, out of assigned area, leaving building or property, inappropriate language, shouting or screaming, hitting, kicking, biting, reflection room (meaning he went to the reflection room on his own), sent to reflection room, sleeping, unkind to peers, destructing property, argumentative, spitting, refusal to coping skills, not following directions, and making threats to staff. (*Id.* at 1398, ln. 11-23.)

When Ms. E works with E.C., they use a curriculum called MindUP, which teaches students how their brain works, how their emotions affect their actions, coping skills, de-escalation techniques, and social skills. (*Id.* at 1400, ln. 12-22.) Ms. E also worked with E.C. on self-calming strategies. (*Id.* at 1400, ln. 23 – 1401, ln. 14.)

Ms. E worked with E.C. in the reflection room if he was willing to do so. E.C. started out in a group setting, but she worked with him individually after he was isolated from his peers at his mother's request. Sometimes Ms. E would go and sit with him to help him with assignments in his 1:1 classroom. (*Id.* at 1401, ln. 5 – 1402, ln. 10.)

Ms. E was not the only one providing E.C. with coping skills and self-calming strategies. Ms. E had provided supplemental materials from the MindUP curriculum to his classroom teacher, she regularly discussed what she and E.C. were covering in their

sessions with his classroom teacher and para, and the teacher also used materials he had found. The self-calming and coping skills were being provided to E.C. throughout the week. (*Id.* at 1403, ln. 1-12.)

Ms. E received training regarding E.C.'s behavior plan and IEP from Ms. A and Ms. A. All of the staff met as a team to discuss E.C.'s behavior plan and how to work with him. Ms. E did use the behavior plan with E.C. (*Id.* at 1404, ln. 2-12.)

Ms. E testified that the October 2016 IEP was designed to meet E.C.'s needs. (*Id.* at 1405, ln. 9-14.) Ms. E has witnessed E.C.'s behaviors and considered them no more severe than other students at H. In fact, she considered his behaviors to be "along the same line" as other students. (Tr., Vol. 5, at 1406, ln. 6-19.) Ms. E testified that H could meet his educational, social, and behavioral needs. (*Id.* at 1407, ln. 17-21.)

E.C. gets easily frustrated playing games, so playing Sudoku and word games are an easy real-world way to work on self-calming strategies and coping skills. (*Id.* at 1422, ln. 16-23.)

Even after E.C. was arrested at H, Ms. E continued to have positive interactions with him, and the interactions she witnessed between E.C. and other staff members at H were positive. (*Id.* at 1433, ln. 7-13.) E.C. did not seem upset around Ms. A after he was arrested and, in fact, he wanted to ask Ms. A questions. (*Id.* at 1448, ln. 15-22.) E.C. also continued to play basketball with Mr. S after he was arrested and acted normally around him. (*Id.* at 1448, ln. 5-14.)

Despite tensions between Mrs. C. and staff at H, the staff would continue to provide E.C.'s services in compliance with his IEP. (*Id.* at 1433, ln. 2-6.) Ms. E testified that "Ms. C. has not been the easiest parent to work with." (*Id.* at 1441, ln. 5-6.) Staff at H had "confirmed with Ms. C. that isolation, while [Ms.E] understand why she chose that, that

it was only continuing to compound the situation and make it worse.” (*Id.* at 1441, ln. 12-16.) Ms. E testified that the staff needed to work as a team with Mrs. C. (*Id.* at 1441, ln. 4-5.)

Ms. E testified it was her opinion that E.C. understood the consequences of his actions and that he had learned not to hit staff after being arrested at H. (*Id.* at 1446, ln. 20 – 1447, ln. 7.)

E.C. did have a “safe place” in his classroom. It was a small tent that had a long pillow in it. E.C. could sit or lay down in it. (*Id.* at 1450, ln. 13 – 1451, ln. 11.)

T. S

Mr. S has a bachelor's degree in sports management, a master's degree in liberal studies, and a bachelor's degree in middle level math education, and he is currently working on licensure for special education. He is currently licensed for middle level math and has a waiver for special education. He currently works in his third year at H as an upper elementary teacher and a math teacher. Prior to that, he worked as a para educator for two years and spent one year at _____ Middle School teaching eighth grade algebra. He knows E.C. as being his student for approximately six weeks at H. *Tr., Vol. 6, at 1467, ln. 10 - ln. 14, at 1469.*

While in Mr. S's classroom, E.C. demonstrated the following types of behavior: inappropriate language, elopement from the classroom, physical aggression towards his peers and staff as well. (*Id.* at 1469, ln. 15-18.) Specifically, Mr. S remembered an incident in which E.C. punched A in the face. Mr. S was standing next to her at the time. (*Id.* at 1469, ln. 19 – 1470, ln. 9.) Mr. S went into the seclusion room to help calm E.C. and though he was calmed down, but E.C. walked straight over to Ms. A and punched her in the face. (*Id.* at 1470, ln. 15-23.)

E.C. left Mr. S's classroom due to altercations with his peers, and was reassigned to N's classroom. (*Id.* at 1471, ln. 3-12.)

Mr. S was familiar with E.C.'s IEP and behavior plan. The staff met as a team to go over both the IEP and the behavior plan before E.C. even arrived at the school. (*Id.* at 1471, ln. 21 – 1472, ln. 7.) In addition, the staff had the behavior plan laminated and carried it with them from class to class so that they would have it at all times. (*Id.* at 1475, ln. 15-19.)

In Mr. S's class, they worked on social skills as a group, some of which was playing games during the 8:30 to 9:00 a.m. timeframe. The social worker came into his classroom about 11:00 a.m. and worked with the class as a whole on Thursdays. (*Id.* at 1472, ln. 22 – 1473, ln. 4; *id.* at 1484, ln. 1-7.) These strategies were intended to address all of his goals – 4 out of 5 of which were behavioral goals. (*Id.* at 1474, ln. 21 – 1475, ln. 9.)

Mr. S went through the positive behavior supports set forth in the behavior plan and explained how he implemented those with E.C. For example, he paired himself with reinforcing activities by playing basketball or catch football with E.C. In addition, they had a token economy for E.C., which carried over to Mr. N's class, in which E.C. could earn tickets for doing his work and making progress toward his goals. E.C. could earn bonus tickets by using appropriate language, staying in the classroom, asking for a break, completing his work without complaining, and complying with staff directives. (*Id.* at 1476, ln. 21 – 1483, ln. 8.)

Mr. S provided multiple examples of the ways in which he would apply the behavior plan to E.C.'s various targeted behaviors. (*Id.* at 1486, ln. 1 – 1490, ln. 19.)

Not only was Mr. S trained regarding E.C.'s behavior plan, he had ongoing discussions with E.C.'s para to ensure that the behavior plan was being followed and made

certain that both he and the para had a laminated copy of the behavior plan at all times. (*Id.* at 1491, ln. 3-14.)

Mr. S reviewed the progress reports set forth in District Exhibit 9 and explained the calculations he created for each of the goals. (Dist. Ex. 9; Dist. Ex. 55; Tr., Vol. 6, at 1492, ln. 21 – 1501, ln. 2.)

After E.C. left his classroom, Mr. S would go into his room a couple of times a day to help E.C. with math. Mr. S would also be called to assist with transports of E.C. because he was very difficult to transport and they sometimes had to switch out staff members. (*Id.* at 1502, ln. 5-18.)

Mr. S testified that it was his opinion that the October 2016 IEP was designed to meet E.C.'s educational needs. He stated that it addressed his emotional, social, and academic needs. Although it could be improved if it had a goal to address E.C.'s physical aggression, Mr. S acknowledged that was being addressed through the behavior plan. (*Id.* at 1503, ln. 16 – 1504, ln. 13.) Likewise, Mr. S testified that E.C. made progress while he was at H. Mr. S saw E.C. make progress in expressing his feelings to Mr. S and he saw E.C. make progress in completing his work. (*Id.* at 1504, ln. 14 – 1505, ln. 8.)

In Mr. S's classroom, E.C. was one of four students. After Christmas, E.C. was moved to Mr. N's classroom and, very shortly after that, moved to his own classroom. Mr. S testified that he did not feel E.C. was making much progress in the 1:1 setting because he was eloping from it a lot more. (*Id.* at 1505, ln. 13 – 1506, ln. 24.)

Mr. S testified that E.C.'s behaviors are very similar to his other students at H and that E.C. was "absolutely" a student who could be served at H. (*Id.* at 1507, ln. 4-22.)

Mr. S testified that E.C. could best be served at H because it is a work in progress and he saw E.C. making progress at H. “It just takes some time.” (*Id.* at 1507, ln. 23 – 1508, ln. 13.)

On cross-examination, Mr. S was asked a number of misleading and unfair questions about certain dates upon which the student was restrained and asked to explain what was happening in video segments which had no audio and did not show sufficient time before the restraint occurred to know what had happened. Mr. S repeatedly testified that he could not recall what had happened on these dates and was still questioned at length and asked if things could have or should have been done differently in hindsight. As Mr. S testified, “There's hiccups that happen throughout the school year with not just [E.C.] but with every student, and it's going to happen.” (Tr., Vol. 6, at 1585, ln. 6-9.) Furthermore, Mr. S Testified that what was in the videos did not represent a typical day with E.C. (*Id.* at 1585, ln. 10-16.) I find that this line of questioning yielded little of relevance to the issues in this proceeding.

Mr. S testified that he had seen progress with E.C. hitting people less often since he had been at H. In addition, E.C. had made progress in that he actually wanted to work on his math, whereas he did not when he initially arrived at H. (*Id.* at 1586, ln. 7-16.)

