

APPENDIX

IOWA DEPARTMENT OF EDUCATION

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DEPARTMENT OF EDUCATION  
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In re: Mellissa D. )  
 )  
 William and Anita D. )  
 )  
 Appellants )  
 v. )  
 )  
 The West Lyon Community School )  
 District and )  
 Northwest Area Education Agency )  
 )  
 Appellees )  
 )

DECISION

Admin Doc. SE- 311

The above entitled matter was heard before Administrative Law Judge (ALJ) Carla A. Peterson on February 7, 2007 in Sheldon, IA. The hearing was held pursuant to Iowa Code Section 281.6 of the Rules of the Iowa Department of Education [Iowa Administrative Code (I.A.C.) 281-41.112-41.125] and applicable regulations from the Individuals with Disabilities Education Improvement Act (IDEA) as amended in 2004. The hearing was evidentiary and was closed to the public at the request of the Appellants. Appellant, Anita D., was present and was represented by Attorney Curt L. Sytsma. The Appellees were present and were represented by Attorney Kevin Rogers of Swisher & Cohort P.L.C.

**Procedural History**

A request for a Preappeal Conference, filed by the Appellants on behalf of their daughter, Mellissa, was received by the Iowa Department of Education on March 9, 2006. The Preappeal Conference was requested to address the Appellant's claim that the West Lyon Community School District (WLCSD) and Area Education Agency 4 (AEA 4) (now part of Northwest Area Education Agency) had failed to provide the supports, services, and accommodations necessary for Mellissa to secure a free and appropriate public education (FAPE) due to her several mental health needs. The Appellants assert that such failure has resulted in an application for a Child in Need of Assistance (CINA) petition, diminishing parental rights to secure necessary services.

The Appellants filed a Request for a Due Process Hearing on March 30, 2006, against the WLCSD and AEA 4, the State of Iowa, and the Iowa Department of Education. Three claims made against the WLCSD and AEA 4 were substantially similar to those that had been made in the Request for a Preappeal Conference. The Appellants claimed that the School District and the AEA violated the IDEA by (1) failing to provide the intensive mental health services that Mellissa needed to benefit from her education; in the alternative, the School District and the

AEA have violated the provisions of the IDEA by failing to secure an educationally adequate medical evaluation of Mellissa's mental health needs and by forcing the parents to incur expenses in an attempt to secure such an evaluation, (2) failing to provide minimally adequate home-based instruction during the periods of time in which Mellissa's mental health needs prevented her from attending school, and (3) encouraging and/or instigating a Child in Need of Assistance (CINA) proceeding to secure the related services that Mellissa needed in order to benefit from her education. This action constituted an attempted change in placement or in the provision of special education and related services that was effected without compliance with the procedural protections set forth in the IDEA. This action also violated the IDEA by imposing significant costs on the parents and diminishing their procedural rights. (4) At the hearing (02/07/07) and in the Appellants' Brief (04/02/07), the Appellants' raised an additional issue claiming that the Appellees' answer to their Request for a Due Process Hearing was inadequate, both technically and substantively.

In addition, this Request for a Due Process Hearing stated that the Appellants sought relief from the State of Iowa and the Iowa Department of Education claiming that: (1) Under Iowa's system for the provision of a full continuum of mental health services to children, as currently designed and/or as currently implemented, school districts and area education agencies have a financial incentive to encourage the filing of a CINA action against the parents or to wait until the deterioration of the child's mental health compels such action, 2) forcing parents to secure mental health services needed under the IDEA pursuant to the CINA process violates both the procedural rights of the parents and the substantive rights of the child, and at the same time, it places undue and unnecessary burdens on the juvenile court system and increases the financial burden of Iowa taxpayers, and (3) this systemic bias has adversely affected Mellissa and her parents, and the State of Iowa and the Iowa Department of Education have violated the IDEA by failing to take adequate steps to correct this long-standing, significant, and systemic bias against IDEA rights.

A considerable period of time passed between filing of the Request for a Due Process Hearing and the actual Hearing on February 7, 2007. A series of Continuances were granted in this case, and three different ALJs have been assigned to handle this case. The case was assigned originally to ALJ Dr. Susan Etscheidt. A Hearing was scheduled for August 1, 2006. The attorney for the Appellants filed a Request for Continuance on July 17, 2006, and on July 19, 2006, a Continuance was granted until October 20, 2006. On October 16, 2006, the attorney for the Appellants requested another Continuance and a Mediation Session. The matter was continued to December 20, 2006, and the Iowa Department of Education was instructed to schedule a Mediation Session. On December 18, 2006, the Appellants requested another Continuance until January 31, 2007, stating that no Mediation or Resolution Session had been held. This request was the beginning of a series of requests. The attorney for the Appellees filed a Resistance to the Request for Continuance and a Request for Dismissal stating the Appellants had requested multiple Continuances, the Appellees had made an offer to which the Appellants had not responded, and the child had moved to South Dakota where she had completed almost a semester of school. The attorney for the Appellants filed a Resistance to the Appellee's Resistance to Continue, and the attorney for the Appellees filed another Request for Dismissal. On December 20, 2006, ALJ Etscheidt granted a Continuance through January 31, 2007, and resigned from the case. On December 21, 2006, ALJ Dr. Larry Bartlett was appointed to the

case, and he convened a conference call with the parties that same day. During that call, the parties agreed that a mediator should be assigned immediately and another conference call be set in early January to establish a date for a Mediation Session or a Due Process Hearing. ALJ Bartlett wrote a summary of this call and resigned from the case that same day.

ALJ Peterson was assigned to the case on January 2, 2007, and a conference call to discuss next steps was held on January 5, 2007. During that call, the parties agreed to move forward with a Due Process Hearing which was scheduled for February 7, 2007. A Continuance was granted until February 17, 2007 to allow time for the Due Process Hearing and subsequent decision.

