

BEFORE THE
IOWA DEPARTMENT OF EDUCATION

In re: G.L.,)	
)	
G.L.'s Parents,)	Dept. Ed. Docket No. SE-376
)	(DIA No. 12DOESE006)
Complainants,)	
)	
vs.)	DECISION
)	(Redacted for Publication)
[] Community School)	
District and Mississippi Bend Area)	
Education Agency (AEA 9),)	
)	
Respondents.)	

Course of Proceedings

This proceeding began when [the Complainants] filed a Due Process Complaint on May 10, 2012, on behalf of themselves and their son, G.L. An Amended Due Process Complaint was filed on May 15, 2012. Jurisdiction is based upon section 1415 of the Individuals with Disabilities Education Act [IDEA], 20 U.S.C. § 1415, and Iowa Code section 256B. The governing rules of procedure are set forth in 34 Code of Federal Regulations [CFR] Part 300 and 281 Iowa Administrative Code [IAC], ch. 41.

An initial prehearing conference call was held on May 23, 2012. All parties participated in the conference. The parties agreed to attempt mediation and agreed upon dates for the evidentiary hearing, if needed. The case was not resolved. The hearing was continued and ultimately was conducted at the Mississippi Bend Area Education Agency offices in Bettendorf, Iowa on January 14th through 18th, 2013, before Administrative Law Judge Christie Scase.

[G.L.'s mother] was present throughout the hearing; [G.L. and his father] were present for significant portions of the hearing; [G.L.]'s older sister [] was also present for portions of the hearing. The Complainants were represented by attorney Bonnie McDougall. Principal [] was present throughout the proceeding as a representative for the [] School District. Mary Cashman was present representing Mississippi Bend Area Education Agency. Attorney Mikki Schiltz and Wendy Meyer appeared as counsel for the school district and AEA.

Multiple witnesses were called by both parties. Objections and rulings are detailed in the transcript of hearing. Three exhibit binders offered by the Complainants and two exhibit binders offered by the Respondents were received into the record. The parties elected to submit briefs, in lieu of closing argument, and agreed upon a post-hearing

briefing schedule. Motions and rulings regarding extension of the briefing schedule are documented in the pleadings file. Initial and reply briefs filed by both parties were accepted as timely.¹ The parties approved requests to continue the deadline for the decision through April 29, 2013.²

Findings of Fact

Introduction: This case concerns [G.L.] and the question of whether the [] School District provided him with a free appropriate public education. [G.L.] was born [in early] 1996. [G.L.]’s father, [], is a professor of [] at a local community college. His mother, [], is [] employed by the Mississippi Bend Area Education Agency. [G.L.]’s only sibling, [a sister], is four years older than [G.L.].

[G.L.] attended a public elementary school in [a public school district], near where his family resided. He attended middle school – grades 6 through 8 – at [a private school in the area]. [G.L.]’s parents sought a high school with a rigorous academic program to prepare [G.L.] for a competitive four-year college. They settled on the [] School District [], where [G.L.] enrolled for his freshman year. The family still lived in [outside the District] and he attended [the School District] during the 2010-11 school year as a nonresident student on a tuition basis. The family moved to [inside the School District] in the summer of 2011 and [G.L.] attended [the School District] his sophomore year as a resident student.

As discussed in detail below, [G.L.] has above average intelligence. He also has a significant processing speed deficit and is diagnosed with Attention Deficit Hyperactivity Disorder (ADHD)-Predominantly Inattentive Type, Dysgraphia, and Nonverbal Learning Disorder. [G.L.] had section 504 accommodation plans in place during his latter elementary school years and all of middle school. [The School District] developed a 504 plan for [G.L.] and he enrolled in a rigorous schedule including two accelerated honors courses. Despite showing good effort, he struggled with the volume and pace of the coursework.

[G.L.] was determined eligible for special education and services under the Individuals with Disabilities Education Act (IDEA) following an educational evaluation in the spring of 2011 and an Individualized Education Plan (IEP) was developed. The IEP provided

¹ In addition to an initial Post-Trial Brief, filed on the February 26th deadline, counsel for the Complainants filed a separate Post-Trial Brief addressing damages and remedies on February 28th. I consider this brief to be untimely and have not given it consideration in drafting this decision. [G.L.’s mother] corresponded directly with me via email on March 4, 2013, requesting permission to file an additional brief. Rather than entertaining this ex parte communication, I forwarded the email to the Chief Administrative Law Judge of my division, Jean Davis, for response.

² Ms. McDougall filed a Motion to Withdraw as Counsel for Petitioners on March 25, 2013. Reply briefs were filed by both parties and I considered the matter submitted on March 5, 2013. Given that no further action was required of counsel after March 25, 2013, I have chosen not to issue a ruling on the withdrawal motion.

for specialized instruction to improve processing speed, executive functioning, and writing fluency; as well as accommodations for [G.L.]’s disabilities including: adapted and/or shortened assignments, homework adapted to maintain a reasonable workload, no penalty for late assignments, and extended time to complete tests and quizzes.

[G.L.]’s parents were not fully satisfied with initial implementation of the IEP at the end of [G.L.]’s freshman year. Their dissatisfaction with accommodations provided to [G.L.] under the IEP grew during the fall of his sophomore year. They requested a mediation and in November of 2011 entered into an agreement with the school district and AEA, calling for an independent educational evaluation and a concerted effort to be made by the school district to use assessment measures to test [G.L.]’s knowledge, not his processing speed, and to employ instructional methodologies not reliant on processing speed. [G.L.]’s general education teachers continued to reduce homework assignments and revise assessments to minimize duplication and avoid essay questions whenever possible, under the close watch of his parents. As the second semester of the sophomore year continued, [G.L.]’s production of written work declined and he struggled to complete exams.

In May of 2012, [G.L.]’s parents filed this due process proceeding. The Complaint centers primarily upon the sufficiency of the school district’s efforts to accommodate [G.L.]’s disabilities. [G.L.]’s parents appear to sincerely believe that further reduction of his workload, additional extended time to complete assignments and assessments, and more finely tuned alternate forms of assessment would have allowed him to successfully complete the honors curriculum in which they choose to enroll him. In essence, the Complainants assert that [G.L.]’s failure to succeed proves that the district and AEA failed to provide FAPE.

During the summer of 2012, while this action was pending, [G.L.]’s parents opted to withdraw him from the [District] and pursue intensive training designed to address learning disabilities at [an out-of-state private academy], which implements [a unique] program. They now seek reimbursement of the tuition and other expenses related to the move and the new program. The school district and AEA argue that individualized educational program offered to [G.L.] at [the School District] provided him with FAPE. Alternatively, the Respondents assert that, even if the [School District] program is found lacking, the Complainants are not entitled to reimbursement of the costs of the private program at [the Academy] because that program is not appropriate under the IDEA.

Nature of [G.L.]’s disability & recommended accommodations: [G.L.] is a likable and talented young man with a unique array of gifts and challenges. He suffered a traumatic brain injury at 17 or 18 months of age. At age six, [G.L.] was diagnosed with Attention Deficit Disorder by pediatrician Karen Myhre, M.D. (Exhibit A2, at p. 2045) At the request of [G.L.]’s parents during the fall of [G.L.]’s 3rd grade year, a section 504 accommodation plan was developed by his elementary school to address a demonstrated difficulty with mathematics, writing, and “completing written work in a timely fashion.” Accommodations provided under the plan included: additional time to complete tests, if necessary, in an alternate setting; Saxon timed tests administered, but not included as part of his math grade; accommodation for note taking, when needed; and when a test is

turned in, [G.L.] given an opportunity to review/finish incomplete answers. (Exhibit A2, pp. 2047-2049)

[G.L.]’s elementary school transcript shows that through 3rd, 4th, and 5th grade he earned mostly As, with occasional Bs, and a rare C. (Exhibit A1, at p. 2874) [G.L.] was identified as a gifted student while attending [elementary school]. The designation made him one of 50 students in the pool for the district’s program for gifted students. He was not among the top 25 students in the pool and did not participate in the district’s gifted program, due to the limited program size. (Tr. at p. 219)

As they prepared for him to transition to middle school, [G.L.]’s parents were concerned about how [G.L.]’s ADHD and slow speed of work production influenced his school performance. In July of 2007, [G.L.] underwent two-days of evaluation and testing at the University of Iowa, Belin-Blank Center for Gifted Education, as a part of a grant-funded research study of twice-exceptional students. [G.L.] tested with a full scale IQ of 117 – in the 87th percentile on the Wechsler Intelligence Scale for Children, 4th Edition (WISC-IV). Although the full scale IQ test result of 117 was above the average range of 90-109, [G.L.] had striking variation in standard scores on the four indices of the test: a score of 134 – in the 99th percentile – on the verbal comprehension index; 129 – in the 97th percentile – on the working memory index; 104 – in the 61st percentile – on the perceptual reasoning index; and a score of 80 – in the 9th percentile – on the processing speed index. (Exhibit 63, at p. 3) As the evaluators observed, “for a child to have scores in both the 99th and 9th percentile is quite rare.” (Exhibit 63, at p. 3)

[G.L.]’s overall scores on four indices of the Woodcock-Johnson Tests of Achievement – 3rd Edition (WJIII) (broad reading, broad math, broad written language, and oral language) were average to high average, ranging from the 68th to 81st percentile. Again, there was notable variation in subtest scores. The evaluators found a direct relationship with [G.L.]’s relatively poor performance on math fluency (42nd percentile) and writing fluency (18th percentile) and his relatively slow processing speed. (Exhibit 63, at pp. 5-6) [G.L.] also exhibited fine-motor skills in the low average range for students his age and scored in the 14th percentile on the Developmental Test of Visual-Motor Integration (VMI). (Exhibit 63, at p. 6)

The Belin-Blank Center evaluators summarized their findings as follows:

[G.L.] is an 11-year-old student entering 6th grade in the fall. . . . Results from this evaluation suggest that the variability in [G.L.]’s cognitive ability is extraordinarily rare. That is, the speed at which he process[es] information is in the bottom 9th percentile, yet his verbal reasoning and rote auditory memory skills are better than 97 percent or more of students his age. This extremely large difference in abilities must cause confusion and frustration for [G.L.] and those who interact with him educationally and personally. It also offers clues as to why [G.L.] has not performed up to potential in school. It is imperative that [G.L.] be given ample time to formulate responses and complete his work. It also suggests that the focus of homework should be on quality not quantity. As classes become more

advanced, [G.L.] will need to work closely with a counselor to plan his schedule such that his advanced verbal abilities will show instead of his inability to complete what is required. [G.L.] has multiple strengths that should not be overshadowed by his extraordinarily slow processing.

Academic testing revealed reading scores that are significantly lower than expectations given his Very Superior range verbal abilities. This discrepancy may be contributing to [G.L.]'s reluctance to read and may also represent a mild reading disorder that could be ruled out on further testing. Regarding math, [G.L.]'s ability to solve computational items was not as advanced as was his math reasoning skills. It may be helpful for [G.L.] to work with a tutor to assist with using math concepts to solve mathematical computation. Across all academic areas, [G.L.]'s slow processing speed was evident as was his fine-motor delays. It does not appear as if [G.L.] has a written language difficulty. Rather his slow speed and fine-motor difficulties likely negatively influence his interest and motivation for completing written work. Therefore, [G.L.]'s writing difficulties likely are due to deficits of visual-motor integration (e.g., dysgraphia). [G.L.]'s ability to express himself through writing is quite strong.

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In summary, information gathered about [G.L.] in this evaluation implies that he has (1) significantly more developed verbal than nonverbal and processing speed skills; (2) poor fine-motor skills; (3) an excellent auditory rote memory with a less advanced working memory; [4] inattentiveness and distractibility; (5) reported history of gross-motor awkwardness; (6) difficulties with social interactions; and [7] underdeveloped academic skills in comparison to Very Superior verbal reasoning skills. This pattern of strengths and relative weaknesses are all suggestive of a Nonverbal Learning Disorder (NLD). [G.L.] will require individualized educational planning so that his academic strengths can be highlighted while his areas for growth are assisted.

(Exhibit 63, at p. 11) (emphasis added) .