The specific incidents represented in the videos did not prevent E.C. from making progress. (*Id.* at 1587, ln. 19-22.) The November 1, 2016, video was the only one which occurred during the time E.C. was in Mr. S’s classroom. The other videos occurred after E.C. had been isolated in the 1:1 classroom. (*Id.* at 1587, ln. 23 – 1588, ln. 14.)

E.C. would sometimes tell Mr. S that he wanted to be with his peers when they would be walking past a group of students. E.C. would say that he would like to play

basketball with them or do P.E. with them or work with them. (*Id.* at 1588, ln. 15 – 1589, ln. 2.)

Mr. S testified that E.C. shows certain signs when he is starting to escalate. Elopement, inappropriate language, and property destruction were all signs of escalation with E.C. (*Id.* at 1589, ln. 9-16.) E.C.'s behavior plan does state that, if E.C. was a danger to himself or others, ESI procedures would be used. (*Id.* at 1589, ln. 17 – 1590, ln. 6; Dist. Ex. 15.)

Although Mr. S was questioned extensively regarding the parent's calculations of progress contained in Parent Exhibit 1, Mr. S noted that it appeared Addendum C of Parent Exhibit 1 appeared to have data for multiple dates entered twice. (Tr., Vol. 6, at 1596, ln. 19 – 1597, ln. 12.) While Mrs. C. clearly disagreed with the manner in which progress had been calculated on E.C.'s goals, Mr. S testified that it is the teacher, not the parent, who determines how progress will be calculated and there was nothing in the IEP specifying the manner in which the calculation should be done. (*Id.* at 1598, ln. 21 – 1599, ln. 10.)

U. E

Ms. E has a bachelor's degree in elementary education, a master's degree in special education, and is currently working on her doctorate in educational leadership. (Tr., Vol. 6, at 1608, ln. 14-17.) She is licensed to teach adaptive special education for grades K-12 and elementary education for grades K-6. (*Id.* at 1608, ln. 19-21.) Ms. E is a special education teacher in the academy program at H Special Day School. (*Id.* at 1608, ln. 24-25.) She has held her current position for two years, but has worked for the Coop for four years. (*Id.* at 1609, ln. 1-6.) Previously, Ms. E has worked for U.S.D. 259 at their alternative school for emotionally disturbed students for two years and for the ____ Public

Schools for one year as an interrelated teacher. She has been a teacher for a total of seven years. (*Id.* at 1610, ln. 1-13.)

The academy program is for autistic students. Some are cognitively impaired, some are non-verbal, and some are high functioning. (*Id.* at 1609, ln. 7-17.)

Ms. E taught E.C. when he was in third grade at P Special Day School, and she knows E.C. from the 2016-2017 school year at H. She did not have any contact with him between third grade and his arrival at H. (*Id.* at 1611, ln. 9-24.)

Ms. E recalled E.C. as a third grade student as follows:

Whenever E came to P he had a lot of anxiety which resulted in some pretty extreme behaviors. For example, he did not really care to be around other students. He would often go outside and he would pick up big logs that we had out here or wooden pieces. He broke a window at one time. We had rocks on the playground equipment and he would throw that at us if we tried to come out here to escort him back inside. There was one time when he tipped over a computer and broke that. He would try to leave the building and run. He was very physical with staff members. I'm trying to recall. He never – I don't recall him really targeting other students. He usually just wanted to be away by himself. It was usually just the behaviors were more towards staff.

(Tr., Vol. 6, at 1612, 6-22.)

Most of Ms. E's involvement with E.C. since he arrived at H has been to assist with transports when needed and her observations of him in the hallway. (*Id.* at 1613, ln. 14-24.) Ms. E testified that E.C. has matured quite a bit and now wants to be around other students and wants to interact with them. In addition, Ms. E noted that staff members can be in the seclusion room with E.C. since he has been at H. When he was at P, staff members had to serve as the door to the seclusion room, and E.C. "would constantly just be physical with us and he would pinch and spit and it was just -- it went on for hours." (*Id.* at 1614, ln. 11-22.) Ms. E further noted that E.C. does not attempt to go beyond the

fence at H because he knows law enforcement would be called; however, at P, E.C. used to jump the fence and try to run for the street. (*Id.* at 1614, ln. 23 – 1615, ln. 4.)

With regard to being around other students at H, Ms. E testified:

We have a lot more interaction -- we have a big gym there so we have an unstructured time where after lunch they're able to play basketball together, football together, and he loved being a part of that. He always wanted to be a part of that and play with the kids. He loved to be a part of recess. He always wanted to be wherever other students were.

(Tr., Vol. 6, at 1615, ln. 14-21.) To the contrary, while at P, he was fine if he was isolated with just staff members. (*Id.* at 1615, ln. 22 – 1616, ln. 2.)

Based upon her experience with E.C. both at P and at H, Ms. E testified that she has seen improvement in E.C.'s behavior and his social skills. E.C. may not yet know exactly how to interact appropriately with his peers, but he now wants to be with them, which she considers an improvement from when he wanted to be isolated while at P. (*Id.* at 1616, ln. 17 – 1617, ln. 3.)

V. T

Mr. T is currently in his last semester of college to become a teacher. He is currently employed by the Coop as a paraeducator at H and has held that position for three years. Prior to that, he worked as a case manager for SC Mental Health for six years. (Tr., Vol. 6, at 1629, ln. 17 – 1630, ln. 2.)

During the six years that he worked for SC Mental Health, Mr. T had served as both a case manager (working with children) and a targeted case manager (working with adults). He was also the coordinator of a summer camp for SC Mental Health for four years. Mr. T worked with children on coping skills and other strategies. (*Id.* at 1630, ln. 6-13.)

At H, Mr. T did art and P.E. with the students, including E.C., and supervised E.C. on Fridays. (*Id.* at 1630, ln. 20-23.) On Fridays, he did not do any academics with E.C. It was supposed to be just a time when he and another staff member would supervise E.C. in the community. E.C. was the only student for whom this supervision was provided. (*Id.* at 1630, ln. 24 – 1631, ln. 8.) No portion of the IEP was to be addressed on Fridays. It was provided simply to give E.C. a fifth day. (*Id.* at 1632, ln. 6-15.)

Mr. T testified that all staff went over E.C.'s behavior intervention plan before E.C. arrived at H. (*Id.* at 1631, ln. 18 – 1632, ln. 5.)

Mr. T testified that the community outings went fairly well until the last one they took to Exploration Place. There was not a problem until they went into the gift shop, and E.C. wanted the staff to buy something for him. When the staff members told E.C. they did not have extra money to purchase something for him, E.C. wanted them to call his mother. They explained that she was working and asked him to leave. E.C. became upset and started using foul language to refer to Mr. T and the other staff member. E.C. then started acting as if he was going to break items on the shelf and staff responded that law enforcement would likely be called if he did that. At that point, E.C. finally agreed to leave with them. (*Id.* at 1662, ln. 16 – 1663, ln. 23.)

After they left Exploration Place, they took E.C. to his mother's office. E.C. was still screaming and cussing at them in the car. Once they arrived at his mother's office, Mr. T and the other staff member were standing and waiting to talk to his mother when she got off the phone. E.C. started kicking Mr. T in shin multiple times. Mrs. C. never got off the phone and, instead, came over and gave E.C. a hug. Mr. T was never able to communicate what happened with Mrs. C. because she never got off the phone. (*Id.* at 1634, ln. 1 – 1635, ln. 5.) Mr. T was aware that he told E.C. to stop kicking him, but it was

more of an attempt to get Mrs. C. to intervene and have E.C. stop kicking. (*Id.* at 1635, ln. 5-14.) Mr. T could not ignore the behavior and leave because E.C. had backed him up against a partition while E.C. was kicking him in the shins. (*Id.* at 1647, ln. 8-20.)

After the incident at Exploration Place, Mr. T testified that Mrs. C. was informed by administration that they would no longer be taking E.C. into the community because they did not consider it safe. The Districts would continue to provide Friday supervision, but they would provide it at H. (*Id.* at 1635, ln. 15-22.)

Mr. T witnessed E.C. eloping from the building, kicking a hole in a wall, and picking his fingers to then use the blood to write words on the wall. (*Id.* at 1636, ln. 17-23.) Mr. T stated there are other students at H with similar behaviors and the staff members are able to handle those behaviors. (*Id.* at 1637, ln. 12-17.) Mr. T further testified regarding some of the coping strategies they had provided to E.C., including deep breathing, counting, setting up his classroom so that he could draw, a tent and stuffed animals as a safe place in his classroom, and allowing him to bring cars from home with which to play. (*Id.* at 1637, ln. 18 – 1638, ln. 8.)

Mr. T was trained in Emergency Safety Interventions (“ESI”) and Crisis Prevention and Intervention (“CPI”) by the Coop. CPI is the method that is used for seclusion and restraint. The ESI training is what was required by state law. (*Id.* at 1638, ln. 14 – 1639, ln. 3.) Mr. T receives this training every year in August, so he had it in August 2016 and August 2017. (*Id.* at 1651, ln. 4-18.)

Mr. T testified that E.C. engaged in more elopement after he was placed in the 1:1 classroom. E.C. would tell Mr. T that it was the staff’s fault he could not be with the other students and he needed to be in the classroom with the other students. (*Id.* at 1639, ln. 4-23.)