Prior to the Hearing, a settlement agreement between the Appellants and the Iowa Department of Education was negotiated. Mr. Sytsma, attorney for the Appellants prepared a document outlining that agreement, which was delivered to this ALJ, along with a letter from Iowa Assistant Attorney General Christie J. Scace stating that, "the agreement fully resolves the claims against the Department and will result in dismissal of the action against the Department, if approved". The substance of this agreement was that the Appellants would drop all claims against the State of Iowa and the Iowa Department of Education given that the Iowa Department of Education will, within 90 days of final execution of this Agreement, publish and distribute to all area education agencies and public school districts in the State of Iowa a reminder that,

"it is improper to recommend or propose a Child in Need of Assistance proceeding to secure mental health or other services that are solely or primarily needed to enable a child with disabilities to benefit from his or her education. Any such recommendation or proposal is deemed to be inconsistent with the procedural and substantive provisions of the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 *et seq.* This policy does not limit or impair the good faith reporting of child abuse or truancy, nor does it apply to recommendations or proposals that are not intended to secure services that are solely or primarily needed to enable a child with disabilities to benefit from his or her education".

Further, the document stated that this proposed settlement should not be interpreted as suggesting or implying in any way that the remaining Appellees (WLCSD and Northwest AEA) violated this. During the Hearing on February 7, 2007, this ALJ presented the proposed settlement and hearing no objections from either party, accepted the proposed settlement (Transcript at 4-6). A formal dismissal of the claims against the State of Iowa and the Iowa Department of Education was delivered on February 17, 2007. As per this agreement, a letter from the State of Iowa addressed to AEA Directors of Special Education, LEA Superintendents, and CFCS Consultants was delivered on April 23, 2007.

During the Hearing, both parties agreed to a Continuance (03/30/07) to allow for completion of the Hearing transcript (03/01), exchange of briefs (03/16) and decision (03/30). On March 16, 2007, the Appellants requested a Continuance due to the fact that receipt of the Hearing transcript had been delayed, and the following schedule was outlined: exchange of briefs (04/02), exchange of reply briefs (04/09), and decision (05/07). The matter was continued until May 7, 2007.

## Findings of Fact

The Administrative Law Judge finds that she and the Iowa Department of Education have jurisdiction over the parties and the subject matter involved in the appeal.

### Background and Early Education Experiences

Mellissa D. was born January 30, 1993. Mellissa spent her preschool years in South Dakota and California, started school in California, and then returned to South Dakota for several years of elementary school. Mellissa first enrolled in the WLCSD in January, 2004, halfway through 5<sup>th</sup> grade; apparently this transition was unremarkable. Records from the Sioux Falls School District indicate satisfactory progress during 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> grades, as well as some periods of multiple absences (Appellees' Record at 272-274). The final grade report from 5<sup>th</sup> grade at WLCSD indicated that Mellissa received satisfactory grades, though she received "extra help" in math and the notation that she needed improvement in the areas of completing work promptly and using time wisely (Appellees' Record at 268).

Mellissa has quite a remarkable record of mental health needs and treatments. According to Mrs. D's report (Appellants' Records at 1049-1050), Mellissa was diagnosed with depression and a separation anxiety disorder in the summer of 2000 after her aunt passed away. Mellissa was under psychiatric care and was prescribed Prozac and Tarazadone because she was experiencing hypnogogic hallucinations. During the next several years, Mellissa was hospitalized 3 times due to suicidal ideations. Mellissa began seeing Dr. Budu after the move to Iowa, and Dr. Budu had ruled out Attention Deficit Hyperactive Disorder (ADHD) (as had other psychiatrists) and diagnosed bipolar disorder not otherwise specified and generalized anxiety disorder, and her several medications were based on that diagnosis. Mrs. D testified that Mellissa had been on a 504 Plan prior to moving to Iowa but that she did not believe that was adequate support to Mellissa when she was experiencing rapidly fluctuating mood swings. Further, Mrs. D testified that she had met with the principal of the elementary school prior to their move to inquire about special services (Transcript at 18; Appellants' Records at 1049).

### Current Dispute

The current dispute arose from the Appellants' claim that the WLCSD and AEA 4 did not provide FAPE due to inadequate consideration of and accommodations for her mental health needs. Evidence and testimony regarding Mellissa's academic experiences, Mellissa's mental health history and care, and the family's experiences with the legal system are all relevant to the presenting issues. The issues relevant to the current dispute will be presented in chronological order as much as possible; some events were related to more than one of these areas and overlapped in time.

#### 2004-2005 Academic Year - 6<sup>th</sup> Grade

Academic and school experiences. Mellissa's situation changed dramatically during her sixth grade year. Mellissa's attendance was perfect for the first ten days of school, but started to drop off after that. Altogether, Mellissa attended 33 of 69 days before she was dropped from the

WLCSO enrollment list. She attended 28 of 43 school days prior to an incident on October 27, 2004, and only 5 of 26 school days after October 27, 2004 (Appellees' Records at 256-259).

Melissa was referred for evaluation on September 21, 2004 with concerns noted in the areas of mathematics and social-emotional functioning. The Consent for Full and Individual Initial Evaluation (09/21/04) identifies concerns about Mellissa's social emotional status (Appellants' Records at 1001-1002; Appellees' Records at 18-19). Mrs. D. testified that during the summer of 2004, a young girl was raped in the city park and that when Mellissa learned of this incident, she became very upset and afraid to go outside or even be alone in her home. Mrs. D. testified that when Mellissa saw the boy, a student at her school, who had been charged with the assault, this triggered panic attacks and flashbacks to sexual abuse that she had suffered earlier. Mrs. D. testified that Mellissa didn't feel safe at school; that the thought of going to school would trigger panic attacks during which she would become hysterical, her heart would race, and she would simply curl up in a ball. Mrs. D. testified that because of this, Mellissa missed a lot of school and while at school found it difficult to concentrate on schoolwork and would frequently go to the nurse's office to calm down (Transcript at 23-27)

