

# ARKANSAS DEPARTMENT OF EDUCATION

## SPECIAL EDUCATION UNIT

***** and *****	)	PETITIONER
on behalf of ,	)	
	)	
*****	)	
	)	CASE No. H-2015-23
vs.	)	
	)	
ROGERS SCHOOL DISTRICT	)	RESPONDENT

---

NOW on this 24<sup>th</sup> day of August, 2015 came on for hearing Petitioner's Request for a Due Process Hearing, Petitioners, \*\*\*\*\* represented by Theresa Caldwell, Attorney and Respondent, Rogers School District, represented by Vicki Vasser, Attorney. This cause was submitted upon the pleadings, the testimony of witnesses, argument of Petitioner and Respondent, and other matters and things from all of which the Hearing Officer finds and Orders. Hearing in this matter was held on August 24<sup>th</sup>, 25<sup>th</sup> and 26<sup>th</sup>, 2015. Based upon the evidence presented and admitted into the record of this proceeding, I make the following findings of fact and conclusions of law:

### ISSUES FOR HEARING

Student, was an eighth grade student at Oakdale Middle School, Rogers School District who has subsequent to the filing of the request for Due Process Hearing was withdrawn from the District by the parents.:

Issues: Alleged denial of FAPE by:

- 1) Failing to provide an appropriate IEP for the student;
- 2) Failing to provide an appropriate goals and objectives;
- 3) Failing to provide related services;
- 4) Failure to implement services on the students IEP;
- 5) Failure to parents periodic progress on students progress on goals and objectives.

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.

## PROCEDURAL HISTORY

On March 26<sup>th</sup>, 2015, a Due Process Complaint Notice was received by the Arkansas Department of Education from \*\*\*\*\* (“Parents”) of \*\*\*\*\* (“Student”). The Parents requested the hearing because they believed that the Rogers 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 2<sup>nd</sup>, 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 April 25<sup>th</sup> to the satisfaction of the Parent. Because the issues were not resolved, Pre-Hearing briefs were required on May 28<sup>th</sup> 2015 from the parties with a Pre-Hearing Conference scheduled for May 29<sup>th</sup>, 2015. The Due Process Hearing was convened and held August 24<sup>th</sup>, 25<sup>th</sup> and 26<sup>th</sup>, 2015. The attorney for the Petitioner Parent was Ms. Theresa Caldwell, Esq., and the attorney for the Respondent District was Vicki Vasser, Esq.

## FINDINGS OF FACT

- 1) Student diagnosed w/autism at age 3 in Little Rock, AR, non-verbal, primitive communication skills, struggles w/daily life activities
- 2) Preschool at Easter Seals in Little Rock;
- 3) At age 5 husband found school in Ohio specifically for autistic students and providing ABA therapy, so and he student moved to Ohio while mother stayed in Little Rock to finish school;
- 4) Student made progress in Ohio with communication;
- 5) When mother and husband divorced, mother pulled student out of school in Ohio and moved him back to public school in Little Rock with her;
- 6) Student was regressing after mother pulled him out of ABA therapy in Ohio;
- 7) There was no ABA therapy in Little Rock, mother contracted for ABA with a therapy provider from Joplin who would come to Arkansas to provide home therapy for student;
- 8) Student cannot function with fine motor skills;
- 9) Student has seizure disorder, but has not had one in 4 years;
- 10) When student in Bentonville, student got limited ABA therapy in school;
- 11) While in Bentonville, student had IEP developed for 7<sup>th</sup> grade school year;
- 12) When student started at Rogers School District he had 2100 minutes special education time, 60 minutes speech therapy weekly, 60 minutes occupational therapy weekly and 30 minutes physical therapy weekly; and,
- 13) In second year (2014-2015 school year) Rogers did a re-evaluation.

## ABSTRACT OF WITNESS TESTIMONY

### PARENT (MOTHER)

Student diagnosed with autism at age 3 in Little Rock, Arkansas, non-verbal, primitive communication skills, struggles with daily life activities<sup>1</sup> Student was enrolled in Preschool at Easter Seals in Little Rock, and at age 5 nothing there to fit his needs. His father found a school in Ohio specifically for autistic students and providing ABA therapy, so and he and the student moved to Ohio while mother stayed in Little Rock to finish school.<sup>2</sup>

Mother's definition of ABA therapy: a term used to describe way of teaching student w/autism, & some other disabilities respond to it well, they break down the task you want the student to learn into little bitty pieces with reinforcement.<sup>3</sup> Student made progress in Ohio with communication.<sup>4</sup> When she and husband divorced, she pulled student out of school in Ohio and moved him back to public school in Little Rock w/her, and it was "pretty clear" student was regressing after she pulled him out of ABA therapy in Ohio.<sup>5</sup> With no ABA therapy in Little Rock, she contracted for ABA therapy with a provider from Joplin who wld come to AR to provide home therapy for student.<sup>6</sup>

Student cannot function with fine motor skills.<sup>7</sup> Student cannot perform basic skills, even hold fork properly, gait is very clumsy.<sup>8</sup> Because of fine motor disability, student cannot turn door handles w/covers on them. The Student has a seizure disorder, but has not had a seizure in 4 years.

When the student was in the Bentonville School District, the student got limited ABA therapy.<sup>9</sup> While in Bentonville, student had an IEP developed for 7<sup>th</sup> grade school year.<sup>10</sup> When he started at

---

<sup>1</sup>	Volume 1	
	12	10-17
<sup>2</sup>	13	21-24
<sup>3</sup>	13	25
<sup>4</sup>	13	3-5
<sup>5</sup>	13	10-20
<sup>6</sup>	13	10-20
<sup>7</sup>	16	15-17
<sup>8</sup>	16	18-25
<sup>9</sup>	14	2-4
<sup>10</sup>	15	7-11

Rogers the next year he had 2100 minutes special education time, and had 60 minutes speech therapy weekly, 60 minutes occupational therapy weekly, 30 minutes physical therapy weekly.<sup>11</sup> The Bentonville IEP had adaptive PE and social skills.<sup>12</sup> Mother does not know of any dedicated time for adapted PE in Rogers, thinks maybe social skills were interacting with the other students in Encore.

Bentonville IEP said “Student needs one on one assistance with all skills.” This was changed on the Rogers IEP to just show seizure plan; mother says it was always discussed with Rogers that he needed one on one assistance and that is why the school chose the classroom into which they put him (actually zoned for Lingle, but parents were told Oakdale was appropriate place for student’s needs).<sup>13</sup>

Goals from IEP plan in Bentonville as to speech therapy, OT and PT, mother assumed Rogers was going to try and continue them, says no one told her why changes were made, that she assumed it was because they had done their own assessment.<sup>14</sup> It was not until the second year(2014) Rogers did a re-evaluation, because it was due. A meeting was held to discuss conducting the evaluation of the student, but she could not tell anything had been changed.<sup>15</sup> At the annual review, they had to get mother’s consent to do needed assessment at Rogers, but school did not intend on changing his IEP because LaTangie already told mother she was just continuing the previous IEP that Jamie Hernandez had done.<sup>16</sup>

At Rogers, IEP for student went from having 2100 minutes of special education down to 1700 minutes, mother has no idea why, and minutes were changed to 400 general education in Rogers when he has zero minutes of general education in Bentonville; mother has no idea what the general education minutes were for.<sup>17</sup>

---

<sup>11</sup>	15	18-25
	16	1-10
<sup>12</sup>	17	5-6
<sup>13</sup>	75	10-25
<sup>14</sup>	76	7-17
<sup>15</sup>	76	25
	77	25
	78	1-2
<sup>16</sup>	79	6-25
<sup>17</sup>	70	10-25
	71	1-2

Mother assumes the Encore had to do with interaction with other students who were general education students in the school, but does not know for sure.<sup>18</sup>

Student rode school bus in Bentonville, excited, would drag backpack to bus, 15-20 minutes ride, there was an aid on bus for “them”.<sup>19</sup> Student needed 1 on 1 assistance with all skills, and when she saw student in Bentonville, he always had a para, but one not assigned to him, something she feels he still needs.<sup>20</sup>

When they moved out of Bentonville school district, they weren’t really upset about changing school districts, because they didn’t think Bentonville school district supported student “in the fact that some of his teachers were just very mean to him.”<sup>21</sup> Mother says daily complaints by Bentonville, but she blames Bentonville for giving student Mountain Dew in mornings (he would work well for that, but then was hyperactive, so locked in seclusion room, or have a heavy vest put on him and go outside in August heat (mother says he was reacting to what they gave him, but they saw it as behavioral issue).<sup>22</sup> Mother says Rogers told her they did not use seclusion/heavy vest techniques for any behavioral issues.<sup>23</sup> When they started the ABA in-home therapy from Joplin, it was just about the time they changed school districts to Rogers in 2013.<sup>24</sup> the ABA therapy began in July, started Rogers school district in October.<sup>25</sup>

Behavioral issues, when she went to Rogers, met with Rick, then w/teacher Jamie Hernandez, & as/every teacher, she let me know student is and has always been a flight risk, a runner, like a dog chasing a squirrel and cannot be verbally coached back. When outside, parents hold student’s hand or keep finger in his belt loop.<sup>26</sup>

---

<sup>18</sup>	74	4-8
<sup>19</sup>	17	11-25
<sup>20</sup>	18	4-19
<sup>21</sup>	14	7-11
<sup>22</sup>	18	24-25
<sup>23</sup>	19	18-22
<sup>24</sup>	14	21-25
<sup>25</sup>	15	1-6
<sup>26</sup>	20	1-19
	21	18-19
	22	7-9

Mother stated student got out of Little Rock preschool twice, out to their parking lot, at Easter Seals he got out to fenced area and in Bentonville to their playground.<sup>27</sup> In March 2014 student got out at Rogers, out of the classroom, out of the building and into the parking lot.<sup>28</sup> After the incident at Rogers, they had an elopement meeting and met with principal, vice-principal and the teacher, but never got full details (husband requested they look at video cameras).<sup>29</sup> At that meeting, she requested student have own aid for safety and was told they would have to have another meeting with special services or administration on that request.<sup>30</sup> All the parents were concerned about was the student's safety.<sup>31</sup> At that meeting Rick Taylor also there (special services rep. who got them enrolled in Rogers). The elopement was in March however, parents received nothing in writing until the "resolution conference" Mother says "they" had a letter from the classroom aid telling them what had happened, but parents knew zero till this resolution meeting.<sup>32</sup> Parents were told at elopement meeting that no law required school to make incident report if student was not hurt or injured.<sup>33</sup>

Mother thinks the "resolution conference" was in May, when they received the document the aide had written about the incident.<sup>34</sup> Parents learned from that document Tracy was one who noticed student was gone and the teacher was at lunch and that there were two paras in the room with nine students.<sup>35</sup>