Mr. T testified that he has had specific training to allow him to serve as a behavioral coach for the students. He has taken conscious discipline, managing emotional mayhem, baby doll circle time (which teaches how to interact with children who have sensory issues), as well as multiple trainings through SC Mental Health. The first three trainings were all taken approximately four years ago, and Mr. T holds special certificates for having completed those trainings. He is not required to take refresher courses. (*Id.* at 1640, ln. 14 – 1641, ln. 23.)

W. N

Mr. N has a bachelor's degree in elementary education and a master's degree in special education. He is licensed K-9 elementary, K-12 behavior disorder special education, pre-K-12 district, building level, and has a coordinator's license. He currently works as special education coordinator for _____ County Special Education and administrator of the special day school, _____, in _____, positions he started on August 1, 2017. Prior to that, he was a classroom teacher at H for two years. He started working with special education students in 1981, starting as a classroom teacher for USD 373 Newton at the day school, then worked as classroom teacher at the day school at Prairie View Mental Health Center, started a program in Topeka as a dropout recovery for adults with no high school diploma, then served as building administrator at Prairie View, moved to coordinator to A & W Special Education Cooperative in Humboldt, then served as special education director at Rice County, then moved to special education director in Newton, USD 373, then moved to H. He knows of E.C. as being a student at H. *Tr.*, Vol. 7, at 1689, ln. 13 - ln. 2, at 1694.

Mr. N was a classroom teacher at Prairie View day school for seven years and then later returned as a building administrator for five years. (*Id.* at 1692, ln. 9-15.) He testified that the program at Prairie View Day School was “highly structured. We had a structured place that students had to work through to earn their way back to their public school. That was always our goal is to help them earn their way back to public school so that they can be with peers and in their community.” (*Id.* at 1692, ln. 18-25.) In addition, they had a lot of interaction between the students and social workers and psychiatrists. They were trying to provide the “total wraparound services” the student needed. (*Id.* at 1693, ln. 1-5.) Students did not need to be mentally ill to attend Prairie View Day School. They had many students who were classified as emotionally disturbed and a lot of students with behavior issues. (*Id.* at 1693, ln. 6-11.)

E.C. was one of Mr. N’s students at H.

Mr. N received training regarding E.C.’s IEP and behavior plan, along with the rest of the staff, from the administrators. (*Id.* at 1694, ln. 9-20.) In addition, the teachers, paras, and administrators closely monitored E.C.’s behavior plan. (*Id.* at 1695, ln. 5-10.)

Mr. N also reviewed the positive behavior supports in E.C.’s IEP and provided examples of how he implemented each of them with E.C. (*Id.* at 1696, ln. 6 – 1701, ln. 6; *id.* at 1702, ln. 13-24.)

In Mr. N’s class, they worked on self-calming skills first thing in the morning during the time in his schedule that was marked for social skills and brain games. This was also the time that the social worker usually came in to work with E.C. (*Id.* at 1701, ln. 7 – 1702, ln. 8.)

Mr. N testified that E.C. eloped more once he was placed into the 1:1 classroom setting. He believed it was because E.C. wanted to be with his peers. (*Id.* at 1704, ln. 16 – 1705, ln. 4.)

Mr. N went through his progress report for E.C. and explained how progress for each goal was calculated. (*Id.* at 1703, ln. 6 – 1708, ln. 23.) E.C. had met goal 5 and was making adequate progress on all of the other goals, except goal 2 – due to the increased elopement after he was placed into the 1:1 classroom. (*Id.*; Dist. Ex. 9.)

Mr. N maintained contemporaneous notes of E.C.'s day in District Exhibit 11. E.C. transferred to Mr. N for homeroom on December 5, 2016. On January 12, 2016, E.C. had the incident in which he hit a peer in the back, leading to Mrs. C. requesting E.C.'s placement in the 1:1 classroom. (Tr., Vol. 7, at 1710, ln. 22 – 1713, ln. 20.)

On January 23, 2017, Mr. N sent Mrs. C. an e-mail letting her know that E.C. stated he did not understand why he was being isolated from his peers, asking Mrs. C. to process that change with E.C., and asking what he could do to assist the family. (*Id.* at 1718, ln. 4-23; Dist. Ex. 51.)

Mr. N did not believe the change to the 1:1 classroom was socially beneficial for E.C. because he liked to be around his peers and was having difficulty adjusting to the isolation. (Tr., Vol. 7, at 1718, ln. 24 – 1719, ln. 7.)

E.C. did work on his academic assignments every day when he was in the 1:1 classroom. He did not complete them one hundred percent, but he did complete assignments and he worked on them daily. (*Id.* at 1719, ln. 8-14.)

Mr. N did not see E.C. become physically aggressive with staff after one incident, but he did see E.C. become physically aggressive with peers. When E.C. did not get his

way, such as when he got eliminated from basketball, that seemed to be a trigger for him. (*Id.* at 1725, ln. 12 – 1726, ln. 2.)

Mr. N did not see E.C.'s behaviors as more severe than the other students served at H. He believed E.C.'s behaviors are about the same as the other students. (*Id.* at 1726, ln. 3-25.)

Mr. N's professional opinion was that the H staff were able to meet the needs of E.C. (*Id.* at 1727, ln. 1-4.) Mr. N further testified that the October 2016 IEP was reasonably calculated to meet E.C.'s academic, behavioral, and social/emotional needs. (*Id.* at 1727, ln. 12-22.) Mr. N testified that it was his professional opinion that a small classroom in a day school setting (such as H) would be appropriate for E.C. (*Id.* at 1730, ln. 10-18; *id.* at 1732, ln. 14-18.)

Mr. N had students participating in the Prairie View program when he was the director of special education at N, as recently as two years ago. (*Id.* 1734, ln. 22 – 1735, ln. 2.)

On cross-examination, Mr. N was asked a number of misleading and unfair questions about certain dates upon which the student was restrained and asked to explain what was happening in video segments which had no audio and did not show sufficient time before the restraint occurred to know what had happened. Mr. N repeatedly testified that he could not recall what had happened on these dates and was still questioned at length and asked if things could have or should have been done differently in hindsight. I find that this line of questioning yielded little of relevance to the issues in this proceeding.

Mr. N testified that the team member responsible for implementing the goal would determine how progress was measured, but they could also see clarification from a colleague, as he did by consulting with Mr. S. (*Id.* at 1849, ln. 9 – 1850, ln. 4.)

X. A

Ms. A holds a bachelor's degree in elementary education, a master's degree in adaptive education, and a master's degree in educational administration. She is licensed to teach grades K-12 in adaptive special education and holds a building level administrative license. (Tr., Vol. 7, at 1869, ln. 9-18.)

She is currently an administrator coordinating the alternative education programs and doing half of the county to transition homebound students for the Coop. (*Id.* at 1869, ln. 21-24.) During the 2016-2017 school year, she was the principal at the H Special Day School and had held that position for six years. (*Id.* at 1870, ln. 4-9.) She has held positions as a classroom teacher, lead teacher, and administrator at P Day School prior to becoming the principal at H Special Day School. (*Id.* at 1870, ln. 10-24.) She has been employed with the Coop a total of 17 years. (*Id.* at 1871, ln. 3-5.)

Ms. A was the administrator at P when E.C. attended there in 2015, as well as having served as the H principal during the past school year. (*Id.* at 1871, ln. 10-19.)

After E.C. left P to attend the structured learning program, Ms. A had no further contact with him until October 2016 when she was asked to attend an IEP meeting for him at P Elementary. (*Id.* at 1877, ln. 6-15.) The outcome of that meeting was to have E.C. begin attending H. (*Id.* at 1878, ln. 1-2.)

With respect to Fridays, Ms. A testified as follows:

Q. Okay. Do you recall an issue about E receiving services on Fridays?

A. I remember that when we were at the meeting at P, that was a concern that they had with him returning to the day school since we are a four day school week.

Q. That who had?

A. Mrs. C and --

HEARING OFFICER BEASLEY: Her attorney?

A. Well, she wasn't there acting as an attorney at that point.

BY MS. LOQUIST:

Q. And do you recall what the concern was?

A. The concern was they needed a place for him to be on Fridays.

Q. Was anything offered to E's mom in that regard?

A. There was an offer that G was waiting to find out if Heartspring would allow him to go to their campus on Fridays.

Q. Do you know if Heartspring did allow him to go on Fridays?

A. They did not.

Q. So what ended up happening with E on Fridays?

A. H staff would go over to _____, pick him up, they were doing things in the community or coming back to the building, gave him lunch and then drive him back to his house.

Q. Was that time on Fridays intended to be anything that addressed his IEP?

A. No.

Q. Were any academics at all to be addressed?

A. No.

Q. What was the purpose then?

A. The purpose was just for E to have a place to go on Fridays.

(Tr., Vol. 7, at 1883, ln. 1 – 1884, ln. 13.)

After E.C. was placed in the 1:1 setting, Ms. A noticed an increase in E.C.'s elopement behavior because he wanted to be with the other students. (*Id.* at 1893, ln. 5-16.) E.C. would tell her all the time that he wanted to be with the other students and doing the class was doing. (*Id.* at 1893, ln. 17-19.)

E.C. told Ms. A that he did not feel like consequences applied to him. E.C. told her that he could get into trouble and get out of just as easily because his parents were "pushovers." (*Id.* at 1894, ln. 2-16.)

Ms. A testified regarding the training that she and Ms. A provided to staff members before E.C. arrived to go over his IEP and behavior plan. While Ms. A provided most of

that formal training, Ms. A made sure the staff had time every day from 3:30 to 4:00 to discuss students and that they had staff development days one Friday each month. (*Id.* at 1900, ln. 1 – 1901, ln. 4.)