Pursuant to the request for evaluation, reports were completed by Dana Oas, school psychologist, and Erin VanderVelde, school social worker. The School Psychological Report (10/15/04) detailed extensive review of Mellissa's academic records and assessment results. Record review revealed that Mellissa had been absent 98 school days and tardy 112 times from first grade through fifth grades. Mr. Oas reported that as of the current date, Mellissa had missed 10 days of sixth grade and had multiple missing assignments in math, reading, spelling, and science. Mellissa was administered the KeyMath Diagnostic Inventory of Essential Mathematics-Revised (KeyMath-R). Mellissa's overall score on this assessment was in the average range, but Mr. Oas stated that "Mellissa's classroom performance is currently not commensurate with her standardized test scores . . . much of this discrepancy can be attributed to poor attendance which has led to missed learning opportunities and incomplete assignments". Mr. Oas' report concluded that, "according to the Iowa Rules of Special Education, Mellissa does not qualify for special education services in the area of math," but the report also noted that, "Mellissa has some significant mental health issues that need to be addressed and hopefully brought under control before she will be able to achieve success academically". Mr. Oas' report states that, "this information will be shared with the school's multidisciplinary team for discussion and decision making. Actual placement and programming is determined by the special education staffing team" (Appellants' Records at 1003-1005; Appellee's Records at 24-26).

The School Social Work Report (12/7/04) reviewed much of the same material regarding Mellissa's academic record and school attendance, but it contained further information regarding Mellissa's social-emotional functioning gathered via interviews with Mellissa and with Mrs. D., as well as additional information regarding Mellissa's school experiences during the fall of 2004. According to this report, Mellissa's mother indicated that Mellissa had been diagnosed with Bipolar Disorder, struggled with anxiety, and saw a therapist every two weeks and a doctor monthly for medication regulation. Mellissa had been hospitalized three times during the past two years for suicidal ideations, but she had not attempted suicide. Mrs. D. reported that Mellissa was absent from school frequently because her anxiety sometimes hindered her from sleeping at night making it difficult for her to get up on time, and also because Mellissa is susceptible to a variety

of illnesses Mellissa also reported her struggles with anxiety and the fact that she was taking medications for mood swings and sleep and was on an anti-depressant. Ms. Vander Velde reported that she had observed Mellissa as alert and participating in classroom activities on October 12, 2004, when Mellissa's teacher reported that Mellissa's attitude had been good recently, but that Mellissa struggled to get her work done due to her excessive absences, and that Mellissa worked better in small groups or one on one with a teacher. Ms. Vander Velde's report also describes a meeting with the parents and school personnel (11/09/05) (Appellants' Records at 1006-1009; Appellee's Records at 20-24).

On the morning of October 27, 2004, Mrs. D. transported Mellissa to school, but Mellissa did not enter the school and various individuals' reports of the event differ fairly dramatically. Ms. Vander Velde's report says that Mellissa refused to enter the school building and was hiding and avoiding adults. The sheriff was called "to maintain Mellissa's safety on a busy highway" and escorted Mellissa home. Mrs. D. indicated they would complete schoolwork at home for a period of time. Mrs. D.'s testimony (Transcript at 27-33) and her written account (Appellants' Record at 1050-1051) provide a somewhat different description. According to Mrs. D., when they arrived at the school, Mellissa went into a panic attack in the parking lot. While Mrs. D. tried to get her out of the car and into the building, Mellissa ran away and went to a gully between the school parking lot and the highway. Mrs. D. called Dawn Kellen, the juvenile court school liaison officer, to request assistance. Mrs. D. testified that when Ms. Kellen approached, Mellissa moved further away. Ms. Kellen told her that the school was not equipped to handle this type of behavior and she may need to call the police for assistance, but Mrs. D. requested that that not be done as it would only make matters worse. At Ms. Kellen's urging, Mrs. D. left the school, but on the way home called Mellissa's therapist who advised her that until they could understand the full nature and extent of Mellissa's panic attacks and address them, she was in no condition to be in school. Mrs. D. returned to the school to learn that the police had come, had picked up Mellissa, and were taking her home. Mrs. D. followed the police car home where Mellissa ran out of the car into the family's home. Mrs. D. testified that the police told her Mellissa's behavior was unacceptable and that the family was not doing enough to help her. Mellissa told her mother that the police officer had said that if she ever behaved like this at school again and he was called, he would take her to juvenile detention rather than taking her home. Mrs. D. testified that on this same day, she asked Dawn Kellen, school liaison officer, about alternative schools who told her that the only alternative available would be Cherokee State Hospital. Mrs. D.'s written account (Appellants' Records at 1050) states that Mellissa had an appointment with her therapist that afternoon where it was learned that her severe panic attack had been caused by a flashback to her incident of sexual abuse and that it had been triggered by seeing the boy charged with rape. Tim Snyder, elementary principal wrote a note about this incident (Appellees' Records at 66). Mr. Snyder's note also states that Mrs. D. had been transporting Mellissa to school for several weeks because "she was not wanting to come to school for various reasons" and "she had refused to ride the bus".

Notes from Julianne Klesel, Mellissa's therapist, during this same time period state that Mellissa "does not want to go to school" (10/20/04; Appellants' Records at 1199) and that Mrs. D. "wanted this therapist to call the school and recommend the client be home schooled. She was told that she should address this issue herself as it was her decision to home school . . . was told

this therapist would only assist with this issues if she ran into any difficulties doing so” (10/27/04; Appellants’ Records at 1198).

Mrs. D.’s testimony confirms the school records that Mellissa’s attendance deteriorated after October 27, 2004. Mrs. D. testified that she had discussed Mellissa’s mental health needs with the school many times, had requested a mental health plan for Mellissa at an IEP meeting, and had requested home bound services for Mellissa but was told that home bound services could be arranged only if that was ordered by a doctor. Mrs. D. testified that she and her husband made the decision to keep Mellissa at home because it was too difficult to get her to school, but that she would have preferred to have someone from the school supervise Mellissa’s education and that she requested that numerous times, that she did not get Mellissa’s assignments on a regular basis, and was concerned about Mellissa falling behind. She testified that she did not remember receiving a Competent Provider of Services form. Mrs. D. testified that Mellissa’s therapist had recommended home schooling but a plan for homebound instruction was not forthcoming (Transcript at 33-35).