The Belin-Blank Center report recommendations included:

1. Continue to involve [G.L.] in enrichment experiences, but make sure to not schedule too many accelerative opportunities at once.
2. Results of this evaluation should be shared with professionals from [G.L.]'s school so that his 504 plan can be revisited in light of current impressions of [G.L.]'s strengths and areas of growth. This plan should address all of the difficulties that are present for [G.L.] (attention problems, dysgraphia, and interpersonal/social concerns), as well as his significant strengths (verbal expression), [G.L.]'s overall verbal abilities suggest that he would benefit from

- enrichment or acceleration opportunities leading to challenging verbally-based course-work at school. . . .
3. Because there are diverse areas of concern, it is important that educational accommodations be tailored for the concern[s].
 . . .
 6. [G.L.] should not be required to take tests, including standardized tests, such as the ACT, SAT, or ITBS, timed.
 7. [G.L.] will perform best in environments that are consistent, structured, and predictable. Environmental distractors should be kept at a minimum, especially during testing circumstances.
 8. Allow [G.L.] to sit at the front of the class as to reduce distractions.
 9. Educators should be aware that students with NLD often misread social cues, which can be both frustrating and distracting in the classroom setting. Care should be taken to learn [G.L.]’s strengths as well as his relative weaknesses so that his social, emotional, and academic needs will be met.
 10. Given [G.L.]’s reported inattentiveness and distractibility in the classroom, it is recommended that, when possible, [G.L.] have daily one-on-one time with an adult to assist him with activities such as assignment organization and time management.
 11. If not currently in place, it may be helpful for [G.L.] and his teacher to initiate a non-intrusive cuing system in which [G.L.] could be signaled to refocus on tasks at hand, without it being necessary for his teacher to deliver correction or redirection verbally. For example, instead of replying “Please get back to work,” it could be arranged that an eye blink or a tap on the shoulder represents that [G.L.] must go back to work. It would be beneficial to allow [G.L.] to assist in determining what cues could be used.
 12. To ensure that [G.L.] understands directions associated with various tasks, we recommend presenting information to him in multiple formats. That is, supplement written instructions (possible for him to keep at his desk) with continued provision of verbal reminders. This may also be helpful in facilitating his understanding of content presented in lectures. For example, information presented verbally to the large class via lecture format can be supplemented with written notes that correspond with the lecture content.
 13. To accommodate for [G.L.]’s writing difficulties:
 - a. We suggest that [G.L.] be evaluated by the district’s occupational therapist to assist him with fine motor difficulties associated with writing.
 - b. Encourage [G.L.] to write with a computer while initiating keyboarding instruction. Also, investigate other assistive technology options. . . .
 - c. Permit [G.L.] to write in the form in which he feels most comfortable (e.g.,

cursive versus print style).

- d. Decrease the amount of “written busywork” (e.g., copying spelling words several times) [G.L.] is expected to complete. In addition, encourage [G.L.] to provide additional length/detail to expressive writing.
 - e. Limit the amount of written work [G.L.] must complete without reducing exposure to challenging material. That is, require him to complete only the more difficult items for a given writing assignment so as to confirm his understanding of the material without compromising efficiency.
14. To help enhance [G.L.]’s interpersonal skills, enroll him in academic enrichment activities that are of interest to him and that further stimulate his high ability verbal skills.

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(Exhibit 63, at pp. 12-13) (emphasis added).

Middle school accommodations / academic performance: Beginning in the fall of 2007, [G.L.] attended grades 6, 7, and 8 at [a local private school]. A section 504 accommodation plan was developed for [G.L.] during his middle school years, based upon the Belin-Blank report recommendations. At the end of [G.L.]’s first year at [the private school], his mother asked to have Kathy Sivill – a consultant with the Mississippi Bend AEA Autism Resource Team – review the Belin-Blank report and make recommendations to [school] staff about how to better serve [G.L.]. (Tr. pp. 225-227) A referral request was submitted to the AEA in late May, specifically seeking input on how to help [G.L.]: (1) stay focused during class and use class time effectively; (2) transition between classes more quickly; and (3) build skills he will need for high school. (Exhibit F1)

In August of 2008 – at the beginning of [G.L.]’s 7th grade year, Ms. Sivill reviewed the report from the 2007 Belin-Blank evaluation report and observed [G.L.] in the classroom before attending a meeting with [G.L.]’s mother, [the private school] teachers, and the school principal. She emphasized the need to have [G.L.]’s attention, suggested the use of self-instruction to try to help him monitor himself, and walked the group through the Belin-Blank recommendation. (Tr. pp. 1463-1469; Exhibit F1)

[G.L.]’s mother] testified that, although [G.L.] had 504 plans in place during part of elementary and all of junior high school, “He didn’t really have significant accommodations” or find it particularly hard to keep up with class work. [G.L.] was not receiving specialized instruction in either elementary or junior high school. Nor was he enrolled in accelerated or advanced courses. His mother testified, “[H]e did need extended time. He had untimed tests, but [G.L.] did all his work. He had some assignment reductions, but . . . he did virtually all of the work. . . . He did work more slowly than the other students, but he did keep up.” (Tr. at pp. 216-217)

The [private school] 504 Plan for the 2009-2010 school year, [G.L.]’s 8th grade year, includes the following list of accommodations:

- Preferential seating to help minimize distractibility.
- Use of a subtle cue or signal to get [G.L.]’s attention before delivering important information.
- For group work, pair with a knowledgeable, organized student.
- Student to be issued two sets of books, one to be kept in the classroom and one to be kept at home.
- At the discretion of teachers and parents, [G.L.] may have selectively reduced homework and class work, considering what is necessary to demonstrate mastery of the subject matter. Because of the excessive time demand which completion of school work already creates for [G.L.] due to his disability, he should be exempted from assignments, such as word searches, which are not essential to subject matter.
- Written rubrics will be provided in a timely fashion for projects and major assignments.
- [G.L.] (or the whole class) will be given advance notice of tests, so that his preparation can include at least 5 study days prior to the test.
- [G.L.] will be given the option of re-taking memory based tests & quizzes on which he demonstrates less than 75% mastery.
- Class notes will be provided to [G.L.].
- [G.L.] will be allowed to type or print his written work, i.e., cursive writing will not be required.
- Although teachers will maintain the expectation that assignments will be turned in on time, and will assist [G.L.] in organizing himself to do so, [G.L.] will not be penalized for late work.
- [G.L.] will not be downgraded for the artistic content of projects, and will be allowed to take art classes on a Pass/Fail basis.
- [G.L.] will be given additional time for tests, quizzes and writing assignments, as needed.
- Teachers will check to see that all portions of tests are completed (i.e., that none are overlooked).
- Although teachers will encourage [G.L.] to continue to develop these skills, [G.L.] will not have a grade penalty for omissions which reflect his forgetfulness or disorganization (i.e. forgetting to put his name on a paper).
- [G.L.] will be permitted to obtain and listen to some assigned books in an auditory format. A list of required reading will be provided in advance, as much as possible.
- Standardized tests will be given without a time limit.
- Teachers will communicate with [G.L.]’s parents, by phone or email, to ensure that parents are aware of [G.L.]’s progress and of any late assignments.

(Exhibit A-2, at pp. 2859-2961) Contrary to [G.L.’s mother]’s characterization, the accommodations included in the [private school’s] 504 Plan appear quite extensive and significant. However, beyond [the mother]’s testimony, no evidence was offered regarding how the [private school] plan was implemented.

[G.L.]’s cumulative record shows relatively consistent academic performance during his junior high years at [the private school]:

Subject	2007-08 (6 th grade)	2008-09 (7 th grade)	2009-10 (8 th grade)
[]	A	A	A
Reading	B	B -	
English	B+	B -	C+
Spelling	B		
Arithmetic	C+	C+	C -
History	C+		C+
Geography		C	
Science	B	A -	B
Spanish		[A -] ³	C+
Band	[A -]	[A -] ⁴	

(Exhibit A-1, at p. 2884) It appears that [G.L.] also received ungraded participation credit for in art, music, and physical education.

[] High School – Freshman Year: [G.L.]’s parents place a high priority on education and believe that, despite the limitations of his disabilities, [G.L.]’s abilities should enable him to attend a competitive 4-year college. As [G.L.] approached high school, they considered public and private schools in the [] area looking for the school that would best suit his educational needs. They ultimately opted to enroll, [G.L.] in the [] School District high school. The parents cited two primary reasons for deciding to enroll [G.L.] at [the School District]: the district had reputation for offering high-quality college preparation with academic rigor and [G.L.’s mother] had worked with and respected [the] High School Principal []. (Tr. at pp. 95, 135-136)

[The School District] is a public school district located in [], Iowa. The district territory includes []. During the current school year, approximately 4,400 students are enrolled in grades K through 12. The high school serves [more than 1,000] students in grades 9 through 12 and has a reputation for academic excellence.⁵ On standardized tests, 28% of the incoming freshman class in the fall of 2010 scored in the superior range (the 95th

³ A Spanish grade for this year is not recorded on the cumulative record. [G.L.]’s report card for 2008-09 lists his quarterly grades for the course as: A, A-, B, and B+. (Exhibit A-1, at p. 2855)

⁴ The band grades are also omitted from the cumulative record. The 2007-08 report card lists band quarterly grades as: B+, A, A, and A-. (Exhibit A-1, at p. 2854) In 2008-09, quarterly band grades were: A-, B, A-, and A. The 8th grade report card was not included in the exhibits. (Exhibit A-1, at p. 2855)

⁵ Approximately 80 to 85% of [district] high school students take the ACT test – a curriculum-based college readiness examination. The district average ACT results range from 24.8 to 25.2, generally placing the high school among the top [schools] in the state. Comparatively, the state-wide average score is about 22 and the nation-wide average is approximately 21. (Tr. p. 1213)

to 99th percentile). In the area of math and science, 35% scored in the superior range. (Tr. pp. 1212-1215)

In June of 2010, [G.L.]’s parents met with [the School District Principal] to finalize arrangements for [G.L.]’s enrollment. [The Principal] was given copies of the Belin-Blank evaluation report and the 504 Plan implemented at [the private school], which [G.L.’s mother] felt had worked very well. (Tr. at pp. 137-138, 1215-1216) Associate Principal [] was assigned to the task of revising the 504 Plan to the format used by [the District]. (Tr. pp. 1222-1225) The resulting [District] 504 Plan incorporated many of the accommodations contained in the [private school] plan, with some exceptions. With regard to homework assignments and extended time, the [District] plan provided:

- Teachers should consider reducing assignments when appropriate.
- Provide extended time for assessments and assignments, if requested. Extra time is defined as four times the class period with prompts for pacing and completion. The teacher and student will determine if additional time is needed.

(Exhibit B2)⁶

[G.L.] began his freshman year with a positive “can-do” attitude in the fall of 2010. He felt challenged, but was willing to work hard and determined to succeed. (Tr. pp. 9-10) [G.L.] had a full class schedule, including two honors-level classes: Honors Biology and Honors English [I]; as well as American history, algebra, Spanish 1, Flex, band, and health and physical education on alternating days. He, like all other freshman at [the District], had a resource period at the end of the day during which general education teachers were available to individually assist students. (Exhibit G-1, Tr. at pp. 31-32, 1225-1226, 1426-1427) [G.L.] also participated on the cross country team in the fall and was in marching band (during football season), pep band (during basketball season), and jazz band. (Tr. at pp. 27-30)

The [District] 504 Plan called for the Flex period instructor to observe [G.L.] when he was working on an assignment or tests and to monitor his progress; provide prompts to determine if he knew the material or needed to move to the next question; and assist [G.L.] with organization. In addition, [the reading specialist] – a special education certified English and reading teacher – agreed to work with [G.L.] for 15 or 20 minutes once a week during the Flex period to help him with writing fluency issues.⁷ (Tr. at pp.

⁶ [The Principal] testified that it was a foreign concept to him to allow “unlimited extended time” to complete assessments and assignments and that this was literally impossible. [The Principal] met with [G.L.] to discuss his needs and to get to know him so they could arrive at a more substantive standard that could be monitored. When [G.L.] was asked about his worst case scenario for test or assignment completion, he gave the example of a math test that took him four 45-minute periods to complete. (Tr. pp. 1223-1225)

⁷ The [District] Flex program is typically staffed by two at-risk instructors who work with general education students, tracking homework and providing a communication conduit between other teachers and the family. [G.L.]’s parents placed a high priority on [G.L.] not being identified by other students as needing special assistance. They rejected a proposal for

1220-1221)

Despite his optimistic attitude, [G.L.] found the pace and volume of work difficult. For grading purposes, the [District] school year is split into four quarters. Classes started in mid- August of 2010. [G.L.'s mother] approached [the Principal] early in the school year with concerns about the amount of time (20 to 25 hours per week) that [G.L.] was spending outside of school on homework. [The Principal] met with [G.L.'s mother] in mid-September to discuss [his] progress. (Exhibit N-2) Given [G.L.]'s full course schedule and his knowledge about the difficulty of his courses, [the Principal] initially did not think the time spent on homework was unreasonable. However, upon speaking further with [G.L.] and his parents and observing [G.L.]'s progress moving into October, [the Principal] became concerned with how the extended time given to complete quizzes and tests was affecting [G.L.]'s ability to keep up on current assignments. (Tr. pp. 1227-1230)

[The Principal] met with [G.L.] and his parents and enlisted the help of Associate Principal [] to examine options for altering [G.L.]'s current and planned class schedules so that the most difficult courses would be layered more effectively with less difficult courses and he would remain on track to earn the 23 credits needed for graduation in four years.⁸ (Tr. pp. 1227-1233, Exhibit N3) In mid-October, near the end of the first quarter, [G.L.] dropped the honors biology class with the intention of re-taking the class the following year. (Tr. pp. 140-142, 601, 1232, Exhibits 9 & G1) This provided him with a Flex period to work on assessments and assignments during the school day.