Ms. A was also very familiar with E.C.'s behavior plan. One of the things she looked for as she observed in classrooms was whether or not the behavior plans were being followed. Based upon her observations, Ms. A believed her staff were properly implementing E.C.'s behavior plan. (*Id.* at 1902, ln. 1903, ln. 1.)

Ms. A testified that E.C. worked on his self-calming strategies in the morning. In addition to videos of self-calming strategies, she was aware that the social worker Ms. E was working with him on Bal-A-Vis-X, which E.C. had indicated was very calming to him. (*Id.* at 1903, ln. 2-21.)

Ms. A testified that it would not have made any difference in how E.C. was treated if he had been identified as autistic because they wrote his IEP for his individual needs. They do not write IEPs based upon categories of disability. (*Id.* at 1905, ln. 3-21.) The Districts offered to reevaluate E.C. to reconsider his exceptionality, but the parent never gave consent. (*Id.* at 1906, ln. 11 – 1907, ln. 8; Dist. Ex. 13.)

On cross-examination, Ms. A was asked a number of misleading and unfair questions about certain dates upon which the student was restrained and asked to explain what was happening in video segments which had no audio and did not show sufficient time before the restraint occurred to know what had happened. Ms. A repeatedly testified that she could not recall what had happened on these dates and was still questioned at length and asked if things could have or should have been done differently in hindsight. I find that this line of questioning yielded little of relevance to the issues in this proceeding.

Ms. A testified that H did have pads available to be used in the event of a student banging his head on the wall. They were stored in a nearby closet. (Tr., Vol. 8, at 1947, ln. 1-10.)

Y. H

Ms. H holds a bachelor's degree in psychology, a master's degree in social work, and a master's degree in educational leadership. She holds a master's level license in social work and licensure in educational leadership at the district level. (Tr., Vol. 8, at 1981, ln. 14-22.)

Ms. H is currently an assistant director with the Coop. (*Id.* at 1981, ln. 24.) She has held that position for one year. Prior to that, she was a behavior coordinator with the Coop, which was also an administrative position. (*Id.* at 1982, ln. 1-4.) Before being employed with the Coop, Ms. H worked for U.S.D. 259 for 17 years. She was a special education executive coordinator for six of those years, prior to that she was a behavior specialist, and then prior to that she was a social worker. (*Id.* at 1982, ln. 7-11.)

Ms. H became involved with E.C.'s case as a behavior coordinator for the Coop in July 2016. (*Id.* at 1983, ln. 3-8.)

Ms. H attended an IEP meeting for E.C. in August 3, 2016, at which time they discussed how to transition E.C. from Heartspring back into P Elementary. (*Id.* at 1984, ln. 3-16.)

Following the August 3rd meeting, Ms. H had sent a draft of the IEP to Mrs. C. She then had multiple e-mail communications with Ms. C. in which Ms. C. provided a scanned version of the draft with handwritten notes of what she believed should be changed. Ms. H responded back with the items that could be changed and those which would require

an IEP meeting to change. Ms. H indicated this response seemed to make Mrs. C. angry. (Dist. Ex. 50; Tr., Vol. 8, at 1986, ln. 6 – 1987, ln. 22.)

Ms. H prepared the prior written notice, dated September 21, 2016, which changed E.C.'s placement from all day at Heartspring to a partial day at Heartspring and a partial day at P. There is photo of a signature page attached to the back of that prior written notice. This photo was a signed copy of the signature page that she had finally received back from Mrs. C. after several requests. (*Id.* at 1984, ln. 17 – 1985, ln. 20; Dist. Ex. 21.)

Ms. H attended another IEP meeting for E.C. on September 21, 2016, at which time the team discussed the need for another functional behavioral assessment (FBA). A prior written notice seeking consent for the FBA was sent to the parent on September 27, 2016, but it was never signed by the parent. (*Id.* at 1989; ln. 4-18; Dist. Ex. 19.) Ms. C. signed the IEP developed as a result of the September 21st meeting and signed consent for implementation of the IEP. (Dist. Ex. 18; Dist. Ex. 21; Tr., Vol. 8, at 1990, ln. 2 – 1991, ln. 7.)

Ms. H also attended the IEP meeting for E.C. on October 21, 2016. The original purpose of this meeting was to review data and determine whether the time in each setting (Heartspring and P) was appropriate. After some of the behavior incidents at P, they also needed to consider other placement options. During the meeting, they reviewed the data and the times that E.C. was successful versus the times that he was struggling. Ultimately, the team determined that E.C. should attend H full-time. (*Id.* at 1992, ln. 4 – 1993, ln. 13.) Mrs. C. gave consent for the placement at H for four days per week. (*Id.* at 1994, ln. 1-14; Dist. Ex. 14.)

Ms. H created a chart of E.C.'s behaviors from January 2016 to March 2017. Ms. H explained how she created the chart and the data which was used, including behavior

data from Heartspring. After reviewing the data in a chart format, Ms. H concluded that E.C. had inconsistent performance. He did very well while he was at Heartspring, beginning in June 2016, but he also had little or no academic demands placed upon him. Ms. H observed E.C. at Heartspring several times from July 2016 to September 2016. She never saw E.C. engaged in an academic task while he was on the pediatric side. While E.C. was on the day school side at Heartspring, he was primarily on a computer in the corner with very little engagement. (Dist. Ex. 62; Tr., Vol. 8, at 1995, ln. 7 – 1999, ln. 21.) Ms. H testified that the graph showed a spike in E.C.’s elopement behaviors in January 2017, but she could not say why just from looking at the raw data. (*Id.* at 1999, ln. 22 – 2000, ln. 3.)

Ms. H described how the IEP development process should look. First, the team should look at the student’s present levels of performance. Those present levels of performance would then determine the goals and objectives, as well as the accommodations, the student needs. From there, the team would consider in what placement is the student most likely to be successful on meeting those goals and objectives. In addition, if the student has behaviors which impede the learning of the student or others, the team would need to consider writing a behavior intervention plan. (*Id.* at 2000, ln. 15 – 2001, ln. 12.)

Ms. H also explained how the manifestation determination process works. The team has to look at the student’s behavior and determine whether it is a direct and substantial cause from a disability, or is it a result of a failure of the team to implement the IEP, which would include behavior intervention plan. (*Id.* at 2002, ln. 11-19.) In making the determination under the first factor, the team has to consider the entire IEP. Ms. H provided an example of a student with whom she used to work that was identified

as speech language only, but had had a behavior plan in the IEP for years. In that instance, the team could not ignore the behaviors which were part of what was being addressed in the IEP. Once the team has made a determination on the first question, then the team must consider whether the behavior was the result of a failure to properly implement the IEP. (*Id.* at 2002, ln. 22 – 2003, ln. 19.) The team would consider whether the IEP had been followed by reviewing data from teachers, interviewing the staff, and gathering information regarding the incident at issue. (*Id.* at 2003, ln. 20 – 2004, ln. 3.) If the answer to either question is yes, then the team must determine the behavior was a manifestation of the disability. (*Id.* at 2004, ln. 5-8.)

Although it is never her goal to have a child arrested, Ms. H stated it is sometimes necessary. (*Id.* at 2004, ln. 9-14.) Ms. H testified, “I think there are situations where you've done everything you can to implement strategies and supports. I think there are times when a student may be so violent or so aggressive that that's what we have to consider. I don't think that's ever a goal of any educator is that we want a student arrested. I would never want that for a student.” (*Id.* at 2004, ln. 16-23.)

The parents never made a request for a residential placement in any of the IEP meetings that Ms. H attended. Likewise, the parents never requested ABA therapy in any of the IEP meetings that she attended. ABA therapy is considered a methodology. (*Id.* at 2005, ln. 21 – 2006, ln. 8.)

Based upon her experience with E.C. and having served as a member of his IEP team, Ms. H testified that the October 21, 2016 IEP was appropriate for him. It was designed to meet his educational needs, his social/emotional needs, and his behavioral needs. (*Id.* at 2006, ln. 9-22.)

Based upon her experience with E.C. and with working with students in residential placements, Ms. H does not believe a residential placement would be appropriate for E.C. (*Id.* at 2006, ln. 23 – 2008, ln. 14.) Ms. H believes that E.C. can be successfully educated in a day school environment. (*Id.* at 2008, ln. 17-18.) She further testified:

I think it takes time to implement strategies and supports. I think it takes time for a student to learn those skills where there are deficits. You can have a very, very good plan and it will not work overnight. It's taken E years, years, of deficits. We cannot change a deficit overnight. We can't change a deficit over the course of a month or even sometimes years. It takes a lot of time.

(Tr., Vol. 8, at 2008, ln. 18 – 2009, ln. 2.)

Ms. H testified that she has had quite a bit of training. She has had training on trauma informed practices. She is also a master's level social worker and did some course work in behavior modification. She has had a lot of on-the-job training as she has worked with kids with mental health and behavioral challenges the entire time she has been in education. (*Id.* at 2010, ln. 12-19.)

When asked on cross-examination whether she had figured out if her relationship with Ms. C. had been harmed by the frustration level Mrs. C. had toward her, Ms. H testified:

Well, I figured it out through this testimony because of the hatred I feel from the other side of the table and the tension and the disrespect, but prior to that I had very little engagement with Ms. C_____. But through the course of this hearing I definitely felt a level of hatred from your side of the table towards me that I've never felt in my entire career.

(Tr., Vol. 8, at 2035, ln. 4-11.)