A team including Mr and Mrs. D., the school social worker, the school psychologist, the school liaison officer, and the principal, met on November 9, 2004. According to Ms Vander Velde’s report, the meeting was scheduled to “discuss interventions designed to improve Mellissa’s school attendance” The plan developed arranged for Mellissa to attend school three days a week, escorted into the building by one of her parents. She was to complete homework assignments for days not in school. A folder with focus points for anxiety attacks was developed, and the social worker, liaison officer and school nurse were to be available as needed. According to Ms Vander Velde’s report, Mellissa attended school only two days after this meeting, and “on December 6, 2004, the school principal informed the special education team that Mellissa would be home schooled by her parents for the rest of the year, with plans to transition her back into the school setting at the beginning of the next school year”. The report concludes by stating that Mellissa is not in need of special education services, her parents are educating her at home, her mental health needs are being addressed by outside service providers, and school personnel should be involved when Mellissa is ready to transition back to school (Appellants’ Records at 1006-1009; Appellee’s Records at 20-24).

Mellissa’s mental health treatment. During this same time period, Mellissa began seeing Julianne Klesel, LISW, at the Seasons Center for Community Mental Health in Spencer, Iowa. Records from her first appointment (10/06/04) indicate that Mellissa had been seen by Dr. Alina Budu, a psychiatrist, and another therapist at Siouxland Mental Health Center in Sioux City, Iowa during the few years prior to this. This record indicates that Mellissa had been diagnosed with bipolar disorder and had been hospitalized due to suicidal ideation 3 times since age 10. The record states that Mellissa’s “primary functional impairment is in school performance and peer relationships” and that her “mother wants her to learn coping skills to deal with these stressors and also learn to express her feelings instead of holding them in” Ms. Klesel recommended that Mellissa participate in individual therapy on a bi-monthly basis, and that the primary goal would be to teach Mellissa skills to decrease stress and anxiety (Appellants’ Records at 1200-1210).

It appears that the WLCSD and AEA 4 personnel did attempt to communicate with Mr and Mrs. D., as well as Mellissa’s mental health providers, to learn more about Mellissa’s needs and recommendations for her mental health care and school programming beginning in the fall of

2004 and continuing through the 2005-2006 academic year. School social worker Erin Vander Velde contacted Julianne Klesel (10/27/04) and Dr. Budu (10/27/04) for recommendations regarding Melliss'a participation at school (Appellees' Records at 79-80).

Therapy notes and documentation of consultative telephone discussions from Ms. Klesal indicate that she saw Mellissa approximately once or twice each month from October, 2004 through at least December, 2005 (Appellants' records at 1162-1210). Therapy notes indicate that Mellissa generally participated in the therapy sessions quite actively and goals focused on assisting Mellissa learn coping techniques to deal with flashbacks, learn and implement relaxation skills, verbalize feelings about her past sexual abuse, regulate her emotions, improve her sleep hygiene, improve her interpersonal relationship skills, work with the family to develop plans for Mellissa's IEP, and decrease her fears about school. Notes from telephone conversations, indicate that Mrs. D. reported that Mellissa was having trouble in school, that Mellissa did not want to go to school or do her homework (Appellants' records at 1199). Notes from October 27, 2004 indicate that Mrs. D. asked Ms. Klesel to "call the school and recommend the client (Mellissa) be home schooled". Ms. Klesel's notes indicate that she told Mrs. D. that she should address this issue herself as it was her decision and that Ms. Klesel would assist if she "ran into any difficulties doing so" (Appellants' records at 1198). The record is unclear as to when the personnel at WLCSD or AEA 4 received these records, and Ms. Vander Velde's report does not indicate that home schooling was discussed at the team meeting held on November 9, 2004 (Appellants' records at 1106-1109; Appellees' Records at 20-24).

#### 2005-2006 Academic Year – 7<sup>th</sup> Grade

Academic and school experiences. At the beginning of Mellissa's 7<sup>th</sup> grade year (8/29/05), Mrs. D. signed a Consent for a Full and Individualized Evaluation; this consent indicates need for social-emotional assessment and states that, "Mellissa struggles with social emotional issues. She also has multiple school absences as a result Mellissa is experiencing anxiety attacks in classes . . . Mellissa experienced the same difficulties last year and was eventually home schooled." (Appellants' Records at 1010-1011; Appellees' Records at 29-30) Ms. Vander Velde was assigned to complete this assessment. The following day, Mr. D. and Mellissa met with a Response To Intervention (RTI) team consisting of Erin Vander Velde, Dana Oas, Dawn Kellen, and principal Doug Jiskoot to address these issues and to develop a plan for having Mellissa return to school for the 7<sup>th</sup> grade. Julianne Klesel, Mellissa's therapist, was identified as an outside agency contact (Appellants' Records at 1017-1018). According to RTI team records (undated – Appellants' Records at 1017-1018; Appellees' Records at 27-28) and the Team Summary Report (Appellants' records at 1012-1016), an intervention plan that incorporated recommendations from Mellissa's private therapist including temporary excusal from classes to engage in coping skills to relieve anxiety, was developed. According to this report, Mellissa's therapist had recommended a school program that called for Mellissa to attend school three full days and two half days each week. Mellissa was to attend a special education classroom for math and study hall to provide her a private area and individualized instruction. At this meeting, Mr. D. was presented with options for seeking voluntary services from the Department of Human Services and was given contact information for the County Attorney (Appellants' records at 1044). Ms. Vander Velde's testimony corroborated this information (Transcript at 150). Ms. Vander Velde testified that the team discussed options for "voluntary services through the Department of Human Services, but not a CINA" (Transcript at 142). When asked, she testified that Mr. and Mrs. D. were informed about services that were available for



them to buy (Transcript at 154-155). This recommendation for an altered school schedule is corroborated by an e-mail communication that Mellissa's therapist, Julianne Klesel, sent to Erin Vander Velde (9/1/05) where Ms Klesel advocated for an altered school schedule of two half days and three full days per week and encouraged the school personnel to "work with the family on developing an IEP for Mellissa as soon as possible" She also stated that "Mellissa's panic attacks are very real and not due to her being rebellious" In addition, Julianne Klesel stated, "I would also like to urge the school to help and support this family. Right now they feel threatened by the school based on comments made at the meetings this week. Mellissa's mother wants her daughter to have a good education and to be in the classroom where she can interact with peers. Mellissa has also stated a desire to return to school" (Appellees' Records at 300)