[G.L.] was able to complete the second quarter for his freshman year with the remaining courses, but not without a great deal of effort. He testified that he was putting in a large amount of time trying to get everything done and, although he did not realize it at the time, he was not getting enough sleep to maintain that pace over the long term. (Tr. p. 10) In December of 2010, [G.L.'s mother] contacted the Honors English [9] teacher, [], to request reduction of upcoming exams. She testified that [the teacher] was very accommodating and agreed to reduce the number of essays on a take-home exam. [The teacher] also offered to allow [G.L.] to do the semester final exam as a take home multiple choice test instead of an in-class essay exam, but [G.L.] wanted to do the in-class essay. (Tr. pp. 144-145) Algebra teacher [] also shortened assignments, provided study guides to [G.L.]'s father, and agreed to award full credit for late assignments and warm up activities. (Exhibit N1) [G.L.] finished the semester with As in American history, Spanish 1, band, Flex, and physical education; a B+ in health; a B in honors

[G.L.] to participate in the standard Flex program. At the end of the first quarter they accepted an alternative that allowed [G.L.] to receive assistance with tracking assignments and other executive function skills from the district's juvenile court liaison in a small group setting, under the auspices of the Flex teacher. The program was slotted for the first class period of the day, with a one-half course credit available. (Tr. at pp. 1218-1220, 1427-1428 & Exhibit G1)

⁸ As [the Principal] described his thought process – "All this extended time was going horizontally, and I started thinking we've got to be able to get this compacted into something more vertical." (Tr. p. 1228)

English [I]; and a B- in algebra. (Exhibit C1)

The classes [G.L.] completed in the first semester carried over into the second semester of his freshman year. His struggle to keep pace with algebra tests and quizzes continued during January and February of 2011, despite the fact that he was given additional time and the number of questions on tests was often reduced.⁹ (Exhibit G2 at pp. 3222-3223) [G.L.]'s parents perceived that his processing speed was slowing because he was simply getting burned out. (Tr. at pp. 147-148) [The Principal] then offered to allow [G.L.] to drop from the algebra class and use ALEKS (a self-paced computer mathematics learning program) over the summer to show mastery of algebra concepts and receive credit for completing the course. (Tr. at pp. 148, 1249-1251)

The school district and [G.L.]'s parents both recognized that [G.L.] might need additional assistance beyond the typical scope of a 504 Plan. In February of 2011, [G.L.'s parents] gave consent for an educational evaluation to determine what, if any, additional support services were necessary and whether [G.L.] would benefit from special education services. (Exhibit 32)

This evaluation was conducted by Mississippi Bend AEA staff – School Psychologist Kris Volbeer and Consultant Melissa Munn.¹⁰ Volbeer and Munn reviewed the Belin-Blank Center evaluation report and [G.L.]'s 504 plan; gathered information from [G.L.]'s parents and current teachers; interviewed [G.L.]; and administered screening subtests on the Wide Range Assessment of Memory and Learning - 2nd Edition (WRAML-2) and the Spontaneous Writing section of the Test of Written Language – 3rd Edition (TOWL-3). The results of the AEA education evaluation were highly consistent with the results from the Belin-Blank Center evaluation that was done in the summer of 2007. (Exhibit D-1; Tr. at pp. 662-668)

[G.L.]'s classroom performance and input from [G.L.] and his teachers and parents confirmed that he needs additional time to process information and has significant difficulty with executive function, including: initiation, working memory, and planning and organizing tasks. The evaluators noted that

[w]hen compiling assessment information, working with [G.L.], getting feedback from [G.L.], his teachers, and his mother it seems as though [G.L.]'s slow processing speed could [stem] from experiencing significant difficulty with organization [of] information and sustaining necessary

⁹ Detailed grade sheet for algebra includes notations regarding extended time and reduced questions on quizzes and exams.

¹⁰ Ms. Volbeer has been employed by the AEA for nine years. She holds a bachelor's degree in psychology from the University of Northern Iowa, master's and specialist's degrees in school psychology from Ball State University, and a graduate certificate in brain injury from George Washington University. Although [the District] was not within her regular assignment area in 2010, Volbeer was brought in to assist with [G.L.]'s evaluation because of her background with brain injury and to honor [his mother]'s request for someone outside of the regular AEA-building team to do the evaluation. (Tr. pp. 660-661)

attention levels. Difficulty organizing information could include organization of class materials or projects, organizing of his thoughts or a framework of attack for various problems, formulating too many options to answer a question/tackle a problem resulting in a significant amount of time passing before choosing a strategy. [G.L.] has stated he sometimes spaces off. In the classroom he may appear to lack focus, but he may also be thinking about how to solve a problem. In an assessment setting, [G.L.] often required clarification of directions or expectations. [G.L.] often needed clarification of statements on the two rating scales he completed as he appeared to “over think” his answers.

[G.L.] performed within the average range on the Spontaneous Writing section of the TOWL-3, only when given 35 minutes to prepare a response normed to a 15 minute time period. The evaluator noted that [G.L.] had extreme difficulty organizing his thoughts and getting them down on paper – to the extent that he did not write his first sentence until after the 13 minute mark. The standard test-time limit was set aside and [G.L.] was able to complete his response (6 sentences totaling 60 words). While the writing he produced was deemed “somewhat artful and creative,” “the number of words and sentences he used to convey his ideas was very limited - especially considering his high verbal IQ.” The amount of time that [G.L.] requires to process and respond to information was found to be “severely and significantly discrepant from that of his peers.”

The educational needs identified in the AEA evaluation report included many of the same strategies and accommodations that were recommended in the Belin-Blank report in 2007, including:

Needs in the area of instruction.

- Direct instruction in executive functions (i.e. initiation, organization, attention).
- Organization can relate to organizing of materials, problem-solving process, template to complete tasks, etc.
- Direct instruction on how to effectively organize thoughts/ideas prior to a writing assignment.
- Minimize [G.L.]’s choices of writing subjects.
- Pre-teaching of new concepts.

Needs in the area of curriculum.

- Specific Organization tools/structure to manage long term projects – assist with selecting topics, identifying necessary materials (what? where will you get them? when will you get them?), breaking project into smaller segments.
- Instruction on how to efficiently organize thoughts/ideas prior to a writing assignment whether through graphic organizers or other tools.
- Specific strategies to utilize when writing a paper or responding to an essay question. Being able to identify keywords to ascertain what the question is asking.
- Organizational framework for problem-solving (i.e. think of 2 options for

- tackling a problem, pick one, and start. And if you don't know which one to pick or how to start ask teacher ASAP. [G.L.] needs to develop alternatives when he gets stuck to help develop his problem-solving skills).
- Coaching in self-advocacy skills – if he doesn't understand something, he needs to ask for clarification, he needs to learn how to communicate his specific needs.
 - Review of math concepts taught in large group setting.

Needs in the area of environment.

- Preferential seating free from distractions.
- [G.L.] will need time built into his daily schedule to allow for support/instruction with organization.
- Due to [G.L.]'s disorganization and slow processing speed, his class schedule may need to include a balanced class load (i.e. one higher level course, [a] few average, and some less demanding courses) in order for [G.L.] to effectively manage all the academic demands simultaneously.
- Check list to review/remember morning and end of day routines.

Additional learning supports needed to provide educational benefit.

- Assignments and tests reduced to include essential concepts.
- Signal to notify [G.L.] when key concepts will be presented in class.
- Graphic organizers to assist with organizing thoughts for written work.
- Use of technology to help self-monitor attention, remembering appointments, materials for class, necessary materials for homework, remembering to turn in assignments.
- Speech to text software.
- Checks for understanding.
- Review of material.
- Pre-teaching new concepts when possible.
- Organizational tools for getting through tasks.
- Note cards or organizational structure/example of how to solve various math problems.
- Copy of lecture notes.
- Consultation services could be pursued with Iowa City's Brain Injury Team.
- Continued consultation services through the AEA's Brain Injury Resource Team.

(Exhibit D-1) (emphasis added).

A meeting was held on March 10, 2011, to review the evaluation information and determine [G.L.]'s eligibility for special education services. (Exhibit D-2, Notice at p. 2994) [G.L.]'s parents and representatives from the school district and AEA attended and agreed that [G.L.] has a disability that impacts his progress in the general education curriculum. Therefore, he is an eligible student under the Individuals with Disabilities Education Act (the IDEA).

An initial Individualized Education Program (IEP) team meeting was scheduled and

held on March 29, 2011. (Exhibit D-1, Notice at p. 2995) A second IEP team meeting was held on April 6th. [G.L.'s mother] felt that the April 6th IEP meeting went well; that the team reached a final agreement regarding terms of the IEP; and that [the parents] gave consent for special education services to begin. (Tr. at p. 162). Upon review of the revised IEP draft that she received after the April 6th meeting, [G.L.'s mother] found that the IEP did not reflect her understanding of the team's agreement, which included: a goal of increasing [G.L.]'s writing fluency, to reduce his need for accommodations over time and prepare him for college, with one-to-one work with a special education teacher delivering specially designed instruction to increase his writing fluency. (Tr. at pp. 154-155) [She] believed the IEP language was finalized at the team meeting on April 6, 2011. The written version of the IEP circulated after the meeting provided for [G.L.] to receive his specialized instruction in a resources room (rather than through one-to-one instruction, included a comment about reducing services over time, and to allow for extended time up to three times standard for exams – instead of allowing unlimited extended time.¹¹ (Tr. p. 157-158)

Associate Principal [] and special education teacher [S.L.] corresponded and met with [G.L.]'s mother throughout the months of April and May to finalize the terms of the initial IEP. (Exhibit E-2; Tr. at pp. 722-724, 789-791) Virtually all of the parents' requested language changes were incorporated into the IEP. (Tr. at p. 791) The IEP was put into final form and uploaded into the AEA Action Log on May 18th, with an implementation date of May 19th. (Exhibit D-7, Tr. p. 724) [G.L.]'s parents felt the IEP as finally crafted in May of 2011 included appropriate services to meet [G.L.]'s needs and the accommodations and goal that the IEP team had agreed to. (Tr. pp. 79-80, 98, 242-243)

Although the educational evaluation found [G.L.] qualified for assistance with both written language and math fluency, [G.L.]'s work with the self-paced computerized ALEKS program was allowing him to make progress in algebra. Given the priority of his needs, a single goal – addressing literacy – was included in the IEP. The goal was to increase [G.L.]'s writing fluency so that “in 36 weeks, when given a complex writing probe, after receiving coaching, direct instruction, and support, [G.L.] will be able to produce a 50 worded paragraph in 15 minutes.” Progress monitoring was to be done every 2 weeks using a complex writing probe. (Exhibit D-2 at p. 2973)

The following accommodations were to be provided under the IEP:

- Graphic organizers to assist with organizing thoughts for written work.
- Teacher checks for understanding.
- Prompting to begin tasks and continue working on task at hand.
- Review/repeat/reteach materials as needed.
- Copy of lecture notes before lecture begins.
- Calculator.

¹¹ In [G.L.'s mother]'s view, the drafters, led by AEA School Psychologist Susan Lewis, subsequently made significant changes to the terms of the IEP that were inconsistent with the agreed-upon language and contrary to the parents' wishes. (Tr. at pp. 154-158, 163-164, 240)

- Provide additional set of books for home.
- Adapted and/or shortened assignments as determined by the case manager, general education teacher and [G.L.].
- Tests and quizzes will be given in an alternate location to maintain focus and test taking strategies with extended time as needed.
- Homework will be adapted by [G.L.]’s case manager to maintain a reasonable weekly amount.
- Rubrics provided beforehand for major assignments or projects.
- Separate quiet area to take tests or work on assignments as needed.
- No penalty for late assignments.
- Weekly contact between home and case manager.
- Alternate forms of assessments considered such as an oral quiz, multiple choice vs. essay.
- Meetings at the beginning of each semester coordinated by IEP case manager.
- Advance notice (at least 5 days) for assessments.