After E.C. went to H in October 2016, Ms. H no longer had any involvement with E.C. because she was not requested. (*Id.* at 2046, ln. 3-5.)

Ms. H testified it would not be in E.C.'s best interest to be in a residential placement because:

research shows that the number one supporting factor for a student to improve in their behavioral challenges is a nurturing loving relationship with a primary caregiver. So to me, in my opinion, if you send him to a residential facility, then he's giving up his connection with his family and his primary caregiver. And a nurturing, consistent, loving relationship is the most important aspect of helping a student improve in the challenges they have with their behavior, whatever they stem from. I think that you can be consistent in implementation of a behavior plan, but if you do not have that nurturing environment consistently, then I'm not sure how successful a Behavior Intervention Plan would be anyway.

(Tr., Vol. 8, at 2063, ln. 12 – 2064, ln. 2.) Ms. H further testified that there needed to be “buy-in and support” from the family so that everyone is working together. (*Id.* at 2067, ln. 1-3.)

Z. A

Ms. A has been the Assistant Director of Special Education with the Coop for the last eight years (Tr., Vol. 8, at 2084, ln. 2-7.) She has a bachelor's degree in elementary education, a master's degree in special education behavior disorders, a master's in educational administration, and additional coursework for district level curriculum. (Tr., Vol. 8, at 2083, ln. 14-19.) She is licensed for PreK-12 Educational Administration, K-12 Behavior Disorders (Special Education), and K-6, Math, English, Science, and History. (Tr., Vol. 8, at 2083 ln. 21 – 2084, ln. 1.) As Assistant Director for the Coop, she oversaw H Special Day School (“H”) where E.C. had attended. (Tr., Vol. 8, at 2086, ln. 1-9.)

Ms. A has been employed with the Coop for a total of 21 years. She was first employed as a teacher at P, then as lead teacher, and then principal. Prior to that I was at the _____ County Special Ed Interlocal as a special ed. teacher, K-6 self-contained behavior disorders classroom for one year. (*Id.* at 2084, ln. 10-16.) During the 2014-2015

school year, Ms. A was also employed by Heartspring on the weekends to run students' programs or their client's programs on the weekends. (*Id.* at 2085, ln. 3-9.)

In her position as Assistant Director, Ms. A oversees the Coop's traumatic brain injury team, the motor team (which includes the Coop's occupational therapists, physical therapists, adaptive PE), the entire _____ School District, and the day schools. Last year, Ms. A was responsible for half of the _____ school district as well. (*Id.* at 2085, ln. 23 – 2086, ln. 5.)

Ms. A explained that H was for students with significant behavior issues who could not be maintained in their home schools. (Tr., Vol. 8, at 2086, ln. 12-15.) The students at H mainly have the exceptionalities of Other Health Impaired (OHI) or Emotional Disturbance. (Tr., Vol. 8, at 2086, ln. 16-18.)

The Academy side of H is for students with a primary exceptionality of autism. They have both lower functioning autistic students and higher functioning autistic student who have severe behaviors on the Academy side. The Academy program was designed so that the Coop could bring their autistic students back from Heartspring and Prairie View in N. (*Id.* at 2086, ln. 23 – 2087, ln. 23.) Ms. A just brought a student who only had an autism diagnosis back from Prairie View as recently as a year ago, and he does not have a mental health diagnosis. (*Id.* at 2088, ln. 3-25.) Ms. A has recently visited the Prairie View program again, and it is very similar to their day school program. (*Id.* at 2090, ln. 21 – 2091, ln. 6.)

Ms. A knows E.C. from his time at H. Ms. A had a chance to get to know E.C. because he would often choose to eat lunch with her in her office. (*Id.* at 2091, ln. 11-21.) This happened during the time after he was placed in the 1:1 classroom and after he was arrested at H for hitting her. (*Id.* at 2091, ln. 22 – 2092, ln. 2.)

E.C. had an incident on October 25, 2016, in which he was punching and hitting staff right after he arrived at H. During that incident, Ms. A had explained to E.C. that, if he continued to hurt staff, she would have to call police. E.C. had immediately stopped and moved away from the staff. (*Id.* at 2092, ln. 16 – 2095, ln. 1.)

On November 1, E.C. became upset in the classroom. He proceeded to go into another room and tip over a computer. When he started to go after another one, Ms. A and Mr. S took him to the seclusion room and Mr. S stayed in the room with him. Ms. A was looking from outside and the room and E.C. appeared to be calm. E.C. asked where another student was, and Ms. A told him the student had gone home. E.C. wanted to go home too. When Ms. A told him no, E.C. punched her in the face. Mr. S had to catch E.C.'s hand to prevent him from hitting Ms. A a second time. Ms. A was in shock after having been hit in the face, and did not even realize that E.C. had pulled them to the ground and had been briefly restrained on the ground until she saw the video. (*Id.* at 2095, ln. 9 – 2097, ln. 20.) Ms. A felt that she needed to follow through on what she had just told E.C. about calling police if you hit staff because he had demonstrated that he could control it. (*Id.* 2097, ln. 23 – 2099, ln. 6.)

Parent training is an option the Coop could have made available to the parents if they had let the Coop know they were having difficulty implementing the behavior plan at home. (*Id.* at 2103, ln. 1-25.)

Ms. A attended the October 2016 IEP meeting because she is the assistant director who oversees H, and it was being considered as a placement option. (*Id.* at 2116, ln. 15-21.)

Ms. A testified that District Exhibit 18 was a missing a page that had not printed out when provided to counsel, but the entire IEP was there in the computerized system. (*Id.* at 2117, ln. 1 – 2118, ln. 6.)

Ms. A testified that the parents had never requested a residential placement prior to filing this due process complaint, so the Districts never had an opportunity to address it in an IEP meeting. (*Id.* at 2119, ln. 11-22.) Likewise, with respect to the parents' request to change E.C.'s primary exceptionality, the parents refused to give consent for the Coop to reevaluate E.C. (*Id.* at 2119, ln. 23 – 2121, ln. 5.) The IEP team does not change exceptionality solely on the basis of a doctor's diagnosis. (*Id.* at 2121, ln. 6-21.)

Ms. A described the training that she helped provide for staff members before E.C. arrived at H, as well as the kinds of staff development they did on every other Friday. (*Id.* at 2122, ln. 2 – 2123, ln. 23.)

Ms. A testified that Fridays came up during the October 2016 IEP meeting that Ms. Gagné attended with Ms. C. Ms. Gagné stated that she was there as a friend of Mrs. C. and that Mrs. C. is a very important person and the Districts needed to help her out. (*Id.* at 2124, ln. 8-11.) After the Coop learned that Heartspring would not take E.C. for Fridays, Ms. A asked some of their paras if they would like to work on Fridays. “[E.C.] did not do any academic work on Fridays. It was strictly supervision. Ended up being it had to be at the school, so they might play games or they would go play basketball or he'd play on the tablet, things like that.” (Tr., Vol. 8, at 2124, ln. 25 – 2125, ln. 4.) E.C.'s behaviors were too severe to have him out in the community without a certified staff member supervising him. (*Id.* at 2125, ln. 7-18.) The incident at Exploration Place is what caused Ms. A to reach this conclusion. (*Id.* at 2125, ln. 19-23.)

Fridays were never intended to be part of E.C.'s IEP because H is a four day a week school. There are no staff or students there on Fridays. (*Id.* at 2126, ln. 10 – 2127, ln. 11.)

After Christmas break, E.C. had another incident in which he hit a peer. (*Id.* at 2127, ln. 22-24.) Mrs. C. asked the Coop to isolate E.C. at H way from all his peers as he had hit the same peer twice and the parent was considering calling law enforcement if E.C. targeted the child again. (Tr., Vol. 8, at 2128, ln. 15 – 2129, ln. 2.) Mrs. C. wanted E.C. isolated because she did not want law enforcement called again. (Tr., Vol. 8, at 2129, ln. 1-2.) The “isolation” intervention went into effect on January 16, 2017, but the parents would not sign consent for the change in the classroom. (Tr., Vol. 8, at 2132, ln. 1-7.) The Coop had agreed to try the 1:1 classroom as an intervention to see if it worked. (*Id.* at 2129, ln. 4-17.)

Ms. A believes E.C. made “great gains” academically while he was in the 1:1 classroom, but his elopement increased because he wanted to be around the other students. Ms. A further testified:

Mrs. C had asked us please do not let him get near the peers. Keep him away. She said I don't want him -- I don't care if he ever has social skills. I don't care if he's ever around those kids, so -- make sure you keep him away.

And so when we would go get him, and I wasn't involved in that but when the staff would, I mean honestly it was their belief that they were simply escorting him back to a safe area because they had been asked not to let him go get around peers. And so that's simply what they were doing, trying to keep him from peers.

(Tr., Vol. 8, at 2130, ln. 10-22.)

Around the time of spring break in March of 2017, Mrs. C. had inquired about an amendment for Fridays. (Tr., Vol. 8, at 2132, ln. 23-24.) Ms. A responded that the Coop would “provide Fridays” for E.C., but she would not put it in an amendment because what was being provide to E.C. on Fridays was supervision, not a service. (Tr., Vol. 8, at 2132,

ln. 14-17.) Ms. A explained that H was a four-day a week school and while she would honor the agreement the Coop had made to “provide Fridays” through the last Friday in May 2017 before school was out for the summer; however, the Coop would not provide Fridays for ESY or the next school year. (Tr., Vol. 8, at 2132, ln. 17-23.) E.C. did not return to H after spring break. (*Id.* at 2133, ln. 2-4.)