Ms. Klesel's therapy notes (08/31/05 and 09/14/05) refer to discussions with Mrs. D regarding developing recommendations for Mellissa's IEP and telephone conversations she had had with the principal and Judy Morrison (Note: name is Morrison) (Appellants' Records at 1177-1179).

The RTI plan was not successful in facilitating improved attendance for Mellissa. An IEP was developed for Mellissa (10/12/05; Appellants' Records at 1020-1026; Appellees' Records at 237-241). Participants in that meeting included the Mr. and Mrs. D, LEA representative Doug Jiskoot, general educator Ken Denekas, special educators Trish Lombard and Audra Kern, school psychologist Dana Oas, health aide Sue Faber, school liaison Dawn Kellen, private therapist Julianne Klesel (by phone), social worker Erin Vander Velde, consultant Becky Hendrickson, parent advocate Judy Morrison from the ASK Resource Center, guidance counselor Kim Mulder, and Mellissa. The Present Levels of Academic Achievement and Functional Performance indicates Mellissa's bipolar disorder and generalized anxiety disorder have resulted in poor school attendance (present on one full and two half days out of 34 school days). A Team Summary report (undated; Appellants' Records at 1012-1016), apparently shared at the IEP meeting prior to finalization, indicates the team's support of Mellissa as an eligible individual due to a significantly slower rate of progress than expected, a discrepancy between her expected performance and actual performance, and instructional needs (to leave classroom, private setting, personnel) IEP goals were developed for Mellissa (1) to attend school 80% of the time, (2) pass her core academic classes in the subsequent 36 school weeks, and (3) experience anxiety that necessitates her leaving a general education classroom three times or fewer in one week. To assist Mellissa in achieving those goals, the following accommodations, program modifications, specially designed instruction, support for school personnel and support or related services were to be provided:

Mellissa should be seated on the front edge of her classrooms near the teacher. Mellissa will be allowed to excuse herself from classes, when necessary, to engage in coping skills to relieve anxiety. Mellissa will go to the nurse's office or guidance counselor's office when she leaves the general education classroom.

Mellissa will attend her core courses in the general education classrooms. She will spend some time working on an independent study for Family and Consumer Science and Health classes during study hall first period and for 15 minutes during sixth period. Mellissa will leave school Monday through Thursday at 1:20.

Mellissa will attend study hall first period and 15 minutes of sixth period in the special education classroom to provide for a smaller class size, as well as small-group assistance to complete current and incomplete homework.

Due to her need to leave the general education classroom and engage in coping skills, Mellissa requires access to an adult (paraprofessional) for supervision when she is not in the general education classroom. This adult can also help Mellissa engage in self-monitoring within the general education classroom.

Mellissa will meet with the school psychologist or guidance counselor during seventh period on Fridays to talk through and process specific concerns she has and to monitor her level of anxiety.

Mellissa will be transported home by a school staff member Monday through Thursday.

A separate document outlining procedures for a severe manic/panic attack indicated that the school would not call the police for assistance. Ms. Sue Faber or Mr. Dana Oas were to be called, and if Mellissa would not calm down, either the Appellants, Mellissa's older sister or brother-in-law, or school-aged brother were to bring Mellissa home (Appellees' records at 166).

Mr. D. signed Consent for Initial Special Education and/or related Services (Appellants' Records at 1027; Appellees' Records at 39), and Mrs. D. signed the Written Notice of a Proposed or Refused Action (Appellants' Records at 1028; Appellees' Records at 40). That document listed only one option, general education without special education services, that had been considered but rejected because Mellissa had not attended school without these services in place. This was corroborated by testimony from school personnel. Ms. Vander Velde testified that Cherokee State Hospital was not recommended as an option (Transcript at 141-142) as did Mr. Jiskoot (Transcript at 121). When asked if the options for instruction in the special education classroom outlined in the RTI plan had been tried successfully, Ms. Vander Velde answered, "It was unable to be determined if it was successful because she was not in attendance" (Transcript at 148). Ms. Vander Velde testified that she knew about requirements that a continuum of placement options must be available (Transcript at 153), but when asked if she knew whether placement options not considered such as a smaller school or alternative school was available to the IEP team, she answered, "Not to my knowledge" (Transcript at 153). Mr. Jiskoot testified that we was not familiar with the concept of a continuum of placement options (Transcript at 120), but that consideration of special education services always begins with services in the least restrictive setting (Transcript at 121). Jim Gorman, Director of Special Education at AEA 4 during this time period, testified that the concept of a full continuum of placement options calls for "matching services to the needs of the student" (Transcript at 176) and that the AEA previously had used a variety of setting ranging from general education classrooms to out of state residential settings (Transcript at 178-179). Mr. Gorman also testified that the AEA has recently formed a Mental Health Resource Team that was beginning a study to better understand the continuum of service options currently available in Northwest Iowa (Transcript at 180-181).