---

<sup>27</sup>	22	10-21
<sup>28</sup>	23	19-22
	24	5-10
<sup>29</sup>	24	22-25
	25	1-11
<sup>30</sup>	25	13-19
<sup>31</sup>	26	7-8
<sup>32</sup>	36	21-25
	37	2-7
	38	6-11
<sup>33</sup>	70	3-6
<sup>34</sup>	40	14-18
<sup>35</sup>	41	1-5
	41	16

The classroom at Rogers, has different areas for different things.<sup>36</sup> Mother says Classroom door was always open, never closed to secure students inside. Says “they” (school) had seen the student playing with doorknobs before.<sup>37</sup> Teacher when student got out was LaTangie Smith, mother voiced her complaint that more support needed in the classroom, and Ms. Smith verified that in the elopement meeting.<sup>38</sup>

When student began at Rogers, was told by his teacher, Jamie Hernandez, they did not provide ABA therapy, rather, they provided a different type therapy and went into detail as to what it was; Mother says she did not know they had a right to ABA therapy, was just told not provided there.<sup>39</sup> Mother says the ABA therapist for home programs contacted the teacher trying to collaborate/work on incorporating home program with school program but it seemed school program counteracted and did not reinforce ABA therapy.<sup>40</sup> Says she was told since ABA not part of the IEP, they could not follow anything student’s therapist suggested.<sup>41</sup>

Parents tried to work on school reiterating sign language they were doing at home, but do not know if done at school. Mother angry when she learned Rogers should have given student ABA therapy, as they were babysitter till he got home to ABA therapy, & they could not even do that since he escaped.<sup>42</sup> Student had just turned 14 when he escaped at Rogers.<sup>43</sup> Student’s skills now, since pulling him out of Rogers focus on ABA home therapy and parents are working on head nodding, new for him, as he would never let you know when he needed or wanted anything.<sup>44</sup> Now he can

---

<sup>36</sup>	42	17-18
<sup>37</sup>	44	13-15
	44	18-19
<sup>38</sup>	26	9-20
<sup>39</sup>	27	7-16
<sup>40</sup>	27	18-25
<sup>41</sup>	28	1-3
<sup>42</sup>	28	8-20
	28	23-25
	29	2-13
<sup>43</sup>	29	17-20
<sup>44</sup>	33	17-25

seek them out if he wants something, will tap on shoulder, bring item to them, use sign for “help”.<sup>45</sup>  
Pulled student out of Rogers in March, after the elopement meeting.<sup>46</sup>

Parents provide student’s transport, but on both IEP’s it has transportation; student did use bus transport in Bentonville, but since they live in Garfield, Rogers told them student’s bus ride would be over 2 hours, that mother would need to meet with special services; did meet with Tita DeVore, but student’s needs could not be accommodated, so parents just provided transport.<sup>47</sup> It’s 30 minutes for a parent to take student to school in Rogers. As to getting an aid for student, principal said meet with administration, but parents did not do so, met with attorney instead.<sup>48</sup>

Cost for ABA therapy, parents paid \$125.99 weekly (up to \$500 mo.) at first, but insurance started picking up copays and so they paid nothing out of pocket; they have changed insurance, so they will be paying out of pocket starting next month. Last year, they paid almost \$6,000 out of pocket, but that was before 2 insurances started to pay. The \$6,000 was July 2013 through June 2014. Mother is asking for \$6,000 for ABA therapy since student was at Rogers<sup>49</sup> They continued ABA while at Rogers b/c that was only thing that worked for student.

Parents paid \$500 for July, Aug. & Sept., then enrolled in Rogers Oct. 2013, asked for ABA therapy there, but told they did not provide it. In March 2015 student removed from Rogers. After they took student out of Rogers, they increased the 20 hours weekly to 30 hours. Now student has 3 insurances, primary through mother, secondary through stepfather, and 3<sup>rd</sup> TEFRA. During school year, student

---

<sup>45</sup>	34	11-25
	35	18-25
	36	1

<sup>46</sup>	36	6-10
---------------	----	------

<sup>47</sup>	45	7-25
	46	1-25
	47	1-4

<sup>48</sup>	47	24-25
	48	9-25
	49	1

<sup>49</sup>	50	1-25
	52	9-13
	54	21-25
	55	1-7



getting 20 hours weekly ABA therapy. Student now gets 50 hours ABA therapy weekly.<sup>50</sup> Has 1 on 1 with therapist, day program 8 a.m. to 2 p.m., getting living skills and has evening therapy 3-7 p.m. Mothers insurance pays majority of it.

Mother is asking for whatever insurance does not pay. The best estimate is \$2,000, but does not know what it will be.<sup>51</sup> Mother is also seeking transportation reimbursement for mileage, 17 miles 1 way.<sup>52</sup>

Mother says she did not know speech therapy, physical therapy, and OT services were not provided to the student per the logs from the school district. Once school logs obtained, mother first learned many minutes of time student was to have received therapy services on the IEP were not provided.<sup>53</sup> Mother says in IEP meetings they actually had to fight so minutes were not decreased. At last IEP meeting mother was told student not tolerating the 30 min. for sessions for speech therapy, so compromised for two 15-minute sessions, but have them more frequently.<sup>54</sup>

Teacher Jamie Hernandez took photos of student to show State they were trying to work with student on areas this student simply cannot learn (i.e., student asked to conduct investigation of water cycle).<sup>55</sup> Parents received no progress reports, only “pass” report card first semester. IEP says Encore, but mother not sure what that even meant.

---

<sup>50</sup>	55	14
	53	5-7
	53	16-19
	53	24-25
	51	1-8
	51	17-19
	56	17-18
	55	25
<sup>51</sup>	56	22-25
<sup>52</sup>	57	13
	57	16-24
<sup>53</sup>	61	13-25
<sup>54</sup>	63	9-18
<sup>55</sup>	64	11-25
	65	1-7

Mother is not asking for compensatory education services. Mother asking for some \$2,000 to \$6,000, whatever insurance will not pay (and they have nothing to show what the amount will actually be) for private placement and mileage reimbursement.<sup>56</sup>

To mother's knowledge, student never had anyone assigned to him. End of year conference document says "Services are going to be provided by his parents and he will be receiving specialized services for the summer, so school services won't be needed."<sup>57</sup>

By state standards, student will be going into 9<sup>th</sup> grade this year (he is 14); parents want to continue with the one on one instruction, and parents have seen since he has not been in the school since July, he is more receptive, listens to them, tries to follow commands impossible before, trying to communicate and actually engages.<sup>58</sup> Student was having meltdowns before, he would hit his head, get frustrated because he could not communicate needs, it is even written in his IEP that is one of his obstacles.<sup>59</sup>

Behaviors, biggest issue at Rogers, student masturbating (only exposed himself at Bentonville) the first year, 2013, also masturbating at home; mother saw pediatrician, talked to teacher Jamie, but toward end of last year problem was to point he would actually ejaculate in school. Mother said he should not have been left along for that long. However, mother says its her fault because she did not ask for a behavioral plan.<sup>60</sup>

---

56	66	18-25
	67	22-25
	81	23-25
	82	12-21
57	84	1-11
	84	12-21
	85	14-23
58	86	1-19
59	86	22-25
60	87	19-25
	88	1-25
	89	1-18

More bad days in 8<sup>th</sup> grade, more head banging/frustration at Rogers and more masturbation; he head-banged at home before ABA therapy, which is why they “were so desperate to get ABA.”<sup>61</sup> Summer 2013, mother declined extended school year before arriving at Rogers.<sup>62</sup>

First conference re/placement at Rogers held November 2013, month after he began there, 11/21/13, they met for a separate programming conference w/the OT, PT, Ms. Hernandez and counselors; mother authorized that initial placement, & at that placement authorized IEP w/400 general ed minutes and 1700 special ed, & also authorized OT to be 2 x week, PT to be 1 time week, & speech 2 x week.<sup>63</sup> Mother is not upset about time spent in general education for socialization with non-disabled peers since the “whole point of him going to school was for socialization,” and, mother said staff amazing at way they handled him.<sup>64</sup>

Student was getting socialization and Rogers actually refused ABA therapy, on more than 1 occasion, the ABA therapist, Edie Woodridge, met with Ms. Hernandez and offered her services to work with the home program; yet, in the October 2014 IEP, it says student was receiving ABA therapy in his home, parents will provide copies of reports. No such reports were ever provided to Rogers (mother says, what would be the point).<sup>65</sup>

During fall of 2013 to spring 2014, at least 3 meetings w/Rogers IEP team, mother made complaints about lack of staff (says tape says LaTangie Smith said “yeah, you’ve voiced that to me before” in the meeting).<sup>66</sup>

---

<sup>61</sup>	92	13-25
	93	1-4
<sup>62</sup>	99	25
	100	1-3
<sup>63</sup>	100	17-25
	101	1-25
	102	1-4
	102	21-25
<sup>64</sup>	103	22-25
	104	1-8
<sup>65</sup>	105	24-25
	106	1-25
<sup>66</sup>	107	6-25
	108	1-5

Mother says what Ms. Hernandez provided was not ABA, or if she did, mother does not know of it. Mother failed to provide reports to the school because she was told it would not be incorporated.

Mother does recall transportation conversation where she was offered reimbursement, but she declined originally, and now wants reimbursement when she never got back to the district on that.<sup>67</sup>

Real issue, the elopement March 12, 2015, she was contacted same day, and parents met school as soon as schedules permitted, which was March 19, 2015. Mother has no idea how long the elopement incident lasted. At end of elopement meeting, parents were to meet w/administration first before formal IEP meeting, but instead they filed for a due process hearing.<sup>68</sup>

Says when she met with Rick Taylor and Jamie Hernandez the first day and they were discussing student's behaviors, she was assured they had locked doors and he could not get out and he would have someone with him when they were in transition.<sup>69</sup> Says "possibly" no other elopement because of aide in place, programming services and teacher monitoring.

Mother did admit earlier in testimony regression could be attributed to her having pulled student out of therapy from Ohio; says Bentonville never had one on one assigned as part of their IEP, but had more aides in the classroom.<sup>70</sup> Mother never asked for any behavior assessment. Mother hoped school would go above and beyond what was required by state law.<sup>71</sup> When she asked Sherry or Tita at a resolution conference for an aide, she was told they did not have that authority; mother believes she has given Rogers every opportunity to fulfill their role.

Mother says it was also at that conference when they asked about ABA, they had no idea there was anyone overseeing ABA in the district (they found out in resolution conference that Rogers actually had a BCBA (Board Certified Behavior Analyst) on staff.<sup>72</sup> Now Mother does not recall being asked for ABA records. When mother asked about BCBA evaluation or working with student, she was told

---

<sup>67</sup> 110 8-25  
112 3-25

<sup>68</sup> 113 1-25  
114 11-20  
114 21-25  
115 1-25

<sup>69</sup> 117 1-6

<sup>70</sup> 117 15-2

<sup>71</sup> 122 6-7

<sup>72</sup> 130 8-19

they had 14 other students (note: earlier, she said it was her fault not asking for any behavior plan).<sup>73</sup>

### **RICK TAYLOR**

He is a special education consultant, providing support to teachers and staff in 6 different school buildings, including Oakdale that this student attended. It is their duty to follow current IEP on any transfer student and hold transfer conference within 30 days.<sup>74</sup>

At the 30 day mark, in an IEP meeting they could make changes, but that would be a noticed conference. Parents received informed consent on 10/23/2014, then set transfer conf. for 11/21/2014. Oakdale had self-contained classroom with 1 to 10, teacher and 2 paras.<sup>75</sup> The other possible school, in student's district, was Lingle, but it had 1 to 15, with 1 para.<sup>76</sup> Rogers IEP developed 11/21, began Rogers 10/23, placed where they could best meet his needs.<sup>77</sup>

Student had 2100 min. of special ed a week at Oakdale, and "If a student with a disability, who had an IEP that was in effect in a previous public agency in the same state, transfers to a new public agency in the same state, and enrolls in a new school within the same school year, the new public agency, in consultation with the parents, must provide free appropriate public education to the student including services comparable to those described in the student's IEP from the previous public agency until the new agency either adopts the student's IEP from the previous public agency, develops, adopts and implements a new IEP that meets the applicable requirements in 34 CFR 300.320 through 300.324."<sup>78</sup> They implemented the Bentonville IEP until they held the transfer conference. At the 11/21/13 IEP conference, a new IEP was developed.<sup>79</sup> The new IEP, information on which it is based

---

<sup>73</sup>	130	20-15
	131	1-2
<sup>74</sup>	143	16-25
	152	22-25
<sup>75</sup>	154	23-25
	155	22-25
	156	1-5
<sup>76</sup>	156	6-7
<sup>77</sup>	159	13-25
	160	18-19
	162	1-4
<sup>78</sup>	162	10-25
	163	1-15
<sup>79</sup>	165	7

is current evaluation documentation from the evaluation that Bentonville did.<sup>80</sup> Teachers develop the IEP's; he did not attend the 11/21/13 conference. ADE regs allow school districts to change a student's IEP on a transfer student without re-evaluating that student. No new evaluation is required of the school to which a student is transferred if there is an evaluation w/in 3 years.<sup>81</sup> An IEP can be changed or modified without having an evaluation done at the new school.<sup>82</sup>

Behavior supports work with the school's psychology specialists and their behavior analyst, whose name is Jodie Bone, the board certified behavior analyst (BCBA), but he has no knowledge of whether she was contacted as to this student. He did hear of behaviors of this student, from teacher Ms. Smith and he told her if the student is kept engaged, the behaviors will not occur.<sup>83</sup> His suggestions, continue to use TEACH tasks and zoning plans set up in the classroom (zoning plan is where everyone working in classroom has specific students they are responsible for at any given time during the day, and TEACH is functional curriculum where students get life oriented skills to prepare them for world once they graduate). He understood this student was getting those. Functional skills would be in method, like sorting, as opposed to learning; so the academics this student was learning were in functional way, but still based on grade level standards.<sup>84</sup> His understanding of this student's disabilities: speech and language impaired, autism, cognitive disability, non-verbal. He did not know how often the masturbating was occurring.

Referral to Ms. Bone would have been a team IEP decision and there would be a notice of conference; he is not on IEP committee, and they can't make a decision based on something that requires parental consent; he was not aware of the severity of the behavior, but was told of stereotypical behaviors such

---

<sup>80</sup>	165	19-21
<sup>81</sup>	169	24-25
	170	1-25
	171	1 and 8
	171	10-19
<sup>82</sup>	172	20-25
	173	1-4
<sup>83</sup>	175	11-25
	176	1-18
<sup>84</sup>	176	22
	177	1-14
	177	18-25

as hand clapping. That was something that could be addressed through a behavior intervention plan, when student kept busy, he did not do that.<sup>85</sup>

He did not know about the elopement behavior, first he heard of it was at the elopement meeting/conference (not an IEP conference, held as a parent conference); they had not had a notice of the conference, they just called parent in to discuss the incident, parent wanted to come in. At the elopement meeting, the aides in the room at the time were not present.<sup>86</sup> At the meeting, parents expressed concerns, principal and vice-principal addressed the concerns and put in place what they were going to do to prevent it from happening again; he does not recall if parents asked to see the tape as to how long student outside before he was discovered; there was no information as to how long he was gone.<sup>87</sup>

Parents did speak of an aide, and an IEP conf. was to be held right after spring break with district level personnel that could commit the funds. There was a noticed IEP conference set for 04/03/2015 to discuss followup, but the 04/03/2015 conference never took place. There was an incident report by the para to the principal and this witness does not know if they are required to share it with parents or not. The formal conference scheduled for 04/03 never happened; the informal conference date, this witness believes parents already had student at home.<sup>88</sup>

The 03/20 document was at informal meeting, & 04/03/15 setting was to have set up/address new IEP. Other than being at elopement conference, he had no other contact with this student. His only knowledge in making his recommendations was that student was masturbating in class. To the best of his knowledge, his recommendations were incorporated in Ms. Smith's classroom. He says no formal IEP conference ever took place.<sup>89</sup>

---

85	179	1-25
	180	1-25
	181	1-5
86	181	19-25
	182	1-8
	184	11-12
87	185	1-12
88	185	23-25
	188	15-20
	194	7-20
89	198	25
	199	1-22
	203	4-7
	205	1-4

There was a 12 day lag b/t time chld enrolled in Rogers and the transfer meeting, at which time they had his IEP from Bentonville. Reviewing the IEP already in place from last school was when they wld make decision as to boundary school vs. school that can provide more services. A student would stay in boundary school until IEP reviewed, to determine best placement.<sup>90</sup>

Between 10/23/2015 and 11/21/2015, 29 days, before the transfer conference, the formal IEP conference was held 11/21/2015. It was a location decision, minutes were same, based on parents' concern for a level of support (placement would be array of services on the continuum, not a location), placement to meet his IEP.<sup>91</sup>

### **JAMIE HERNANDEZ**

Now special ed consultant for the district. Previously this student's teacher, classroom teacher in a 1 to 10 ratio classroom in Oakdale Middle School, 6<sup>th</sup> through 8<sup>th</sup> grade. In her second year as special ed consultant for 3 elementaries and 1 high school.<sup>92</sup>

Student's disabilities are multiple: autism, seizure disorder, intellectual delay. Non-verbal but can vocalize, a very functional level, has to be walked through steps to go to bathroom, academically working on functional skills, social skills, job training, task box type skills; overall, functional curriculum, but had to place it in academics, but even within that, embedded in that was functional and communication.<sup>93</sup>

---

	205	9-17
	205	19-25
<sup>90</sup>	206	17-25
	207	1-10
	208	18-25
	209	1-2
	209	19-25
	210	21-24
<sup>91</sup>	215	5-24
	216	5-7
	217	17-25
	218	1-2
<sup>92</sup>	219	25
	220	1
	220	2-6
	220	12-17
<sup>93</sup>	220	21-23
	220	21-25



She was student's teacher for 2013-2014 school year; his portfolio assessment was because he would not show his potential, his skills, in standardized test, so like PARCC last year, & now this year it is going to be ACT Aspire; that does not measure what he can do; whole point of classroom is to get his potential realized and accomplished; they are at least able to show he is being exposed to content, to a functional curriculum, they are working at his level.<sup>94</sup> Their job is to take common core standards and relate them as best they can to student's level of functioning, giving him pre-job skills (as for Pathfinders or Open Avenues or in Fayetteville, Styles). She has not read parents' complaint.

She understands parents are looking for services more appropriate, therapeutic. She did talk with Shannon Edwards the mother about Student having ABA therapy, & Shannon told her that he was attending ABA, he even had therapists that would come pick him up and drop him off at school. Does not remember the mother asking for ABA therapy to be included in the school day.<sup>95</sup> Says she offered for the therapist to come and observe student in class setting, as it was her belief class setting very different than therapeutic setting or a home setting. Says she invited one, called and talked to one several times and she came and observed.<sup>96</sup>

She did talk about ABA therapy and talked about fact student had a therapist. She thinks the strategies in her room that are good teaching practice that follow right in line W/ABA therapy, evidence based practices: prompting, modeling, getting away, walking, moving, exercising, PECs, any kind of visual supports if he is over-stimulated, all of those are evidence based in ABA. Those are just good teaching practices she utilized daily, not just with this student, but with whole class.<sup>97</sup> Food big motivator for this student, he made sounds, could sign and push away also, might drop to the floor, they also communicated w/picture cards and some sign language.<sup>98</sup>

---

	221	1-10
	222	13-16
<sup>94</sup>	223	1-25
	225	1
<sup>95</sup>	227	8-13
	227	14-21
	227	23-25
<sup>96</sup>	228	2-5
	228	10-11
<sup>97</sup>	228	16-18
	228	21-23
	229	1-8
<sup>98</sup>	229	9-25
	230	1-25

She would have been given his IEP to implement b/c he was a transfer in. His minutes from Bentonville IEP were changed on 11/21/2014 because they try to place their students in the least restrictive environment possible and have those students be given the opportunity to be able to go to generalized classrooms, interact w/non-disabled peers.<sup>99</sup>

If behaviors triggered, they back off and have separate programming, but nothing to indicate this student could not handle this, & they have a para that goes with them, half go to one class, half to the other, so its 1-4 ratio, & Student did beautifully. She was not changing the continuum placement; they honored the prior IEP until they had another one. Educational minutes reduced down to 2100 – 1700, based on fact she thought all students should take part in a general ed curriculum. Student did not have adaptive PE in Rogers the year he was with her. Social skills are embedded, but social skills not on her IEP, if you want to call them social skills you can, it was embedded throughout his day.<sup>100</sup>

As to transportation, she recollects mother said she wanted to keep it on, so that they would have that option, as they had just moved and were still trying to figure out what that was going to look like for their family with their schedule, and so “Please can we keep that on, because we think we will want that,” but what ended up happening was people would just drop him off.<sup>101</sup>

He did not get daily transportation services, & when she wrote that she had no way of knowing the family would not want that. She was aware of the 2 hours ride option this year but not when she was student’s teacher and though specialized transportation still on IEP, he did not receive it.<sup>102</sup>

---

	231	1-6
<sup>99</sup>	232	7-9
	232	14-17
	233	8-25
	234	1-3
<sup>100</sup>	234	4-12
	234	18
	235	1-5
	235	6-10
	235	22-24
	236	1
<sup>101</sup>	237	15-25
	238	1-3
<sup>102</sup>	238	4-13
	238	19-25
	239	1-16

Mother did not talk with her about wanting ABA therapy in the school setting. ABA has good teaching practices that any trained teacher will implement, they are just good classroom practices for students with disabilities. ABA is Applied Behavior Analysis, specialized programming for students with autism, doing discrete trials, something appropriate for the student. She did not use discrete trial, because she did not have specific training in it. Jodie Bone, the Board Certified Behavior Analyst, was not there during this witness' school year with Student.<sup>103</sup>

Student was very compliant and attentive in their small setting, only problem was his masturbation behavior, occurring daily, said it is possible he reached ejaculation couple of times, a handful or less; this behavior started near end of the school year. Discussed this behavior w/student's parents, nannies, or babysitters, or therapists that came in, to let them know of the frequency.<sup>104</sup>

There was a correlation between this behavior and one girl in the classroom and Jessie, a Toy Story character (mother said that was a story used at home a lot because it was a motivator), and they put Toy Story away, as when he looked at one, the behavior occurred; they took the girl's picture down, and had him look at teacher and maybe two other students since they could not take the girl out of the classroom.<sup>105</sup>

One change on IEP was Encore, which is specials, like music and PE. PE was every day; other rotated by quarter, typically would go to band, choir, art and computer lab, thinks 50 minutes approximately 2 regular ed classes per day. IEP says 400 minutes, which would be 80 minutes daily, maybe 2 40 minute periods.<sup>106</sup>

---

103	241	9-12
	241	18-21
	241	24-25
	242	1-9
	242	10-11
	242	13
	242	14-21
104	243	15-25
	244	1-9
	244	22-25
	245	1-2
105	245	7-25
	246	1-22
106	251	1-6
	251	23-24
	252	5-25

She does not recall mother ever telling her about student running away/elopeing if he got the chance, but day one he was right next to a para in line going anywhere. There is a door knob that locks from inside; she was not worried about any of the students eloping.<sup>107</sup>

During her school year, the IEP team decision says student would be receiving specialized services for summer that are being provided by parents, & she says she possibly assumed those were ABA services. She never at any time stated the district refused to provide ABA therapy for this student. She had IEP meetings w/parents as well as some other informal meetings with the student in her classroom and she was part of IEP team. She provided parents with progress reports, daily even, because there was always someone connected to him picking up or dropping off, they always talked about how his day went; never had an elopement in her class.<sup>108</sup> They did have a take home folder, they did check marks for what was done daily, she may have been lax on some.

Does not recall parent ever asking for ABA therapy, just that they talked about his being in therapy. She knew a couple of student's therapists, because they picked him up and she felt pretty open dialogue with them. Never felt she was resistant, actually asked for names and phone numbers and after those were shared with her, she called and invited them to observe classroom setting and do critique; the comment after leaving was "Wow, this was great" and I never heard from her again. This teacher would have been happy to do anything mother asked, that's the kind of rapport they had. To her knowledge, no student in Rogers district is receiving ABA therapy. Student was picked up early from school by therapists.<sup>109</sup>

---

	253	1-11
	253	17-25
107	258	19-25
108	260	17-25
	261	16-21
	266	9-11
	266	12-18
	266	20-25
	267	1-5
	267	16-17
109	268	21-25
	269	1-13
	270	4-6
	270	7-10
	271	3-4, 20, 25
	272	1

In answer to why she did not provide ABA therapy for student, this witness says her training as a teacher is being utilized to the best of her ability & she was providing student w/sound education; she felt she was using strategies that worked for him, and parents ever day choose to take their students to outside therapies. That was a choice that she was making to supplement. She was not qualified to provide ABA therapy.<sup>110</sup>

She did incorporate ABA practices into her classroom programming, modeling, peer modeling, adult modeling, extinction, PECs, visual supports, exercise, hand over hand, prompting, verbal prompting, gestural prompting, fading from greater to lesser, probably a handful more (did not have list in front of her).<sup>111</sup>

**JASON TRAVERS**

Assistant Professor of Special Education at University of Kansas. A board certified behavioral analyst at doctoral level. Formerly licensed school teacher in Nevada. He prepared expert report in this case. When asked to review his experience in working with autistic students, both as a teacher and as a BCBA, he testified he has “about 13 years of experience in the field,” that he started by

**END OF VOLUME ONE - START VOLUME TWO**

working in intensive behavior intervention programs for young students with autism provided in the home as a behavioral therapist in Las Vegas, did that 2 years before starting teaching in Clark County, Nevada public schools. He also continued to do home therapy weekends.<sup>112</sup>

5 years as teacher in Clark County School District for students with autism at elementary and preschool levels. When he worked in Las Vegas, he was a consultant for the UNLV Center for Autism Spectrum Disorders, providing training and personalized support to families, as well as teachers who were trying to educate and treat various behavioral and educational problems related to students with autism.

---

<sup>110</sup>	273	22-25
	274	1-6
	274	11-13 and 22
	279	23-25
<sup>111</sup>	275	5-17
<sup>112</sup>	6	18-19
	6	21-22
	6	22-23
	6	2-4
	7	11-17
	7	18-19

In preparing his expert report for this case, he obtained all the documents provided by the district electronically and reviewed and analyzed them in different ways. He analyzed the IEP's using validated process validated via research for evaluating the quality of IEP's. In approx. 2013, he adapted her procedures for evaluating IEP's, & applied those to this student's IEP's. That procedure included 5 steps focused on, looking for evidence the IEP's included the sections or contents required by law, and also looking for relationships between present levels of performance, parent concerns, goals and objectives, specialized instruction, related services, and accommodations and modifications.<sup>113</sup>

He specifically looked at IEP goals and objectives to evaluate quality, and relationship between amount of time dedicated to specialized instruction and number of objectives associated with the specialized instruction to determine if evidence of adequate planning and good use of instructional time, and also to determine degree to which teacher or school would be held accountable for meeting IEP goals and objectives.<sup>114</sup>

ABA is application of principles of learning and motivation discovered via behavioral science. In discrete trial teaching, which he thinks people often mean when talking about ABA, they are actually talking about ABA, and it is a small aspect of ABA.<sup>115</sup> His analogy: equating cardiogram to entirety of medicine; cardiogram is but one tool/procedure, one diagnostic instrument a part of medicine, but it does not comprise entirety of medicine.<sup>116</sup> ABA is also used in geriatric care and treatment of people with Alzheimer's ABA is most known for/probably recognized best for its successful applications to educating and treatment students with autism.

In Special Education, accountability is very low, which has to do with poor measuring of student skills, poorly written IEP objectives not measurable, lack of data collection, failure to report progress, failure to even record information about student progress, and to the extent that no one is held accountable when a student fails to meet IEP goals or objectives. Revision to an IEP should be used to modify the student's performance or instructional procedures when the data collected

---

<sup>113</sup> 7 3-6  
9 10-16  
10 9-25  
11 1-2

<sup>114</sup> 11 3-13

<sup>115</sup> 11 16-18  
11 22-25  
12 1-2

<sup>116</sup> 12 6-12  
12 22-23  
13 2-5

by teachers show the student is not adequately responding. He teaches graduate courses comprised almost entirely of currently practicing special educators, and part of their graduate programming in autism, part of their Master's degree, incorporates knowledge and interpretation of the IDEA. Schools are required to use evidence-based practices with students who are autistic or have disabilities. He says ABA is required in teaching autistic students.<sup>117</sup>

Other avenues of research, other theoretical constructs of teaching and learning common in General Ed classroom are ineffective for educating autistic learners. He says the evidence is unequivocal that if Student had been provided with interventions consistent with applied behavior analysis, he would definitely have made some progress.<sup>118</sup>

He compares and contrasts Bentonville and Rogers IEP's: Bentonville IEP dated 04/25/13, included 8 goals and 24 objectives and had twice as many goals and objectives as compared to Rogers IEP (he says he did not inspect Bentonville's IEP with same scrutiny as Rogers,' as that one was not included in this case). He says there had been no assessment or evaluation, any data collected about Student's educational needs at Rogers, and apparently they relied on Bentonville's evaluation to develop IEP, and developed a completely different one without their own evaluation.<sup>119</sup>

He finds troubling fact Rogers changed student's placement to include more time in general ed program, despite decision by Bentonville to provide full time specialized instruction environment. He seeks no rationale in present levels of performance and the IEP goals and objectives. He found IEP objectives of extremely poor quality and not amenable to reliable measurement, but is not clear what Encore is. Says this undermines ability to hold school accountable for making sure Student achieves some meaningful progress, and found lack of integration of parent concerns in the IEP, and the IEP did not include any information that parent had about Student's home programming.<sup>120</sup>

---

<sup>117</sup> 17 11-18  
19 5-10  
21 15-17  
21 21-23  
22 13-16  
22 17-19

<sup>118</sup> 23 3-6  
24 2-5

<sup>119</sup> 24 17-25  
25 1-18

<sup>120</sup> 25 25  
26 1-5  
26 7-9

Bentonville’s IEP had 8 goals, 24 objectives; Rogers’ had 4 goals, 13 objectives. To have changed IEP this much, there needs to be evidence a change is warranted, either through an evaluation or conducting formal and informal assessments, or via behavior data collection; there needs to be information indicating this is appropriate change based on the student’s needs. Given the severity of this student’s needs, he would have expected change to include more goals and objectives and more specialized instruction, not less. For a transferred IEP, there needs to be an evaluation for a change per the IDEA.<sup>121</sup>

He says he found the IEP accommodations rather peculiar, and not necessarily constituting accommodation. As to one accommodation, “praise often,” he found it demonstrated a lack of understanding as to how redirection or delivery of attention can exacerbate inappropriate behavior. Overall, the accommodations and modifications were lacking in any specificity in terms of how they would be applied, and they were also disconnected from much of the IEP.<sup>122</sup>

Related services from Bentonville to Rogers stayed same in quantity, but modification was made for OT, they changed number of sessions; initially student had OT one time weekly, & Rogers changed that to two sessions of 30 minutes each. He did not find any evidence that Student made any meaningful progress toward IEP goals or related objectives, & it looks as if only progress reported was for one IEP goal in 2013 IEP (speech therapy).<sup>123</sup>

In Nov. 18 IEP, admission statement made by school district that Student had not met any of his goals or objectives in the IEP. He also quotes the annual review that said due to change in teachers and classrooms, student was unable to master any of his goals or objectives, but it was anticipated he would master them by the end of this IEP year. His IEP for the 7<sup>th</sup> grade, the district made mention of behaviors, but indicated he did not require positive behavior interventions. He found

---

	26	9-13
	26	19-20
	27	4-10
<sup>121</sup>	27	19-25
	28	10-25
	29	1-4
	29	5-9
<sup>122</sup>	32	9-12
<sup>123</sup>	32	16-22
	34	7-16



that remarkable, given this student's persistent inappropriate behaviors, and the significant problem of eloping and masturbation.<sup>124</sup>

In District's response to the complaint, they explained positive behavior interventions and supports are only necessary when student is danger to himself or others. He says that is inconsistent with the law and what the IEP says. He believes district had lack of understanding about when positive behavior interventions and supports are warranted, which is when behavior interferes with learning, with a person's learning or the learning of others. Autism is by definition a disability impacting learner's behavior.<sup>125</sup>

They marked Student did not need positive behavior interventions and supports, but also marked he is not able to adhere to school code of conduct or regular discipline policy, so it would be expected a student who cannot adhere to discipline policies is certainly engaging in behavior interfering with their learning or that of others, and requires positive behavior supports. Discussing the student's placement on IEP, there is admission that Student is engaging in behavior interfering with his or others' learning, which contradicts special factors page that says he did not have behavior impeding his or others' learning. This was in 2013 and 2014 IEP's.<sup>126</sup>

If student is engaging in behavior that interferes with his ability to learn and he is not provided with positive interventions and supports to address those behavioral needs, he is not likely to make

---

124	35	16-20
	35	16-20
	36	10-14
	37	16-23
	38	1-2, 10-12
	35	16-20
	36	10-14
	37	16-23
	38	1-2, 10-12
125	38	21-24
	38	24-25
	39	1
	39	1-6
	39	8-9
126	39	19-25
	40	1-3
	41	7-14
	41	15-16

any educational meaningful progress. The team continued to respond in a specific way to Student's inappropriate behavior, and specifically to masturbation, using redirection, and if that was used consistently, that would show this student engaged in behaviors for attention, not necessarily sensory simulation, and the behaviors were actually being reinforced.<sup>127</sup>

He sees virtually no documentation in file sent to the parent as to this behavior occurring on a daily basis and he says if no positive behavior supports plan was ever developed, that is egregious. Says since the aid who wrote the elopement report said they ran to the gym, because that is the one place this student always tried to get to, indicates school district fully aware Student eloped. They may not, however, have expected he could open doors and run away. Elopement is one of the most dangerous behaviors of autistic students, and this with this student's masturbation interfered with his ability to learn.<sup>128</sup>

Other reasons for this student's lack of progress, general lack of access to effective instruction, no documentation, no implementing of any type of evidence-based practices, failure to provide related services as outlined in his IEP, poorly written IEP objectives not amenable to measurement, lack of oversight and support for classroom to ensure student adequately supervised and that other students were properly supervised and safe from Student's behavior, including his masturbation to ejaculation in front of his peers. There was a lack of conduction of functional behavior assessment to inform interventions and supports, no data or monitoring of the student's behaviors or progress or lack of change in behavior for the better, a lack of documentation of behaviors occurring on a regular basis.<sup>129</sup> As to related services, in his report he references charts about the related services not provided; he looked at the speech notes, OT notes and PT notes.

He looked at therapy notes for 2013 and 2014, as well as speech, OT and PT for the 2014-2015 year; what stood out to him was lack of provision of these services as well as lack of unclear documentation for speech and language therapy, very unclear, unorthodox and inconsistent with documentation necessary to bill Medicaid; this was for 2013-2014 school year, beginning

---

<sup>127</sup> 42 6-11  
44 20-25  
45 1-8

<sup>128</sup> 45 11-18  
52 1-6  
52 7-8  
52 13-15  
52 25  
53 1-2

<sup>129</sup> 53 10-23  
54 6-8

October 2013<sup>130</sup> up to January of 2015.<sup>130</sup>

Finding student may not have received any speech and language pathology services for six months and that services never clearly documented, no real progress notes as to any achievement skills. Real contrast in quality and professional level of work done between speech and language pathologist and physical therapist; Physical therapist kept great notes, which did not happen with speech and language pathologist.<sup>131</sup>

Every person on team would be responsible for making sure services were implemented, but the teacher is the one person who would know that a student is not getting their related services, the teacher would know when student is being pulled out of room for services, or when speech and language pathologist was in room providing services, and probably would be documenting the number of minutes student received. He could only estimate number of minutes that might have been provided during dates when minutes were not recorded. When all was said and done, according to his admitted estimations, he says it could be as much as 1,580 minutes missed for the 2014-2015 school year.<sup>132</sup>

Looking at OT documentation, he says there was nearly 1300 minutes of OT not provided. Physical therapist had best quality notes, and witness finds that in 2013-2014 student missed 4 sessions of physical therapy due to him, 120 minutes worth, and the services stopped in beginning of December 2014. Witness can only assume those addt'l sessions were never provided and that student was owed 580 minutes of PT.<sup>133</sup> In his summary of findings and recommendations, he says student owed 55 hours, or 3,300 minutes of related services and when you incorporate his estimates for time lost, or due to lack of documentation, time never provided, it could be as much as 5,370 minutes of related service time, or nearly 90 hours. Arkansas requires students with severe disabilities work towards general education curriculum, which is problematic in that many of the skills focused on in Student's IEP are different from skills and curriculum being implemented and

---

130	55	20-25
	56	1-12
131	58	15-21
	58	25
	59	1-12
132	59	16-25
	60	1
	61	1-4
	62	5-6
133	63	9-10
	63	17-23
	63	3-5

reported to the state. The portfolio shows Student is not making any meaningful progress toward a general education curriculum due to his reliance on full physical prompting and supports from individuals, and also misrepresents the extent he understood curriculum, and shows no relationship to goals and objectives in his IEP.<sup>134</sup>

From the November 2014 IEP he was not able to find any connection between the current levels of performance in that IEP and the goals and objectives in the IEP; zero percent of IEP objectives were related to present performance levels. He finds district’s explanation of lack of progress being blamed on change of teacher unsatisfactory. To assess a student for IEP, there are a number of standardized assessments: curriculum based, formal, behavioral rating profiles, sometimes even diagnostic instruments to help inform program development; however, he found no evidence the district did any of that in developing their present levels of performance. When there is no relationship between the goals and objectives to the present levels (of performance), it undermines the team’s ability to impart educational benefit for Student.<sup>135</sup>

His primary recommendations have to do with compensatory education in form of home based intensive behavior intervention programming at 100 hours per month, and delivery of speech and language services at a minimum of 1310 minutes, and as much as 2,702 minutes for speech therapy; 1290 minutes is owed for OT, 700 minutes is owed for PT. OT and PT were demonstrated, but speech and language therapy number of minutes were clearly not provided, but he has estimates of how much time might also be considered in decision as to outcome of compensatory education for related services.<sup>136</sup>

His second recommendation, placement: by what was provided to him, he concludes Student could not be adequately educated in the self-contained programs, and probably in any of the district’s programs, so he is not offering a specific location or program, he does not feel that was appropriate

---

134	64	6-15
	66	20-25
	67	21-25
	68	1-2
135	68	12-17
	70	1-3
	73	4-11
	79	22-25
	80	1-3
136	82	23-25
	83	1-7
	83	8-17

for this witness, he thought location or school could be made by Hearing Officer or family and school together.<sup>137</sup>

His third recommendation, not necessarily specific to Student, is having an evaluation conducted by Special Education programs. He reviewed what parents provided after they pulled him out of school in March until this time, and Student was making progress toward objectives in his treatment plan.<sup>138</sup>

He has never met with Student. He has never observed Student's classroom in Rogers. He has never visited Student's home. Never visited the self-contained classroom just to see dynamics of it at Oakdale. Never visited with any of his speech, OT, PT therapists providing Student services. Never interviewed any people listed on the IEP. Has never met parents in person. His report is strictly based on records review and interview of parents, assuming the records are complete, but if additional records were provided, that could influence some of the aspects of his report and could change opinion about how much time is owed to Student. His assumptions are based on what he was provided. The documents he received were from parents' attorney, not the district.

There was a question by district counsel as to the fact that, since during testimony it has been found there were some omissions, and that parents' counsel asked for supplemental documents, the witness said he did not know if he rec'd a supplement after the first part of August from Ms. Caldwell August 21<sup>st</sup> attendance record most recent document received.<sup>139</sup>

---

137	83	19-25
	84	16-21

138	85	1-10
	87	8-20

139	93	21
	93	22-24
	94	1-2
	94	3-7
	94	8-10
	94	11-14

	94	16-17
	94	18-25
	95	1-13
	98	4-5
	108	1-4
	111	6-9
	111	15-25
	112	1-25

He says they reinforced the eloping behavior by allowing him to run to gym. He criticized Christine Sarratt's evaluations as a part of the re-evaluation process in fall 2014, scope of observation quite limited. When he does an observational assessment, he observed for an hour or two, meets w/teacher, take notes and go back in those notes and pick out significant instructions teacher gave, disruptive behaviors, how they were responded to, and quantify types of responses provided; the one here was brief anecdote as to brief observation. He says spirit of the law is team will develop IEP in partnership, but reality is schools are strapped for resources, and in practical terms that's not how IEP's are developed. Law intends people contribute to the document in a prolonged meeting in which people offer information and explore ideas and come up with a good plan; that would take 8, 16, 20, 24 hours to do; he says he has been in IEP meetings where that has happened, but that is the exception. His recommendation for 2 year plan for Student in private school, then decide if place back to school district He says he need not speak to anyone to evaluate documents that are required by law to be kept and maintained that demonstrate compliance with the law and implementation of a free and appropriate public education resulting in meaningful educational benefit. His conclusion is based on what the law says about how an IEP should be developed, implemented, provided and evaluated.<sup>140</sup>

This is the 5<sup>th</sup> time in four years he has testified as an expert witness. All 5 times he testified for the parent. This is his 4<sup>th</sup> time testifying for Ms. Caldwell. In answer to the Hearing Officer's questions about best practice in obtaining all documents for review as an expert, the witness said it probably could be for him to get records himself if there was a release in place.<sup>141</sup>

## VOLUME II, THURSDAY, CONTINUED

### CHRISTINE SARRATT

---

140	117	21-25
	118	1-6
	119	1-25
	120	4-16
	121	17-25
	122	1-3
	125	10-16
	126	16-21
	126	23-25
	127	1-4

141	134	4-10
	134	23-25
	135	1-21
	140	15-17
	136	4-25
	137	1-10

Physical therapist, holds Master's in PT, practicing 21 years, has been at Rogers School District since 1997, contracts with Rogers district.<sup>142</sup>

She has been Student's physical therapist since Oct. or Nov. 2013. Referring to a binder parent counsel has her identify, this witness says the first is a treatment plan set up when Student transferred to Rogers district from Bentonville, stating how many minutes he would be seen and goals, second is his evaluation, he was up for 3-year re-evaluation and she did it, and third section is progress notes done on visits when he was seen in school. She says yes, that she has produced all the logs showing therapy services she has. She reviewed the logs prior to her testimony today. Tab 11, page 54 in parent binder, she says she has never seen this document before (as to times and minutes, reported time, the PT lost). Student was to get 30 min. PT weekly. Between January and June of 2013-2014 school year, there were times he was not seen, which she makes up if at all possible.<sup>143</sup>

Feb. 29 she was home w/sick student. Feb. 17 through 21, it says not seen second schedule conflicts and two conferences, other times she was unavailable. From time to time, when she missed, there would be makeup sessions, and they would all be reflected in these logs. As to page 54 in the joint binder, as to billing codes and minutes, she does not bill Medicaid for her services, nor does the school to her knowledge.<sup>144</sup>

When asked if she was supposed to turn in her logs to the school, she said "I do"; said she just keeps them on file if there is ever a question and they need to be seen, they are available to be seen; they are not routinely turned in to the school, and answer was yes if Medicaid student. If Medicaid was billed, it would be through the District, not her. Student was seen independently, individually. Medicaid requires minutes, time in and time out. He had sessions on 1st, 8th and 15th of December. Looks like parents' chart is wrong. She did not find some records or locate some

---

142	142	16-25
	143	2-5, 11

143	143	21-23
	144	9-24
	145	2-4
	145	8-10
	146	9-23
	147	7-8
	147	9-21

144	148	1-6
	148	13-20
	148	21-24
	148	25
	149	1-9

records recently. She has always had those. As far as January, PTA and PTD-PTA means when the physical therapist assistant saw Student. She does not know rule on guidance Dept. Of Ed requires to use a physical therapist assistant, or if parental permission is required. The physical therapist assistant has notes in her as well, showing exactly what she worked on with the student. PDD note means professional development day in logs. With exception of day there was no school, he got all his sessions for January. When there is no school that day, its not made up. Student absent February 2, and those days are not made up. Another professional development day 16th, not made up. In that year, Student's therapy was once weekly, on Monday. He had 2 sessions in February, 1 from her and 1 from the physical therapy assistant.<sup>145</sup>

He got 2 sessions in March, and student absent 16th and 30<sup>th</sup>. After March, Student did not attend school. She was not asked to go to any type conference in March or April for Student, did not hear, nor was she told, about Student's elopement. His therapy was done in the cheer locker room, a room off the gym, and it had therapy equipment in it. She got him from the classroom and escorted him to therapy. No problems doing that. Student would run off from her if they were in the gym, and go under the basketball goals, she would let him and she was right behind him, then they went on to therapy. It was not hard to get him to disengage from the basketball goal. She estimates 75 feet between basketball goal and student's classroom. When she went to classroom to get Student,

---

145	149	10-19
	150	10-16
	150	21-25
	151	1
	151	2-5
	151	13-15
	151	16-22
	151	24-25
	152	4-7
	152	8-14
	152	15-19
	153	6-10
	154	6-7
	154	12-16
	154	17-20
	154	21-25
	155	5 1-7
	155	8-14
	155	15-17
	155	24-25



door out to the hallway was locked, she knocked, and either teacher or a para would open door and let her in. Student never ran from her except in the gym, and that was occasionally.<sup>146</sup>

To communicate with him, she would talk to him, as well as demonstrate (says he responded well to tactile cues and verbal cues). Two goals/objectives from Bentonville IEP were walking with equal stride length and decrease rocking to desired location, up to 200 feet with minimal cues, which she implemented. She also implemented his taking off his backpack, placing it on the cubby locker and rising from the floor standing through a half kneeled position. She also implemented scooting a classroom chair away from the table, and then scoot the classroom chair up to the table. Some of the information for the treatment plan came from Bentonville IEP, as this student transferred to the district in October and his conference was not held until November 21st.<sup>147</sup>

October 25th was first time she saw him. She also implemented a goal from the Bentonville IEP of his carrying lunch tray with minimal cues to the table without spilling it. Goals went from 6 to 9 because she added goals she thought appropriate for him to be able to work on based on her observations. She does not record quarterly or yearly progress on goals and objectives. How well student did was gone over at annual review. She discusses what she goes over at annual review, goals partially met, not met, etc., and when it says partially met it means he is making progress, has shown ability to do it, but not consistently, and he has met a goal it means he can do it consistently (the criteria she uses is 3 consecutive sessions).<sup>148</sup>

---

<sup>146</sup>	158	1-3
	158	4-5
	158	24
	159	2-22
	160	12-18

<sup>147</sup>	160	25
	161	1-8
	162	9-25
	163	1-6
	163	7-13
	163	14-18
	163	22-26
	164	1-7

<sup>148</sup>	164	10-12
	164	17-23
	165	1-12
	165	13-22
	165	23-25
	166	1

If she thinks there is progress to be made toward goals, then she will carry them over to the next year if they are a realistic and appropriate goal. She also usually adds new ones also, it varies depending on the student. She has formulated functional goals. As to integrating PT in any location other than the PT room, she went with Student to PE, & tried to get him to participate in what the group was doing. As to how often she went with him to PE, she said it would be if she happened to be seeing him during his PE time (it was mornings). There was another special ed class there, as well (she did not recall if there were any general ed students there at the same time). She has annual reviews in, probably, November.<sup>149</sup>

As to having data on how Student was doing on his goals and objectives in PT when he left in March, she would have to go off her progress notes. When asked if there was anything one could look at to tell how Student was doing overall in March, when he left school, she said no. When she gets ready to tell anyone whether this student has met his goals or partially met them, she would go back through her records as opposed to giving him some sort of test. As related to the goals she set, she felt Student was making progress. When he first came, she would call his progress moderate. This past year, he met four goals, partially met three, and did not meet two. She did believe he needed the PT she provided to benefit educationally. Overall progress, as of when he left in March, she had him maybe 3/4 of the school year, new goals were set in November, and the evaluation was done in October, so she felt he was making progress. She did not see his progress declining, but difficult to say exactly what she would call his progress without looking through every note. In IEP meetings she spoke with student's mother about progress, and other than that, that would be only progress information she provided as to PT.<sup>150</sup>

---

	166	1
149	168	4-9
	168	11-12
	169	1-3
	169	5-13
	169	25
	170	1-5
	170	10-15
	170	16-20
150	170	21-15
	171	15-19
	171	20-25
	172	18-21
	172	24-25
	173	14-23
	174	1-3
	174	4-18

Looking at parents exhibit page 54, tab 11, the chart as to physical therapy owed v. recorded v. time lost, it appears she saw Student. December 2, 8 and 15 of 2014, but she is not getting credit for that time under PT time recorded. Looking at same exhibit, it appears she gave therapy or therapy was provided on January 12 and 26 of 2015, but she is not getting credit for that either, and he also had therapy January 5<sup>th</sup> and credit is not shown (the 5<sup>th</sup> was the physical therapy assistant). In same semester, February 2015, page 267 of that joint exhibit, it appears student was absent February 2<sup>nd</sup>, but he received therapy February 9 and 23<sup>rd</sup>, 2015, but she is not given credit for that on this table provided in parents exhibit. Per her logs, in March 2015 he received therapy March 2 and 9, and he was absent March 16 and 30, and spring break was that middle week, but she is not given credit for the therapy times given in March. So, there are times therapy was provided but not captured by the expert's chart in the parents exhibit.<sup>151</sup>

On the Bentonville IEP, she provided three goals in addition to the six already there by the time the transfer conference had occurred a month later in November of 2013. Those additional goals were based on physical therapy sessions during that month before the transfer conference. And for the 2014-2015 school year, the goals were modified based on the evaluation done in the fall of 2014. She was asked to produce her therapy logs spring of last year. She gave all her logs in the spring.<sup>152</sup>

#### **LEOLA JOHNSON**

Speech therapist for Student, Master's in Communication disorders Has worked as a speech and language pathologist since 2000, employed by Rogers School District now.<sup>153</sup>

---

	174	22-25
	175	1-11
<sup>151</sup>	175	25
	176	1-22
	176	23-25
	177	1-13
	177	14-25
	178	1-2
	178	3-12
	178	13-17
<sup>152</sup>	178	18-25
	179	1-4
	180	1-5
	181	1-3
	181	15
<sup>153</sup>	183	4-12
	185	7, 23-25

In answer to question is she required to bill Medicaid when students have Medicaid, she said “They would like for us to, yes.” When she bills, she turns it in to the special ed department, a Darian. She was asked to produce her speech and language records of therapy sessions with Student and did She identified goals and objectives for the 2013-2014 school year when Student came in, and she identifies her therapy notes. Student started October 28<sup>th</sup>.<sup>154</sup> Student had language therapy 2 times a week, 30 minutes each session.<sup>155</sup>

There are no records for February, March, April and May because Another therapist came in January, on the 20<sup>th</sup>, and covered that classroom, so she only saw Student that year from October when he came in until January 20<sup>th</sup>. She does not know where those logs are. Other speech therapist was Christy Roberts, who is no longer with Rogers. Her first session with Student says “get to know” and NDT (no data taken). It qualifies as a session even if data is not taken, because she worked on goal with student. Medicare specifies that how long each session is and goals and objectives listed if billing Medicaid for a session, but she would have done the paperwork if not billing Medicaid.<sup>156</sup>

On 10-30 she implemented the first of goals and objectives. She did not implement goal two of the objectives off page 160 in December, said maybe she made a recording mistake, nor did she implement number three. When asked where to look to see what time student had speech therapy, she said she did not turn that part in. She says the records are at Oakdale Middle School on other side of town, but she brought the data she was asked for. Looking at her schedule for 10/30, it does not appear to have any percentage on how Student did, what level he attained that day.<sup>157</sup>

---

	186	1-3
<sup>154</sup>	186	4-15
	186	22-25
	187	3-17
	188	1-5
	188	14-20
<sup>155</sup>	188	14-20
<sup>156</sup>	189	2-8
	189	9-10
	189	13-19
	189	20-24
	190	3-19
	191	5-20
<sup>157</sup>	192	9-17
	193	22-25

11/4 it says TX (no therapy). 11/06 it is just subjective data, not a number. 11/07, most speech therapy is integrated into the room. She did reinforce right answers. She was working on getting student to ask for something by identifying it. On 12/04 she decided to use modified sign language, and 20% means student used it 20% of the time he used the sign more. He received the same services as a Medicaid student. She does not have the times down that Medicaid requires on her data sheet; she has the data down on what she taught, but maybe not percentages. The Rogers IEP, the transfer conference, she was not present because she was ill.<sup>158</sup>

She assumes she did the speech and language goal and gave it to them (those at the meeting she did not attend), since she is the only one who does that. There is nothing filled in on the IEP as to implementation of these goals, and at annual review it says student met zero of one speech goal. There were two speech goals. There was one speech and language goal contained in the IEP on November 21<sup>st</sup>, and her data says she did not implement that goal. When asked if in the hearing they had been over all the data existing on the student that would show speech and language services he received for the 2013-2014 school year, she said no, but said she did not know if there was any other data existing. She cannot speak to why there is no data past 01/13 for student, as she was not the speech therapist, she was only up until January 20<sup>th</sup>. The special ed office replaced her, it would come from one of the administrators, Sherry Stewart, Ed Harris, because she was way over in her numbers, she was out of compliance with state regulations, so they pulled in another therapist to pick up part of her caseload.<sup>159</sup>

---

	194	1-9
	195	3-6
	196	13-19
	197	17-22
158	197	23-24
	198	1-3
	199	15-18
	201	10-11
	205	6-8
	208	11-15
	210	1-2
	210	3-8
	210	14-23
	211	1
159	211	6-17
	212	18-25
	213	1-7
	214	2-5
	215	17-23

She would have provided the new therapist with the IEP. Then, after the year ended, she acquired this student back in the fall, but she does not recall if she did an evaluation or provided any information to the parent. Does not recall if she provided any progress to the parent on the implementation of goals and objectives for the 2014-2015 school year. Page 164 has the rough draft of the speech and language assessment she did and provided at the conference, because she needed to finish it and put other information in it. She did observe behaviors during therapy times.<sup>160</sup>

To her knowledge, there was never a formal behavior. She did attend IEP meetings parent attended where she talked about student's speech and therapy provided. The 8<sup>th</sup> grade IEP, she does remember mother discussing with her that mother wanted to keep speech at 60 minutes, and she had recommended 50 minutes instead; however, says the disagreement was resolved by keeping student at 60 minutes. Even though the IEP says 50, it should say 60. She implemented the old four objectives from Bentonville for the new IEP.<sup>161</sup>

---

	216	1-3
	216	4-18
	217	10-19
	221	22-25
	222	2-5
	222	13-21
160	223	8-10
	224	2-12
	224	13-16
	224	21-25
	225	1-6
	225	13-25
	226	1-7
	227	20-23
	227	24-25
	228	1-2
	228	17-22
	229	2-7
	229	8-12
	231	5-9

161	223	8-10
	224	2-12
	224	13-16
	224	21-25
	225	1-6

When asked about lack of performance levels data, she said it should have been on the computer; and when asked if she went through and printed out all the data on how student did on objectives when she was asked to, she said she did not. Said she provided speech therapy daily notes and her notes related to the therapy she had with student for 2014-2015 school year. Said she could have done a better job documenting some of the things she did with Student. She was asked to produce any additional documentation, schedules, lists, notes, anything else she can get, and she said she would look.

### **LaTANGIE SMITH**

Student's classroom teacher, has a Masters in teaching, Certification for Special Education in Texas, has taught special education four years, taught one year in Houston, one year at Ozark Guidance Center as a special ed teacher in their day treatment unit, this is her second year at Oakdale.<sup>162</sup> Student retained a few things, not as much as a normal general ed student, had to have a lot of one on one, or hand over hand instruction. She described him as a great student, said she did not have a lot of behavior issues with him. Speech therapy took place in her classroom, sometimes at the table, sometimes he was taken to a little location there so as not to bother other students. He did exhibit masturbation daily, even to ejaculation stage, but she did not record how often.<sup>163</sup>

There was no Journaling with the parent as to student's behaviors, communications were verbal. When masturbation to ejaculation occurred, sometimes in front of his peers, she would remove him from the setting to whichever other part of the room available, the sensory room or the changing room, both in her classroom, and change him; they did not bring attention to this behavior, they

---

	225	13-25
	226	1-7
	227	20-23
	227	24-25
	228	1-2
	228	17-22
	229	2-7
	229	8-12
	231	5-9
162	239	7-25
	240	1-5
163	240	21-21
	240	23-24
	241	5-10
	241	22-25
	242	1

would redirect him and talk to him. This behavior was not addressed through some type of functional behavior assessment, it was just natural.<sup>164</sup>

If they were close enough, they would let student run to the gym, but normally they held his hand; when he did run ahead, it was to the basketball goal; his gym period was second hour daily, and in that class was Student's class, another self-contained classroom, and a general ed class also. That was not her class, she just transported him there, as that was her planning period, so she did not often stay with him, but an aide stayed with him. Also during the day he went to specials, Encore classes: they visited computer class, band, and kind of work out so he could work with some of the other students, and he went to art. They either held Student's hand or had his hand on the wheelchair when they were pushing another student, so they always had hold of him. Student left school a bit early, 2:30-ish to go home with his ABA therapist he was a car rider, and school ended at 3:30 but our students leave a little bit earlier.<sup>165</sup> Student's class was 10 students, four were nonverbal like Student. It was discussed with parents that she was maybe overloaded with students who had severe disabilities. They kept door shut, and Student has never gone to a door. The classroom did not have bathroom, so traveled to another room for bathroom use, and she would travel with him for that. Student did not go out to lunch, she or one of the aides would go to cafeteria and get their lunch and bring it back, and they would have all the students sitting and waiting to eat, so they would prepare the food, cut it, etc.; one reason they did not travel to cafeteria was because two students are tube fed, one is hand fed (Student does not have to be hand fed).<sup>166</sup>

---

<sup>164</sup>	242	2-7
	242	12-25
	244	1-22
	245	1-5

<sup>165</sup>	245	22-25
	246	1-25
	247	7-9
	247	13-22
	248	9-15
	249	8-13
	249	22-23
	250	1-11

<sup>166</sup>	250	15-18
	250	19-23
	251	10-15
	251	25
	252	1-2, 9
	252	13-25
	253	1-23



She was aware of an incident involving Student eloping from classroom. She was aware of an incident involving Student eloping from classroom. She was at lunch, so does not know what happened. She spoke with the student's mother at the elopement meeting, could only say what she was told by the aides. She does not know how it was handled, as when she returned from her lunch student was back in class and they were ready to get started. Her lunch was 30 minutes. She thinks the father asked for the security tapes at the meeting. She was not focused on student's speech therapy, OT or PT, she was his classroom teacher, focusing on academics. She recalls she and student's mother had a conversation about how he as getting outside ABA therapy and communicating a little better, as she recalls mother talking about how student used to be as to communication. Student had no meltdowns in her class.<sup>167</sup>

When asked what she meant regarding achievement of goals for the 2013-2014 school she, when she recorded he was unable to master any of his goals and objectives was due to changes in teachers and classrooms, she says it was based on what she had entering the classroom and from the observation she had, the goals and objectives the previous teacher had, he had not mastered those. The goals and objectives had no performance level codes, and should have. She tested the student on verbal observation. Said they tried the Brigance a couple of times before November, but just put it aside because student was not really responsive to the testing. She just wanted student to be functional, and spoke with the parents about that. She changed some of the first IEP goals. She did not keep data, and if one were looking for data, it would be for regression and recoupment. She has a goal on behavior, regression and recoupment behavior, because they were working on that, wash hands on command, etc., it was not on the IEP, it was some of the things from last year.<sup>168</sup>

---

<sup>167</sup>	254	1-3
	254	1-3
	254	6, 9
	256	11-13
	257	19-22
	258	7
	259	12-14
	259	21-25
	260	1-3
	260	18-23
	261	11-13

<sup>168</sup>	262	23-25
	263	1-14
	263	23
	264	2-5
	264	9-13
	265	3-6
	268	3-4

When asked if the student enjoyed redirection, relative to the classroom masturbation, she said he showed no emotion about it, as to whether he enjoyed the redirection. Last year in her classroom, besides herself there were two paras and ten students, three of whom were in wheelchairs, a couple of students they had to hold hands to go, but nothing they could not handle. General protocol, keep door closed. Mother dropped Student off mornings, and she and mother talked as often as she came in. She felt parents were pleased with what she was providing Student, they never discussed any displeasure. On average, witness would say maybe two days a week the mother was in.<sup>169</sup>

### **LaDONNA BALL**

Assistant Principal assigned to Student's classroom. Last year was first year as an assistant principal, before that she was a classroom teacher, English, secondary. Started working for Rogers School District in 2003. She did attend IEP meetings as to Student, but basically says in this part of her testimony she did not recall anything. She was made aware that Student had to have his hand held and be escorted out of the classroom, to prevent him from running ahead of the class. She knew Student was a flight risk, and at the time of the incident she knew this. She was the administrator present on IEP team, but did not think she had authority to commit district resources. She routinely attended IEP meetings.<sup>170</sup>

She did not think she had authority to authorize an aide. She said special services department would need to authorize an aide. She again said she could not authorize an aide, and also says she

---

	268	9-11
	269	2-10
<sup>169</sup>	272	8-9
	273	7-9
	274	5-14
	274	21-22
	275	16-25
	276	1-5
	276	6-9
	277	2-5
<sup>170</sup>	280	3-4
	280	3-4
	280	7-11
	280	12-14
	280	19-25
	281	1-21
	283	14-21
	284	14-15

could not approve one. She could convey information and work with Tita and Sherry on that if they felt it was needed or requested by a parent, but that is not within the scope of her authority to make decision. She does not know when, but does recall someone saying that they felt another aide was needed. As to father asking to see tapes, she got with Officer Weems, but found the cameras in that area were not working. All she knows is the student was found in the parking lot, she thinks by the nurse. As to whether parents were given the incident report, this witness said she did not recall seeing the document presented to her at this time, and that there was no incident report. When asked if there is anything existing concerning the incident, she said "this" (the document presented to her to identify) obviously exists.

### VOLUME III

#### **DONNA CHARLTON**

Principal at Oakdale Middle School since 2011-2012, employed by Rogers School District. Before coming to Oakdale, she was a high school assistant principal in Texas. She has been in some type of school administration maybe 13 years. Before she got into administration, she taught high school about 12 years. BA in English, Masters in teaching, currently working on Ph.D. She does have general knowledge as to Student attending Oakdale, that he was student in LaTangie Smith's class, a one to ten class. Aides in that class were Tracy Evans and Rebecca Elster.<sup>171</sup>

She was never at an IEP meeting for this child in the two years he attended Oakdale. She had one meeting involving this child's parents, the one as a result of his leaving the classroom. She says she was made aware by the assistant principal, Ms. Ball, that the parents had been contacted that same day when the child left the classroom. There was no incident report written, since the child was not injured, and normal protocol was followed: correct the situation and notify parent.<sup>172</sup>

---

171	286	5-8
	286	11-12
	287	11-19
	288	6-9
	289	2-7
	290	18-25
	291	1-3
	291	10-13
	293	4-12
	294	23-25
	295	4

172	10	2-5
	10	20-24
	11	24-25
	12	1-4
	12	25

She recalled talking with Tracy Evans, one of the para, as to what could be done to prevent anyone or any of the students from opening the door. She also contacted Jim White (who, she thinks, is COO for the District as to grounds, maintenance and physical structure) the same day, shortly after being made aware of the situation, and it seemed everything she could come up with to make sure none of the students could open the door was against the fire code. She determined, in talking with the para, Tracy, that she would go ahead and put in a purchase order, which they follow any time they need to buy something for the building or the students, for an alarm to put on the door to be within fire code, and she was going to put it in the next day. However, Tracy, the para, went out after school that day and used her own money to get an alarm like we had discussed, and when this witness arrived the next morning, about 7:20 a.m., the alarm was already on the classroom door. She did check the security cameras, and it showed Student in the parking lot. When asked about how she could check the security cameras, when yesterday the assistant principal said they were not operating, this witness said "from the information that I was given, I was told that we were able to see him in the parking lot. She cannot recall who she spoke to about who reviewed the security tapes.<sup>173</sup> The parents asked for the meeting. As far as what went on at that meeting, she says she apologized to the parents, and explained what she had been told about the incident. In the meeting after the incident, the parents did ask for an aide to prevent that sort of thing happening again. There is not a security tape of the incident, and they loop, tape over the same tape. She thought it was 3-5 minutes, but had no personal knowledge of the time. All information in her possession at the time of the meeting with the parents was given to the parents.<sup>174</sup>

---

	13	1-2, 15-2
173	14	1-4
	14	5-22
	14	23
	15	1-14
	15	14-19
	28	15-16
	28	25
	29	19-25, 1-2
	29	8-15
174	31	15
	32	20-25
	37	5-13
	41	19-20
	42	3-9
	43	2-9
	43	20-25

There was to be another, subsequent meeting with the parents, a formal IEP meeting, and it could not be sooner because certain people were required to be there and they had to have time to schedule it. She thinks at that subsequent, IEP meeting, questions, like about the aide, could be formally addressed, but no one at the elopement meeting had the authority to commit district resources toward an aide for Student.<sup>175</sup>

## TRACEY EVANS

Now working at Lingle Middle School, worked last year at Oakdale Middle School, was there three years working as a para in the severe and profound self-contained classroom in which Student was a student. She helped him with his daily procedures; he has autism, likes to stand and is very active; said he is a good worker when they sit one on one with him. She works in the same capacity now at Lingle. She had no particular training in special needs prior to working in the school district. There was always a para with Student on the way to classes, and they stayed with him the whole class; they would hold his hand or lock arms with him exhibited typical teenage boy behavior, liked to touch himself There were ten students in Student's class, and a lot of his day was someone being with him one on one. For his behaviors, they used a lot of redirection, a small trampoline to go jump on, go to the gym, put up privacy screens to block out distractions, and they were constantly bringing him back to the table because he was so active.<sup>176</sup>

The ABA therapist parents had sometimes picked up Student, and taught this witness some sign language to use with Student The classroom and the gym are about 30 feet apart, and sometimes he would be successful in running to the gym, but they had an eye on him when that happened. The day of this incident, it was just after noon; the teacher was at lunch and this witness was with another student when Student got out of the classroom; she had been with the other student and came out from the changing room and the other para said "Student left," and went to look for him.<sup>177</sup>

---

<sup>175</sup>	44	13-35
	46	3-16
<sup>176</sup>	52	6-8
	52	11-13
	53	5-6
	53	18-21
	53	24-25
	54	1-3, 4-12
	54	19-21
<sup>177</sup>	85	24-25
	86	1-12
	55	25
	56	1-10
	56	14-25

The other para was gone 2 to 3 minutes, and when she came back and told this witness where she had looked for Student, this witness went to look for Student. She looked in both gyms, and there is a door to outside by the small gym, and she went outside by those doors, around from the back of the building to the front. She saw Student standing in the parking lot, and the nurse got to him first. After Student got back in the classroom, they were there maybe ten minutes before he and three other students were taken to computer class and the day proceeded as normal. He was just standing in the parking lot, flapping his hands like he does when he is excited. They walked Student back to the classroom, where the nurse looked him over; he had no scratches, no bruises.<sup>178</sup>

Student had never gotten out of the classroom before, but she had seen him touching the door and playing with the doorknob, but he never got it open. How the door in this classroom works, they have a cover over the doorknob so the students can't get out, as they were worried about this sort of thing happening; it was precautionary and in place before Student came to this class. Normal protocol is they keep the door locked, a school procedure, and it is extremely rare that the door would be open; maybe five times the whole school year the door was open for a short time, and then they would put a screen in front of the door so the students would not notice so quickly it was open. That afternoon she did research to find what would help them keep students in the classroom, and while the door could not be locked, they could use a doorbell so they would know right away when the door opened. She talked to the principal, and by the end of that day they went to the store and put a doorbell on the door by the next school day. When the parents would drop Student off, she would communicate with them, always in a positive manner, being direct as to what happened that day, and hoped they knew they had redirected him as best as possible. She did not personally talk with the parents about the incident until the week after it happened, as she thought the principals were taking care of that. When the parents came in the next week for the meeting with the principals, they brought Student to class and he stayed there all that day and the next; her interaction with the parents was a brief one after the meeting the parents had with the principals. As to how anyone knew Student was in the parking lot, this witness said she was aware someone had called the office and said there was a student in the parking lot (she had no idea who called) and while the nurse went out, this witness does not know how the nurse got involved, but

---

	57	1-2
178	57	11-25
	59	21-25
	60	1-5
	66	15-25
	67	1-5
	70	22-23
	71	2-4
	72	8-10
	69	2-20

this witness and the other para had been/were already looking for student. From time to time they have therapists for the students coming in and out the door You have to pull the door until the lock clicks She was asked to put in writing what happened, and she did so and emailed it to one of the principals (could not recall which one).<sup>179</sup>

### JAMIE HERNANDEZ

In addition to reading on a typical day, they had one class dedicated to life skills, and they worked one on one with Student on those; her two biggest hopes for him was that he could hold his toothbrush independently, to have it moving in his mouth, and follow up with rinsing it off and putting it back in his cubby next to the sink. Daily living was one class listed on Student's IEP There was shredding, sweeping, cleaning off tables, putting the trash off the lunch tray.<sup>180</sup>

We had a schedule of what Student's job was going to be that day. They would break down tasks and work with Student on them, with a lot of verbal redirection, showing him the picture schedule of what comes next. They might also focus on work skills in a typical day, sort of activities or shredding of recycled paper. They visited places like Pathfinders or Open Avenues that seemed appropriate for after high school, and they have to have a vision of where they want the students to go, and an appropriate place to start in middle school. They also had science and social studies; with science, Student was able to do more hands-on, especially looking at life cycles, plants and animals. All the common core strands he was trying to hit, but most of the time she made it as

---

179	58	1-12
	58	13-25
	59	6-20
	60	14-25
	61	1-3
	62	6-11
	62	12-15, 18-19
	63	9-18
	76	18-25
	77	1-19
	80	8-11
	80	21-23
	88	9-10
	89	16-17
	93	17-20

180	104	2-3
	104	20-25
	105	1-2
	124	11
	125	14-15
	126	3-5

hands-on as possible: growing plants from seed to flower, potting, watering, a process. A lot of math, counting, math for Student was different than for a typical student, because she was teaching him practical application she felt more appropriate for him to integrate into his daily life. Student could drink and snack independently, and he always helped clean up, with verbal redirection and sometimes hand over hand direction, more life skills they worked on to make him as independent as possible. Student's speech therapists were Leola Johnson and Christie Roberson. This witness did not know about their record keeping, but said Student had speech weekly in her room. The occupational therapist had a space in another part of the building where she took Student (so a pull-out). The speech therapist, for the most part that was a push-in, and PECS cards were used a lot during lunch to have him request food, request a fork, request a drink.<sup>181</sup>

## CONCLUSIONS OF LAW and DISCUSSION

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).<sup>182</sup> 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.<sup>183</sup> 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.<sup>184</sup> From the initial contact with the district, there has always been an IEP in place for the student. From student's initial enrollment there was an IEP created within 30 days as required by the IDEA. The parents had been involved in the IEP team and had approved the IEP in place for the 2013-14

---

<sup>181</sup> 126 21-22  
125 2-3  
125 7-21  
125 25  
126 1-16  
126 17-25  
128 11-17  
128 18-25  
129 1-6  
129 7-11  
129 13-25  
130 1

<sup>182</sup> 20 U.S.C. 1412(a); 34 C.F.R. 300.300A(a)

<sup>183</sup> 458 U.S. 176, 206-07 (1982)

<sup>184</sup> Id



and 2014-15 school years including changes. One repeated request made by the mother was for the addition of an additional aide in students class. It was noted that the district exceeded the state required ratio of student/teacher of one teacher to ten students by having one teacher and two aides in the students classroom.

Regardless of the first inquiry, that of whether to 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.<sup>185</sup> 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.”<sup>186</sup> 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.<sup>187</sup> 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 ends of the spectrum will ‘differ dramatically.’”<sup>188</sup>

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 mother of the student responded to questions relating to her wants and needs and indicated that all she wanted as relief was tuition reimbursement not covered by her private insurance for two years private placement and transportation reimbursement related to private transportation costs incurred for the students travel during the 2013-14 and 2014-15 school year. During the Due Process Hearing the mother did not produce any substantive evidence as to what the costs would be, only estimates. In addition there was no testimony relating to services, location staffing or student demographics for the private facility which student would be attending.

---

<sup>185</sup> 34 C.F.R. 300.511(d); 20 U.S.C. 1415(f)(3)(B)

<sup>186</sup> *Rowley*, 458 U.S. 176, 206-07 (1982)

<sup>187</sup> *CJN v. Minneapolis Public Sch.*, 323 F.3rd 630, 63-68 (8<sup>th</sup> Cir.), cert denied, 540 U.S. 984 2003

<sup>188</sup> *C.B. by and through his parents, B.B. and C.V. v. Special School District No. 1, Minneapolis MN*, , 262 F. 3<sup>rd</sup> 981 (8<sup>th</sup> Cir. 2011) (quoting *Rowley*, 458 U.S. 176, at 202 (1982))

Having determined that the District did provide FAPE to the student 2013-14 and 2014-15 school year, the issue now becomes whether or not to Order tuition reimbursement for a private non-school placement for the student as requested by the mother. 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.<sup>189</sup> 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.<sup>190</sup> Pursuant to *Rowley*, a district's 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."<sup>191</sup> 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.<sup>192</sup> In addition, the IDEA requires that disabled children be educated in the "least restrictive environment."<sup>193</sup> In this regard, the IDEA reflects a "strong preference" that children with disabilities attend regular classes with non-disabled children."<sup>194</sup>

Testimony of the mother also confirmed the district claim that transportation had been offered the student. Mother stated in her testimony that the district transportation would result in the student having to be on the school bus at least 90 minutes or more each way. The mother indicated that even with her providing transportation they lived far enough out in the country that the student had a 30 minute commute each way. Because the district had offered transportation and the mother had not accepted the offer her request for reimbursement related to private transportation costs incurred for the student's travel during the 2013-14 and 2014-15 school year are also denied.

## **ORDER**

After due consideration of the record, the foregoing Findings of Fact and Conclusions of Law, it is hereby **ORDERED** that all relief sought by Petitioner is **DENIED**.

## **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

---

<sup>189</sup> *Rowley*, 458 U.S. 176, at 203 (1982)

<sup>190</sup> *T. F. v. Special School District St. Louis Co.*, 449 F.3<sup>rd</sup> 816, 821 (8<sup>th</sup> Cir. 2006)

<sup>191</sup> *Fort Zumwalt Sch. Dist. v. Clynes*, 119 F.3<sup>rd</sup> 607 612 (8<sup>th</sup> Cir. 1997)

<sup>192</sup> *Rowley*, 458 U.S. 176, at 203 (1982)

<sup>193</sup> *Blackmon v. Springfield*, 358 F.3<sup>rd</sup> 999, (8<sup>th</sup> Cir. 1998)

<sup>194</sup> 20 U.S.C. 1412 (a)(5)(A)

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

October 16, 2015