An IEP meeting was held April 10, 2017. (Tr., Vol. 8, at 2133, ln. 23-25.) The April 2017 meeting dealt with consent for amending the IEP to account for Mrs. C.’ request that E.C. remain in isolation from his peers and ESY. (Tr., Vol. 8, at 2133, ln. 23-25; Tr., Vol. 8, at 2134, ln. 14-17; Tr., Vol. 8, at 2134, ln. 12-16.) An amendment was needed for E.C. to remain in isolation after two months as it was no longer an intervention. (Tr., Vol. 8, at 2219, ln. 1-5.) The Districts’ staff members said E.C. was eligible for ESY and wanted him to attend, but Mrs. C. did not agree to ESY because the program was at H during the mornings in June, Monday through Thursday. (Tr., Vol. 8, at 2132, ln. 1-13.)

Ms. A testified that the parents have never requested ABA therapy. (*Id.* at 2135, ln. 20 – 2136, ln. 2.) ABA therapy is a methodology, which would be determined by the Districts. (*Id.* at 2136, ln. 3-7.)

Ms. A has been involved in decisions to place two other students in a residential facility, specifically Heartspring and Prairie View. (*Id.* at 2137, ln. 7-15.) Ms. A testified that there must be an educational need to justify a residential placement and it is only done when all other resources have been exhausted and the school district is not able to provide FAPE. (*Id.* at 2139, ln. 4-19.) E.C. is not to the point that he is uncontrollable. Ms. A testified that changes could be made to the behavior plan and the staff at H still want to work with E.C. The Districts could even try providing some ABA methodology

with E.C., as they have trained staff who could provide that service. (*Id.* at 2141, ln. 13 – 2143, ln. 5.)

Ms. A testified that the October 2016 IEP was designed to meet E.C.’s educational needs, his social/emotional needs, and his behavioral needs. (*Id.* at 2143, ln. 11-23.)

Because H is in the B School District, H follows the B calendar. (Tr., Vol. 9, at 2208, ln. 9-16.) At the earlier October 21, 2016, IEP meeting, the team agreed that H would be the best placement for E.C., even though H was not in session on Fridays. (Tr., Vol. 9, at 2132, ln. 14-17.) Ms. A explained that another assistant director for the Coop had promised Mrs. C. that she would be provided something for Fridays to help her out. (Tr., Vol. 9, at 2210, ln. 18-25.) Ms. A said she did not put Fridays into the IEP because “we don’t provide services on Fridays. It was supervision. And we did that for the whole school year that he was in attendance.” (Tr., Vol. 9, at 2211, ln. 5-8.)

At the hearing, counsel for the parents questioned: “How does consistency get provided to E if he only goes to school four days a week and then the goal is to transition him back to a five day a week school?” (Tr., Vol. 9, at 2211, ln. 12-15.) Ms. A responded: “We’ve transitioned three students back to their home districts last school year and they did beautifully. Transition is very slow.” (Tr., Vol. 9, at 2211, ln. 16-19.) Ms. A explained that E.C. would not go from attending 4 days a week to suddenly attending 5 days a week when he went back to his home school. (Tr., Vol. 9, at 2212, ln. 5-8.)

CONCLUSIONS OF LAW

Hearing Officer’s Conclusions of Law

1. That the Hearing Officer has jurisdiction to decide the issues before him.
2. That the issues are ripe for determination and that the due process hearing was held in accordance with the law.

3. That the burden of proof is on the parents. The burden of proof and the burden of persuasion lie with the party challenging the IEP. *Schaffer ex. rel. Schaffer v. Weast*, 546 U.S. 49, 56-58 (2005); *Johnson v. Indep. Sch. Dist. No. 4 of Bixby, Tulsa County, Okla.*, 921 F.2d 1022, 1026 (10th Cir.1990). The party seeking relief bears the burden of proving the appropriateness or inappropriateness of the education. *L.E. v. Ramsey Bd. of Educ.*,435 F.3d 384, 391 (3rd Cir. 2006). In this matter, the Parents are the party challenging the IEP.
4. That IDEA requires the local education agency (LEA) provide a free and appropriate public education (FAPE) to all children with disabilities emphasizing special needs education and related services designed to meet the child’s unique needs and prepare them for employment and independent living. 20 U.S.C. 1400(d)(1)(A). “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(9).
5. That the IDEA requires that the child be provided a FAPE and that such FAPE be provided in a least restrictive environment (LRE) to the maximum extent appropriate. *Murray v. Montrose County Sch. District*, 51 F.3d 921 (10th Cir. 1995).
6. That IDEA’s substantive provisions are violated if: (1) the LEA fails to provide a child with FAPE; or (2) a FAPE is provided, but not, to the maximum extent appropriate. *LB and JB v. Nebo School District*, 379 F.3d 966 (10th Cir. 2004).
7. To meet IDEA’s goals, the law provides federal funding to state and local agencies and requires them to provide each child with an Individualized Education Plan (IEP). *T.S. v. Indep. Sch. Dist. No. 54*, 265 F.2d 1090, 1091 (10th Cir. 2001).
8. To determine if a School District has satisfied the IDEA’s substantive obligations, courts engage in two-step inquiry: “First, has the State complied with the procedures set forth in the Act? And second, is the individualized educational program developed through the Act’s procedures reasonably calculated to enable the child to receive educational benefits. If the answer to both is yes, the school district “has complied with the obligations imposed by Congress and the courts can require no more.” *Id.* At 207. 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.

The U.S. Supreme Court recently reviewed the standard the Tenth Circuit Court of Appeals had applied to the second prong of the *Rowley* test and found the Tenth Circuit's *de minimis* benefit test lacking. Instead, the Supreme Court held that "a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F. v. Douglas County Sch. Dist. RE-1*, 580 U.S. ____, 137 S. Ct. 988, 999 (2017).

The Supreme Court went on to explain that:

The "reasonably calculated" qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials.... The Act contemplates that this fact-intensive exercise will be informed not only by the expertise of school officials, but also by the input of the child's parents or guardians.... Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal.

Id. (internal citations omitted).

In *Endrew F.*, the Supreme Court reiterated *Rowley*'s deference to school authorities with respect to educational policy, stating:

We will not attempt to elaborate on what "appropriate" progress will look like from case to case. It is in the nature of the Act and the standard we adopt to resist such an effort: The adequacy of a given IEP turns on the unique circumstances of the child for whom it was created. This absence of a bright-line rule, however, should not be mistaken for "an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review."

Endrew F., 137 S. Ct. at 1001 (quoting *Rowley*, 458 U.S., at 206, 102 S. Ct. 3034).

9. The IEP "is a snapshot, not a retrospective." *Roland M v. Concord Sch. Comm.*, 910 F.2d 983, 992 (1st Cir. 1990). As a result, "the measure and adequacy of an IEP can only be determined as of the time it is offered to the student, and 'Morning Quarterbacking' in evaluating the appropriateness of a child's placement." *O'Toole v. Olathe Dist. Schs. Unifed Sch. Dist. No. 233*, 144 F.3d 692, 701-02 (10th Cir. 1998); see also *Adams v. State of Oregon*, 195 F.3d 1141, lagged behind her non-disabled peers, the record indicated that the student was making progress and that the proposed IEP would have provided an education to benefit her); *Bobby R.*, 200 F.3d at 349 (affirming that "a disabled child's development should be measured not by his relation to the rest of the class, but rather with respect to the individual student, as declining percentile scores do not necessarily represent a lack of educational benefit, but only a child's inability to maintain the same level of academic progress achieved by his non-disabled peers.").

10. Under the IDEA, parents must file a request for due process hearing within 2 years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint. 20 U.S.C. §1415(f)(3)(C).
11. Although the parents were permitted to introduce evidence well beyond the two year statute of limitations for purposes of historical background, such evidence will not be considered beyond the two year limitations period to support an alleged denial of FAPE.
12. It is the goals and the services in the IEP that are uniquely developed by the IEP Team to meet the child's needs that are determinative as to whether FAPE has been provided. *See Polk v. Cent. Susquehanna Intermediate Unit 16*, 853 F.2d 171, 173 (3d Cir. 1988). *See also Honig v. Doe*, 484 U.S. 305, 311 (1988) (“The IEP is so significant that the courts have characterized it as the ‘centerpiece’ of the IDEA's system for delivering education to disabled children.”)

DECISION

After a review of the facts and law herein, the Hearing Officer enters the following ruling on the issues:

Issue 1: Did the Districts deny autism as the primary exceptionality for E.C., resulting in a denial of FAPE?

1. E.C. was diagnosed with autism in February of 2015 by Dr. Turner. *Tr.*, Vol. 1, at 50, ln. 15-18, at 34, ln. 8-19, at 30, ln. 11-12; *Parent Ex. 113*. Autism is defined to mean a developmental disability significantly affecting verbal and nonverbal communication and social interaction that adversely affects a child's educational performance and can include engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. 34 C.F.R. §300.8(c)(1)(i).
2. E.C.'s parents claim that because the Districts did not label E.C. with the exceptionality of Autism, the Districts failed to provide him appropriate services, thus resulting in the denial of E.C.'s right to a free and appropriate public education (“FAPE”) under the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1400, *et seq.* Under the IDEA, the IEP must provide students with exceptionalities an educational program tailored to the students' individual needs, 20 U.S.C. § 1400(d)(1)(A), and each student must be offered special education and related services as are necessary to permit the child to benefit from the instruction. 20 U.S.C. § 1401(29). The purpose of the IDEA is “to ensure that all children with disabilities have available to them a free appropriate public education.” 20 U.S.C. § 1400(d)(1)(A). *See Johnson ex. rel. Johnson v. Olathe Dist. Schools Unified School District No 233. Special Services Div.*, 316 F. Supp. 2d 960, 962 (2003) (A FAPE must be provided at public expense, under public supervision and direction,

and in conformity with an IEP developed for the child; children with disabilities must receive a FAPE that emphasizes special education and related services designed to meet their unique needs).