Mellissa's attendance did not improve following development of the IEP. The Appellants presented written records (Appellants' records at 1052-1053) that after the IEP was developed, several attempts were made to get Mellissa to school. Mrs. D.'s notes indicate that she took

Mellissa to school and stayed on the school grounds to try to help calm her when she had panic attacks but was told by the school psychologist that she was "enabling her and should not be staying at the school". Mrs. D. indicated that she left the school, but when Mellissa came home that day, she seemed jumpy and had trouble sleeping. The next morning, Mellissa reported seeing visions (blood, a scary fox, jugglers); these visions lasted for several weeks and disturbed her sleep and her ability to focus. Mrs. D.'s notes indicate that she made several unsuccessful attempts to get Mellissa to school, that she requested having teachers give her assignments that Mellissa missed but was told by Principal Jiskoot that this could not be expected. Mrs. D. indicated that she did not receive any of Mellissa's assignments until the first week of December when 3 packets arrived.

School records indicate that Mellissa attended school only 3 full days and 7 half days between August 25, 2005 and March 20, 2006 (Appellants' Records at 1074-1076; Appellees' Records at 106-108). Additional notes (Appellees' Records at 109-115) indicate that the D. family called the school and/or gave a reason for Mellissa not being present on 44 of 66 school days between 8/29/05 and 12/9/05. No calls to the school were recorded between 1/12/05 and 3/28/06. Mellissa was in attendance two half days (2/3 and 3/10) during that period of time. These same records indicate that Ms. Kellen made one call to the D. family on 8/30/05. The Appellants' presented records of multiple e-mail exchanges with teachers and other school personnel regarding Mellissa's attendance and assignments (Appellants' Records at 1128-1155). A few of these exchanges had taken place during the 2004-2005 academic year, but the bulk of them were initiated by Mrs. D. and occurred between August and December of 2005. Additional notes from the WLCSD record multiple times that teachers pulled together Mellissa's assignments to be picked up by her parents; the records indicate that they were picked up and returned sporadically (Appellees' Records at 118-119).

Mellissa's mental health treatment. Mrs. D. testified that during this period of time, she informed the school that Mellissa needed more intensive mental health services but was told, during the IEP meeting that the only alternative placement available was Cherokee State Hospital (Transcript at 44). Further, she said that she and her husband had been told that if they wanted additional services, they should request that Mellissa be declared a Child in Need of Assistance (CINA) (Transcript at 45). Mrs. D. also testified that she was told by school personnel that Mellissa could not be provided home-bound services unless they were ordered by a doctor, but that Mellissa's psychiatrist, Dr. Budu said that she would not make a recommendation regarding education (Transcript at 45-46). As noted above, testimony of school personnel contradict these statements. Further, Ms. Vander Velde testified that Mr. and Mrs. D. did not request a different placement during the IEP meeting (Transcript at 143) and that they did not have recommendations from mental health providers about using different strategies to address Mellissa's absences (Transcript at 159). Similarly, Mr. Jiskoot testified that when the IEP was developed, there had been no communication from any IEP team members, including Mr. and Mrs. D., about additional services (Transcript at 112).

At some point in the fall of 2005, Mrs. D. requested that Mellissa be provided with homebound instruction, and she testified that she was told she needed to have a doctor's recommendation for home schooling in order for the school to provide that. Mr. Jiskoot testified that Mrs. D. was "insistent that Mellissa be homebound instructed" (Transcript at 112) but that he had told her that the documentation they were receiving said just the opposite of that, "that

school was probably the best place for her to help her with her anxiety, albeit with accommodations which we were willing to make as documented in the IEP" (Transcript at 112-113). Ms. Vander Velde and Mrs. D. made several contacts with Mellissa's mental health providers

On October 24, 2005, Ms. Vander Velde contacted Dr. Budu to inform her of the agreed-upon IEP and Mellissa's response. The IEP was in effect October 17, 2005 and although Mellissa attended school on October 17<sup>th</sup> and 18<sup>th</sup>, she was not in the general education classrooms due to anxiety. Her mother had reported by phone that Mellissa had been "curled up in a ball" in bed or on the couch for the following four days. Ms. Vander Velde inquired:

"While we are trying to address Mellissa's educational needs as they relate to her mental health needs, it appears that her mental health needs are of greater concern at this point in time and go well beyond the scope of what the school can offer or provide. Is Mellissa's current treatment regimen of medication and one hour of therapy every other week adequate to meet her needs? Are Mellissa's parents receiving adequate support and training to work with Mellissa at home? Please inform us of any recommendations you would make for Mellissa at school."

The following day, Ms. Vander Velde again wrote to Dr. Budu to report that Mrs. D. had told the school principal that you (Dr. Budu) were considering having Mellissa "committed" (Appellees' Records at 84). She asked for recommendations concerning Mellissa's educational plans. A letter was sent to Ms. Klesel at the Season Center for Mental Health as well (Appellees' Records at 85).

The Appellants presented communications from Judy Morrison, parent advocate from the ASK Resource Center, and Ms. Klesel, Mellissa's therapist, that supported Mellissa's need for homebound instruction. Ms. Morrison's e-mail (addressed to Mrs. D. and dated 10/27/05) states, "I feel at this time that Mellissa is unable to attend school on a regular schedule. I think she would be best served with home bond schooling with the school providing the work material and teaching plans for her parents. I do think, however that she should take all test in the school setting. I think there are several reasons as to why Mellissa is unable to be in school. She doe need to receive an education in some manner. A reentry plan should be developed so that she can return to school as soon as possible" (Appellants' Records at 1147-1148).

Ms. Klesel's consultation notes (10/27/05) state,

"At this point, the client is unable to continue with school. Judy, the parent advocate recommended homebound school . . . Judy has sent this recommendation to the psychiatrist. The doctor must recommend this in order for the school to provide this . . . This therapist also agrees that this would be the best option for the client" (Appellants' Records at 1176).

Ms. Vander Velde wrote letters to Dr. Budu (Appellee's Records at 80) and Ms. Klesel (Appellee's Records at 79) on this same day seeking recommendations regarding Mellissa's participation at school. Again on November 8, 2005, Ms. Vander Velde contacted Dr. Budu to inquire about recommendations regarding Mellissa's education.