The AEA Assistive Technology team was to be contacted for consultation about what devices would be effective for [G.L.] for organizing, time management, and speech-to-text software. [G.L.] was to be provided 45 minutes per day of specially designed instruction outside of the general education classroom, to include “coaching to improve processing speed and executive functioning and teaching of writing strategies to improve writing fluency.” This amounted to removal from the general education classroom for 13% of the school day. (Exhibit D-2, at pp. 2976-2977)

Special education teacher [S.L.] was assigned as [G.L.]’s IEP case manager. [S.L.] participated in the March 29th and April 6th IEP meetings and began working directly with [G.L.] on April 11, 2011. They initially focused on basic organization, time management, and executive functioning needs. (Exhibit E-1; Tr. p. 730, 791-793) Through the remainder of the spring semester of [G.L.]’s freshman year, [S.L.] worked to implement self-talk and prewriting strategies to assist [G.L.] with his Honors English 9 assignments. (Tr. pp. 794-795)

Kathy Sivill is a member of the AEA Autism Team with significant experience developing programs to assist students with executive functioning deficits. She had observed [G.L.] and advised his school team when he was [in middle school at the private school]. Sivill was asked to offer suggestions for specially designed instruction to improve [G.L.]’s executive functioning. She presented the framework for this instruction to [special education teacher S.L.] and [G.L.]’s mother on May 23, 2011. (Exhibit F-2; Tr. pp. 212-214; 1471-1478)

In her role as case manager, [special education teacher S.L.] communicated with [G.L.]’s regular education teachers regarding outstanding assignments and ways to reduce workload and develop alternate assessments to accommodate [G.L.]’s processing speed deficit. [G.L.]’s American history teacher agreed to accept and grade the work he was able to accomplish. (Tr. p. 797) [G.L.]’s Spanish I teacher, [], allowed extended time for completion of assignments; shortened some assignments; chunked and extended time for quizzes and tests; and utilized oral tests – instead of written exam questions –

where possible. [The Spanish I teacher] also allowed [G.L.] to come to his room during his prep period to work on tests and quizzes that [G.L.] was unable to complete during the regular class period. (Tr. pp. 306-38, 326-330, 798; and Exhibit 16)

[G.L.] was farther behind with current work in Honors English 9 than in his other courses. When the IEP was drafted he still had not completed a significant composition assignment from the third quarter (due February 14th) – “Creating an Epic,” two essay assignments – addressing *Romeo and Juliet* and *Dandelion Wine*, and a “Yellow Nickel Tablet” project were outstanding for the fourth quarter. [The Honors English 9 teacher] abridged, or reduced the size of, homework assignments and tests. [The teacher] agreed to exempt, or excuse [G.L.], from completing the Epic assignment. He refused to exempt or extend the deadline for the Yellow Nickel Tablet project, because [G.L.] had been present during class when other students discussed their completed work on this project.¹² [The teacher] allowed extended time to June 10th – 2 weeks after the end of the school year – for completion of the other two essays. [G.L.] submitted the essays within the time allowed and received credit for these assignments. (G-2 at pp. 3207-3209, & I-1; Tr. pp. 799-800)

[G.L.] finished the second semester of his freshman year with As in Spanish 1, band, and physical education; an A- in American History; a B+ in honors English 9; and a B in health. His cumulative grade point at the end of the year was 3.667. (Exhibit C1) He was not, however, able to complete algebra before the start of the next school year.¹³

In the spring of each year, high school students at [the District] register for classes for the next fall. Teachers are routinely asked to look at their current students and make recommendations as to who should continue in honors program courses. The school does not require a teacher recommendation for honors enrollment. Ultimately, students and parents decide whether to enroll in honors courses. (Tr. pp. 1059-1061, 1365, 1431-1433) In mid-May 2011, [special education teacher S.L.] asked [the Honors English 9 teacher] for his recommendations for [G.L.] the following year. [The Honors English 9 teacher] responded:

It is my recommendation that [G.L.] should *not* take Honors Soph English next year. Because he doesn't keep up with the daily readings, he can't participate in class discussions, small group work and activities pertaining to that day's reading. He also is always playing catch up so his focus is on learnings that have already passed, snowballing him for learnings that are

¹² This is the only non-exempt graded item in Honors English 9 on which [G.L.] received a zero. (Exhibit K-2, at pp. 1218-1222)

¹³ In April of his freshman year, [G.L.] began familiarizing himself with the ALEKS program and working on completion of the second semester of algebra. As planned, his work on ALEKS algebra continued into the summer. He spent 1 to 4 hours each day, five days a week, working with the program for six weeks during June and July. Although he did master many of the discrete topics, he was not able to complete the algebra course work during the summer. (Exhibit H-1 at pp. 3271-3273; Tr. pp. 14-15, 32-33, 1250-1252)

currently being presented. The amount of work, rigor and pace will increase next year in Honors Soph English; this will be a huge weight of stress and anxiety on [G.L.] to just stay above water, if indeed he will be able to do so.

(Exhibit I-1 at p. 372) [G.L.]’s parents requested a meeting to discuss how to make sophomore Honors English work for [G.L.]. The meeting was held in late May. [G.L.’s mother], [the Honors English 9 teacher], [] – the Honors English 10 teacher, and [] – the [District] guidance counselor who had been working with [G.L.] and his parents – attended. [The Honors English 10 teacher] provided a copy of the course syllabus and discussed the curriculum and the independent work required in the class, which included reading three novels and preparing written work before the beginning of the fall semester. [The Honors English 9 teacher] discussed his concerns about [G.L.]’s ability to keep pace with coursework – even with accommodations. [G.L.’s mother] focused on possible modifications to the workload. (Tr. 1057, 1071-1072, 1433-1435) In the end, [G.L.] was enrolled in Honors English 10.

[G.L.] was very busy during the summer of 2011. He spent the first two weeks of summer break finishing his essays for Honors English [9] and then worked on algebra until mid-July using the ALEKS program. [G.L.] also helped with the family move from [] to []. He attended camp for one week and had an emergency appendectomy in early August, shortly before school started. He was not able to complete all of the independent summer reading and writing assignments for Honors English 10. (Tr. pp. 167-169)

Fall 2011 – sophomore year: [G.L.] began his sophomore year with the following course schedule: Spanish II, Honors Biology, Honors English 10, band, two periods for skills enrichment every day, and a third period alternating between skills enrichment and health. (Exhibit G-3) [G.L.] was still recovering from the appendectomy and did not go out for cross country as a sophomore. He did continue to participate in band, including marching band and pep band, took part in the Mr. [School District] contest, and occasionally took part in a student-led improvisation group. (Tr. at pp. 27-30)

[G.L.]’s class schedule included three high-level academic courses. Hearing testimony includes a description of the course content and expectations of each these classes. Both Honors English 10 and Spanish 2 included a large volume of writing.

Honors English 10 is a fast moving course designed to prepare students for AP (Advanced Placement) Composition the following year. [The District] high school offers three levels of sophomore English courses: basic, college track, and honors. A greater emphasis is placed on writing in Honors English 10 than in Honors English 9 or the college track sophomore-level course. The Honors English 10 curriculum also covers more material than the college track sophomore-level English course: the students read novels, two Shakespeare plays instead of one, and complete a dedicated grammar unit (3200) that is not included in the college track course. [The Honors English 10 teacher] has taught both the college track and honors track courses. She estimated that Honors English 10 includes two or three times as much writing as the

sophomore-level college track course. Grades are based on homework, quizzes, tests, essays, and presentations. (Tr. at pp. 1064-1065; Exhibit G-3)

Two biology courses are offered by the high school: general biology and Honors biology. Both are college preparatory classes. The basic topics, or core content, of the courses is essentially the same. However, expectations are accelerated in the honors course: a higher level of textbook is used, there is more reading, and the students study each topic in greater depth. Daily reading assignments and guided-reading worksheets serve as the basis for classroom discussion. Grades are based on quizzes, tests, and laboratory projects. (Tr. at pp. 615-620; Exhibit G-3)

Although not designated as an honors course, Spanish I and II are considered college-prep courses by the school, in that the admission requirements for many colleges include at least two years of a foreign language. The focus in Spanish I is largely on learning vocabulary, word forms, and sentence structure as used in the language as spoken. Spanish II builds on this core knowledge. Students study more complex grammar and vocabulary concepts, which are practiced in various communication modes: speaking, listening, reading, and writing. All instructions for assignments, quizzes, and exams are written in Spanish. Grades are based on homework, quizzes, tests, and projects. (Tr. pp. 330-333, 1171-1174; Exhibit G-3)

Each of [G.L.]’s general education classroom teachers was told about the accommodations in his IEP, including reduced assignments, assessments, and extended time. (Exhibit K-1 at p. 2253) [S.L.], [G.L.]’s special education case manager, met regularly with the English, biology, and Spanish teachers to review upcoming assignments and assessments and determine what could be changed or cut out and what parts of the assessments could be done orally. (Tr. at pp. 893-895) Review of the detailed grade reports (Exhibit G-3); weekly reports provided to [G.L.]’s parents (Exhibit L-6); and testimony from each of the teachers and [G.L.] confirms that assignments and quizzes were shortened or exempted in each class throughout [G.L.]’s sophomore year. (Tr. at pp. 36-37, 47-48, 608-609, 1079, 1083-1084, 1789-1799)

Specially designed instruction was provided to [G.L.] during his skill enrichment periods. AEA Consultant Kathy Sivill had recommended use of a self-instruction strategy, to improve [G.L.]’s ability to plan and execute tasks. The belief was that if [G.L.] could avoid becoming stuck in pre-writing preparation, his writing fluency would increase. She met with [G.L.]’s mother and [special education teacher S.L.] in the spring of 2011 to explain the recommended format. (Tr. at pp. 1471-1475, & Exhibit F2)

As he began his sophomore year, [G.L.]’s special education teaching team included [S.L. and S.G.] [S.L.] continued to serve as [G.L.]’s case manager and the designated liaison with his general education teachers. [S.L.] also worked directly with [G.L.] providing his specially designed instruction at the beginning of the school year. [G.L.] was also assigned to [S.G.]’s classroom for skills lab during 4th period every day and 7th period

every other day.¹⁴ [S.G.] is in an enhanced classroom with assistive technology available, including computers and Dragon Speak dictation software. In the beginning of the year, [G.L.] used this time to work toward completing the ALEKS algebra course. As the year progressed, he used the time to work on outstanding assignments and complete tests and quizzes. [S.G.] holds bachelor's and master's degrees in special education. She has been employed by the [] district for 18 years and serves as head of the special education department. (Tr. at pp. 997-1002)

[S.B.] is a special education reading specialist with the district. She worked briefly on writing fluency exercises – or writing probes – with [G.L.] in the fall of 2010 during his freshman year at [the Principal's] request before an IEP was in place. In September of 2011, [the reading specialist] was brought in to provide specially designed instruction to [G.L.] during his 2nd period skills enhancement class. She used journaling exercises to have him practice unstructured free writing and applied a self-talk script, based on the model provided by AEA consultant Kathy Sivill, in conjunction with current Honors English assignments, to assist him with organization and executive functioning. As the first semester progressed, it became apparent that [G.L.] found the self-talk script awkward. [Special education teacher S.L.] and [the reading specialist] consulted with Sivill to adjust the script, in an attempt to fine-tune it to meet [G.L.]'s needs. (Tr. at pp. 373-375, 396-408) In early October [the reading specialist] consulted with Kathy Sivill again about [G.L.]'s resistance to the self-talk scripts. Sivill was open to trying alternative instruction methods that might work better for him. [G.L.] had shown improved writing fluency during journaling exercises and Sivill supported continued use of the journaling procedure as a means of helping [G.L.] practice getting his thoughts committed to words on paper. (Exhibit N6, at p. 2381) Throughout the semester, writing probes were used to monitor his writing fluency for progress. (Exhibit D5 at pp. 3083-3084; Tr. at pp. 399-401)

[G.L.] testified that he felt he had gotten a second wind and was more productive as the fall semester of his sophomore year began than he had been in the spring. (Tr. at p. 15) From the onset of the year, however, [G.L.]'s parents were dissatisfied with the degree to which his assignments were shortened. The conflict between the parents and the school regarding reduction of [G.L.]'s assignments and workload became apparent during the first week of school.

The Honors English 10 independent reading includes three novels that are to be read during the summer and the students begin the year with a writing assignment based on eight “literary lenses.”¹⁵ The standard requirement is for each student to prepare four

¹⁴ The skills lab was built into [G.L.]'s class schedule, but not mentioned in his IEP. The IEP was amended on September 21, 2011, to include this part of [G.L.]'s schedule in his IEP. Because no changes were being made to the services actually provided, this was considered a “leveling amendment,” for which an IEP team meeting was not required. [S.L.] explained the proposed IEP addition to [G.L.'s mother] by e-mail and offered a meeting to discuss the change, but was given approval to proceed with the change. (Exhibit D-3; Tr. at pp. 817-819)

¹⁵ The literary lenses are different perspectives for literary criticism or approaches to analyzing literature that the students will be expected to employ when analyzing novels and plays

15-sentence paragraphs, each applying a different literary lens to books from the summer reading list. This is the first substantive assignment in the class. [The Honors English 10 teacher] agreed to reduce this assignment for [G.L.], by requiring him to write paragraphs for only three – instead of four – lens perspectives. [G.L.’s mother] did not believe this was a sufficient reduction of the assignments and workload to accommodate [G.L.]’s processing speed deficit. She had several communications with [special education teacher S.L.], [the Honors English 10 teacher], and others asking to have the assignment reduced by another paragraph. [S.L.] and [the Honors English 10 teacher] consulted about the request. The teacher was willing to allow additional time for completion of the lens project and to reduce quizzes. Due to the importance of the lens concepts to ongoing work in the class, she resisted further reduction of the assignment. (Exhibit I3 at pp. 2274, 3336, & Tr. at pp. 172-174, 1078-1079)

[G.L.] completed and submitted a draft of his first lens paragraph on Friday, August 26th. He received feedback from [the Honors English 10 teacher] that afternoon and was able to complete revisions over the weekend and began work on the second lens paragraph on Monday, August 29th. (Exhibit K4 at pp. 1298, 2319-2320; Exhibit L7, at pp. 2394-2395) The following Friday – September 1st, [G.L.]’s parents sent an email to [special education teacher S.L.], [the Honors English 10 teacher], and [S.G.] (the special education teacher who was working with [G.L.] during his skills enrichment periods). They expressed “dismay” that their suggestion for [G.L.] to write 2 of the 4 lens essays had been rejected and insisted that further reduction of his assignments was necessary to reach a reasonable workload and comply with his IEP. (Exhibit I3 at pp. 3338-3339)

[G.L.]’s IEP calls for “meetings at the beginning of each semester coordinated by [the] IEP case manager.” [Special education teacher S.L.] scheduled the fall meeting for September 12th. [G.L.]’s parents and general education teachers attended, as did [S.L.], [the High School Principal], and guidance counselor []. [Both parents] were invited to discuss [G.L.]’s learning style and academic needs and the teachers offered updates about [G.L.]’s progress in each class. (Exhibit K4 at p. 218, Exhibit L6 at p. 2401-2402)

As the end of the first quarter approached in mid-October, [G.L.] had finished all work due for Honors biology, with a B- for the quarter. He still had four past due quizzes and tests for Spanish II. He had completed outstanding writing assignments for Honors English 10, but had made little progress on the 3200 grammar unit which began during the last week of September. A meeting was held on October 11, 2011, to discuss possible assessment accommodations for Spanish II. [The Spanish II teacher], [Special education teacher S.L.], [the guidance counselor], and [G.L.’s father] attended. [The Spanish II teacher] agreed to accept one of the outstanding quizzes, which [G.L.] had $\frac{3}{4}$ completed and to review each of the remaining assessments and reduce them to the material most critical for [G.L.] to be tested on. During this meeting, [S.L.] expressed concern that [G.L.] had been sleeping in skills lab, needed frequent reminders to stay awake, and seemed less attentive than in the past. She was concerned that he might

throughout the year, examples include the cultural studies lens and the feminist lens. (Tr. at pp. 1075-1078; Exhibit I3)

have a medical problem. [G.L.]’s father shared that [G.L.] began taking Wellbutrin in early October. (Exhibit L6, at p. 1876) With reduction of the assessments and the extended time allowed, [G.L.] was able to complete required 1st quarter work for Spanish II by mid-November, with a B in the class.

Three and a half to four weeks are set aside at the end of the first semester on Honors English 10 for an intensive self-paced grammar study book – referred to throughout the record as the 3200. The book presents grammar, syntax, and writing style lessons through a series of 3200 questions, broken into 12 units. Unit texts and a cumulative end test are used to assess mastery of the content. 18 to 20 Honors English class periods are set aside for each student to work through the questions at his own pace. Students are not assigned additional new homework projects while the class is working on the unit. (Tr. at pp. 409-411, 1066-1070, 1090-1091) In 2011, the Honors English class began work on the 3200 in late September. [G.L.] had a difficult time with the format of the unit and progressed very slowly while working on it in class. Accommodations were made to facilitate his learning. He was allowed to skip questions if he felt he understood the concept being covered, he could take a unit test at any time he felt ready, was allowed to turn in pages from the book – rather than separately writing down his answers, and he was exempted from the cumulative post-test. (Exhibit I3, at p. 3543; Tr. at pp. 1088-1089)

Parental concerns about [G.L.]’s workload were not resolved through the [September 12th] meeting and on September 16, 2011, they filed a request for mediation prior to the filing of a due process complaint (commonly referred to in Iowa as a “pre-appeal” request).¹⁶ (Exhibit M2, at pp. 2064-2065) Following an initial mediation session in October, an IEP meeting was held on November 3, 2011, to review services, goals, and accommodations in the IEP. Attorneys representing the parents and the school district/AEA attended the meeting. Several revisions to the IEP were made: the progress monitoring tool was changed to a 3-minute writing probe (down from a 15-minute probe), to allow more direct comparison with peers and provide more class time to be focused on teaching and working with [G.L.] on written fluency; no late penalties for assignments was removed as an accommodation and unlimited extended time for tests and quizzes was changed to up to 4X extended time, under the theory that a limit on extended time would decrease the chances of [G.L.] becoming overwhelmed by the duration of assessments; a new accommodation of dividing and chunking tests and quizzes into sections was added to make the assessments more manageable. These changes to the IEP were implemented on November 30th. (Exhibit D4; Tr. at pp. 783-787, 855-856, 1258-1261, 1270-1271)

¹⁶ The mediation request asserted that the agreed-upon IEP terms had been altered without parental participation; that the school district and AEA did not recognize the right of gifted students to secure special education accommodations and supports necessary to succeed in honors-level classes; and that the AEA was retaliating against [G.L.’s mother] as an employee because of advocacy activities she undertook on behalf of her son and other students.

During a final mediation session on November 16, 2011, two weeks after the IEP revisions were agreed upon, the parties entering a mediation agreement. Under the agreement [G.L.] was to undergo an independent neuropsychology evaluation and the school district and AEA were to make a “concerted effort . . . to ensure that assessments measure [G.L.]’s knowledge of the subject matter of the course and not his processing speed” and to make a “concerted effort . . . to use instructional methodologies that do not rely on processing speed.” (Exhibit M1) At the November 16th meeting [G.L.]’s parents agreed to have [G.L.] work with [the reading specialist] during his skills period to complete the 3200 unit assessments that were still outstanding, they later had second thoughts about replacing writing fluency specially designed instruction with work on the 3200. (Exhibit L6 at pp. 1455-1461, 1971-1973; Exhibit N4)

[G.L.] was able to complete his 1st semester final exams by the end of the semester. Other work remained outstanding at the semester break. He had yet to finish portions of the 3200, as well as one test for Honors biology and one test and three quizzes for Spanish II. School administrators offered to be available during the break for [G.L.] to come to the school and complete the outstanding assessments. (Exhibit L6, at pp. 2532-2534) Additional extended time was allowed after the break. Ultimately [G.L.] completed all required course work and exams and completed the first semester of his sophomore year with As in band and health club, a B in Honors English 10, a C+ in Honors biology and skills enrichment, and a C- in Spanish II. (Exhibit C1)

The Complainants were very displeased with the amount of work that was carried over from the first semester to the second semester. They felt that the school district had utterly failed to reduce [G.L.]’s workload to a reasonable level and they made certain that the school administration and teachers were aware of their dissatisfaction. On January 4, 2012, [G.L.]’s parents sent a “Prior Written Notice” to [special education teacher S.L.], with copies to [the Principal] and each of [G.L.]’s teachers.¹⁷ Through this document school personnel were told:

- [G.L.] and his parents will no longer cooperate with the LEA’s and AEA’s refusal to follow the IEP as written, prior to the illegal amendment, i.e., the amendment done without parent knowledge or consent. We will be following the original IEP and have instructed [G.L.] to disregard any advice which directs him to do otherwise.
 - Parents are taking this action because the multiple violations of special education law by the LEA/AEA and the district’s refusal to follow the IEP have resulted in continued and significant harm to [G.L.].
- . . .
- In order to allow [G.L.] to progress appropriately through the gen ed curriculum, [G.L.] will no longer spend almost half of his school day on test completion. [G.L.] will work on ALEKS Algebra I program during his resource periods. Tests will be shortened as each gen ed teacher deems appropriate and [G.L.] will begin each test with his class. Because of the deterioration in [G.L.’s] speed which has

¹⁷ A Prior Written Notice is a form document generally used by schools to notify parents of proposed or refused action with regard to a child’s educational programming.

resulted from the refusal to follow the IEP accommodations, a viable alternate method of assessment will be used until such time as parents, teachers & [G.L.] agree that it is not needed: Each gen ed teacher will arrange an 8th period at their earliest convenience to allow [G.L.] to complete the test orally with them or in combinations of written and verbal format.

- Because of [S.L.]’s failure to perform her duties as case manager – duties which include: following the IEP as written; not tampering with the IEP; not amending the IEP without parents’ knowledge or consent, and working with gen ed teachers to make the accommodations listed in the IEP – parents will be assuming the case management role until such time as someone willing and able to follow the IEP and work in [G.L.]’s best interests is appointed.

• • •

- Because the IEP accommodations were violated in terms for reduced assignments for a reasonable workload, [G.L.] will not work on any assignments or tests from first semester without express consent of the parents.

(Exhibit N5) [The Principal] sent a letter to [G.L.]’s parents on January 9, 2012, detailing the current accommodations and protocols that would be implemented to meet [G.L.]’s needs. (Exhibit N8) On January 11, 2012, the school district’s attorney provided the Complainants’ attorney with a copy of the school district’s response to the parents’ Prior Written Notice. The school district maintained that teachers were providing reasonable accommodations pursuant to [G.L.]’s IEP. (Exhibit N9)

The beginning of the semester meeting between [G.L.]’s parents and teachers was held on January 10, 2012. [G.L.’s mother] made it very clear to all in attendance – including [], a teacher who was being assigned to help [G.L.] complete algebra on the ALEKS program and had not previously worked with him – that the accommodations included in [G.L.]’s IEP were not optional and that if the teachers followed [the Honors English 10 teacher]’s guidance on implementing the accommodations they would be risking losing their teaching licenses. Although both of [G.L.]’s parents testified that [G.L.’s mother] did not mean this as a threat, the teachers in attendance understandably found the comment threatening and intimidating. (Tr. pp. 253-254, 633-634, 861-863, 977-978)

The school’s approach to implementing the IEP accommodations did not change significantly at the beginning of second semester. [G.L.] showed a lot of interest in the first Honors English reading assignment – “To Kill a Mockingbird.” He was very engaged during in-class discussion, completed all journaling associated with this novel, and did very well (>92%) on the test over this material. Despite his interest in the topic, [G.L.] did not complete a related essay assignment even though [special education teacher S.L.] devoted more than 20 periods of his instruction skills lab to work on the project. (Tr. at pp. 740-742, 1105-1110)

AEA Consultants Kris Vollbeer and Kathy Sivill were asked to observe the delivery of specially designed instruction in early February of 2012, as [S.L.] worked with [G.L.] on the Mockingbird essay. They both felt that the strategies and approach [S.L.] was using was appropriate for [G.L.]. (Exhibit F5; Tr. at pp. 677-684, 1486-1492) Vollbeer also

observed [G.L.] in Spanish class when a quiz was given and was concerned that he appeared to be off task or stuck. She interviewed [G.L.] a few days later. He said he knew the material, but might have been distracted during the quiz. (Tr. at pp. 684-687) Vollbeer also asked [G.L.] about how his classes were going. He said his work had been cut down, but not in the right way and he was failing all of his classes. They also discussed [G.L.]'s long term goal of going to a four-year college and Vollbeer told him that she thought this was a realistic goal, although it might take him more than four years to finish high school and college. (Tr. at pp. 688-690)

The annual review for [G.L.]'s IEP began at a meeting on February 29th and was completed at a second meeting March 21st, 2012. Each of [G.L.]'s regular education teachers was invited to give an update about his progress. Notes regarding the classroom teacher's input are included in the IEP. (Tr. at pp. 861-863)

By this point in the semester, [G.L.] had been exempted from nearly all homework and quizzes for Spanish II. His teacher expressed concern about his inattentiveness and inability to participate in classroom discussion. She was also concerned that the only remaining assessment would be the end of unit exam and she would not have a chance to re-teach material that [G.L.] had not mastered. [G.L.]'s biology teacher reported that he had been reducing test questions and options, chunking tests, and allowing extended time. He also attempted to use oral examinations with [G.L.], but his delay was just as great as on written exams and he did not appear comfortable with the format. During laboratory sessions, [G.L.] was relatively on task and productive. At the time of these IEP meetings, [G.L.] was still working on the Mockingbird essay assignment for Honors English 10. The teacher explained that this assignment had been modified to allow [G.L.] to write a shorter essay than other students – three paragraphs instead of four to five paragraphs. Despite pre-writing strategies and extensive skills lab time devoted to the essay, [G.L.] had not yet completed the project. [G.L.] was making progress working through the ALEKS algebra program with one-to-one assistance. Frequent attendance problems, both absences and late arrivals, were also noted by the team. The IEP also includes a detailed discussion of the efforts made by school staff to revise assessments to ensure measurement of [G.L.]'s knowledge, rather than his processing speed. (Exhibit D6)

As the second semester progressed, [G.L.] was more frequently absent or tardy and he often missed his skill lab due to arriving late for school. His class schedule was revised, moving skills lab to later in the day in hopes of improving his attendance. [G.L.]'s productivity did not improve. He remained resistant to completing and turning in assignments and had difficulty completing tests and quizzes. (Tr. pp. 893-894) The school suggested that it might be necessary for [G.L.]'s schedule to be adjusted, by changing the Spanish class to a pass/fail course. This possibility was summarily rejected by [G.L.]'s parents. They remained convinced that [G.L.] could succeed in the classes he was taking if the accommodations in his IEP were properly implemented.

[G.L.] ended the second semester of his sophomore year with As in band and health, a D+ in Honors biology, and Fs in both Honors English 10 and Spanish II. (Exhibit C1) His English and Spanish teachers attributed his failing grades in those classes to his

failure to produce work that could be graded. In Honors English, he did well on the Mockingbird journal entries and class discussion, but turned in no written assignments during the remainder of the semester except a resume project. (Exhibit G-4, at pp. 3253-3255; Tr. at p. 1118) [G.L.] was exempted from nearly all Spanish homework and quizzes, at his parents' request. He did well enough on tests and the work that was completed during the first half of the second semester to receive a C for the third quarter. During the fourth quarter, [G.L.] appeared to grow increasingly lost in the class and completed insufficient work to receive a passing grade. (Exhibit G-4, at pp. 3245-3246; Tr. at pp. 1187-1199)

Each regular classroom teacher during his sophomore year testified at hearing. They appeared to appreciate his wit and intelligence and, to a person, they seemed to genuinely like [G.L.]. I am convinced that they and his special education team tried very hard to implement the accommodations in [G.L.]'s IEP as best they could. Each of the classroom teachers testified that they could see no way to further reduce [G.L.]'s workload or further alter assessments without compromising the integrity of the curriculum. (Tr. at pp. 608-610, 1115, 1199) Given the nature of these classes, I am in no position to second guess their judgment in this regard.

The independent neuropsychological evaluation that the parties agreed to in November of 2011 was conducted in April of 2012. A copy of the report from this evaluation was provided to counsel for the school district and AEA on June 8, 2012. (Exhibit M6) It is difficult to directly compare this report with the Belin-Blank report from three years earlier. Partially because only some of the test instruments used in 2007 were re-administered in 2012 and partially because the 2012 report does not report the results of the tests that were given in the same detail. The 2012 report notes minor changes in cognitive ability, as measured by the WISC-IV. [G.L.]'s verbal comprehension rating dropped slightly from the very superior range to the high average range. His score on the verbal similarities subtest, which measures verbal reasoning, was significantly lower than obtained in 2007. Nonverbal reasoning test results were consistent with the 2007 testing. The working memory and delayed recall scores increased. His processing speed scored in the 13th percentile, essentially consistent, but slightly higher than the 9th percentile score in 2007.

Enrollment at [the] Academy – The complaint initiating this action was filed in mid-May of 2012. The school district continued to provide one-to-one assistance to [G.L.] as he worked on the ALEKS program in June and July. On July 18, 2012, [G.L.]'s parents sent an e-mail to [the Principal], notifying him that they would likely be enrolling [G.L.] “in an out placement program specifically for kids with his particular disabilities.” At that time, they were investigating [a specialized school in Canada]. (Exhibit P1) [G.L.] underwent a 3 ½ day evaluation at the school []. The [specialized] program is designed to identify and address brain function in 19 cognitive areas. Once areas of weaker cognitive function are identified, the program is designed to stimulate and strengthen cognitive function in those areas. (Tr. pp. 572-574) The evaluation showed [G.L.] to be a strong candidate for the program.

Ultimately, [G.L.]’s parents opted to enroll him at [the Academy in Pennsylvania], which implements the [specialized] Program, pursuant to a licensing arrangement with the program originator. (Tr. at pp. 87-89; 594-595) The program is built upon the concept of neuroplasticity and the focus is on building cognitive capacity, rather than compensating for dysfunction by building only on strengths and avoiding weaknesses. (Tr. pp. 575-584) The [Academy] does not maintain a full complement of secondary school courses. They do have a laboratory. This school year, [G.L.] has been taking chemistry, finishing geometry with the ALEKS program, and doing a rigorous brain training program throughout most of the day. (Tr. at p. 52)

Conclusions of Law

Controlling legal principles: A discussion of the basic framework and requirements of the IDEA is set forth below, followed by consideration of the overlapping procedural and substantive challenges the [Complainants] lodge regarding to the development of [G.L.]’s IEP and the delivery of special education services and accommodations.

The IDEA: The overriding purpose of the Individuals with Disabilities Education Act (IDEA) is to “ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.” 20 U.S.C. § 1400(d)(1)(A); *see Bd. of Education of Hendrick Hudson Cent. School Dist. v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034, 73 L.E.2d 690 (1982) (examining history and purpose of the Education for All Handicapped Children Act, the first comprehensive federal statute addressing special education, from which the IDEA has evolved). In exchange for accepting federal money to assist in educating children with disabilities, state and local education agencies must agree to make a free appropriate public education (FAPE) available to all qualifying children in their jurisdiction. 20 U.S.C. § 1412(a)(1).

Participating schools must evaluate and identify eligible students; develop an individualized educational program (IEP) for each eligible student – specifying the specialized instruction, related services, and accommodations that will be provided; comply with the Act’s procedural safeguards; and provide services to each child in the least restrictive environment (LRE) appropriate for the child. 20 U.S.C. §§ 1412(a)(3)-(6), 1414(d).

A parent or guardian who believes that a school district has failed to comply with the IDEA may seek relief by filing a complaint initiating due process proceedings with respect to “any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” 20 U.S.C. § 1415(b)(6). “The IDEA’s legal requirements are fulfilled if a school district (1) complies with the law’s procedures in developing an IEP, and (2) the resulting IEP is ‘reasonably calculated to enable the child to receive educational benefits.’” *M.M. v. District 0001 Lancaster County School*, 702 F.3d 479, 485 (8th Cir. 2012), quoting, *Rowley*, 458 U.S. at 206-07.

Burden of persuasion: “[T]he burden of persuasion in an administrative hearing challenging an IEP is properly placed upon the party seeking relief, whether that is the disabled child or the school district.” *School Bd. of Ind. School Dist. No. 11 v. Renollett*, 440 F.3d 1007, 1010 at fn. 3 (8th Cir. 2006), citing *Schaffer ex rel. Schaffer v. Weast*, 546 U.S., 49, 62, 126 S.Ct. 528, 537, 163 L.Ed.2d 387 (2005). Here, this burden rests upon the Complainants.

Available remedies: State hearing officers have broad discretion to order educational relief, including compensatory education benefits, to parents who prevail in an IDEA due process proceeding. *Doe ex rel. Doe v. Todd County School Dist.*, 625 F.3d 459, 465 (8th Cir. 2010); 20 U.S.C. § 1415(i)(2)(C). In addition, attorneys’ fees may also be awarded to the prevailing party in some circumstances. 20 U.S.C. § 1415(i)(2)(C). General and punitive damages are not included in the relief available under the IDEA. *Ind. School Dist No. 284 v. A.C.*, 258 F.3d 780 (8th Cir. 2001) (concurring opinion), citing *Birmingham v. Omaha Sch. Dist.*, 220 F.3d 850, 856 (8th Cir. 2000).

Review standard: “Parents and guardians of a disabled child may challenge the procedural and substantive reasonableness of an IEP by requesting an administrative due process hearing. . . .” *Fort Osage R-1 Sch. Dist. v. Sims*, 641 F.3d 268, 1002 (8th Cir. 2011).

In a suit by an aggrieved party under the IDEA, the court inquires whether the school district met the IDEA’s procedural and substantive requirements. Procedurally, the school district must follow the procedures set forth in the IDEA to formulate an IEP tailored to meet the disabled child’s unique needs. To pass substantive muster, the IEP must be “reasonably calculated to enable the child to receive educational benefits.” If the school district has met these requirements, it “has complied with the obligations imposed by Congress and the courts can require no more.”

Renollett, 440 F.3d at 1011, quoting *Rowley*, 458 U.S. at 206-07 (other internal citations omitted).

A procedural error provides a basis to set aside an IEP, only if “procedural inadequacies compromised the pupil’s right to an appropriate education, seriously hampered the parents’ opportunity to participate in the formulation process, or caused a deprivation of educational benefits.” *Fort Osage R-1 Sch. Dist.*, 641 F.3d at 1002-03, quoting *Lanthrop R-II Sch. Dist. v. Gray*, 611 F.3d 419, 424 (8th Cir. 2010); 34 CFR § 300.513(2).

The substantive reasonableness of an IEP hinges upon the requirement to offer a free appropriate public education (FAPE). This requirement is generally satisfied when “a school district provided individualized education and services sufficient to provide disabled children with some educational benefit.” *Fort Osage R-1 Sch. Dist.*, 641 F.3d at 2003, quoting *Blackmon v. Springfield R-XII Sch. Dist.*, 198 F.3d 648, 658 (8th Cir. 1999). “The standard to judge whether an IEP is appropriate under IDEA is whether it offers instruction and supportive services reasonably calculated to provide some

educational benefit to the student for whom it is designed. ‘Some educational benefit’ is sufficient; a school need not ‘maximize a student's potential or provide the best possible education at public expense.’” *Park Hill School Dist. v. Dass*, 655 F.3d 762, 765-66 (8th Cir. 2011), quoting *Lanthrop R-II Sch. Dist. v. Gray*, 611 F.3d at 427, and *Gill v. Columbia 93 Sch. Dist.*, 217 F.3d 1027, 1035 (8th Cir. 2000).

Even when an appropriate IEP has been developed, a student may be denied FAPE if the IEP is not properly implemented. “To prevail on a claim challenging the implementation of an IEP, the aggrieved party ‘must show more than a *de minimis* failure to implement all elements of that IEP, and instead, must demonstrate that the school board or other authorities failed to implement substantial or significant provisions of the IEP.’” *J.L. v. Francis Howell R-3 School*, 693 F.Supp.2nd 1009, 1033-1034 (E.D. Mo 2010), citing *Houston Ind. School Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir.), *cert denied*, 531 U.S. 817 (2000) and *Neosho R-V School Dist. v. Clark*, 315 F.3d 1022, 1027 (8th Cir. 2003) (footnote 3, citing *Bobby R.* as setting forth appropriate analysis for claim concerning failure to implement IEP). “This approach affords local agencies some flexibility in implementing IEP’s, but it still holds those agencies accountable for material failures and for providing the disabled child a meaningful educational benefit.” *Houston Ind. School Dist. v. Bobby R.*, 200 F.3d at 349.

Unilateral parental placement / reimbursement: Although the provisions of the IDEA, as originally enacted, were silent as to reimbursement of costs related to private education, the Act authorized a reviewing court to “grant such relief as the court determines is appropriate.” 20 U.S.C. § 1415(i)(2)(C)(iii). Through decisions issued in 1985 and 1993, the United States Supreme Court held that the scope of relief available to courts and hearing officers under the IDEA included the power to order school authorities to reimburse parents for the cost of privately educating a child with disabilities upon finding that the public schools failed to develop an adequate IEP and provide a FAPE. *School Comm. of Burlington v. Department of Ed. of Massachusetts*, 471 U.S. 359, 369, 105 S.Ct. 1996, 85 L.Ed.2d 385 (1985); *Florence County School Dist. Four v. Carter*, 510 U.S. 7, 15, 114 S.Ct. 361, 126 L.Ed.2d 284 (1993). Under these cases, parents could recover reimbursement for the cost of private education only upon findings “both that the public placement violated the IDEA and the private school placement was proper under the IDEA.” *Florence v. Carter*, 510 U.S. at 15.

In 1997, Congress directly incorporated this remedy into the IDEA.

Reimbursement for private school placement. If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private elementary school or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment.

20 U.S.C. § 1412(a)(10)(C)(ii). This provision did not alter the meaning of section 1415(i)(2)(C)(iii), as interpreted in *Burlington* and *Carter*. The twin requirements must still be met. A Court and or hearing officers may order a school district to reimburse parents the costs of a unilateral private-placement only if (1) the public agency has not made a free appropriate public education available in a timely manner and (2) the private-school placement is appropriate under the Act. See *C.B. v. Special School Dist. No. 1, Minneapolis*, 636 F.3d 981, 988 (8th Cir. 2011), citing, *Forest Grove School Dist. v. T.A.*, 557 U.S. 230, 246, 129 S.Ct. 2484, 174 L.Ed.2d 168 (2009).

When both of the prerequisite factors are established, the IDEA still allows reduction of the amount of expense reimbursement in some circumstances.

Limitation on reimbursement. The cost of reimbursement described in clause (ii) may be reduced or denied—

(I) if—

(aa) at the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

(bb) 10 business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in item (aa);

(II) if, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in section 1415(b)(3) of this title, of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for such evaluation; or

(III) upon a judicial finding of unreasonableness with respect to actions taken by the parents.

20 U.S.C. § 1412(a)(10)(C)(iii).

Thus, even when parents establish both of the prerequisite criteria for reimbursement of expenses related to unilateral private placement, courts and hearing officers “retain discretion to reduce the amount of a reimbursement award if the equities so warrant – for instance, if the parents failed to give the school district adequate notice of their intent to enroll the child in private school. In considering the equities, courts should generally presume that public-school officials are properly performing their obligations under IDEA.” *Forest Grove School Dist. v. T.A.*, 557 U.S. at 247; 129 S.Ct. at 2496, citing *Schaffer v. Weast*, 546 U.S. at 62-63 (Stevens, J., concurring).

“As a result of these criteria and the fact that parents who ‘unilaterally change their child’s placement during the pendency of review proceedings, without the consent of state or local school officials do so at their own risk,’ the incidence of private-school placement at public expense is quite small . . .” *Id.*, quoting *Carter*, 510 U.S., at 15 (quoting *Burlington*, 471 U.S., at 373-374).

Free Appropriate Public Education - FAPE: The first prerequisite for a parent to obtain reimbursement of expenditures related to a private placement is a showing that the public school district failed to make a free appropriate public education available in a timely manner. The term “free appropriate public education” – or FAPE – means special education and related services provided without charge at public expense, which: meet the standards of the State educational agency; include an appropriate education; and are provided in conformity with an individualized educational program. 20 U.S.C. §§ 1401(9); 1414(d). In many cases, a mere offer of specialized instruction is not sufficient to constitute a FAPE. FAPE is defined to include both instruction specially designed to meet the needs of the child and “related services,” including: “such developmental, corrective, and other supportive services . . . as may be necessary to assist a child with a disability to benefit from special education.” 20 U.S.C. § 1401(26).

As noted above, the substantive requirement to offer a free appropriate public education is generally satisfied when “a school district provide[s] individualized education and services sufficient to provide disabled children with some educational benefit.” *Fort Osage R-1 Sch. Dist. v. Sims*, 641 F.3d at 1003, quoting *Blackmon v. Springfield R-XII Sch. Dist.*, 198 F.3d at 658. The individualized education program – or IEP – is a “comprehensive statement of the educational needs of [the] handicapped child and the specially designed instruction and related services to be employed to meet those needs.” *C.B. v. Special School Dist. No. 1*, 636 F.3d 981, 989 (8th Cir. 2011), quoting *Burlington*, 471 U.S. at 368.

In our circuit, “[t]he standard to judge whether an IEP is appropriate under IDEA is whether it offers instruction and supportive services reasonably calculated to provide some educational benefit to the student for whom it is designed.” *Park Hill School Dist. v. Dass*, 655 F.3d at 765-66. “IDEA does not require that a school either maximize a student’s potential or provide the best possible education at public expense. The statute only requires that a public school provide sufficient specialized services so that the student benefits from his education.” *Fort Zumwalt School Dist. v. Clynes*, 119 F.3d 607, 612 (8th Cir. 1997), citing *Rowley*, 458 U.S. at 185 & 203. “IDEA’s goal 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.’” *Id.*, quoting *Rowley*, 458 U.S. at 192.

Specific results are not required, but a student’s academic progress can be an “important factor” in determining whether an IEP complies with the IDEA and academic progress can tip the determination in either direction. The fact that a student is falling behind or failing to make academic progress is an indicator that current programming is not sufficient to meet the student’s needs. See *C.B. v. Special School Dist. No. 1*, 636 F.3d at

989-990 (holding that public school failed to provide a FAPE, where despite student's average intellectual ability, positive attitude, and willingness to work, the educational program offered by the school did not assist him in making progress in reading during the fourth and fifth grade); and *Independent School Dist. No. 284, Wayzata Area Schools v. A.C.*, 258 F.3d 769,776-778 (8th Cir. 2001) (residential placement found necessary for FAPE, where – despite the absence of a learning disability – student's emotional and behavioral problems led to truancy and disruptiveness that caused her to fall behind).

On the other hand, a showing that a student is progressing academically at an average rate, despite psychiatric illness and behavior problems, is an indicator that current programming is reasonably calculated to provide educational benefit. *CJN v. Minneapolis Pub. Schools*, 323 F.3d 630, 642 (8th Cir. 2003), *see also School Bd. of Independent School Dist. No. 11 v. Renolett*, 440 F.3d 1007,1012 (8th Cir. 2006) (holding that where student made academic progress despite cognitive and behavioral disorder, he was provided with meaningful educational benefit and the substantive requirements of the IDEA were satisfied). FAPE is provided and the IDEA's requirements are satisfied "when a school district provides individualized education and services sufficient to provide disabled children with 'some educational benefit.'" *Blackmon v. Springfield R-XII School Dist.*, 198 F.3d at 658, quoting *Rowley*, 458 U.S. at 200; *see also Neosho R-V School Dist. v. Clark*, 315 F.3d at 1027.

Appropriateness of private placement: The second prerequisite to an order for reimbursement of expenses related to a private placement is a finding that the private placement is "proper under the Act and the award furthers the purposes of the Act." *C.B. v. Special School Dist. No. 1*, 636 F.3d at 991, citing, *Burlington*, 471 U.S. at 369, 105 S.Ct. at 2002, and *Forest Grove*, 557 U.S. at 242, 129 S.Ct. at 2493 (n. 9). This is not to say that the alternative placement chosen by the parent must meet the standards applicable to the public school.

Reimbursement is not barred simply because the chosen private school does not meet state standards, is not on a state-approved list, or has faculty members who are not certified teachers. *See Carter*, 510 U.S. at 14-15, 114 S.Ct. at 365-366. Nor must a parentally chosen alternative placement satisfy the least restrictive environment requirement.

The IDEA expresses a clear preference for the education of children with disabilities in the least restrictive environment. The law requires the public school to educate children with disabilities with children who are not disabled "[t]o the maximum extent appropriate." 20 U.S.C. § 1412(a)(5)(A). However, the Eighth Circuit recently found that this preference for mainstreaming is not intended to limit parental discretion and clearly held that "a private placement need not satisfy a least-restrictive-environment requirement to be 'proper' under the Act." *C.B. v. Special School Dist. No. 1*, 636 F.3d at 991.

In fact, to be 'proper' under the IDEA, the placement need only be reasonably calculated to enable the child to receive educational benefits. ...

Accordingly, to qualify for reimbursement under the IDEA, parents need only demonstrate the alternative placement provides educational instruction specially designed to meet the unique needs of a handicapped child, supported by such services as are necessary to permit the child to benefit from instruction.

T.B. v. St. Joseph School Dist., 677 F.3d 844, 847-848 (8th Cir. 2012) (internal quotations and citations omitted).

Analysis: Nature of the parents' claim - The amended complaint describes the general nature of the problem by saying that the [] School District failed to provide [G.L.] FAPE; failed to adhere to the procedural safeguards of the IDEA; and failed to uphold the terms of the Mediation Agreement executed on November 16, 2011. (Amended attachment to model form, at ¶ 1A – 1C) The amended complaint was filed on May 15, 2012, before the Complainants made the decision to withdraw [G.L.] from the public school and send him to the [Academy]. The complaint did not explicitly seek reimbursement of expenses related to the [Academy] placement. The complaint did warn the school district that if it was unable to develop a program of special education that worked for [G.L.] and met his needs it could be bound to pay for a placement meeting his needs. (Amended Complaint at ¶ B (1)(g)).

In response to a discovery interrogatory regarding the relief they were seeking, the Complainants delineated relief including reimbursement of costs related to the pre-admission evaluation for the [specialized] program, including travel expenses; reimbursement of costs related to moving [G.L.] to Pennsylvania; annual expenses for attending [the Academy], including tuition, housing, board, daily travel to and from the Academy, and travel home for visits, for the duration of his enrollment (estimated as 3 or 4 years); and an award of attorney fees. By the time of this interrogatory response, the Complainants were requesting no remedy other than expense reimbursement. (Exhibit R1, item 5)

As a general rule, the party requesting a due process hearing is not allowed to raise issues at the hearing that were not raised in the due process complaint, unless the other parties agree otherwise. 20 U.S.C. § 1415(f)(3)(B). Arguably, the Complainants adequately raised the issue of reimbursement for the costs of private placement by noting this potential within the amended complaint. Clearly, the reimbursement claim was spelled out by the Complainants months in advance of hearing. At hearing and in post-hearing briefs both parties approached the case as a claim for reimbursement of the costs the Complainants incurred for the [Academy] placement.

The Complainants assert that a “[u]nilateral placement did not occur in this case.” (Pet. Reply brief at p. 13) I find this assertion difficult to fathom. In the context of the IDEA, a unilateral parental placement occurs when parents who are dissatisfied with the educational services provided to their child by a public school decide to enroll their child elsewhere. The term unilateral refers to the fact that the decision is made unilaterally by the parents, rather than by the school district or the IEP team. When a school district decides that out-of-district placement is necessary to properly serve a student, the

school district bears costs of the placement. Costs of an out-of-district placement by a parent are reimbursable only under the limited circumstances outlined in the IDEA. “Recovering tuition [or costs] is a remedy only if the free and appropriate public education (FAPE) guarantee has been violated, exhaustive administrative remedies have been tried before placement, and the school has been notified.” *Thompson v. Bd. of Special School Dist. No. 1*, 144 F.3d at 579.

IDEA Procedural Compliance: [G.L.]’s parents contend that the school district altered [G.L.]’s IEP outside of an IEP team meeting. First, they assert that the team came to agreement on terms for the initial IEP during the second IEP meeting on April 6, 2011, and that the IEP terms were changed before the document was “finalized” in late May. Two initial IEP team meetings were held, on March 29th and April 6th. [G.L.’s mother] believed that the team arrived at a final agreement during the April 6th meeting. She did not think that the revised IEP draft distributed after that meeting fairly incorporated the agreed upon terms. Apparently – it is this draft that the Complainants believe unlawfully altered [G.L.]’s IEP.

The record simply does not support this characterization of the IEP drafting process. As discussed extensively at hearing and within the findings of fact in this decision, contrary to the Complainants’ belief, only one IEP was finalized and implemented in the spring of 2011. An IEP is a collaboratively developed document. The Complainants do not argue that the IEP team omitted essential members or did not fully discuss needed services and accommodations. Rather, they contend that the team members who were charged with writing the IEP did not accurately record the decisions made by the full IEP team during the April 6th meeting. Approximately 10 people attended the IEP team meetings in the spring of 2011. (See Meeting Notice, Exhibit D-2 at p. 2995) The attendees included a school administrator, regular education teacher, special education teacher, AEA consultant, [G.L.]’s parents, and an advocate. It is highly unlikely that each of the attendees left the meeting with an identical understanding of precisely how the final IEP would be worded.

I find nothing within the extensive hearing record, other than the Complainants’ testimony, to support the parents’ assertion that agreed-upon terms for the IEP were intentionally altered to make things more difficult for [G.L.]. To the contrary, although it took several weeks for the final wording to be worked out and agreed upon, both parents were satisfied with the IEP as finalized on May 18, 2011. Indeed, [G.L.’s mother] conceded during her cross-examination that the IEP included the accommodations and the goal that had been agreed upon by the IEP team. (Tr. at p. 242) The Complainants failed to prove that [G.L.]’s IEP was inappropriately revised in the spring of 2011.

The Complainants’ procedural argument also includes assertions that the accommodations, specially designed instruction, and progress monitoring delineated in the IEP were not fully implemented. They contend that [District] teachers and administrators did not abide by the provisions of the IEP, in that they did not adequately adapt or shorten assignments so that the workload was reasonable and manageable for [G.L.]; did not adequately or consistently offer alternative forms of

assessments; and did not allow unlimited extended time for tests and quizzes, as needed. Cast as a procedural claim [G.L.]’s parents’ argue that by failing to fully implement the IEP, [District] staff revised the IEP without following the notice and meeting requirements of the IDEA. The same factual allegations underlie the Complainants’ substantive claim that that the school failed in their duty to provide [G.L.] with FAPE by failing to fully implement [G.L.]’s IEP. As discussed in detail below, I find that the school district acted in good faith and reasonably implemented [G.L.]’s IEP.

Substantive IDEA Compliance: Eligibility for services under the IDEA is based upon a student’s disability and whether the disability has an adverse impact on the student’s educational performance. Although the IDEA is silent regarding “twice exceptional”¹⁸ or “gifted” students, it is clear that a student who possess above average intellectual ability can meet the IDEA eligibility standard if a developmental disability (such as Asperger’s Syndrome) or a specific learning disability related to reading, writing, or mathematics, adversely impacts educational performance. See Letter to Anonymous, 55 IDELR 172 (OSEP 1/13/2010). The educational evaluations conducted in 2007 and 2011, clearly show a connection between [G.L.]’s disabilities (ADD and a processing speed deficit) and his educational performance and the parties agree that he is eligible for services under the IDEA.

It is equally clear, however, that the purpose of the IDEA is not to maximize a student’s potential or to ensure the best possible education. The intent of the IDEA is not to require public schools to correct disabilities.

Nowhere in *Rowley* is the educational benefit defined exclusively or even primarily in terms of correcting a child’s disability. Certainly, given the wide range of disabilities covered by IDEA, remediation may often be part of an IEP. Behavioral modifications, for instance, immediately come to mind as an example of an IEP strategy that may remediate a disability while also being necessary to confer educational benefits. But the whole educational experience, and its adaptation to confer ‘benefits’ on the child is the ultimate statutory goal.

Klein Independent School Dist. v. Hovem, 690 F.3d 390, 397 (5th Cir. 2012), cert. denied 81 USLW 3421, 2013 WL 182782 (2013). Rather, the intent of the IDEA is to provide students with disabilities with meaningful access to public school.

Meaningful access, in this context, means a full opportunity to access “the variety of educational programs and services available to nondisabled children,” including accelerated classes. 20 C.F.R. § 300.110. “Thus, if a qualified student with a disability requires related aids and services to participate in a regular education class or program,

¹⁸ The term “twice exceptional” is commonly applied to students who have high cognitive ability as well as disabilities that impede academic performance.

then a school cannot deny that student the needed related aids and services in an accelerated class or program.” Exhibit N7 – *Dear Colleague Letter*, OSEP 12/27/2007.

The Complainants assert that [District] administration and staff were unwilling to provide the accommodations [G.L.] needed to have meaningful access to the school’s honors-level classes. Indeed, they assert that the school district and AEA were “firmly of the opinion that if [G.L.] wanted to be in honors or advanced classes, he had to be able to do the same volume of work as his non-disabled peers . . . [the] accommodations were believed by LEA/AEA staff not to reach into honors courses.” (Pet. Reply brief at p. 5)

The overwhelming weight of evidence in the record simply does not support this allegation. The nature of [G.L.]’s disabilities and the accommodations needed to minimize the affect these disabilities have upon his educational performance is well documented in the record. A comparison of the educational evaluations available to the school district – the 2007 Belin-Blank Center evaluation and the 2012 AEA evaluation – reveals that two evaluations contain essentially consistent recommendations for accommodation of [G.L.]’s disability. The vast majority of these recommendations were incorporated into the IEP developed by his IEP team at the [] district.

In the view of [G.L.]’s parents, the most crucial accommodations were: reduced assignments; extended time to complete tests and quizzes, as needed; and alternate forms of assessments. The Complainants’ argument centers upon these three accommodations and their belief that the school district resisted and refused these accommodations – particularly as applied to the district’s honors curriculum. In the parents’ view the district did too little, too late to meet [G.L.]’s needs. The school district contends that appropriate accommodations and modifications were provided based on [G.L.]’s individualized needs to the extent possible, while ensuring the core curriculum and academic integrity of each class was maintained. In the district’s view, further revision of assignments and assessments could not have been accomplished without sacrificing the integrity of the curriculum.

The question of whether these three accommodations were adequately implemented is the central focus of this case, but it is also essential to keep in mind the many other accommodations and services were provided to [G.L.] under his IEP. [G.L.] was provided with specially designed instruction to teach self-talk strategies designed to address his executive functioning deficits and increase his writing fluency by helping him break assignments into manageable segments, estimate the length of time needed to complete each task, self-monitor his progress, and organize and focus his thoughts. [G.L.] found this process awkward and adjustments were made to the instruction through the school year as his special education instructors tried to fine tune the instruction to be more effective for him. Daily instruction to address writing fluency was suspended for several weeks at the end of the second quarter of [G.L.]’s sophomore year after the mediation sessions in November of 2011, when his parents agreed that the focus of instruction would be turned to completion of the 3200 grammar unit.

Classroom teachers monitored [G.L.'s] progress and provided prompts to begin tasks and continue working on the task at hand. Graphic organizers were used to assist with organizing thoughts for written work. [G.L.] had dedicated class periods set aside within the school day to apply his specially designed instruction to written assignments – under the direct supervision of a certified special education instructor – and to work on assignments, tests, and quizzes that he was unable to finish during regular class. Voice activated dictation software was provided – although [G.L.] did not find it helpful and used it little. He was provided with an extra set of books for home and was given copies of lecture notes. Rubrics were provided beforehand for major assignments or projects. Despite his parents' belief to the contrary, he was given credit for all completed work and was not penalized for late assignments.

The record contains conflicting evidence regarding the three accommodations upon which the parents' argument centers – reduced workload, extended time to complete quizzes and tests, and alternate forms of assessments. [Both parents] testified that these accommodations were essentially ignored by the district during [G.L.]'s sophomore year, until after [G.L.] was buried in past-due assignments and assessments. In their view, despite repeated efforts to obtain a greater reduction of assignments, little relief was granted. [G.L.] was routinely spending 20 to 30 hours per week on homework during the first semester of his sophomore year, but he was still unable to maintain the pace of current work and was falling behind in the fall of 2011. In his parents' view, this was proof that the school was not adequately implementing the accommodations in his IEP. Their response was to intensify pressure on the school district to reduce [G.L.]'s workload further, to the degree that they put the school district on notice at the beginning of January that they and [G.L.] would no longer cooperate with the school unless they felt the accommodations offered were adequate to allow [G.L.] to succeed.

The specific revisions that were made to [G.L.]'s assignments, quizzes, and exams were detailed through the testimony of [the Principal], [special education teacher/case manager S.L.], [the reading specialist], [special education teacher S.G.] and each of [G.L.]'s sophomore-year regular education teachers. The accommodations are also well documented within the school records. [G.L.] was exempted from completing portions of the work in each class. Each of his regular education teachers reviewed quizzes and tests. [G.L.] was exempted from completing many quizzes. Remaining quizzes and exams were revised, duplication was eliminated to reduce the number of questions, and the number of potential responses on multiple-choice questions was reduced. Oral exams were also tried when feasible, with varying success. Although [G.L.] undoubtedly had to work hard, he was able to complete his freshman year and the first semester of his sophomore year with good grades and he continued to perform well on district-wide assessments.

When [G.L.]'s parents advocated for additional reduction of his workload and further modification of assessments or identification of alternate means to assess [G.L.]'s knowledge of core concepts during the second semester, they met resistance. Assignments, quizzes, and tests had already been revised to the extent that the teachers were concerned about the integrity of the curriculum. The fact that [G.L.] was enrolled in rigorous honors courses did factor into the school district's perspective, but not in the

sense argued by the parents. Without question, the teachers of [G.L.]’s honors classes were willing to work with [special education teacher S.L.] to apply appropriate accommodations. They were not, however, willing to alter the performance expectations placed on [G.L.] to such a degree that they fundamentally altered the nature of the course-work.

The parents seem to believe that since [G.L.] had the intellectual capacity to succeed in the honors courses and was entitled to IDEA accommodations for these courses, he was entitled to succeed, regardless of the degree to which the accommodations changed the nature of the course-work. I simply cannot agree. IDEA eligibility entitles a disabled student to a full educational opportunity. It does not guarantee that the student will excel in all aspects of education or even pass all courses attempted. The aspects of Honors English 10 and Honors biology that set these classes apart from the district’s college-track course offerings were the volume and depth of the material covered and the pace of the courses. It was certainly possible for the teachers to eliminate redundancies and duplication within assignments and exams to a degree without compromising the course content. Logically, however, at some point it becomes impossible to further extend time limits and reduce assignments and tests without changing the course to the point that it becomes equivalent to a non-honors class.

[G.L.]’s parents feel that they were not given adequate voice in determining what constituted reasonable accommodation in each class. Again, I disagree. [G.L.]’s IEP called for “adapted and/or shortened assignments as determined by the case manager, general education teacher, and [G.L.]” [G.L.] and his teachers were in the best position to identify areas where workload needed to be reduced. Ultimately, [G.L.]’s teachers, not [G.L.] or his parents, were in the best position to determine when the accommodations had been taken as far as they could be, as applied to a specific courses.¹⁹

In many respects, the issue here is resembles a methodology dispute. The parents and school district essentially agreed upon [G.L.]’s basic educational program, but they could not agree on some aspects of how the program would be implemented. As with disputes concerning educational methodology, the ultimate decision regarding the reach of agreed upon accommodations is most appropriately made by the school district.

¹⁹ Although not controlling in the IDEA context, case law regarding the sufficiency of accommodations required of post-secondary institutions under the Rehabilitation Act and Americans with Disabilities Act (ADA) provides an instructive point of comparison. These federal statutes prohibit discrimination based on disability and require colleges to make reasonable accommodations and program modifications to avoid discrimination on the basis of disability. The acts do not, however, require educational institutions to make fundamental or substantial modifications to its programs or standards and deference is appropriately accorded an educational institution’s determination as to the reasonableness of a requested accommodation. *See Zukle v. Regents of the Univ. of California*, 166 F.3d 1041, 1048 (9th Cir. 1999).

The guarantee of an opportunity to participate in the IEP development process does not afford parents the authority to dictate the terms of the IEP or the methodology that will be used to implement the IEP.

It is “largely irrelevant” if the school district could have employed “more positive behavior interventions” as long as it made a “good faith effort” to help the student achieve the educational goals outlined in his IEP. *CJN v. Minneapolis Public Schools*, 323 F.3d 630, 639 (8th Cir. 2003). Although an IEP team must “consider” the results of outside evaluations, not all such recommendations need be adopted. *K.E. ex rel. K.E. v. Indep. School Dist. No. 15*, 647 F.3d 795, 805-06 (8th Cir. 2011) (citation omitted). That is because requiring a school to change methodologies based on the preferences of each parent would create “the potential that a school district could be required to provide more than one method ... for different students whose parents had differing preferences.” *E.S. v. Indep. School Dist. No. 196*, 135 F.3d 566, 569 (8th Cir. 1998) (citation omitted).

M.M. v. Dist. 0001 Lancaster County School, 702 F.3d at 487.

“The standard by which to judge whether an IEP is appropriate under the IDEA is whether it offers instruction and supportive services reasonably calculated to provide some educational benefit to the student for whom it was designed.” *Park Hill School Dist. v. Dass*, 655 F.3d at 765-766. If an appropriate IEP has been developed, a denial of FAPE occurs only if significant provisions of the IEP are not implemented.

For the reasons discussed herein, I conclude that Complainants have failed to meet the burden of proving that the [] School District and Mississippi Bend AEA failed to offer a free appropriate public education to [G.L.]. Therefore, they are not entitled to receive reimbursement of the cost of the private placement.

Finally, I note that I would conclude that the Complainants are not entitled to reimbursement of costs related to the private placement, even if they could prove a denial of FAPE. As detailed above, parents seeking reimbursement for the cost of a private education can prevail only if FAPE was denied by the public school *and* the private placement is proper under the IDEA. See *T.B. v. St. Joseph School Dist.*, 677 F.3d at 847-848.

The private placement chosen by the parents in this case is not designed to and does not provide educational instruction designed to meet [G.L.]’s needs. Indeed, except for a single chemistry class, [G.L.] is engaged in no academic coursework at the [Academy]. While a parental placement is not held to the same standards as a public school program, the record here would not support a finding that the [Academy] is reasonably calculated to enable [G.L.] to receive educational benefit.

Decision

The Respondents have prevailed on all issues raised in this proceeding. The public school offered [G.L.] a free appropriate public education and his parents are not entitled to reimbursement of costs related to the private placement at the [Academy].

Issued on April 29th, 2013.



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