3. Here, the Districts' conclusion that E.C. did not meet the educational criteria to qualify for special education services under the label of autism did not deny him FAPE because the Districts created an IEP with appropriate services for his educational needs. The amount and type of services that a district is required to provide will depend on the child's identified needs. An IEP is not defective if it fails to include special education services requested by the parents if those services are not required for the child to receive FAPE. *See Winkelman v. Parma City Sch. Dist.*, 51 IDELR 92 (6th Cir. 2008), *cert. denied*, 557 U.S. 946 (2009). Here, the parents are requesting some unspecified services they think E.C. will receive if E.C.'s exceptionality is deemed to be autism instead of other health impaired ("OHI"). This argument is without merit.
4. In the present case, Ms. N testified that while E.C. received a medical diagnosis of the exceptionality of autism, he did not qualify for autism in the educational setting. Ms. N testified the label of autism was not the lynchpin of his IEP. In fact, she noted that under the facts of this case, whether E.C. qualified as autistic was not determinative because his IEP was written to provide a multitude of services addressing his unique needs.
5. When the parents complained about the Districts' failure to label E.C. with the exceptionality of autism, the Districts offered to reevaluate E.C. The parents not only once, but twice, refused their consent to allow the Districts to reevaluate E.C. for autism. By refusing to consent to the reevaluation, the parents are estopped from arguing that E.C.'s designated exceptionality denied him FAPE. In her testimony, Mrs. C. opined that there was more than enough information to support E.C. qualifying for special education under the autism exceptionality and she did not think another evaluation was needed. Essentially, Mrs. C. wanted the Districts to simply accept Dr. Turner's medical diagnosis of autism as the educational exceptionality. While the parents are required and valuable members of the IEP team, they cannot force their opinion on the team.
6. Parental consent is required for a reevaluation. 20 U.S.C. § 1414(c)(3); *accord* 34 C.F.R. § 300.300(c). Parents also have a right, under certain circumstances, "to obtain an independent educational evaluation of the child." 20 U.S.C. § 1415(b)(1); *accord* 34 C.F.R. § 300.502. Also, pursuant to 34 C.F.R. § 300.300(c)(1)(iii), if the parents refuse to consent to a reevaluation, the "public agency does not violate its obligation under § 300.111 and §§ 300.301 through 300.311 if it declines to pursue the evaluation or reevaluation. *See also* K.A.R. 91-40-27(f)(3) (an agency shall not be in violation of its obligations for identification, evaluation, or reevaluation if the agency declines to pursue an evaluation or reevaluation because a parent has failed to provide consent for the proposed action).

7. The testimony of the Districts' staff members who worked with E.C. on a regular basis to be credible. They all testified that they followed the behavior plan to the best of their abilities. The Districts' staff members clearly cared for E.C. and wanted the best for him. Accordingly, I find that the Districts did implement and follow the Behavior Intervention Plan as written.
8. The parents had the right to have E.C. evaluated by an independent evaluator and to have the Coop consider the evaluation when they disagreed with the Coop's evaluation. *See* 34 C.F.R. § 300.503. There is, however, "no exception to the rule that a school district has a right to test a student itself in order to evaluate or reevaluate the student's eligibility under IDEA." *Andress*, 64 F. 3d at 178-79. In *M.T.V. v. Dekalb County School Dist.*, 446 F.3d 1153, 1159-60 (2006), the court explained that: "Every court to consider IDEA's reevaluation requirements has concluded that if a student's parents want him to receive special education under IDEA, they must allow the school to reevaluate the student and cannot force the school to rely solely on an independent evaluation)."
9. The parents have failed to carry their burden of proof under this issue for two reasons. First, E.C.'s medical diagnosis of autism fails to establish an educational need. Ms. N determined E.C. did not qualify for special education services under the educational criteria of autism. The IEP team, however, wrote his goals and provided his services based on his individual needs as required by IDEA, not an exceptionality determination. Therefore, he was not denied FAPE.
10. Second, the parents refused to consent to a reevaluation whereby the team was willing to reconsider whether E.C. met the educational criteria for an autism label. This failure to consent, as supported by the numerous cases cited above, also refutes the parents' claim that E.C. was denied FAPE. If E.C.'s parents want him to receive special education under IDEA, they had to allow the Districts to reevaluate him and could not force the school to rely solely on their independent evaluation diagnosing him with autism.

Issue 2: Did the Districts fail to provide appropriate services for E.C.'s autism diagnosis, resulting in a denial of FAPE?

1. E.C.'s parents claim that the Districts failed to provide appropriate services for E.C.'s autism diagnosis, resulting in a denial of FAPE. However, as all of the District and Coop witnesses testified, IEPs are not written based upon a student's diagnosis. IEPs are written based upon the *individual* needs of the student.
2. Multiple witnesses, including N, testified that E.C.'s IEP was written to meet his individual needs, and it would not have been written differently simply by virtue of the fact that his primary exceptionality had been changed to autism.
3. Likewise, multiple witnesses, including Ms. Moore and Dr. Evans, testified regarding the differences between the medical diagnosis of autism and the educational identification of autism for special education. All of the witnesses

agreed that what is required by the medical model is very different from that which is required by the educational model.

4. Based on the foregoing, the Hearing Officer finds the Districts did create and IEP and provide appropriate service to meet E.C.'s educational needs.

Issue 3: Did the Districts fail to implement the behavior intervention plan, resulting in a denial of FAPE?

1. E.C.'s parents claim that the Districts failed to properly implement E.C.'s behavior intervention plan, which resulted in a denial of FAPE.
2. Throughout the course of the hearing, there was a great deal of testimony regarding the implementation of E.C.'s behavior plan and the need for consistency. Mrs. C. was clearly very familiar with the terms of the behavior plan, although she testified that it was too difficult to implement it at home. (Tr., Vol. 4, at 920, ln. 12 – 922, ln. 4.)
3. Credible testimony came from the H staff members who implemented the behavior plan on a daily basis. In particular, Mr. S and Mr. N went through the behavior plan in detail and gave specific examples of how they implemented the various portions of the behavior plan with E.C.
4. Videos of six different restraint/seclusion incidents at H were shown at the hearing. *Parent Ex. 156-157*. In addition to those six dates, which were November 1, 2016, January 26, 2017, January 31, 2017, February 21, 2017, February 23, 2017, and March 1, 2017, Mr. N's behavior event logs reflect escorts to seclusion on January 11, 2017, January 12, 2017, and March 14, 2017. *District Ex. 11*. It should be noted that the behavior event logs were notes kept by Mr. N after E.C. was transferred to his classroom in December of 2016, after being in Mr. S's room for approximately six weeks. *Tr., Vol. 7, at 1886, ln. 22 - ln. 14, at 1887, at 1585, ln. 23-24*. It should also be noted that testimony at the hearing would indicate that there were additional restraint/seclusion events other than the dates identified above. Ms. E appeared in one of the six videos, but she testified that she was involved in possibly six seclusion and restraint events during E.C.'s time at H *Tr., Vol. 6, at 1622, ln 9-14*. Similarly, Mr. T appeared in one of the six videos, but he testified that he was involved in two or three seclusion and restraint events. *Tr., Vol. 6, at 1658, ln. 17-20*.
5. Regarding the incidents of restraints, Mr. Sarket testified, "There's hiccups that happen throughout the school year with not just [E.C.] but with every student, and it's going to happen." (Tr., Vol. 6, at 1585, ln. 6-9.) Furthermore, Mr. S testified that what was in the videos did not represent a typical day with E.C. (*Id.* at 1585, ln. 10-16.)
6. Educational benefit is not limited to academic needs, but includes the social and emotional needs that affect academic progress, school behavior, and socialization,

and the IEP defines what goals are relevant in providing the measure of whether a student is getting an educational benefit in the placement. *County of San Diego v. California Special Educ. Hearing Office*, 93 F.3d 1458, 1467 (9th Cir. 1995).

7. I find the testimony of the Districts' staff members who worked with E.C. on a regular basis to be credible. They all testified that they followed the behavior plan to the best of their abilities. The Districts' staff members clearly cared for E.C. and wanted the best for him.

Issue 4: Did the Districts fail to ensure that the IEP provided FAPE?