Keith Karstens, clinical psychologist at the Associates for Psychiatric Services, evaluated Mellissa on November 9, 2005. His report indicated that Mellissa

“endorsed more symptoms on the M-PACI than 92% of those her age in the standardization sample. This very unusual response pattern makes any conclusions drawn from the report of questionable validity. It is possible that Mellissa was trying to look more symptomatic than she actually is. It is also possible that endorsing so many symptoms represented an anxious plea for help.

Mellissa is feeling overwhelmed much of the time and feels unable to cope with the demands of her everyday life. This may lead to a tendency toward impulsive outbursts or inappropriate actions at times . . . . She is likely to externalize blame for her problems onto others possibly as an attempt to disguise self-doubts. She may have limited ability to identify with real people in her life. . . . She is feeling more needs for personal closeness than are being currently met and may be feel quite dependent and even deprived. Psychological testing suggests that Mellissa’s reports of stress are genuinely felt but some of her reported symptoms may be exaggerated. She is most likely a dependent youngster who is very sensitive and has low self-esteem. She may easily misinterpret the comments and behaviors of others further increasing her feelings of vulnerability and sensitivity. Although she reports hallucinations, it is not clear that these distortions represent psychosis, however. Therapeutic intervention will be the key to helping Mellissa increase her feelings of control and competence and to view others in a more realistic way. Mrs. D’s “participation in the therapeutic process with be important” (Appellants’ record at 1035-1036 and Appellees’ record at 179-180).

Mrs. D. challenged the report as inaccurate and misleading (undated; Appellants’ Record at 1037-1036; Appellees’ record at 171-182).

Mrs. D. testified that Dr. Budu would not make a recommendation about Mellissa’s education, and she informed school personnel (11/18/05; Appellees’ Record at 103) that Dr. Budu’s services were terminated and Mellissa would begin seeing a new psychiatrist.

Shortly thereafter, Mellissa began seeing Dr. Christine Segreto, staff psychiatrist at the Seasons Center. In her report of Mellissa’s first visit (12/15/05), Dr. Segreto indicated that the reason for the evaluation “is because her regular psychiatrist, Dr. Budu, won’t write a letter saying that Mellissa has to have home-bound education”. Mellissa reported to Dr. Segreto that the school threatened to send her to juvenile detention if she has panic attack at school, and Dr. Segreto stated, “This leads me to suspect that Mellissa’s panic attacks are something other than panic attacks and evidently that’s what the school is thinking too but according to the parents, the school psychologist and Melissa’s therapist believe that these are panic attacks”. Dr. Segreto also noted,

“this evaluation was complicated by the fact that Mellissa’s parents suddenly changed psychiatrists because they have to go to court this month and they’re wanting a letter from a psychiatrist saying that Melissa should be home-schooled. This puts me in a distinct disadvantage. I have never met Melissa before. The school evidently feels she should be attending school. Her parents feel she should be homebound. Her former psychiatrist seems to think she shouldn’t have homebound education. There is no way I can make a determination after seeing

this child one time as to whether or not she should have homebound education or not, and, just generally speaking, keeping people homebound because they have panic attacks is probably the worse thing that one can do for them unless we want them to become invalids in their own home afraid to leave the house. I told the mother this but she wasn't too pleased to hear my opinion about that".

She concluded that,

"I believe that Melissa has learned to manipulate the system and she certainly has her mother on her side. At this point I don't know if she should be home-schooled or not. I don't know if she's having genuine panic attacks or not. I'm not certain that she has Bipolar Disorder and I'm not convinced that she has hallucinations. ...we need to get a lot more information from the school and from everybody involved before any decision can be made about home schooling" (Appellants' Records at 1158-1161 and Appellees' Records at 186-189).

Mellissa was evaluated at the Center for Disabilities and Development at the University of Iowa (01/03/06). A report of the educational component of that assessment described learning concerns and a possible math disorder. The psychological component of the evaluation described uneven cognitive functioning and several recommendations regarding school and home experiences. Recommendations regarding school included

"We strongly support her full-time attendance back to the school setting. This transition time will need to be monitored very carefully with the need for ongoing therapy and support in place to facilitate the transition. ... increased specialized support for mathematics as well as her anxiety needs, provision of tutoring ... to help Mellissa get her incompletes up to dates as well as her incomplete homework assignments completed. ... use of a calculator ... math assignments reduced significantly ... additional explanations to interpret visual graphs, etc , participation in small group rather than large group instruction as much as possible once she has transitioned back to the school setting

Several more general recommendations were made including,

"have an evaluation from Child Psychiatry ... restore a more age-appropriate lifestyle that includes regular school attendance and opportunities for peer interaction ... at home, monitor Mellissa's Internet usage ... encourage regular physical activity ... encourage Mellissa follow a typical, age-appropriate sleep-wake schedule" (Appellants' Records at 1032-1034; Appellees' Records at 183-185)

The Appellees' copy of this report includes a hand-written note indicating that this was the "Iowa City eval , requested by cnty. attorney prior to CINA hearing".

On January 10, 2006, Ms. Vander Velde contacted Dr. Segreto at the Seasons Center to inquire about Melliss'a official diagnosis and treatment plans, as well as recommendations to increase school attendance. Dr. Segreto responded on January 17, 2006 indicating she could not make a recommendation since he did not know Mellissa well enough (Appellee's Records at 190). A second report from Dr. Segreto (01/27/06) confirmed that Mellissa "grossly exaggerates her symptoms, but that doesn't mean she's not having any symptoms. Again, I don't believe that she's psychotic ... I do believe that she's probably hypomanic at this time" (Appellees' Records at p. 191) Dr. Segreto repeated her reluctance to recommend homebound instruction at that time.

Follow up inquiries were dated February 14, 2006. Dr. Segreto's report (0/17/06) concluded that "evidently, Melissa does have actual panic attacks" following the discussion of the Sheriff's incident and panics at school and other settings. . . . new medications were prescribed to get the panic attacks under control (Appellees' Records at 193).

On March 22, 2006, Ms. Klesel wrote to the Appellants' attorney stating that Mellissa's mental health interferes with school attendance and that she had been seeing Mellissa every other week for therapy. Since more intensive services were required, Ms. Klesel recommended that Mellissa receive additional services at home (Appellees' Records at 194).

Family's involvement with the legal system. Principal Doug Jiskoot testified that Mellissa's attendance continued to be poor after the IEP was developed, that he met with Mrs. D and Mellissa and advised them that if he didn't get some medical documentation from a doctor stating that Mellissa could not attend school that he would need to start truancy proceedings. He testified that he was duty bound to do so as Mellissa was under mandatory attendance age. He testified that he reported Mellissa as truant in November, 2005 (Transcript at 105-108).

Lyon County Attorney Carl Petersen informed the Appellants, via letter (12/6/05), that Mellissa was considered truant due to her very intermittent attendance during the fall of 2005. Mr. Peterson informed the Appellants of his duty to call a meeting (set for 12/20/05) to discuss causes of the truancy, and to discuss services necessary to ensure attendance. A formal agreement was to be drafted at the meeting (Appellants' Records at 1029-1030; Appellees' Records at 195-196).

Mrs. D. testified that a meeting regarding Mellissa's truancy was held (12/20/05, and attended by herself, Mr. D., Mellissa, Doug Jiskoot, County Attorney Petersen, and parent advocate Judy Morrison. Mrs. D. testified that she and her husband were encouraged to sign a CINA petition so that Mellissa could get more in-home mental health services and someone could be assigned to work with Mrs. D. on organizational skills and getting Mellissa to school. Mrs. D. testified that when she inquired as to whether the person assigned would be able to assist with Mellissa's panic attacks, she was told that a social worker and not a mental health provider would be assigned. Mrs. D. stated that she did not want a CINA petition to be served as Mellissa has separation anxiety and with a CINA, the state of Iowa would have had the right to take Mellissa from her home and determine treatment for her. Mrs. D. testified that Ms. Kellen had told her that Mellissa should be hospitalized but that she and Dr. Segreto did not think this was a good idea. Mrs. D. testified that she was given 3 weeks to get further educational and psychiatric evaluation completed, so she arranged to have Mellissa seen at the Center for Disabilities and Development in Iowa City. Mrs. D. testified she drove 789.7 miles to have this assessment done, paid a \$50 testing fee not covered, and incurred a bill of \$138.86 for overnight lodging in order to obtain this assessment (Transcript at 52-56; Appellants' Records at 1031). Mr. Jiskoot's testimony corroborated that this meeting had been held. He testified that the County Attorney needed additional information before making a conclusion as to whether he would file a CINA petition, that he wasn't sure who had recommended that the Iowa City assessment be completed, but that he thought it would be a good idea. He testified that the more information they had to handle Mellissa's situation, the better and that, up to this point in time, he had not received any recommendation from mental health professionals (Transcript at 108-112). Ms. Kellen sent an e-

mail message to Mrs. D. (12/22/05) suggesting that she call Kaisha Netten because "she has another option for services without having to do a CINA" (Appellants' Records at 1153).

Lyon County Attorney Carl Petersen sent another letter (02/22/06; Appellants' Records at 1039-1040) stating that his office "had received documentation from the University of Iowa and other sources that lead me to the position that Mellissa is capable of going to school". Thus, due to Mellissa's continued failure to attend school without receiving intensive mental health treatment, he stated he was planning to file a Child In Need of Assistance (CINA) petition on her behalf. The CINA petition was filed the following day (Appellants' Records at 1041-1042). Ms. Vander Velde wrote a letter (2/21/06; Appellees' Records at 159-162) addressed To Whom It May Concern that detailed Mellissa's record at the WLCSD and ended with these statements:

"At this time, I reiterate a statement I wrote to Mellissa's therapist on October 21, 2005: We continue to have serious concerns for Mellissa's mental health. Is her current treatment enough/appropriate? Are her parents equipped to deal with Mellissa's condition? These are questions that go well beyond our scope of assistance at school, but greatly impact our ability to provide services to Mellissa educationally. If she is not here, we cannot educate her. "I greatly appreciate the opportunity to provide input into these proceedings and look forward to a positive resolution that will benefit Mellissa, most importantly. Please contact me with any additional questions or concerns."

Ms. Vander Velde testified that she had prepared this letter at the request of the County Attorney (Transcript at 157-158).

That same day, an additional court order appointing Timothy J. Kramer as attorney for Mellissa was filed, but a separate guardian ad litem was not appointed. A hearing in this matter was scheduled for March 10, 2006 (Appellants' Records at 1047-1048). Mr. Kramer filed a Request for Continuance and Application for the Appointment of a Guardian Ad Litem stating that he did "not believe that he can properly represent the legal interests of the child as legal counsel and also represent the best interests of the child as guardian ad litem" (2/23/06; Appellants' Records at 1079-1080).

Curt Sytsma filed a Request for an Expedited Preappeal Conference on behalf of the Appellants (03/9/06; Appellants' records at 1057-1058). The following day, a Continuance was granted in the CINA proceeding until March 31, 2006 (Appellants' Records at 1081-1082). Frances Honrath, an attorney for Mrs. D. contacted Lyon County Attorney Carl Petersen, Attorney for Mellissa D. Tim Kramer, and the Iowa Department of Human Services to notify them that the family was intending to move to South Dakota (03/24/06; Appellants' Records at 1085-1086). Mr. Honrath also filed a motion to continue (Appellants' records at 1087), and the matter was continued to April 19, 2006 (Appellants' records at 1088). Tim Kramer filed a motion to dismiss the CINA action (07/28/06; Appellants' Record at 1115), the matter was continued until August 11, 2006 (Appellants' records at 1116), but then was subsequently dismissed (08/11/06; Appellants' records at 1125-1127).



### