

- 5) Failure to parents periodic progress on students progress on goals and objectives.
- 6) Failure to provide services in the least restrictive environment;

Seeking:

- 1) Compensatory education services,
- 2) Compensatory education for related missed services,
- 3) Evaluation and appropriate IEP in:
 - a) least restrictive environment;
 - b) A Board Certified Behavior Analyst (BCBA); and,
 - c) Reimbursement of costs.
- 4) Training for Administrators, Teachers, Paraprofessionals and staff.

PROCEDURAL HISTORY

On April 7th, 2016, a Due Process Complaint Notice was received by the Arkansas Department of Education from **JAMES** and **CAMILLE XXXXXXXX** parents of ("Student"). The Parents requested the hearing because they believed that the Forrest City School District (hereinafter referred to as "District") failed to comply with the Individuals with Disabilities Education Act of 2004 (20 U.S.C. §§ 1400 - 1485, as amended) (IDEA) (also referred to as the "Act" and "Public Law 108-446") and the regulations set forth by the Department by not providing the Student with appropriate services as noted above in the issues as stated.

On April 2nd, 2015 the District responded to the Notice with a copy to the Hearing Officer. On or before the District was required to convene a resolution session and resolve the complaint prior to May 7th, 2016 to the satisfaction of the Parent. A Pre-Hearing Order was entered on April 12th, 2016. The District responded on April 17th, 2016. A Motion to Continue was filed by the Petitioner on May 4th, 2016 and an Order approving said Motion was entered the same day.

Because the issues were not resolved, Pre-Hearing briefs were required on July 11th, 2016 from the parties with a Pre-Hearing Conference held July 12th, 2016. The Due Process Hearing was convened and held July 13th, 14th and August 3rd, 2016. Attorney for the Petitioner/ Parent was Ms. Theresa Caldwell, Esq. and Attorney for the Respondent/ District was Ms. Sharon Streett, Esq.

As a preliminary matter, the issue of standing of the parents to petition on behalf of their 18-year-old child was discussed, this being an issue of first appearance in AR, where there is an 18-year-old without a conservator or guardianship. However, counsel for the Petitioner parents produced an order granting them temporary guardianship to maintain this action on behalf of their adult child, making, the issue of standing moot.

The second preliminary issue was that there was a prior due process hearing between these parties

which was settled and on which a Settlement Agreement was signed May 15, 2015. Any grievances as to whether or not that was followed through with are to be dealt with as a breach of contract suit in Circuit Court by the aggrieved party, not in this due process hearing. Counsel for the District did brief this issue, counsel for the Petitioner did not. The essence of the District's claim is that there are no claims to be dealt with in the current due process hearing that go back before May 12, 2015. Counsel for the Petitioner states the Petitioner's claims have to do with this year. The Hearing Officer takes all this under advisement and will rule on it at the appropriate time. Post Hearing Brief's were Ordered and one additional day was granted past the seven days allowed by ADE regulations for submission. Petitioner submitted their brief in a timely manner however the Respondent did not. Respondent's brief was deemed submitted out of time and therefore was not considered. Respondent Moved to reconsider and is hereby denied.

FINDINGS OF FACT

- 1) Student is age 18 and is enrolled in the 12th grade at the Forrest City High School, within the Forrest City School District;
- 2) Student has disabilities including Mental Retardation, Developmental Coordination Disorder, Specific Disorder of Motor Function and Developmental Delay;
- 3) Forrest City is a Local Education Agency as Defined in 20 U.S.C. 1401(19);
- 4) Student has attended school in the Forrest City District since Kindergarten;

Volume I, Wednesday, July 13, 2016

LISA BIRMINGHAM:

Witness Lisa Birmingham serves as Director of Special Education for the Forrest City School District, and XXXXXX is a student with a disability within that school district. She is in her 17th year serving as the LEA of the Forrest City School District. Ms. Birmingham sometimes, occasionally attends IEP meetings, she directs curriculum and such matters as resources for XXXXXX, and provides technical assistance to teachers.

Ms. Birmingham holds a Master's degree in students with severe and profound disabilities, has been in the teaching profession since 1983, has been a Special Education supervisor 33 years, was in the classroom as a self-contained teacher for 4 years, and as a Resource indirect teacher 1 year.¹ Most of her 33 years have been in administration².

Ms. Birmingham's Master's degree is in moderate, severely, profoundly disabled programming. Vol. I, P. 24, L. 6-7. She has a kind of collateral degree in Special Ed in school administration, is certified

¹Vol. I, P. 23, L. 20-25

²Vol. I, P. 24, L. 1-3

as a K-8 principal, as well as a K-12, or a P-12 instructional specialist in Special Ed.³ Ms. Birmingham did not recall holding a conference with the parents as to the prior due process claim, but said she had several meetings with the parents.⁴ After looking at the parents' binder, page 111, Ms. Birmingham recalled sending an email about the parents' concerns to Tiffany Hardrick, the superintendent of schools, one of the concerns being a classroom too small for ten students and two adults, which was expressed to this witness in a meeting December 17th.⁵ The witness said another of the parents' concerns was that their child was segregated during the school day.⁶ However, the witness said the parents did not express concerns about that at the beginning of this year, when she planned for the 12th grade IEP.⁷ After looking on the statement of parental participation and concerns at the annual review conference, it does state they were concerned about the child's participation in the general curriculum with the same-age peers.⁸ The witness agreed that on page 45, the student's 11th grade IEP, what the school writes down, it says the father is concerned about interaction with outside peers and would like to see more music involvement.⁹

The witness disagreed the student was segregated, but agreed the parents wanted him to have more integration with outside peers. This was remedied by adding music and art the second semester, to which the parents agreed.¹⁰ Before that, he had PE, in a general ed classroom with both disabled and non-disabled. The student's parents asked that he be integrated into activities outside the Special Ed classroom, but requested the Student be dropped from choir.¹¹ This witness had no independent knowledge of a physical therapy evaluation being done prior to the October 2015 one.¹² Once consent is granted by parents, there is 60 days in which to conduct an evaluation, and if a PT evaluation does not exist, that would be a due process violation.¹³

If they had conducted an evaluation within 60 days of the May 28, 2015 annual review conference,

³Vol. I, P. 24, L. 9-14

⁴Vol. I, P. 25, L. 14-19

⁵Vol. I, P. 25, L. 22-25 and Vol. I, P. 26, L. 1-13

⁶Vol. I, P. 26, L. 15-18

⁷ Vol. I, P. 26, L. 19-25 and Vol. I, P. 27, L. 1

⁸Vol. I, P. 28, L. 7-14

⁹Vol. I, P. 28, L. 15-25, Vol. I, P. 29, L. 1-3

¹⁰Vol. I, P. 29, L. 8-17, Vol. I, P. 29, L. 22-25 and Vol. I, P. 30, L. 1

¹¹Vol. I, P. 30, L. 1-14, Vol. I, P. 117, L. 15-18

¹²Vol. I, P. 32, L. 2-18

¹³Vol. I, P. 32, L. 19-25, Vol. I, P. 33, L. 1-3

it should have been mentioned, but on page 126 there is nothing about a PT evaluation.¹⁴ The parents gave consent, wanted an evaluation (page 111), and nine months later Easter Seals did one.¹⁵ They did not do an evaluation within 60 days, and violated the Due Process Procedures.¹⁶

This witness had no knowledge of whether the Student's Special Ed teacher gathered any data concerning implementation of the reading goal.¹⁷ As to the choir, PE and art and other subjects listed on the IEP, at a meeting 09/21/15, the parents requested that the Student be taken out of band and choir. This witness' Decision form says nothing about the Student being taken out of band or choir. It also says nothing about the 750 minutes being decreased for this Student.¹⁸

After evaluation received September 28th, there was a parent conference attended by the Physical Therapist to explain the report why the Student no longer needed PT, that it no longer showed benefit to implementation of the Student's IEP or his Special Ed services. The technology evaluation was discussed and what had been done, and looking at requirements for related services under IDEA, the therapist felt there was no longer any skills the Student needed within the school setting to benefit implementation of his IEP or his Special Ed program.¹⁹ The parents were not told at that meeting they could obtain an independent evaluation if they disagreed with the PT recommendations.²⁰

The high school did not have a speech pathologist for the first eight weeks, and announced they were introducing a new program called "TinyEYE therapy that was tele-therapy, and it would take a short while to get that implemented. The parents of the Student signed up for this.²¹ This is where a licensed AR speech therapist works on a computer or an iPad, with a computer with a camera, and worked with the Student face to face. She and the Student had a microphone for direct therapy. The therapist would have gotten a copy of the Treatment Plan for the Student as well as his IEP from the speech therapist who worked with the Student the year before. They did not do a speech evaluation.²²

In addition to the IEP, there was a Treatment Plan, a copy of which went to the speech therapist and

¹⁴ Vol. I, P. 33, L. 5-10 and Vol. I, P. 33, 11-14

¹⁵ Vol. I, P. 35, L. 1-12

¹⁶ Vol. I, P. 36, L. 9-14

¹⁷ Vol. I, P. 51 P. 19-23

¹⁸ Vol. I, P. 60, L. 2-6, Vol. I, P. 60, L. 12-20 and Vol. I, P. 60, L. 21-23

¹⁹ Vol. I, P. 63, L. 16-25, P. 64, L. 1-25 and P. 65, 1-14

²⁰ Vol. I, P. 66, L. 12-17

²¹ Vol. I, P. 67, L. 17-25

²² Vol. I, P. 79, L. 6-13, Vol. I, P. 79, L. 23-25, Vol. I, P. 80, L. 1-15 and Vol. I, P. 68, L. 19

a copy to the parents in the annual review documents.²³ Of all the Student's skills, his speech and language skills are the poorest. In November of 2014 there was a meeting held to do a speech and language evaluation, the report saying the Student had oral expressive deficits, receptive language deficits.²⁴ It also said the Student's receptive language and oral expression skills are profoundly delayed, a severe delay in articulation skills.²⁵ This witness testified the Student speaks in one, two, three-word sentences. One of the things the Easter Seals evaluation said the Student needed was a dedicated iPad with apps for functional skills development, and he has one, to which they added some of the programs.²⁶ For this Student, they looked at his IEP to work toward graduation instead of at credits.²⁷

Looking at pages produced by the District a week before this hearing, which were not part of the production done when documents were asked for in April, this witness did not know why they were not produced until April. and there are speech goals on pages A-1-135 and 136, yet one of them has a date of 09-01-15. However, looking at the 09-01-15 conference decision in the other book, the parents' binder, on page 30, it says nothing about speech therapy goals being developed, and no speech teacher was present during that conference.²⁸ In answer to the inquiry how speech goals were developed in the annual review at the September 1st conference when no speech teacher was present, the witness said speech goals were developed in the annual review in May; the speech therapist submitted her Treatment Plan to the committee and recommended they bring forward the goals and objectives from 2014, the Treatment Plan from 2014-2015, which they attached and continued.²⁹

In the annual review, under "Other Matters" it says the Student will continue his OT and speech therapy. In developing speech and language goals for a child, this witness testified it is not required to have the speech and language therapist present. At the 09-01 meeting, the whole IEP was discussed, and the parents were made aware speech therapy was not going to be available.³⁰ This witness testified that in the Decision form from the the IEP meeting there was nothing documented about the fact the Student was not going to be getting speech therapy.³¹ The witness testified that

²³ Vol. I, P. 69, L. 11-20

²⁴ Vol. I, P. 72, L. 11-15 and Vol. I, P. 73, L. 3-21

²⁵ Vol. I, P. 73, L. 23-25 and Vol. I, P. 74, L. 1-5

²⁶ Vol. I, Vol. I, P. 75, L. 22-25, Vol. I, P. 76, L. 1, Vol. I, P. 78, L. 19-20

²⁷ Vol. I, P. 84, L. 16-17

²⁸ Vol. I, P. 91, L. 9-22, Vol. I, P. 92, L. 11-18 and Vol. I, P. 93, L. 16-21

²⁹ Vol. I, P. 93, L. 22-25, Vol. I, P. 94, L. 1-8

³⁰ Vol. I, P. 95, L. 5-17, Vol. I, P. 101, L. 18-25, Vol. I, P. 102, L. 1.
and Vol. I, P. 102, L. 19-24

³¹ Vol. I, P. 103, L. 16-21

there was no speech therapy for this Student during the first quarter, there was not a speech therapist to implement goals, but that they were made up in the second semester.³² The last time this witness could recall the IEP was revised or reviewed was 12-15-15.³³ The IEP that was developed went from 750 minutes to 250 minutes; art and choir were dropped, and physical fitness was added.³⁴ The witness testified there was a difference between course work and activities on an IEP. The course description of transition was added 09-01 (2015), when they met to revise and change some things in the Student's IEP, as they had to change the IEP due to some issues around the Settlement Agreement.³⁵ They made a correction to clear up that the Student did have art. Art and PE, or physical fitness, were two classes the Student had outside of the Special Ed classroom.³⁶ The Student had eight subjects: English, math, science, transition, daily living skills, reading, PE and art (speech did not count as a class), with seven periods, but the witness testified an IEP is not course work, it is designed to meet the individual student's needs, and this Student had been in art the entire year.³⁷

The witness testified that the Student got 90 minutes of speech included in the 1,300 minutes of Special Ed. The IEP team awarded the Student credit for PE because he is a Special Ed student and IDEA requires students with more serious cognitive disabilities to have PE every year. There was a math typo, and corrections were made in the 12-15-15 conference.³⁸ A Special Ed teacher taught English, math, science, daily living skills and reading to the Student. The witness testified a special educator is not tied to a course, they are tied to an IEP.³⁹ The IEP on 05-28 was the proposed IEP for the Student for the 2015-2016 school year. The Student's parents wanted to make changes and recommendations on the IEP, so there was a conference on 09-01-15, and the changes made are documented.⁴⁰ On 09-01-15 the speech goals that were recommended from the annual review, from the Treatment Plan, were added. The witness did not know why they were out of order in the book.⁴¹

Originally, as a part of the Settlement Agreement, the Student was to be a band aide, but that was changed in 09-01. The request to change was made in the counseling office, but the band director

³² Vol. I, P. 104, L. 13-23

³³ Vol. I, P. 113, L. 14-21

³⁴ Vol. I, P. 113, L. 25, Vol. I, P. 114, L. 1-9

³⁵ Vol. I, P. 115, L. 14-25, Vol. I, P. 116, L. 1-3, 12-15

³⁶ Vol. I, P. 116, L. 21-24, Vol. I, P. 117, L. 6-11

³⁷ Vol. I, P. 118, L. 3-19

³⁸ Vol. I, P. 120, L. 25, Vol. I, P. 121, L. 1-8 and Vol. I, P. 123, L. 7-11

³⁹ Vol. I, P. 132, L. 11-14. Vol. I, P. 133, L. 19-21

⁴⁰ Vol. I, P. 136, L. 8-15

⁴¹ Vol. I, P. 137, L. 11-16.

did not follow up. The Student went a couple of times before they changed the class on 09-01, but the Student received a report card showing he was in band even after that conference since the computer network system from the state could not be changed, so the Student made an "A" and had a half a credit.⁴² Science and daily living skills are not listed as the Student having taken them during his senior year because those are activities on his IEP, not courses.⁴³

It was this witness' understanding that daily living skills for the Student would be implemented in his classroom in the transition section of the IEP as well as in the lab. Talking about addressing the parents' concerns about the size of the classroom and number of students and staff, the witness testified there are two classrooms, a regular one and then a departmental lab that everyone can use. They moved the students from a classroom to a larger classroom for educational services, and teachers could use the lab if they needed to.⁴⁴ (In asking to view the lab, the Parents' counsel said one of the assertions of the parents here is that the district did not provide the appropriate supports, the room, and made an offer of proof that a teacher would testify the lab provided was not conducive the teacher getting to teach the Student daily living skills).⁴⁵

Volume II, Thursday, July 14, 2016

As a note of procedure, the high school was visited this morning and the classroom and the lab room were viewed. It appeared both rooms were intact, even though the high school is in a state of disrepair, being renovated and cleaned and worked on for the summer term.

HAZEL I. FINGERS

Ms. Fingers testified she came out of retirement to fill a position that abruptly came open, and she worked with the Student the last semester, during his senior year. As far as background, this witness testified to holding a Bachelors degree from Austin Peay State University, Clarksville, TN, holding a Master's degree in education with the preference on special education, and taught for 32 years before retiring. She retired three years ago, after 3 years here and 1 in Marianna, and was home 2 years. She previously taught this Student in his ninth grade year.⁴⁶

This witness testified that she was not concerned whether page numbers were on the IEP, she was concerned about the IEP goals and objectives and reaching those. Responsive to the question how this witness knew the goals and objectives in the IEP without page numbers, she testified the teacher

⁴² Vol. I, P. 141, L. 16-20, Vol. I, P. 142, L. 4-25 and Vol. I, P. 143, L. 1-5

⁴³ Vol. I, P. 144, L. 1-5

⁴⁴ Vol. I, P. 153, L. 23-15, Vol. I, P. 155, L. 11-18

⁴⁵ Vol. I, P. 154, L. 25, Vol. I, P. 155, L. 1-25, Vol. I, P. 156, L. 1-25 and Vol. I, P. 157, 1-21

⁴⁶ Vol. II, P. 11, L. 1-5, Vol. II, P. 11, L. 22-25 and Vol. II, P. 12, L. 1-6

had a binder with each student's goals and objectives.⁴⁷ Looking at the goals and objectives for this Student, the witness identified the goals and objectives she would have implemented: two and three and a little bit of one, very little of one. Number seven, they did not do any of these in the classroom.⁴⁸

As to the OT ever coming in the classroom and doing OT with the Student there, this witness testified OT took the Student to their location to work with him. Looking at pages 10 and 11, the witness testified they did none of those.⁴⁹ The learning lab, or CBI lab, was not operational/being used by the class this witness assumed the class in December. This witness, who taught 32 years, only taught CBI (community-based instruction), which is a concept that students with lower functioning abilities learn skills to transfer from classroom to home to independent living situations.⁵⁰

When asked to contrast this Student's functioning in 12th grade when she had him with 9th grade when she had him earlier, testified that in 9th grade this Student was always bubbly, friendly, easy to get along with, no behavior problems at all, and they worked on things like his first name, his last name a lot of hand-over-hand, tracing, and he could write his first name with a pattern underneath. She testified that in 12th grade when she came back, this Student was unable to write his name independently, while he could make letters, he would always do one backwards, e.g., he would do "d" into a "b," which he did not do when she left. However, this witness also testified that with this type of child, they lose skills unless done repeatedly.⁵¹

When the witness referred to "this type of child," she was referring to Down's Syndrome children, which population all have lower IQ's, most 55 or below, and they can learn to do almost anything if it is patterned out, demonstrated, tasked, analyzed, and used that way. This witness said these children need steps; when they come in on Mondays, she learns what they did over weekend, and always goes back to what they did on Friday, bring that forward and go from there. Skills have to be reinforced, and you cannot expect this population to learn something forever without refresher.⁵²

In describing how the lab class worked, this witness testified the students learned to set a table, with real utensils, table cloths and place mat, to make a bed. Several of the students, including this Student,

⁴⁷ Vol. II, P. 13-25, Vol. II, P. 14, L. 1-16 and Vol. II, P. 13, L. 17-25

⁴⁸ Vol. II, P. 14, L. 13-25

⁴⁹ Vol. II, P. 15, L. 1-8, Vol. II, P. 15, L. 19-22

⁵⁰ Vol. II, P. 18, L. 22-25, Vol. II, P. 19, L. 1-7 and Vol. II, P. 19, L. 8-15

⁵¹ Vol. II, P. 19, L. 16-25, Vol. II, P. 20, L. 1-10

⁵² Vol. II, P. 20, L. 17-25, Vol. II, P. 21, L. 1, Vol. II, P. 21, L. 2-14
and Vol. II, P. 24, L. 5-8

had trouble with the roller chairs, but this witness testified they (teachers) would hold the chairs.⁵³

As to the earlier settlement concerning this Student, this witness said she was told two different things: That the lab was to be used for all Special Ed classes, and that the CBI class was to be the primary users. This witness testified initially there was conflict between the teachers as to the way the room was used, the dates, but it was cleared up through emails. This teacher's class did not use it all day; they did classroom work Monday and Tuesday, and used the lab Wednesday, Thursday and Friday, but this witness testified that did not interfere with her ability to implement the goals and objectives on this Student's IEP.⁵⁴

This Student was not a fluent reader, but he was attentive and he could picture read, tell the teacher what he thought, which is a precursor to teaching a child to read. This witness was aware this Student was being tutored in reading, and the para assigned to this teacher would work with this Student every day on those assignments that came from his tutor.⁵⁵

This witness testified she had visited the Student's church, and he played drums there sometimes. The Student can also sing; he sang Happy Birthday to this teacher just the other day.⁵⁶ This teacher had a relationship with the Student such that he knew when she was serious, and he followed directions well, understood limits and knew how to manipulate situations.

This teacher said she did not get to use any of the apps that were talked about with teaching this Student, but thinks he could have benefitted from a dedicated iPad. This teacher asked about an iPad and got one, but it had nothing on it she could use and no one trained her on it.⁵⁷ Easter Seals came a couple of times and told this teacher a picture schedule was needed, but she and the Student never finished that.⁵⁸ The Student went to art with non-disabled children, went to all his classes independently.⁵⁹

This teacher attended the IEP meeting in December and the annual review held in May but attending the annual review in May out of protest, because it was her understanding the parents should be at that conference, said the least that should have been done was have the parents available for an annual

⁵³ Vol. II, P. 25, L. 1-25, Vol. II, P. 26, L. 13-6

⁵⁴ Vol. II, P. 27, L. 9-19, Vol. II, P. 27, L. 24-25 and Vol. II, P. 28, L. 1-13

⁵⁵ Vol. II, P. 46, L. 10-25, Vol. II, P. 47, L. 1-2 and Vol. II, P. 47, L. 10-16

⁵⁶ Vol. II, P. 52, L. 18-25, Vol. II, P. 53, L. 1-4 and Vol. II, P. 53, L. 7-16

⁵⁷ Vol. II, P. 56, L. 7-15, Vol. II, P. 56, L. 24-25 and Vol. II, P. 27, L. 1-12

⁵⁸ Vol. II, P. 57, L. 13-23

⁵⁹ Vol. II, P. 58, L. 2-14

review, and since they were not there, she was in attendance but did not sign.⁶⁰

This witness said she would caution the Student about hugging girls instead of shaking hands, and they watched videos and talked about appropriate behavior also. In the community, when the Student ran into someone he knew, she would give him verbal cues and visual cues how to act, and he followed them well.⁶¹

When this teacher came in December, there were two students in the group with this Student using TinyEYE, and the teacher described the situation as chaotic since one student was nonverbal and the other screamed, even while this Student was trying to follow along. According to this Student's IEP, he was supposed to get speech therapy three times a week for 90 minutes, and occupational therapy for 60 minutes. They used TinyEYE up to May, and at some point a lady was hired to make up some time. They would go to TinyEYE for their regular speech minutes, and it was this teacher's understanding that they had time that had to be made up, which came out of her time teaching daily living skills.⁶²

This teacher testified the Student's grades were decent, he had nothing lower than a "C." It is this witness' understanding that if the Student received an actual diploma at gradation, that would compromise this proceeding.⁶³ This Student had an honors cap and gown because he had the GPA for honors.⁶⁴ However, when it was time for graduation practice, this Student was not on the list. This teacher appealed to the superintendent about this Student being able to walk across the graduation stage because he qualified for it, the paperwork saying "met all requirements."⁶⁵

The difference between daily living skills and transition skills, in the opinion of this witness, is not much, since daily living skills are ones you will use later, and transition skills are ones you use now and later.⁶⁶

This teacher thinks the Student made progress with her. She said his progress was in counting money, number recognition, making his name more legible, following directions, he knew if he went to the bathroom he had to come back instead of playing in the hall, he knew how to put plates on a

⁶⁰ Vol. II, P 58, L, 20-25, Vol. II, P. 59, L. 3-17

⁶¹ Vol. II, P. 62, L. 13-25, Vol. II, P. 63, L. 1-17

⁶² Vol. II, P. 64, L. 3-25, Vol. II, P. 65, L. 1-13, Vol. II, P. 66, L. 10-13,
Vol. II, P. 66, 14-25, P. 67, L. 1-12

⁶³ Vol. II, P. 74, L. 2-10, Vol. II, P. 81, L. 22-25, Vol. II, P. 82, L. 1-2

⁶⁴ Vol. II, P. 82, L. 14-20

⁶⁵ Vol. II, P. 83, L. 1-2 Vol. II, P. 84, L 20-25, Vol. II, P. 85, L. 1-23

⁶⁶ Vol. II, P. 90, L. 4-12.

table, he knew everyone had to have a fork, and he could follow directions for place settings from the smartboard.⁶⁷ As this Student's Special Ed teacher, this witness was responsible for the continuation of the IEP that had been initiated. This witness said she tried to focus on goals and objectives she decided, based on what was in writing, would be more beneficial to this Student.⁶⁸

Other transition skills or daily living skills this teacher worked on with the Student that were not spelled out in his IEP were how to sweep, use the broom and dust pan, how to use the vacuum cleaner, how to clean windows and mirrors, how to dust, how to use a feather duster as opposed to a Swiffer duster, how to use a dust cloth. They worked on nail brushes being used before kitchen work, how to dry their hands, activities that have to be done as opposed to what is on the IEP.

This student could make a grilled cheese sandwich, he could pop popcorn in the microwave.

This teacher felt she adequately implemented this Student's IEP to the best of her ability, but said she would have written some other things into it.⁶⁹

KELLI D'AMBROSIO

This witness lives in Virginia. She has a Masters of Arts and Speech/Language Pathology, did a clinical fellowship year, received her ASHA certificate of clinical competence and New York state license in Speech/Language Pathology, and worked in New York state as licensed therapist until June of 2015 when her family moved to Virginia. She also holds a Virginia state license in speech/language pathology, and became certified through the State of AR and received her AR state licensure so she was able to provide therapy through tele-therapy with TinyEYE for Forrest City, where she worked from the end of September, 2015 until the end of May of 2016.⁷⁰

For the past 7 years, she has worked for a school district, mostly K-6. This witness never met the Student's parents. This witness was never requested to attend any IEP meetings regarding this Student.⁷¹

In working with this Student, this witness testified she had nothing asking her to evaluate him; rather, she was given a treatment plan and she was to carry out the goals and objectives on that plan. The treatment plan she was given for this Student said "Medicaid Treatment Plan," and it was uploaded into her TinyEYE office to be accessed. Through TinyEYE, she provides a virtual speech therapy

⁶⁷ Vol. II, P. 97, L. 1-5, Vol. II, P. 97, L. 6-25

⁶⁸ Vol. II, P. 101, L. 11-23, Vol. II, P. 101, L. 24-25 and Vol. II, P. 201, L. 1-11

⁶⁹ Vol. II, P. 102, L. 12-25 Vol. II, P. 103, L. 1-9, Vol. II, P. 105, L. 7-21
and Vol. II, P. 110, L. 14-24

⁷⁰ Vol. II, P. 114, L. 24-25, Vol. II, P. 115, L. 1-25 and Vol. II, P. 116, L. 1-8

⁷¹ Vol. II, P. 118, L. 16-21, Vol. II, P. 119, L. 3-4 and Vol. II, P. 119, L. 8-12

through the web.⁷²

She also received a consent form that had been signed by the Student's family, then a schedule for therapy. At the beginning of the year she did not know exact days of the week and time, but it was for 3 times a week for 30 minutes in a small group. She never saw the IEP for this Student. The speech and language goals were on the Student's treatment plan. She did not receive the latest evaluation for any of her students.⁷³

To find students' levels of present functioning, this witness testified that typically the goals and objectives show where the students are functioning and where she needs to bring them to the next level. She uses her first therapy sessions to gather baseline data to see where they are, then scaffold her therapy to determine how to get them from where they are currently to where they need to be to meet the goals and objectives she has been given.⁷⁴

In reviewing the Medicaid Treatment Plan, a one-page document, saying "Per Settlement Agreement as of 05/12/15, this witness testified she believed this Student to be one of her students on her caseload for which she was given an initial Medicaid Treatment Plan, and was then told that after she had seen the Student for a short time that she would be asked to revise goals and objectives. In November she believes she updated goals and kept them pretty close to what they were, but just updated them a bit."⁷⁵

With regard to the one-page Medicaid Treatment Plan as to this Student's speech needs when this witness began to work with him, this witness testified she knew he had an expressive language disorder in which he was speech-impaired, and had Downs Syndrome. She then realized the goal stated they would be working on oral movements and correct sound productions by producing targeted phonemes in conversation speech, which she read to mean he was verbal but exhibited some articulation and motor planning difficulties which would be targeted to work on expanding the Student's expressive communication. The Plan also stated the Student needed to increase his intelligibility. She understood that to mean at times the Student was difficult to understand, so that would be a focus of his therapy, to work on improving his ability to be understood, as well as working on two-word combinations, multi-word phrases, sentences and conversations. She was unable to deduce from the Plan how bad the Student's expressive language deficit was.⁷⁶ When asked whether this witness knew the Student had been tested and had a severe impairment in speech, this witness testified that based on the recommended objectives, it appeared as though this Student had

⁷² Vol. II, P. 119, 23-25, P. 120, L. 1-4, Vol. II, P. 120, L. 23-25 and Vol. II, P. 121, L. 1-16

⁷³ Vol. II, P. 121, 17-25, Vol. II, P. 122, L. 1-25 and Vol. II, P. 123, L. 1-4

⁷⁴ Vol. II, P. 123, L. 8-16

⁷⁵ Vol. II, P. 123, L. 18-25, Vol. II, P. 124, L. 1-13.

⁷⁶ Vol. II, P. 125, L. 1-25, Vol. II, P. 126, L. 1-12

a severe delay for a student his age.⁷⁷

This witness testified the number of children in this Student's group therapy varied, and at one point there was a child who screamed, so this witness requested that child be removed from the group that included the Student in this case. There were initial sessions for this Student that were made up after the fact.⁷⁸ When the school gave this witness the chance to revise the Student's objectives after she had worked with him for a while, this witness testified she did so—she made his objectives a little bit more specific. Four times a year, the district asked that this witness update the Student's IEP, which she believes was done by all staff who worked with students with IEPs in the district. When she was asked to revise the Student's goals and objectives, she made four objectives instead of three for the Student. The fourth goal was for the Student to increase his mean length of utterance given models and/or cues, with 70% accuracy, which is the one this witness worked off for most of the school year. The reason the goals went from three to four was because the initial objectives were very complex, and as a therapist she was hoping the Student would slow his rate of speech, so she tweaked the original goal to make more sense. All the goals would help improve articulation of the Student, and expressive language tends to encompass articulation.⁷⁹

As to this therapist's revised treatment plan and the four objectives, she worked with the Student on producing three and four syllable words, and the Student continued to do better at the word level than the sentence level, meaning he was more successful when imitating words than using those words in sentences. He also benefitted from slowing his rate and using precise articulation. . As of December 17th, the Student was making progress. . He was able to imitate sentences with multi-syllabic words and targeted phonemes using a slow rate with 70% accuracy. He could slow his rate with reminders.⁸⁰ As of March, the Student was working nicely on slowing his rate in sentences he imitated, with 75% accuracy.⁸¹

This Student was very good at concentrating and was a very hard worker each day this therapist saw him. He mastered the part of his goal as to displaying awareness of his lips, tongue, teeth and jaw movements by initiating movements produced with and without accompanying speech sounds with 70% accuracy.⁸²

⁷⁷ Vol. II, P. 128, L. 11-16.

⁷⁸ Vol. II, P. 131, L. 4-21, Vol. II, P. 133, L. 3-5

⁷⁹ Vol. II, P. 137, L. 1-16, Vol. II, P. 138, L. 18-21, Vol. II, P. 143, L. 15-20, Vol. II, P. 143, L.9, Vol. II, P. 144, L. 1-6. Vol. II, P. 147, L. 10-25, Vol. II, P. 147, L. 1-25 and Vol. II, P. 148, L. 1-4

⁸⁰ Vol. II, P. 158, L. 1-11, Vol. II, P. 158, L. 13-15, Vol. II, P. 162, L. 25, Vol. II, P. 163, L. 1-3, Vol. II, P. 163, L. 23-15 and Vol. II, P. 164, L. 1

⁸¹ Vol. II, P. 172, L. 19-22

⁸² Vol. II, P. 167, L. 8-9, Vol. II, P. 170, L. 2-12

This therapist did an update on May 5th because those updates were due at the time of the Student's annual review. She attended the annual review conference via phone conference, and as to this Student's objectives, this therapist reported 1) the Student was able to achieve the number one objective, being able to demonstrate an awareness of his lips, tongue, teeth and jaw movements by initiating movements produced with and without accompanying speech sounds with 70% accuracy, 2) he was able to slow his rate of speech given cues in sentences with 75% accuracy, and at the conversation level he was about 60% accurate with cues, 3) he was able to producing three-syllable words at the word level following a model with 70% accuracy, and was also, by the end of the year, able to produce four-syllable words following a model with 60% accuracy, with his overall progress producing four-syllable words and phrases and sentences following a model at 55% to 60%, and 4) as to the Student's mean length of utterance, he imitates four-word phrases with 70% accuracy, is improving his ability to imitate five to seven words in phrases and sentences with 55% accuracy.⁸³ This therapist saw the Student through the end of the school year, although he had several absences in May. May 20th was the last session where the Student was present.⁸⁴

This therapist's contact in the school, and the person with whom the therapist had the most conversation with, was Jean Vick. The therapist testified she was told it was fine for her to do her progress updates and upload them into the TinyEYE software, and that Ms. Vick would take it from there. There were also e-helpers for each session, to help the students log on and be with them during the session. She also spoke with Ms. Vick's supervisor on occasion, and with the people who were running the annual review meetings.⁸⁵

This therapist did not make a recommendation that this Student needed an augmentative communication device, as she felt the Student has some really good speech production skills, and feels his speech output is the way to focus his therapy. This student was always engaged, and she felt that an augmentative communication device could potentially hold him back, as with his motor planning difficulties, which is his message being sent from his brain to the output of his extremities, whether it be his hands or speech production, there could be a breakdown in the communication. He may know that he wants to say something, as he is searching through to find those words, he may forget what it is he was trying to say.⁸⁶

The therapist also thought the small group therapy was appropriate for this Student; it was a good way for her to interact with this Student and also to sit back and see him interact with others in the group, which allows her to see if the skills are carrying over or generalizing to the conversation area. The students do better with her, but when speaking with their pers, they don't remember to use those skills, so that was a very good way for her to monitor how the Student was doing at the conversation

⁸³ Vol. II, P. 178, L. 10-25 through Vol. II, P. 182, L. 1-5

⁸⁴ Vol. II, P. 182, L. 12-14, Vol. II, P. 184, L. 4-7

⁸⁵ Vol. II, P. 184, L. 16-25, Vol. II, P. 185, L. 1-20

⁸⁶ Vol. II, P. 186, L. 2-8.9, Vol. II, P. 186, L. 10-24

levels for each of his objectives.⁸⁷

At the end of January, this therapist met with representatives from Easter Seals, she thought it was a speech pathologist and an occupational therapist, who came in to observe the Student; they had done work with the Student in the past and were questioning a potential augmentative device, but this therapist expressed she was still pushing for the Student's speech output and production because she really thinks he has some skills that he can do very well with that. Those representatives did not tell this therapist that in September Easter Seals had recommended a dedicated iPad for the Student to use for his functional skill development as opposed to an augmentative communication device.⁸⁸ The school did mention to this therapist that the Student did have access to an iPad, but she was not made aware of anything else by the school.⁸⁹

There are iPad apps that some people can use to help support language development, and there are some apps that have been developed that they can use for augmentative communication, but in this therapist's experience, she finds there are a few that are very limiting, so you can only put maybe 25 pictures on it, and that could be tough. She tried another system with another student that was very, very, very complex to use, almost too complex. So, while systems are there, this therapist testified that these can go from one extreme to the other, and this therapist did not make recommendations about certain apps for this Student.⁹⁰

CHARLENE BUTLER

Ms. Butler is a paraprofessional in Room 108, the self-contained classroom as it relates to this Student. As to her education and work history, she has been with the school district 12 years, and worked in nursing for 25 years. This was her first year in the high school self-contained classroom.⁹¹ The teacher in that self-contained classroom was Keresia Jones from August to November (the week before Thanksgiving) (Vol. II, P. 195, L. 7-11), then Ms. Fingers from December 4th or 7th.⁹²

This witness' interaction with the Student was that she reinforced what the teacher was teaching; she would sit at the desk and help this Student keep up, sometimes she would make sure he got to his classroom, she would shadow him to make sure he got to his destination safely due to a lot of gang fights at the high school. When the lab opened, she went there and assisted them in setting the table. The art class this student attended was on the other side of the building. This para mostly shadowed

⁸⁷ Vol. II, P. 187, L. 2-16

⁸⁸ Vol. II, P. 187, L. 25, P. 188, L. 1-18, Vol. II, P. 188, L. 19-24

⁸⁹ Vol. II, P. 189, L. 4-8

⁹⁰ Vol. II, P. 190, L. 18-21

⁹¹ Vol. II, P. 192, L. 22-25, Vol. II, P. 193, L. 1-10

⁹² Vol. II, P. 193, L. 11-17

the Student to art class, since it was farther away than P.E.⁹³

This para also took the Student to speech in Ms. Rivers' room. She was there for the speech therapy, would log the Student on and get him situated (there were three students). There were issues with the head pieces, and one student would scream, so Ms. Vick said they would need to get speakers. However, the speakers did not work. Then Ms. Fingers brought speakers so the students could hear without putting it on the ear. There was a single computer screen for all three students. Sometimes they had a mouse, and the therapist could see their faces and they could see her. This Student was distracted when the other student would scream, but that student might on two or three months before an outburst. Sometimes it would go on for a week, so that student would have to be removed. These were 30 minute sessions. The para went in at least five minutes before the sessions to get ready. Sometimes it would be 2:10 if there were technological problems. There was no average time, since it depended on the situation.⁹⁴

Talking about the lab when Ms. Jones was the Student's teacher, this witness said during November tables had been brought in, but she (Ms. Jones) did not like them, and they did not use the lab.⁹⁵ This witness was not able to implement the goals with this Student like clearing the table, counting the number of plates, things like that, were not implemented during the time Ms. Jones was there. Nor were goals implemented like matching socks, folding t-shirts, folding pants, feeding a hangar with the non-dominant hand to feed a hangar, hanging things on a hook, sorting clothes or preparing them to be washed while Ms. Jones was the teacher. While Ms. Jones was there, this para did work with the Student on his address.⁹⁶ In the classroom, this para testified the Student used a microwave and toaster with Ms. Jones. He could fix a pot pie in the toaster, which this para called a little microwave. He was able in the cafeteria to pour his milk into his bowl of cereal.⁹⁷

This para read with the Student, little papers Ms. Fingers would run off and the whole class would read. Ms. XXXXXXXX gave them the material, some tutoring, and he would read with them. The person tutoring the Student would ask them question, and give them activities to do with the Student. There was not a dedicated iPad with apps dedicated to the Student in the classroom.⁹⁸

⁹³ Vol. II, P. 193, L. 18-25, Vol. II, P. 194, L. 1-5 and Vol. II, P. 194, L. 7-19

⁹⁴ Vol. II, P. 202, L. 25, Vol. II, P. 203, L. 1-6, Vol. II, P. 203, L. 20-25, Vol. II, P. 204, L. 1-25, Vol. II, P. 205, L. 1-25, Vol. II, P. 206, L. 1-25, Vol. II, P. 207, L. 1-25, Vol. II, P. 208, L. 1-25, Vol. II, P. 209, 1-25, Vol. II, P. 201, L. 1-19

⁹⁵ Vol. II, P. 196, L. 11-25, P. 197, L. 1-6

⁹⁶ Vol. II, P. 197, L. 7-25, Vol. II, P. 198, L. 1-6, Vol. II, P. 198, L. 7-17

⁹⁷ Vol. II, P. 198, L. 18-25, Vol. II, P. 199, L. 1-25, Vol. II, P. 200, L. 1-9

⁹⁸ Vol. II, P. 200, L. 21-25, Vol. II, P. 201, L. 1-4, Vol. II, P. 201, L. 7-10 and Vol. II, P. 202, L. 20-22

They started TinyEYE around September, the girl who was sometimes disruptive and screamed was good in August, September until the last of October.⁹⁹ The Student did not go to P.E. with this class, and this para would make sure the Student go to P.E. where he would be with Coach Trail. She made sure the Student got there safe, then she went back to the classroom.¹⁰⁰

In discussing therapy times missed or not, this para testified she kept notes as to therapy time, she keeps them at home since she never knows what is going to come up, and she kept notes of whatever happened in class. She testified both Ms. Jones and Ms. Fingers told her to do that, and she never throws those notes away. If a child was removed from the class, it was the teacher's call, not this para's. When asked if she gave copies of these notes to Ms. Fingers, this para said Ms. Fingers would not accept them, she told this witness to keep them, she might need them. When asked if she could go back to her notes and tell how long each session was, this witness said some yes, some no. She said sometimes there are outbursts and she did not write it down, but that did not mean it did not happen.¹⁰¹ This witness did not mention to anyone other than the people in the classroom that she had notes, and also testified that she was not made aware she needed to give them to the school.¹⁰²

JAMES XXXXXXXX

Mr. James L. XXXXXXXX is the Student's father. Mr. XXXXXXXX holds a bachelor's degree in mathematics, with a minor in physics at Jackson State University, Jackson, MS. He taught in this district 32 years, from 1969 until 2001, when he retired. He also taught part-time at Crowley Ridge Vo-Tech for 7 years at night. He has done a number of tutoring sessions in the city. He has driven the school bus 29 years. He taught at all levels of mathematics in the secondary level.¹⁰³

The Student is now 18 years old. In testifying as to bringing everyone up to date about what had gone on since last year when they filed for Due Process, this witness said as the Student approached graduation time, the witness began to look at the Student's future, and realized many things had not happened and that he did not know that anything was supposed to happen. So, he began searching for things to help the Student transition into the real world. He began to notice that there were a lot of skills, assisted living skills, that the Student had not been taught. That prompted Mr. XXXXXXXX to ask questions about the Student not being able to cook, cleaning and those things. He realized that his own time was getting a little shorter and wanted the Student to be more secure. So they started talking about the things necessary for the Student to live alone, and Mr. XXXXXXXX brought it to the attention of the teacher at the time, Ms. Jones, not in this school year, but when she first came,

⁹⁹ Vol. II, P. 209, L. 20-25, Vol. II, P. 210, L. 1-6

¹⁰⁰ Vol. II, P. 212, L. 9-21

¹⁰¹ Vol. II, P. 213, L. 22-25, Vol. II, P. 214, L. 1-25, Vol. II, P. 215, L. 1-25, Vol. II, P. 215, L. 9-25 and Vol. II, P. 216, L. 1-19

¹⁰² Vol. II, P. 217, L. 3-15

¹⁰³ Vol. II, P. 221, L. 1-19.

which was almost 2 years ago.¹⁰⁴

It seemed we didn't have the facility to teach the things that the Student needed. Mr. XXXXXXXX also talked to one of the Student's older teachers who was here years ago, and she told him about things they were doing at their school, which he did not know these things were necessary for a senior, such as skills on cleaning, cooking, making up beds, going out into the community. Those things were not happening here for the Student.¹⁰⁵

When he got no answers, got nothing done, he felt it was time to take it forward, and that is what got us to this point. The concerns of this parent were voiced and listed in page 111 of the yellow-covered binder, and the first concern he had resulted in the Due Process being filed.¹⁰⁶

The second concern was one talking about "Naturally segregated during the school day. They do not participate in grade level activities." This parent having been in the district as a teacher for years, had seen Special Ed children separated from everyone else, and even if you tried to separate them, they would always come back together, feeling like they belonged in that group. This disturbed him, and he did not want the Student feeling he always had to be with a certain group. It was not until they filed for Due Process that the Student began to leave the classroom to participate in any activities with non-disabled peers.¹⁰⁷

Up to the point this parent became involved and began actively advocating for the Student, there was very little interaction with non-disabled peers. Outside school, it was different, but at school he was always isolated. He was welcomed everywhere; everyone liked him. This witness testified he practically lived at the school ever since the Student has been there, in his room down the hall, the small room.¹⁰⁸

As far as the Student coming home to talk about his school day, what he mainly talked about when he came home was the kids who were picking on him, calling him cuss words and such. He would repeat those words, not knowing they were wrong words. After Mr. XXXXXXXX taught the Student these are words you do not say, he would come home and tell his father what else was said. The father said he talked to the teacher a couple of times, and she tried to address the matter, but there were just some students who would not change. Very little was done about it. He also told his parents about kids fighting, a fight he saw, or someone in the room pushing on him. Mr. XXXXXXXX would go back and always address those situations; he know about everyone in the school, so the

¹⁰⁴ Vol. II, P. 221, L. 20-25, Vol. II, P. 222, L. 1-25, P. 223, L. 1-3

¹⁰⁵ Vol. II, P. 223, L. 5-15

¹⁰⁶ Vol. II, P. 223, L. 17-21, Vol. II, P. 224, L. 2-9

¹⁰⁷ Vol. II, P. 224, L. 11-25, Vol. II, P. 225, L. 1, Vol. II, P. 225, L. 2-8

¹⁰⁸ Vol. II, P. 225, L. 11-25, Vol. II, P. 226, L. 1-13

kids would start looking out for the Student for Mr. XXXXXXXX.¹⁰⁹ Kids in the neighborhood who knew the Student, they would let Mr. XXXXXXXX know what was going on when the Student would not tell him.¹¹⁰

There were notes sent home from school about things that were going on. Discussing the Student's IEP's in 11th and 12th grades, Mr. XXXXXXXX is the one who made the comments about wanting the Student more involved in classes with non-disabled students, but he was not allowed to do that until the Due Process was filed. This parent observed the music classes, and did not think there was a lot of effort in getting the Student to participate. This Student does not volunteer for things, he has to be coaxed into doing things. In choir you need to be able to read music, but the Student could not do that, and no efforts were made to help him, so he was basically just present.¹¹¹

Item number 6 talks about this parent having requested a physical therapy evaluation and provided consent for that. The parents were not happy about his dismissal in May, since when Mr. XXXXXXXX talked to the therapist, they were very simple goals, like jumping from one step down to the next step, being able to walk up and down stairs; the therapist said to him these are just the basic requirements, so we do not make an effort to go any further. The parent felt that the Student should be able to run or jump or do whatever is necessary if there is a fire so he could get out in a hurry. The parent said the Student can run, but he has to watch every step, usually looks at the ground, and watches where he is walking and watches the stairs, and the parent felt the Student needed more PT. He had heard about a PT evaluation the school was doing to do in December, but does not know if it ever took place.¹¹²

The parents did not think the Student needed an augmentative communication device, but want an evaluation anyway, and gave consent for Easter Seals to complete an evaluation. A Settlement Agreement was signed in May, and the Easter Seals evaluation had not occurred at that point.¹¹³ The IEP meeting held 09/01/15, it states the technology evaluation is scheduled for September 19, which is the one this parent heard about, that Easter Seals was coming to evaluate the Student. However, this parent never saw the report.¹¹⁴

When this parent went to the meeting on May 28th, after the Settlement Agreement was signed, when he planned for the IEP and was present at that meeting, that states Mr. XXXXXXXX voiced concerns about the Student being involved in functional education and incorporating functional living skills into

¹⁰⁹ Vol. II, P. 226, L. 17-25, Vol. II, P. 227, L. 1-15

¹¹⁰ Vol. II, P. 227, L. 17-19

¹¹¹ Vol. II, P. 227, L. 20-25, Vol. II, P. 228, L. 1-25, Vol. II, P. 229, L. 1-25

¹¹² Vol. II, P. 230, L. 9-25, Vol. II, P. 231, L. 1-25

¹¹³ Vol. II, P. 232, L. 9-14, Vol. II, P. 233, L. 7-14

¹¹⁴ Vol. II, P. 233, L. 18-25, Vol. II, P. 234, L. 1-5

the self-contained classroom. He thought after the agreement that they would immediately start on this lab, and he would come out periodically to check. But it did not start. So, around July he talked to Ms. Birmingham. She mentioned she had already contracted the job to Mr. Peacock, or some of the jobs, but he had to do the plumbing. He was tied up in other jobs, so this parent went to the plumber because things were moving rather slowly to have gotten finished by the beginning of the school year, and the parent was worried. The plumber told him he was told about it around July and had other jobs lined up.¹¹⁵

Time was important to Mr. XXXXXXXX; he had already made up his mind the Student was going to graduate with his peers and not have to watch them leave and he has to stay, so Mr. XXXXXXXX wanted the lab as soon as possible, even though the Student could go to school until age 21.¹¹⁶ Mr. XXXXXXXX continued to check on the building, and when nothing happened, he suggested the home economics room be used, since he had worked in this school 32 years right across from home economics and knew everything was already there—sewing, cooking, a living space. The room was not used because the wheelchair students could not get upstairs, and in case of a fire they could not use the elevator. At that time there was one wheelchair student in this Student's class.¹¹⁷ There were plumbing issues, then electrical issues, then furniture issues with readying the room. Mr. XXXXXXXX felt it was intentional. It was August, then September, then October, then November, and it was about February before the Student first started getting to use that room, when the school year was 3/4 over. As far as implementing the Student's goals, the parent did not know what the plan was if there was not a classroom in which to teach them, the parent just knew it was not being done.¹¹⁸

As far as the Student's extracurricular activities for which the parents bargained in the settlement, they asked that the Student be allowed to take band and assist with sports so he would be knowledgeable of other things going on in the school, and being a band aide was part of that. However, the parent wanted to remove the Student from that because on several occasions when he went to pick up the Student, the band was practicing, but the Student would be asleep behind the band teacher. So, the parent could not see where the Student was getting anything from being in the band. The band teacher told the parent the Student could not read music so the teacher could not fit the Student into the program. The parent did not understand why the band teacher could not make an effort to help the student fit in, since many people play by ear. The parent said the Student could

¹¹⁵ Vol. II, P. 234, L. 19-25, Vol. II, P. 235, L. 1-25, Vol. II, P. 236, L. 1-25, Vol. II, P. 237, L. 1-10

¹¹⁶ Vol. II, P. 237, L. 20-25, Vol. II, P. 238, L. 1-11. Vol. II, P. 237, L. 14-15, Vol. II, P. 238, L. 1-11

¹¹⁷ Vol. II, P. 238, L. 19-25, Vol. II, P. 239, L. 1-25, Vol. II, P. 240, L. 1-5

¹¹⁸ Vol. II, P. 240, L. 15-25, Vol. II, P. 241, L. 1-25, Vol. II, P. 242, L. 1-24 and Vol. II, P. 243, L. 6-13

have even been outside helping set up instruments, but that was not done, and the parent said it discouraged him from just letting the Student just sit day after day and not get something.¹¹⁹

The parent asked for extended services in PE for the Student, in 12th grade class with non-disabled students also. The Student was also going to have 12th grade art with non-disabled students. However, it was maybe a week before the Student was removed from PE, band and art at the parent's request, the parent wanted the Student to get back in to Ms. Jones' classroom so she could maybe help him.¹²⁰

The committee adjusted the Student's schedule to have more time with Ms. Jones to work on reading. Vol. II, P. 250, L. 14-24. The Student was getting tutoring during 12th grade, after school. At first it was an hour twice weekly, then it was changed to 2 hours once weekly. The parent thought reading was more important than PE or band or football, so he requested the Student be returned to Ms. Jones' rooms in the afternoons last period.

The way the parent learned the Student was in the transitions class with the other teacher, Ms. Oswalt, was he happened to go in and there see the Student. The parent said the Student never had a dedicated iPad in the classroom. The parent knew very little about the Student's speech goals.¹²¹ The parent said the Student has limited ability to express himself totally, and outside their household it is difficult for the Student to communicate with anyone else. The parent testified this limited the Student's ability to go to school, that he had missed several opportunities because of that. There as a program at Arkansas Children's Hospital the Student interviewed for, but he was not accepted because he could not make sentences, he could not express himself, he could not answer questions in a statement form, and those were necessary skills at that school. The parent also testified the Student's speech ability would come and go; he could make a full statement when angry or really wanting you to understand, but often, if you were not around him enough, you would not be able to understand him.¹²²

The parent testified the Student's ability to communicate was not stable, and the parent thought the Student had improved, but that between the 9th and 12th grades, it was like he went backward, so that is why the parent asked for more speech and reading to prepare the Student for graduation. The parent did know the Student did not get speech therapy the first nine weeks because there was no

¹¹⁹ Vol. II, P. 244, L. 16-25, Vol. II, P. 245, L. 1-25, Vol. II, P. 246, L. 1-17

¹²⁰ Vol. II, P. 247, L. 23-25, Vol. II, P. 248, L. 1-6, Vol. II, P. 249, L. 8-12, Vol. II, P. 249, L. 20-15 and Vol. II, P. 250, L. 1-13

¹²¹ Vol. II, P. 251, L. 22-25, Vol. II, P. 252, L. 1-18, Vol. II, P. 253, L. 9-13, P. 255, L. 17-21, P. 257, L. 15-16

¹²² Vol. II, P. 259, L. 5-25, Vol. II, P. 260, L. 1-7 and Vol. II, P. 260, L. 13-23

speech therapist.¹²³

At the December meeting, when Ms. Fingers came in to teach, the parent understood that the Student was not being able to be taught functional living skills because the classroom was not ready until February.

As far as the parent expressing concern to the school or anyone there about the Student's functional living skills, his ability to be independent, maybe go into an independent setting after school, the parent was mainly telling the Student's teachers, and also Ms. Birmingham. The parents filed the lawsuit to get the Student's assisted living program going, but September 1st was right around the corner and this was not getting done. The Due Process complaint filed in April of this year was because the orders that were issues were not being fulfilled.¹²⁴

The parent did notice how determined the Student's teachers were about getting the Student ready, and the parent saw all kinds of effort in getting the Student the functional skills, as many as they could without the lab.¹²⁵ When the parent filed in April, the Student was not getting the services for the assisted living program.¹²⁶

This parent testified he discussed with the superintendent, Dr. Hardrick, the Student graduation situation, walking for graduation even if the Student did not have all the credits, and she said she could spend up to \$10,000 without the school board's consent, and would rather do that than give it to the lawyers, but the parent said he did not want money, he wanted the services the Student deserved. He was to get back to the parent before class night, but did not do so. So, the parent took the Student to class night, and even though his name was not on the program, the principal announced the Student.¹²⁷

Come graduation day, still no word from the superintendent, even though the parents had tried and tried to contact him, and the Student had relatives coming in from other states to see him march, so the parents contacted the media. All they wanted was for the Student to march. Only after the parents had contacted their counsel was the Student allowed to walk across the stage. His name was

¹²³ Vol. II, P. 260, L. 24-25, Vol. II, P. 261, L. 1-13 and Vol. II, P. 261, L. 22-25

¹²⁴ Vol. II, P. 262, L. 12-18, Vol. II, P. 263, L. 18-25 and Vol. II, P. 264, L. 1-13

¹²⁵ Vol. II, P. 265, L. 1-3

¹²⁶ Vol. II, P. 265, L. 8-16

¹²⁷ Vol. II, P. 272, L. 16-25, Vol. II, P. 273, L. 1-25 and Vol. II, P. 274, L. 1-14

not on the program, and they were greeted at the gate with ten programs.¹²⁸

The parents are asking that in lieu of compensatory education, the parents be allowed to place the Student in a placement of the parents' choice, including, but not limited to, any private school, trade school, or vocational school, college, or rehabilitation facility to be provided remediation and be taught how to read and obtain extensive training in daily living and job skills, with the expense associated therewith provided by the Forrest City School District until completed, at which time the Student will provide the Student a high school diploma.¹²⁹

The parent testified he thought the Student would be playing the drums in the band because that is what he plays at church. The parent said even as an aide in band, the Student did nothing. However, he was just there for a little over a week, and the parent did not come every day. Although he testified the Student was sleeping when the parent did come, the parent did not know what they had been doing before the parent arrived.¹³⁰

The parent said it was his idea that if they did not have the lag, they could have implemented daily living skill goals and objectives. One of the reasons the parent filed this Due Process was because things in the Settlement Agreement were not being done. When the parent testified he did not like the computer speech therapy system, the TinyEYE system, he also said he has not signed the form for it, but when asked if the signature could be his wife's, he said it was possible.¹³¹

Vol. III, Friday, July 15, 2016

JEAN VICK

Ms. Vick is a Due Process paraprofessional. She obtained a Bachelors degree in psychology in 2009. This witness worked as an aide with the Student for six years.¹³² When the TinyEYE program came in, since it was all computer, she was asked to do the computer technical stuff in the office, was over it and was the contact person for TinyEYE. When asked if Ms. D'Ambrosio sent her documents, she did not send the information to put in the progress report at the bottom of the page,

¹²⁸ Vol. II, P. 274, L. 16-25, Vol. II, P. 275, 1-17, Vol. II, P. 275, L. 22-25 and Vol. II, P. 276, L. 1-13

¹²⁹ Vol. II, P. 276, L. 21-25, Vol. II, P. 277, L. 1-12

¹³⁰ Vol. II, P. 282, L. 13-21. Vol. II, P. 283, L. 8-19.

¹³¹ Vol. II, P. 283, L. 20-23, Vol. II, P. 285, L. 5-14, Vol. II, P. 285, L. 19-23, Vol. II, P. 286, L. 2-4 and Vol. II, P. 287, L. 1-21

¹³² Vol. III, P. 7, L. 2, Vol. III, P. 9, L. 8-13 and Vol. III, P. 9, L. 14-16

and Ms. Vick phoned to get the percentages.¹³³

As to why percentages on goals and objectives by Ms. D'Ambrosio were different than those of this witness, this witness testified she got overall percentages, and Ms. D'Ambrosio worked on stuff separately, and they would have to do averages. Identifying the documents shown her, the witness said they were her original ones that were filed with Medicaid, all the therapy reports with all the TinyEYE notes. Every nine weeks, she prints everyone's stuff and puts it together and it went into the Medicaid files and they were filed with Medicaid. She personally did not send anything to Medicaid.¹³⁴

When this witness was asked yesterday where she got the numbers to put into the boxes on progress, she then went and got these documents out of the boxes. The figures written out, the percentages, this witness called and got those from Kelli D'Ambrosio. This witness said she updated the goals and objectives on A-1-135 and A-1-36.¹³⁵ Every nine weeks reports were mailed to the parents. When asked about proof they went out, this witness testified the last two nine weeks they went by certified mail, and although they went by regular mail the first semester, this witness said they did not come back after they were mailed. This witness said she personally mailed them.¹³⁶

LISA BIRMINGHAM

The Due Process hearing request had already been filed by the Student's parents when Ms. Birmingham had a meeting with Mr. XXXXXXXX and made a list of his concerns. One was as to a PT evaluation which she said in her email they agreed to the change through the stay-put amendment. They also discussed the aug com evaluation, and consent for that was granted.¹³⁷ The reason the evaluation did not move forward was because shortly after that they received from Ms. Caldwell's office a withdrawal of informed consent and release of information that told them not to do any evaluations. It released them from the informed consent, and was signed by Ms. XXXXXXXX. This witness called Ms. Streett and learned this negated responsibility for PT and aug com evaluations.¹³⁸

After the Settlement Agreement was signed in May 2015, they were getting ready to do the Student's

¹³³ Vol. III, P. 7, L.3-6, Vol. III, P. 7, L. 17-21

¹³⁴ Vol. III, P. 10, L. 7-16, Vol. III, P. 8, L. 1-4, Vol. III, P. 8, L. 5-9 and Vol. III, P. 11, L. 9-10

¹³⁵ Vol. III, P. 8, L. 10-17, Vol. III, P. 8, L. 18-25-P. 9, L. 1

¹³⁶ Vol. III, P. 11, L. 13-21, Vol. III, P. 12, L. 5

¹³⁷ Vol. III, P. 15, L. 17-25, Vol. III, P. 16, L. 1-5 and Vol. III, P. 16, L. 7-14

¹³⁸ Vol. III, P. 16, L. 15-24

annual review and were trying to get organized. There were several things in the Agreement that had to occur in the summer, and they were rebuilding that relationship, they were filling out applications for camps and programs, and trying to facilitate and talk about the annual review and the IEP. They were registering the Student for some time at Aldersgate at a camp for the Student to be able to go with a sibling or friend, they made application to the Youth Leadership Program (a state program for individuals with developmental delays) where they choose children to come in for a week and do leadership activities. They were trying to get these done because of the deadlines. They were also providing other information about other camps, etc.¹³⁹

Mr. XXXXXXXX came by and they talked about what he felt needed to be in the Student's IEP, and the parent expressed a desire to see more functional programming. They discussed what had been in the Student's IEP's in the past, and one of the things this witness testified she told this parent was that they did not have a good set of adaptive behaviors or rating scales concerning that area from the Student's family. This witness testified they had asked for those, but they were not returned at evaluation time or re-evaluation time. This witness testified she pulled the FISH (Functional Independent Skills Handbook) from the Student's file so the parent could see that.¹⁴⁰

Since there are no curriculum grades for children with Special Education, they look to national products to help guide programming, and this is a product from Pro Ed they have been using with the self-contained kids the last 2-3 years. When the Student was re-evaluated 11/05 of 2014, in that time period they asked that it be completed, but they did not get it back. So, they opted and the teacher started doing it. They try to do a comparison, sending one home with the parents and they do one with the teacher, they do the same thing on the ABAS, the BAS, any sort of rating scales. They always try to gather two.¹⁴¹

Mr. XXXXXXXX and this witness added some markings, but the baseline is the teacher's markings. This witness and Mr. XXXXXXXX went through and talked about skills the parent felt should be taught at home, such as closing the shower curtain, bathing and shaving skills, and those he felt should be taught at school, like washing hands and faces and drying off, to be taught at school. They checked off things they were interested in, routines in the classroom, as well as some inclusion of some of those activities on the Student's goals and objectives.¹⁴²

This witness testified she then told the parent she would suggest he let her play with the information and work on trying to develop some proposed goals and objectives, and if he would come back before the IEP team meeting, he and the witness could go over those and see if they were acceptable and then

¹³⁹ Vol. III, P. 17, L. 19-25, Vol. III, P. 18, L. 1-5 and Vol. III, P. 18, L. 6-18

¹⁴⁰ Vol. III, P. 18, L. 19-25, Vol. III, P. 1-18

¹⁴¹ Vol. III, P. 19, L. 18-25, Vol. III, P. 20, L. 1-14

¹⁴² Vol. III, P. 20, L. 20-15, Vol. III, P. 21, L. 5-25 and Vol. III, P. 22, L. 1-4

present them to the IEP team meeting, which is what they did. Those were tweaked just a bit, and that became the basis for the Student's 2015-2016 IEP. This witness was not in charge of getting the lab done. The District picked up the cost.¹⁴³

When asked about what happened in the summer as to the lab, this witness said within public school there is always lots of red tape. The meeting for the earlier settlement came at the end of the school year, and they were making applications to the ADE, those type of things, through the public school facilities office. It has to be approved, there has to be on-site checking, the process began slowly because they were also closing the budget at the end of the year in June, and the cost was going to be over \$5,000.00 so it had to have board approval.¹⁴⁴

In the middle of July they began to get indications they could move forward, so they began looking at the building and what could and could not be done, where they might put the lab. It took a bit for the principal to look at it (they were asking him to relocate classrooms, regular teachers, those type things), then they began looking at recommendations. From there they came to an agreement as to location, probably around the end of July. Then they began getting ready for the school year and started ordering what was needed, getting their contractor set up (that was not her job to choose the contractor, she only told him--Mr. Peacock--what they wanted). They were starting in the room, things were being cleaned up. The classroom was moved to the new location, either the week before school started, maybe even at the beginning of the in-service week, around August 8th or so. They had to relocate a regular classroom.¹⁴⁵

Talking about the meeting on September 1, 2015, this witness testified she tried to reach the parents 08/24 to set up a meeting but was unable to reach them. Later that day she reached them, so they set up a time to meet with the superintendent (which is documented on this witness' communication log). They talked about the life skills lab, about field trips, about an iPad, which was part of the settlement, they talked about whether or not they needed to provide a laptop.¹⁴⁶

When asked if an iPad and laptop were provided, the witness testified the iPad was provided in May; the parents came in and were provided an iPad loaded with several apps for use at home during the summer. They went over those apps with Ms. XXXXXXXX, and the Student had it all summer to work with. The Student was also provided a laptop even though that was not a part of the settlement.