1. As noted above, the *Rowley-Andrew F* cases provide a two prong test which is: first, has the State complied with the procedures set forth in the Act? And second, has the school offered an IEP reasonably calculated to enable the child to make progress appropriate in light of the child's circumstances? Inasmuch as there is no allegation that the Districts failed to comply with the procedures set forth in the Act, the issue remains whether the Districts offered an IEP reasonably calculated to enable E.C. to make progress appropriate in light of his circumstances and exceptionality.
2. In considering the testimony and documentary evidence in this matter, it is important to keep in mind the U.S. Supreme Court's reiteration of its policy from *Rowley*: "The adequacy of a given IEP turns on the unique circumstances of the child for whom it was created. This absence of a bright-line rule, however, should not be mistaken for 'an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review.'" *Andrew F.*, 137 S. Ct. at 1001 (quoting *Rowley*, 458 U.S., at 206).
3. The testimony of the Districts' staff members, who regularly worked with him, and the documentary evidence clearly demonstrate that E.C. is a highly intelligent young man who is functioning at or near grade level academically and continues to make academic progress. It is equally clear that E.C. has had challenging behavior over the years. In fact, parents have attempted to argue through testimony that the number of placements E.C. has had since kindergarten (and, to some extent, perhaps even pre-school) are all the fault of the Districts and that he has not received FAPE as a result.
4. As an initial matter, I again note that the limitations period for IDEA matters is two years – not the entire educational career of the child. While I allowed the parents to introduce evidence of events occurring prior to the two years, it was primarily for historical purposes and/or providing the basis of the medical diagnosis of autism, and I so ruled at the time this information was admitted in response to timely objections by Districts' counsel. I will not consider information beyond the two year limitation period in considering the merits of this matter.
5. Looking at E.C.'s behavior during the limitations period in this matter, the testimony and evidence does demonstrate that E.C. has been making progress,

albeit likely not as rapidly as the parents would prefer. Ms. E was E.C.'s teacher at the time E.C. was reevaluated in May 2015, and she testified regarding the improvements in E.C.'s behavior and social skills between the time he left her classroom at P Special Day School in May 2015 to the time he came to H in October 2016. E.C. had changed from a child who did not want to be around peers to a student who craved being around peers so much that he eloped from his 1:1 classroom to find them.

6. Mr. S testified that he had seen a decrease in physical aggression from E.C. during the short time he had been at H, but the elopement increased after E.C. was placed in the 1:1 classroom.
7. Mr. N saw progress with E.C. as well with all of his goals, except the one relating to elopement. From the testimony, it appears the student wants to be with his peers and compliance with the parents' request for the 1:1 classroom caused the increase in the elopement.
8. Likewise, from a historical perspective, E.C. was still occasionally hitting and kicking people and engaging in property destruction when he stopped coming to school in March 2017, but there were no longer reports of E.C. choking any students or breaking any other student's arms, as he had when he was in elementary school. I find the testimony of the Districts' witnesses to be credible.
9. All of the Districts' witnesses testified that the October 2016 IEP was designed to meet E.C.'s academic, social, and behavioral needs. While the parents and even some of the District witnesses may have items they would prefer to change in the IEP given the benefit of hindsight, the question for this hearing officer to answer is whether it was reasonably calculated to enable E.C. to make progress appropriate in light of E.C.'s circumstances. I find that the October 2016 IEP was reasonably calculated to enable E.C. to make appropriate progress in light of his circumstances. I further find that he did make appropriate progress so long as his parents continued to send him to school.
10. Based upon the evidence and testimony of the witnesses, the Hearing Officer finds for the Districts on this issue.

Issue 5: Did the Districts refuse to provide a required IEP amendment?

1. It may be appropriate for school officials to convene an IEP meeting to review or revise the child's IEP. 34 CFR § 300.343(d). Under the IDEA, the IEP must provide students with exceptionalities an educational program tailored to the students' individual needs, 20 U.S.C. § 1400(d)(1)(A), and each student must be offered special education and related services as are necessary to permit the child to benefit from the instruction. 20 U.S.C. § 1401(29).
2. The parents allege that the Districts refused to provide an "appropriate IEP amendment" for E.C. because it would not create a special program for him on

Fridays when school was not in session at H. An IEP amendment was needed because E.C. had been isolated from his peers for more than two months. The amendment was not needed, however, to address Fridays, as Fridays were not a related service necessary for E.C.'s educational needs under IDEA.

3. The Districts provided, and the parents agreed to, an IEP reflecting E.C.'s change in placement to H for 4 days per week in October 2016. This IEP did not include Friday supervision. H is only in session four days per week. As no other students would be in attendance on Fridays and no other students were provided services on Fridays, no IEP services would be provided for E.C. on Fridays. Because E.C.'s parent complained that some type of program or supervision needed to be provided for E.C. on Fridays, as a *courtesy* to E.C.'s parents, the Districts offered to provide supervision for E.C. on Fridays for the rest of the 2017 school year.
4. In the case at hand, the Districts created an IEP with appropriate services for E.C.'s educational needs. The amount and type of services that a district is required to provide will depend on the child's identified needs. An IEP is not defective if it fails to include special education services requested by the parents if those services are not required for the child to receive FAPE. *See Winkelman v. Parma City Sch. Dist.*, 51 IDELR 92 (6th Cir. 2008), *cert. denied*, 557 U.S. 946 (2009).
5. Here, the parents argue the failure of the Districts to include an amendment to provide for Friday services rendered the IEP defective. It is the goals and the services in the IEP that are uniquely developed by the IEP team to meet the child's needs that are determinative as to whether FAPE has been provided. *See Polk v. Cent. Susquehanna Intermediate Unit 16*, 853 F.2d 171, 173 (3d Cir. 1988).
6. In *Gaston v. Oregon State Educational Agency*, 24 IDELR 1052 (1996), when the IEP team amended the IEP, the District added an instructional aide as needed for the student despite the belief it was unnecessary to satisfy the parents' concerns. In *Gaston*, it was acknowledged that school districts "sometimes add items to IEPs that are not essential to addressing a student's disabling conditions, but which may improve overall performance. Sometimes too, items are added at the parents' request to make for a better working relationship."
7. Similarly, in *Anchorage Sch. Dist.*, 115 LRP 38038 (2015), the school obliged the parents' request that their son, a 12th grade student with autism, drop his special education social skills class and replace it with a class that would allow him to meet the NCAA eligibility requirements, which was the priority for the student and the parents. The school district, however, had erred when it did not amend the IEP to reflect the change in services and placement resulting from the student's removal from the social skills class, despite the fact the parents had requested the change.
8. Here, the parents requested that E.C. be placed in isolation because Ms. C. did not want to take a chance that E.C. would get into any kind of violent situation with his peers that could result in another arrest. The Districts were willing to oblige the parents and try isolation as an intervention, but correctly reasoned once the

isolation ceased to be an intervention an amendment to the IEP would be needed. *See* 34 C.F.R. §300.324(b)(1)(ii) (school must ensure that the IEP team revises the IEP to address lack of expected progress toward annual goals and in the general curriculum, results of evaluation, information provided to or by the parents, the child's anticipated needs, or other matters). With the April 10th IEP meeting, the Districts were trying to attend to E.C.'s anticipated needs. This meeting, however, became about the Friday situation, not the isolation from peers. Mrs. C. refused to sign the amended IEP because the Districts would not commit to placing Friday services into the IEP.

9. The parents' argument about an "appropriate amendment" is merely pretext for wanting the Districts to provide baby-sitting services on Fridays. The parents signed a prior written notice for the change in placement to H on October 24, 2016. Accordingly, this issue has been addressed through an Amendment IEP and a prior written notice. The Friday provisions were simply a courtesy. The parents' assertion that the IEP was somehow defective because it would not provide child care services for Fridays after May 2017 fails.

Issue 6: If the Districts failed to provide FAPE, does that entitle E.C. to a residential placement at an undetermined location?

1. Parents may seek reimbursement for a unilateral placement at a residential facility when they believe the school district is not providing FAPE; however, such reimbursement may be reduced or limited if the parents do not follow the procedure set forth in 34 C.F.R. § 300.148(d) and K.A.R. 91-40-41. A court may grant the parents tuition reimbursement only if it finds that the school district failed to provide a FAPE and that the alternative private placement was appropriate. *See Florence Cnty. Sch. Dist. Four v. Carter*, 510 U.S. 7, 15–16, 114 S.Ct. 361, 126 L.Ed.2d 284 (1993); *Mary T.*, 575 F.3d at 242.
2. K.A.R. 91-40-41 requires a hearing officer to make both of the following findings before granting a request for reimbursement on a unilateral parental residential placement: (A) the agency did not make FAPE available to the child in a timely manner before the private school enrollment; and (B) the private school placement made by the parent is appropriate to meet the needs of the child.
3. The Hearing Officer finds that the Districts did not fail to provide FAPE such that alternative private placement would be appropriate. Accordingly, private placement in a residential facility is denied.
4. Having found for the Districts on all issues, the Hearing Officer denies Parents' request for reimbursement of fees and expenses.

CONCLUSION

The Hearing Officer is aware of the Parent's concern regarding arrest and criminal charges being made due to their son's exceptionality. No one could observe the videos presented at the hearing without being disturbed by the physical restraint used on E.C. and being placed in isolation. Watching your child butt his head on a concrete wall or steel door would be devastating to a parent for the care and love one has for their child.

This Hearing Officer is not immune to being emotionally disturbed by watching this child being dragged down the hallway to the isolation room. While I wish I could personally devise a way E.C. could be educated without such extreme interventions, it is obvious that the educators feel the same way. Their mandate is to afford and implement "educational benefit" and progress for E.C. which they have all testified is their primary goal and which they have endeavored to do. I feel badly for the parents under these circumstances, but, in my view, the law which I am to apply makes provision for E.C.'s education and the Districts have met that burden.

IT IS SO ORDERED.

Original signed/James G. Beasley
James G. Beasley
Special Education Hearing Officer

The foregoing Due Process Decision was electronically sent this 18th day of December, 2017 to:

Ms. Leah Gagne
Attorney for E.C.,

Sarah J. Loquist
Attorney for USD ____ and
Special Education Interlocal ____, and

Mr. Mark Ward
Kansas State Department of Education.