¹⁴³ Vol. III, P. 22, L. 22-25, Vol. III, P. 23, L. 1-5, Vol. III, P. 23, L. 13-24.
Vol. III, P. 23, L. 25 and Vol. III, P. 24, L. 1-12

¹⁴⁴ Vol. III, P. 24, L. 15-25

¹⁴⁵ Vol. III, P. 25, L. 3-25, Vol. III, P. 26, L. 1-20

¹⁴⁶ Vol. III, P. 27, P. 1-25, Vol. III, P. 28, L. 1-6

Neither the iPad nor the laptop were ever returned.¹⁴⁷

In that same 09/02/15 meeting, the progress on the lab was also discussed, and the person in charge of maintenance and transportation came in to explain a bit about status, and they explained to the parents they recognized they were not as fast as they wanted to be, but were moving forward. The September 1, 2015 meeting was requested by the parent. There was no deadline for the lab to be completed in the Settlement Agreement.¹⁴⁸

Talking about extracurricular activities for the Student that came out of the Sept. 1st meeting as a result of the settlement, which were not a part of the IEP, this witness testified a band aide was a way of saying student worker. This witness summarized it on A-1-41, where it says "He will not participate in choir, he will not be required to dress out in personal fitness. He will be in a senior home room and will integrate in senior activities." The last part said the Student would be in a self-contained classroom, they again discussed the location of the classroom, and Mr. XXXXXXXX gave permission for the new PT evaluation.¹⁴⁹

They were also discussing evaluations in the meeting, which is why the parent gave permission for the PT evaluation, and they were discussing the aug com evaluation that they were supposed to do out of the settlement. This witness said she made them aware she had already scheduled Bryan Ayres from Easter Seals to come and begin the tentative preliminary day one of it.¹⁵⁰

At that point the committee had concerns about the Student's verbal skills. They felt his verbal skills were very good and were improving. His teacher, Ms. Jones, also a speech therapist at that time with a bachelor's degree in speech therapy, had talked about the Student's utterances and increasing how long he could speak in the classroom, and that given prompting and things, the Student could use his words. She had concerns that technology supported the Student if he was going to be on an instrument. This witness testified they did not feel it was critical, but wanted to begin with the technology evaluation first. They moved from a full aug com evaluation to doing the technology and allowing Mr. Ayres to lead and make recommendations.¹⁵¹

Discussing changes to the Student's IEP, this witness testified they also added one goal about the mean length of utterance and added an objective at Ms. Jones' request, since she had been working

¹⁴⁷ Vol. III, P. 28, L. 8-25, Vol. III, P. 29, L. 1-11

¹⁴⁸ Vol. III, P. 29, L. 12-25, Vol. III, P. 30, L. 1-3

¹⁴⁹ Vol. III, P. 32, L. 12-25, Vol. III, P. 33, L. 1-7, Vol. III, P. 33, L. 25 and Vol. III, P. 34, L. 1-5

¹⁵⁰ Vol. III, P. 34, L. 21-25, Vol. III, P. 35, L. 1-8

¹⁵¹ Vol. III, P. 35, L. 9-25, Vol. III, P. 36, L. 1-2

with the Student in the classroom getting him to speak in longer sentences, and felt he was ready to do some intensive work in that.¹⁵²

The arrangements for bringing TinyEYE in occurred before the Sept. 1st meeting, and at the meeting they talked about how it was going to be delivered, and there was no objection. The information as to TinyEYE was relayed to the parents in Parent Fair, the back-to-school parent meeting that is required for all parents to attend. The superintendent made an announcement in that meeting about TinyEYE, saying that if they were parents of a child who received speech therapy, a new computer-based speech therapy program would be offered district-wide to any parent who wanted to participate. It was explained the program met all the state standards and that there would be a trial period and we would not be doing speech for all children. It was explained the expected start date would be the end of September, the first of October. It was further explained they would make up all therapy and provide a notice noting how many minutes of therapy needed to be provided to their child. There was a table with TinyEYE brochures, Ms. Vick was present to answer questions, and parents were told they had to give consent to release records and things, and parents signed up at that table. This Student's parents were one of the first ones to sign up.¹⁵³

This witness said an IEP is just the activities that are going to be provided to the child in a school year, not specific courses. This witness testified that when she wrote on that for this Student, she made a mistake in figuring the number of minutes—it should have been 500 minutes.¹⁵⁴ This witness testified anyone can teach an IEP if they are Special Ed certified. It does not have to be one teacher all day long.¹⁵⁵

Mr. Ayres did the technology evaluation and this witness sent a copy to the Student's parents.¹⁵⁶ They were also waiting on a PT evaluation, they were within their time frames, so when they received permission it was all there and this witness mailed a copy to the XXXXXXXXs for their information, because of the iPad, the teacher, Bryan had talked to them and had already given them preliminary data.¹⁵⁷

There was a physical therapy evaluation done of the Student by Ms. Cecelia Killough, and when it

¹⁵² Vol. III, P. 36, L. 6-15

¹⁵³ Vol. III, P. 36, L. 17-25, Vol. III, P. 37, L. 1, Vol. III, P. 37, L. 2-21 and Vol. III, P. 38, L. 2-9

¹⁵⁴ Vol. III, P. 38, L. 18-25, P. 39, L. 1

¹⁵⁵ Vol. III, P. 42, L. 24-25, Vol. III, P. 43, L. 1

¹⁵⁶ Vol. III, P. 46, L. 14-19

¹⁵⁷ Vol. III, P. 47, L. 22-25, Vol. III, P. 48, L. 1-3

came in they moved forward with the conference in December to review the evaluations.¹⁵⁸

The witness said Mr. XXXXXXXX told her during this period that the front of the Student's IEP was still wrong, and the witness said it could be fixed at the evaluation conference.¹⁵⁹

Document D-179 just numbered contains the handwriting of this witness; it reflects the Student's IEP activities would include English, math, science, transition, daily living, reading, art (which had beside it that art had been dropped at the September 1, 2015 conference), and they pulled speech up in the top to be sure it was reflected in the minutes. This witness corrected the General Education minutes to 500 and the Special Education minutes to 1,300 and noted "corrected error from conference on 9-1-15."¹⁶⁰ Also at the 12-15 meeting, they discussed the two evaluations. Ms. Killough was present and explained why she did not feel the Student needed to continue in physical therapy. She did not feel it would benefit the Student's IEP, that he had the functional skills he needed to be around the school. The committee and the Student's parents agreed. The Student's mother even made a statement that she understood.¹⁶¹ In discussing the Student's scores, if they felt the Student needed further PT, the district offered to provide transport after school to the local PT office, and the Student's father could pick up the Student from there instead of at school.¹⁶²

This witness testified the Student is eligible for PT through Medicaid. Ms. Killough explained that because of the Student's developmental delays and his lower cognitive, he would always on standardized test scores show he would meet the qualifications for medically-based PT.¹⁶³

The lab was completed the Friday before Thanksgiving.¹⁶⁴ They had lost their first semester teacher, but Ms. Fingers had been hired and she was a full-time, fully certified Special Ed teacher to complete the contract for the remainder of the year. The Student had previously been taught by Ms. Fingers in the 9th grade, and the Student's parents were as excited as this witness to have Ms. Fingers back.¹⁶⁵ This witness testified one of the things they encountered was Ms. Fingers' misconception of her

¹⁵⁸ Vol. III, P. 48, L. 4-11

¹⁵⁹ Vol. III, P. 48, L. 13-22

¹⁶⁰ Vol. III, P. 57, L. 8-25, Vol. III, P. 58, L. 1-5

¹⁶¹ Vol. III, P. 58, L. 8-22

¹⁶² Vol. III, P. 58, L. 22-25, Vol. III, P. 59, L. 1-2

¹⁶³ Vol. III, P. 59, L. 6-12

¹⁶⁴ Vol. III, P. 59, L. 20-25

¹⁶⁵ Vol. III, P. 60, L. 3-16

responsibilities. She thought she was just there to teach, that she was not going to do the paperwork, that she was not going to update any IEP's. There were many problems; Ms. Fingers did not want to do lesson plans, did not want to attend faculty meetings. This witness said she had a very frank discussion with Ms. Fingers about IEP implementation and that she had to be the one updating and implementing IEP's. They went over goals and objectives, she had some questions which this witness said she honored since Ms. Fingers had been out of the classroom away from what they were doing. These were new forms, and she need some development in that. When the 3rd nine weeks came, Ms. Fingers was resistant about putting the updates in. Other than speech, Ms. Fingers put in all the goals and objectives.

She confirmed that for the IEP team at the annual review this year. The parents did not attend that conference (May 16th). The witness said they had provided notice in an appropriate time period and made several attempts to get the Student's parents to attend, since that is a required conference and they have to move forward under the IDEA regulations. Certified mail had been sent, it was asked that the para or teacher provide Mr. XXXXXXXX notice in person when he picked the Student up in the classroom, and they provided the Student a notice. Several phone calls were also made attempting to get the parents to attend. The Student's teacher, Ms. Fingers, was very upset the parents were not in attendance, but this witness explained under the law they had to move forward. That teacher did attend, but she would not sign the conference forms.¹⁶⁶

It was a large conference, they were preparing for a Due Process hearing. The OT was there, they had speech on the phone and several people in the conference. We reviewed each goal and objective and talked about the mastery rate. Ms. Fingers verified she taught those goals and objectives and that those were her numbers. This witness was writing a summary of that conference, and any extra comments she made were added into the annual review summary.¹⁶⁷ As far as Ms. Fingers' progress numbers, this witness testified that teacher is from the old school, whether you go from zero to ten, and then you measure from ten to the next one.¹⁶⁸

When asked how the school district determines who gets to walk in graduation, this witness testified Dr. Hardrick and the principal have established the procedure that if no diploma is being received, a student does not walk in graduation. It has been a hard and fast rule.¹⁶⁹

Discussing how this affects the school district in reporting drop-out rates, this witness testified allowing students who are not actually graduating walk in graduation increases the drop-out rate,

¹⁶⁶ Vol. III, P. 63, 4-25, Vol. III, P. 64, L. 1-5

¹⁶⁷ Vol. III, P. 64, L. 8-22

¹⁶⁸ Vol. III, P. 69, L. 20-24

¹⁶⁹ Vol. III, P. 72, L. 3-8. Vol. III, P. 73, L. 11

since those students cannot be classified as graduates. It is a motivator for students to have completed what they are supposed to do if they only allow students who are actually getting a diploma to walk in graduation.¹⁷⁰

Discussing the difference in what is on the IEP and what is on the course code list and what is on the transcript for students, the witness testified the State requires Course Codes to allow them to delineate which children take what courses according to State assessment criteria. By way of an example, the witness said for every first grader there is a schedule, but that teacher does not follow that, because it is only listing that the student had reading or math or those activities in that classroom. It has nothing to do with what really happened in that classroom. An IEP is designed around an individual child's programming, and is done before courses are even assigned. It is about the activities that child needs to progress and show benefit from their education. The courses are just there to allow the State to desegregate Special Ed and specialized population data. It is important to the State for Federal reporting, how school improvement is scored. It is about how they desegregate by race, economic status, disability codes. It is all part of the No Child Left Behind requirements.¹⁷¹

In explaining this further, responsive to a question that if there are two students in a classroom, and both are doing the same thing, can they have different course numbers based on their needs, if it is a Special Ed child, the witness said codes reflect the Special Ed child received the assessment with an approved accommodation, where the regular child took the same assessment without an accommodation, and that is how it is fed through the computer to get it out; two different course codes, but the same test. Those codes are all connected to Little Rock, not to IEP's.¹⁷²

Discussing the Student going to lunch with his Special Ed classroom and non-disabled students coming in, this witness said when they integrated the Student into a regular PE class in 2014, he was going to lunch with his regular peers and had to stand in long lunch lines and it took longer for him to get his lunch and then the bell would ring and he would not have had his lunch yet, so after a meeting they set the Student's schedule back so that he was allowed to go to the front of the line. In discussing that this year, the Student went early so he could get his tray and sit down. The children, including this Student, had the ability to move around and gave him time to go out afterwards to the commons area.¹⁷³

Discussing the TinyEYE therapy, this witness said when they began with TinyEYE, they started sending data to them in early August after the open parent meeting, trying to get things hooked up to get into the system faster, get the therapy going. The TinyEYE therapist received the original

¹⁷⁰ Vol. III, P. 73, L. 12-22

¹⁷¹ Vol. III, P. 73, L. 25, Vol. III, P. 74, L. 1-25 and Vol. III, P. 75, L. 1-8

¹⁷² Vol. III, P. 77, L. 1-25, Vol. III, P. 78, L. 1-7

¹⁷³ Vol. III, P. 79, L.13-25, Vol. III, P. 80, L. 1-25 and Vol. III, P. 81, L. 1-7

Treatment Plan for the Student that was attached to the IEP, with one goal and three objectives. About the time they had the September 1st conference and started therapy, they noted and remembered that they had added the goal and objective.¹⁷⁴

October 14th was the first report from the TinyEYE therapist, and when they asked about her updating, they realized that she did not get the updated Treatment Plan or the new goal. This witness asked the therapist at that point if she would put that in and they would send her the new one, which they did. This witness testified the therapist wanted to break the objectives down more minutely, and the witness told her that she could keep her data however she wanted, they just needed to reflect she was teaching those two goals and four objectives.¹⁷⁵

When the lab was ready, there was an issue about who would use it when; Ms. Fingers wanted the lab, Ms. Oswalt was in charge of the transition program at the high school and she facilitated scheduling, and Easter Seals was in to discuss how the lab could be used. Easter Seals said they did not have labs assigned to classroom by teacher, and it was more appropriate to rotate the lab, that prep work could be done in the classroom, then do the lab work in the lab. There was another self-contained teacher who said she would teach life skills the way she always had and was not getting involved in this. So, Ms. Oswalt took Monday and Tuesday, and Mr. Fingers got first choice and took Wednesday, Thursday and Friday.¹⁷⁶

Talking about the other self-contained teacher who said she would teach as she always had, the witness testified teachers in the district have access to the materials they would need to teach daily living skills in the classroom, that a lab is not required. It is more than self-contained teachers, because a Resource teacher could have a life skill for a child and have access to whatever they need by way of appliances, mixing bowls, dishes, in their classrooms or available within the department.¹⁷⁷ There were also refrigerators in the self-contained classrooms. All the self-contained teachers also have a budget for what they need to teach.¹⁷⁸ This witness testified labs are not required under IDEA, nor are they required in State regulations. All they are charged with is being able to teach the activities in the IEP, and they make sure if something is needed there is access to it.¹⁷⁹

Talking about what if the Student's parents decide they want more time for the Student, this witness

¹⁷⁴ Vol. III, P. 81, L. 14-25, Vol. III, P. 82, L. 1-15

¹⁷⁵ Vol. III, P. 83, L. 5-22

¹⁷⁶ Vol. III, P. 84, L. 23-25, Vol. III, P. 85, L. 1-22

¹⁷⁷ Vol. III, P. 85, L. 23-25, Vol. III, P. 86, L. 1-15

¹⁷⁸ Vol. III, P. 86, L. 16-25, Vol. III, P. 87, L. 1-25

¹⁷⁹ Vol. III, P. 88, L. 3-13

said the IDEA allows for students with disabilities to attend until their 21st birthday, or through the semester after their 21st birthday. The witness said they have other children who have been allowed to stay and that is not a problem. They just do not say graduate, they say they are going to have extended time in public school.¹⁸⁰ On 05/10 the Student was eligible to graduate and receive a diploma.¹⁸¹ In discussing why the Student's name was not on the list as a graduating senior, this witness said they clearly stated in their prior written notice that the Student was in stay-put, which stops any changes to his placement and programming within his IEP, so he was not eligible for graduation until the complaint can be resolved through withdrawal, resolution or hearing determination.¹⁸² When asked if the Student's parents wanted him to receive a high school graduation diploma and participate in the graduation ceremony, this witness stated no, based on the conflict resolution meeting prior to the actual filing, where it was discussed that graduation and the awarding of a diploma would negate the Student's rights to things after that.¹⁸³

Based on the 05/10/16 prior written notice of action, stating the Student had met the criteria for a change of placement by graduating with a regular diploma based on the progress and mastery of goals on his current IEP and the completion of the course of Student within his Transition Plan, that means he did meet the criteria for graduation, and if nothing else had happened, he could have walked across the stage, been handed a diploma, and been a high school graduate that might.¹⁸⁴

The Student received a dedicated iPad with apps in May, 2014 from the District, and he also received a laptop in the Fall. The classroom had an iPad and they had access to those types of materials, so the Student had access to an iPad at home and at school.¹⁸⁵ The Student had access to those types of technology supports, and they reinforced he needed to use his iPad for technology.¹⁸⁶ More time for reading was provided for the Student by increasing his Special Ed minutes. Transition includes reading skills, and both teachers were implementing this with the Student.¹⁸⁷

As to the TinyEYE therapy, this witness testified the Student's parents signed up and never complained about it, and Mr. XXXXXXX's testimony in this hearing is the first time this witness heard

¹⁸⁰ Vol. III, P. 89, L. 4-13

¹⁸¹ Vol. III, P. 103, L. 18-20

¹⁸² Vol. III, P. 110, L. 20-25, Vol. III, P. 112, L. 1-6

¹⁸³ Vol. III, P. 115, L. 5-25

¹⁸⁴ Vol. III, P. 119, L. 16-25, Vol. III, P. 120, L. 1-8

¹⁸⁵ Vol. III, P. 137, L. 12-23

¹⁸⁶ Vol. III, P. 139, L. 11-18

¹⁸⁷ Vol. III, P. 141, L. 14-15, Vol. III, P. 141, 3-9

any concerns about it.¹⁸⁸

The witness was given and read a part of the May 11th, two days before graduation, letter from the Parents' counsel to Dr. Hardrick, the school superintendent, part of which said "Let me make our position perfectly clear. Mr. and Ms. XXXXXXXX do not want XXXXXXXX to receive his graduation diploma until our hearing in July has been concluded, as otherwise they could arguably forfeit their claims."¹⁸⁹ They are required to hold an evaluation conference to determine eligibility (for graduation), and if an outside evaluation comes in, they are required to do that. The PT evaluation and the technology evaluation for the Student were both district evaluations paid for by the district. They were not independent evaluations or for eligibility.¹⁹⁰

The witness received an email from Dr. Hardrick 12/29/14 to Sharon Streett, Lisa Birmingham (this witness), Brad Beavers, Subject, Forward: Withdrawal of Contents (sic), with two attachments. The attachment Withdrawal of Consent.¹⁹¹ The witness testified all the minutes missed by the Student not having speech therapy before starting with TinyEYE were made up.¹⁹² They were made up during the school day, just a general part of the school day, because speech and Special Ed are the same minutes, and they are pulling them out, and it is documented.¹⁹³

CAMILLE XXXXXXXX

The Student's mother testified they had not begun their search for local post-secondary educational programs for the Student.¹⁹⁴ Mrs. XXXXXXXX testified they would not be sending the Student back to Forrest City at this time.¹⁹⁵

This witness said she did not agree with some of Ms. Birmingham's testimony-- at the end of May last year, this witness said no one reached out to them through the summer as to making up missed therapy sessions, that she (the witness) is not sure the speech was made up the school year of 2015-2016, she received no verification speech was made up, then they find out by notification of a letter

¹⁸⁸ Vol. III, P. 145, L. 8-20

¹⁸⁹ Vol. III, P. 156, L. 7-24

¹⁹⁰ Vol. III, P. 158, L. 21-24, Vol. III, P. 159, L. 1-5

¹⁹¹ Vol. III, P. 162, L. 1-7, Vol. III, P. 162, L. 16-18

¹⁹² Vol. III, P. 166, L. 10-15

¹⁹³ Vol. III, P. 166, L. 16-25

¹⁹⁴ Vol. III, P. 169, L. 21-15, P. 170, L. 1

¹⁹⁵ Vol. III, P. 170, L. 5-15

saying there was no speech therapy. This witness said she had no knowledge of coming to the district fair on the Saturday.¹⁹⁶ This witness denied attending the Back-to-School fair, the signature shown is not her signature, and she did not know about TinyEYE until receiving the letter in the mail.¹⁹⁷ This witness did not say she did not know whether the therapy was made up, she is just saying she had no proof it was made up.¹⁹⁸

Being asked if there were any other services the Student should have received on his IEP that this witness thinks were not provided or that she does not know if they were provided, the witness testified PT was one that he should have received, that it should never have been taken away because there was no formal meeting on that, they did the consent for a re-evaluation but that never happened until a year later.¹⁹⁹ This witness testified it was her signature on an undated letter withdrawing consent.²⁰⁰

This witness testified when they were in the meeting in December of 2015, Ms. Killough went over her evaluation with her, and she (the witness) did not agree that the Student did not qualify for PT services; this witness said the need was great. She said Ms. Killough did not explain the difference in standard between needing it medically and needing it educationally.²⁰¹

In answering the questions whether she thought there were any other services on the Student's 2015-2016 IEP he did not receive, this witness said she did not believe he benefitted at all from PE. She also had concerns about the CBI lab, she did not think he benefitted at all from that since they did not get in until February, and she did not think he was prepared to live on his own or even in a group home.²⁰²

The witness testified she believed Ms. Fingers implemented the IEP to the best of her ability.²⁰³ In discussing the TinyEYE therapy, this witness testified she did not believe the Student benefitted from

¹⁹⁶ Vol. III, P. 172, L. 14-25, Vol. III, P. 173, L. 1-25 and Vol. III, P. 174, L. 2-7

¹⁹⁷ Vol. III, P. 175, P. 9-25, Vol. III, P. 176, L. 1-25 and Vol. III, P. 177, L. 1-8

¹⁹⁸ Vol. III, P. 19-23

¹⁹⁹ Vol. III, P. 182, L. 25, Vol. III, P. 183, L. 1-15

²⁰⁰ Vol. III, P. 185, L. 1-19

²⁰¹ Vol. III, P. 186, L. 11-25, Vol. III, P. 187, L. 1-19

²⁰² Vol. III, P. 190, L. 20-25, Vol. III, P. 191, L. 1-2, Vol. III, P. 192, L. 6-25 and Vol. III, P. 193, L. 1-3

²⁰³ Vol. III, P. 193, L. 6-7 and Vol. III, P. 194, L. 1-4

it at all since there were distractions and the Student did not do well with distractions.²⁰⁴ She bases this on the Student's communication.²⁰⁵

MARYANGELA HOFFPAUIR:

This witness is the occupational therapist for the school district. She has treated this Student for the 4 years there in the district, and knew him prior to that from preschool, when he was in the preschool where she worked. She also knew the Student and his mother from a personal point of view from the Down's Syndrome Association of Northeast Arkansas. She also has a Down's Syndrome child.²⁰⁶ In testifying how she decided what to work on with the Student in OT, the witness testified they do standardized testing, and then in addition do clinical observation, then she always writes additional functional goals for any of the children in public schools, things like self-care goals.²⁰⁷

Approximately the first week in May this year, Ms. Birmingham asked if this witness had addressed any of the Student's dressing types of goals. In looking at the notes, they had worked on dressing skills three different times during the year, so the witness said she was asked to readdress that. Although the Student was independent with it when they had last worked on it, Ms. Birmingham wanted to make sure he was doing what he needed to do out of concerns that had been addressed. Then this witness sent therapists seven times, and the Student was only at school one of those seven times the last three weeks of school when they went. Therefore, they really did not get to readdress that.²⁰⁸

The witness testified the Student's dressing skills were that he could toilet independently, usually without problems. He is able to pull his pants up and down and can zip the zipper. Most of the pants, he can get his snap done. Occasionally, he has a little bit of difficulty with it. He can buckle his belt; sometimes it takes cues to remind him to slide the belt back through the loop. They also worked on some upper body dressing. On one of the notes she pulled to remind herself, he had a sweat short on, and cb had moderate difficulty getting it off (she thought it was because of a snug fit), and was able to get it back on. He was able to button and unbutton his oxford shirts. He is a big boy, and sometimes needs help approximating the zipper on his jacket together, but once he sees the zipper and you help him line it up, he can pull the zipper up. He can also unzip the zipper. He can do a lot, but often waits for a verbal cue. He can dress himself, which is not to say he wouldn't put on something backwards,

²⁰⁴ Vol. III, P. 196, L. 1-25

²⁰⁵ Vol. III, P. 197, L. 8-13

²⁰⁶ Vol. III, P. 201, L. 2-13

²⁰⁷ Vol. III, P. 202, L. 9-17

²⁰⁸ Vol. III, P. 202, L. 18-25, Vol. III, P. 203, L. 1-10

but if you tell him he would know how to stop and try to figure it out how to put it in order.²⁰⁹ What the witness characterized as an oxford shirt is actually a polo type shirt as to buttons.²¹⁰ A lot of the functional goals this witness finds for her children are using the standardized testing on BOT (the Bruininks-Oseretsky Test of Motor Proficiency) for their academic goals to make sure they qualify for OT academically. Medicaid requires have treatment diagnoses.²¹¹ When asked if she was aware of the lab, this witness said yes, she had used it.²¹²

In again talking about sending therapists to address concerns but the student was not at school, this witness was aware that seniors get out early, but she said when they had the meeting on May 7th they were informed the Student's graduation had been placed on hold, so he should still be coming to school during the next few weeks.²¹³ The witness said later that the Student's mother showed the witness graduation pictures the last week of school, so as of that time she knew it was the mother's intent that the Student graduate.²¹⁴ The student received 60 minutes weekly of therapy, and everything was provided until they did a recount at the annual review meeting to make sure anything not done was made up. They were short one hour, and she sent therapists there six or seven times to make it up but, as she testified earlier, he was not there.²¹⁵ She did not send periodic reports to the parents, but testified they are always welcome to have their notes at any time, and she sent out nothing but annual reviews telling how the Student did on the goals and objectives.²¹⁶

The Student was last seen May 17; he was also seen twice in the first week of May. This witness also had an assistant who provides some of the Student's therapy.²¹⁷

CECELIA KILLOUGH

She is the district's physical therapist. She serviced this Student two years ago. Discussing dismissing this Student from physical therapy after doing a PT evaluation on him, this witness testified she uses

²⁰⁹ Vol. III, P. 203, L. 11-25 and Vol. III, P. 204, L. 1-18

²¹⁰ Vol. III, P. 14-23

²¹¹ Vol. III, P. 209, L. 15-25, Vol. III, P. 210, L. 17-18

²¹² Vol. III, P. 212, L. 7-10

²¹³ Vol. III, P. 214, L. 1-21

²¹⁴ Vol. III, P. 217, L. 1-5

²¹⁵ Vol. III, P. 217, L. 7-20

²¹⁶ Vol. III, P. 218, L. 8-17

²¹⁷ Vol. III, P. 227, L. 8-17, Vol. III, P. 229, L. 1-3

a secondary assessment, not an approved testing tool by Medicaid, but one she does to make sure she does not miss anything; she also uses standardized testing called the BOT-2.²¹⁸

In discussing her evaluation, the witness said she does a medical/social history, given to her through the school system, she does clinical observation, watching to see how he moves and does things, she notices if there are sensory issues, and how they interact with others in the room. She said the relevant behavior is how he cooperated, if he came willingly or not. The Student has low muscle tone, common with his diagnosis, he has bilateral flat feet, which is also low tone. When he ran, he did not have a true flight pattern, which is when running, there is a point where both your feet are off the ground at the same time.²¹⁹ He has decreased speed when walking, it took extra time to go over rough surfaces, it took extra time when there was a surface change, but he did not stumble or fall. This is the developmental test, the BOT-2, Bruininks. It is the normal testing for 4 to 21. It measures stability, mobility, strength, coordination and object manipulation. They also have stepping sideways over a balance beam, one-legged side hopping, two-legged side hopping, , the long-jump, push-up, sit-up. Wall sit as if you are a chair against the wall, and the V-up, like Superman flying through the air when on your stomach.²²⁰

To qualify for services under Medicaid standards, you had to be at least a minus 1.5 standard deviation below the mean.²²¹ The Student here is a community ambulator, meaning he can walk around without stumbling and falling, does not need a cane or anything else to get around. He could walk on uneven surfaces, he could step up and down on a curb with fair balance, he can walk up and down 21 steps, which is the first to second floor, and had an alternate gait pattern, where you put one foot on each step instead of two feet on each step. He could stand on a line one foot in front of the other for five seconds. He could walk forward on a line with both feet six steps without stepping off. He could stand on one leg for three seconds and walk heel to toe (your feet are within three inches of your toe) for two steps on the line. He attempted to run, he could broad-jump 18 inches, he could throw a tennis ball 12 feet overhand and 10 feet underhand. He kicked with fair control and used opposing arms and legs. That is a more advanced pattern. She recommended orthotics, which can help with his bilateral flat feet to improve gait sequence. He can get up and down off the floor, he can roll over and go from sit to stand independently. He can move around without assistance. Then she did the School Functional Assessment to make sure she did not miss anything.²²²

Explaining the difference between the Student being eligible for PT in Medicaid and not needing it at

²¹⁸ Vol. III, P. 230, L. 5-9, Vol. III, P. 231, L. 7-25 and Vol. III, P. 232, L. 1-13.

²¹⁹ Vol. III, P. 233, L. 3-25, Vol. III, P. 234, L. 1-7

²²⁰ Vol. III, P. 234, L. 18-25, Vol. III, P. 235, L. 1-22

²²¹ Vol. III, P. 236, L. 2-5

²²² Vol. III, P. 236, L. 9-25, Vol. III, P. 237, L. 1-5 and Vol. III, P. 238, L. 1-15

school, this witness said the Student is eligible for PT because his BOT-2 scores show significant delay of more than minus 1.5 standard deviations below the mean. In the school system, the school is based more on the functionality, how it could affect and improve the IEP, so what she looks for in the school setting is can they get around campus independently without stumbling or falling, can they go to the cafeteria, can they carry their tray, get in and out of their seat, go up and down stairs. Transportation was not relevant here because he is driven to school by his parents and does not take the bus. The witness went on to list more skills, and said the Student has good functional life skills.²²³

At age 17, this witness recommended a daily fitness program—walking, riding his 3-wheel trike, going to PE classes—would benefit him more than therapy in the school, and made that recommendation to the IEP team for their decision.²²⁴ The Student still had gross motor delays/deficits when she released him from PT.²²⁵

If the witness had a clinic, and the Student's parents brought the Student to that clinic, she could provide PT for him and Medicaid would pay for it (but this witness testified she did not have a clinic, and that would be a conflict of interest anyway).²²⁶ She did not discuss this with the parents, but said in the IEP meeting it was suggested that if the parents wanted to seek outside services, the school would transport him if the parents would pick him up from the therapy.²²⁷ The witness testified school therapy is not intended to meet all the physical needs of a child, only as long as it benefits his IEP. In the school, they are functional as long as they can get around and do everything required of them in the classroom.²²⁸ This Student qualifies for PT in a non-school model, so under a medical model, he would qualify. What she told the parents was that the Student was functional within the school system.²²⁹ When asked if she had heard of Delta Rehabilitation Therapy, this witness said there is one in Wynne. When advised that doctor had recommended 150 minutes weekly for the Student, this witness was not sure the Student would qualify for that much. The witness said that was outpatient rehab, but she was surprised at the number of minutes.²³⁰

²²³ Vol. III, P. 238, L. 16-25, Vol. III, P. 239, L. 1-4 and Vol. III, P. 239, L. 11-17

²²⁴ Vol. III, P. 240, L. 17-25, Vol. III, P. 241, L. 1-13

²²⁵ Vol. III, P. 243, L. 1-25

²²⁶ Vol. III, P. 247, L. 14-18, Vol. III, P. 247, L. 22-25 and Vol. III, P. 248, L. 1-12

²²⁷ Vol. III, P. 248, L. 13-21

²²⁸ Vol. III, P. 250, L. 12-18

²²⁹ Vol. III, P. 250, L. 23-25. Vol. III, P. 253, L. 14-16

²³⁰ Vol. III, P. 254, L. 3-25, Vol. III, P. 255, L. 1-11

CONCLUSIONS OF LAW and DISCUSSION

Current case law holds that “the burden of proof absent a State Statute to the contrary in an administrative hearing challenging an IEP is properly placed upon the party seeking relief, whether that is the disabled child or the school district.”²³¹ It is settled that staff shortages, even unexpected ones, will not excuse a district from implementing IEPs. *Mesabi East Independent School District #2711 v. Minnesota State Educational Agency*, 110 LRP 15180.

Compensatory education is a proper method to provide FAPE to children with disabilities who were entitled to, but were denied, FAPE. *Letter to Kohn v. Office of Special Education and Rehabilitative Services*, 17 LRP 1319. If an Independent Hearing Officer finds denial of FAPE which affects a student’s ability to meet objectives, even though not a willful denial, the Independent Hearing Officer may take into account equitable considerations in determining the amount of compensatory education and the type of services to be provided. *Ipswich Public Schools v. Massachusetts State Educational Agency*, 104 LRP 29571.

FAPE as defined for the purposes of this part are:

- a) To ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living;
- b) To ensure that the rights of children with disabilities and their parents are protected;
- c) To assist States, localities, educational service agencies and Federal agencies to provide for the education of all children with disabilities; and
- d) To assess and ensure the effectiveness of efforts to educate children with disabilities.

Case law is well settled that, while IEP’s are subject to considerable procedural and substantive requirements, IEP’s are not required to “furnish[] ... every special service necessary to maximize each handicapped child’s potential,”²³² What the IDEA requires is that IEP’s provide a “basic floor of opportunity,” consisting of services which are “individually designed to provide educational

²³¹ *Schaffer v. Weast*, 44 IDELR 150 (U.S.2005)

²³² *Board of Education v. Rowley*, 458 U.S. 176, 199 (1982)

benefit”²³³ to a child with a disability.

Pursuant to Part B of the IDEA, States are required to provide FAPE for all children with disabilities between the ages of three (3) and twenty one (21).²³⁴ In 1982. In *Hendrick Hudson Dist. Bd. Of Educ. V. Rowley*, the U.S. Supreme Court addressed the meaning of FAPE and set forth a two part analysis that must be made by Courts and Hearing Officers in determining whether or not a school district has failed to provide FAPE as required by Federal law.²³⁵ Pursuant to *Rowley*, the first inquiry a Court or Hearing Officer must make is that whether the State, i.e., the local educational agency or district, has complied with the procedures and regulations as set out in the IDEA. Therefore, it must determine whether the IEP developed pursuant to the IDEA procedures was reasonably calculated to enable the student to receive educational benefits.²³⁶ From the initial contact with the district, there has always been an IEP in place for the student.

Regardless of the first inquiry, that of whether the District has complied with the procedures set forth in the IDEA, the Hearing Officer notes that Counsel for the Petitioner in this case did not raise any procedural violations of the IDEA and as such, this Hearing Officer hereby finds that the District did not deny FAPE to the student on account of any violation of any procedural issues.

Having analyzed the first prong of the FAPE analysis, it is now necessary to consider whether or not the District substantively denied FAPE to the student i.e., whether the district failed to provide an IEP that was reasonably calculated to enable the student to receive educational benefits.²³⁷ Pursuant to *Rowley*, the goal of the IDEA is “more to open the door of public education to handicapped children on appropriate terms than to guarantee any particular level of education once inside.”²³⁸ Essentially, an IEP is not required to be designed to “maximize the student’s potential commensurate with the opportunity provided to other children” thus making the standard that the District must meet very minimal.²³⁹ However, what constitutes educational benefit when dealing with a disabled student must be determined on a case by case basis. Specifically, “the IDEA requires Public School Districts to educate ‘a wide spectrum of handicapped children,’ and the benefits obtained by children at different

²³³ *Board of Education v. Rowley*, 458 U.S. 176, 199 (1982)

²³⁴ 20 U.S.C. 1412(a); 34 C.F.R. 300.300A(a)

²³⁵ 458 U.S. 176, 206-07 (1982)

²³⁶ Id

²³⁷ 34 C.F.R. 300.511(d); 20 U.S.C. 1415(f)(3)(B)

²³⁸ *Rowley*, 458 U.S. 176, 206-07 (1982)

²³⁹ *CJN v. Minneapolis Public Sch.*, 323 F.3rd 630, 63-68 (8th Cir.), cert denied, 540 U.S. 984 2003

ends of the spectrum will ‘differ dramatically.’”²⁴⁰

After hearing each witness and evaluating their credibility and reviewing the evidence presented in the transcript of the Due Process Hearing, the hearing officer finds the following:

The Student was provided FAPE under the IEP in the Forrest City School District. The Student’s IEP was reasonably calculated to provide an educational benefit, and services mandated by the IEP as well as services for Speech Therapy, Occupational Therapy and Physical therapy were delivered. A lack of these services could constitute a denial of FAPE.

Having determined that the District did provide FAPE to the student 2015-2016 school year it is noted that there is no requirement in the IDEA that a child shall be provided with the specific educational placement that his or her parents prefer.²⁴¹ Additionally, nothing in the IDEA requires that a school district maximize a student’s potential or provide the best possible education at the expense of the public.²⁴² Pursuant to *Rowley*, a districts obligations under the IDEA are satisfied when a child receives FAPE, i.e., “personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.”²⁴³ As addressed previously, a public school district has a responsibility under the IDEA to offer eligible children instruction and programming reasonably calculated to provide some educational benefits.²⁴⁴ In addition, the IDEA requires that disabled children be educated in the “least restrictive environment.”²⁴⁵ In this regard, the IDEA reflects a “strong preference” that children with disabilities attend regular classes with non-disabled children.”²⁴⁶ No such reimbursement or compensatory education is Ordered.

ORDER

After due consideration of the record, evaluation of the witnesses, review of the evidence and the foregoing Findings of Fact and Conclusions of Law, it is hereby found that no relief sought by

²⁴⁰ C.B. by and through his parents, B.B. and C.V. v. Special School District No. 1, Minneapolis MN, , 262 F. 3rd 981 (8th Cir. 2011) (quoting *Rowley*, 458 U.S. 176, at 202 (1982))

²⁴¹ *Rowley*, 458 U.S. 176, at 203 (1982)

²⁴² T. F. v. Special School District St. Louis Co., 449F 3rd 816, 821(8th Cir. 2006)

²⁴³ Fort Zumwalt Sch. Dist. v. Clynes, 119 F. 3rd 607 612 (8th Cir. 1997)

²⁴⁴ *Rowley*, 458 U.S. 176, at 203 (1982)

²⁴⁵ Blackmon v. Springfield, 358 F. 3rd 999, (8th Cir. 1998)

²⁴⁶ 20 U.S.C. 1412 (a)(5)(A)

Petitioner is Ordered.

FINALITY OF ORDER AND RIGHT TO APPEAL

The decision of this Hearing Officer is final and shall be implemented unless a party aggrieved by it shall file a civil action in either Federal District Court or a State Court of competent jurisdiction pursuant to the Individuals with Disabilities Education Act within ninety (90) days after the date on which the Hearing Officer's Decision is filed with the Arkansas Department of Education.

Pursuant to Section 10.01.36.5, *Special Education and Related Services: Procedural Requirements and Program Standards*, Arkansas Department of Education 2008, the Hearing Officer has no further jurisdiction over the parties to the hearing.

It is so Ordered.

Michael McCauley

Michael McCauley
Due Process Hearing Officer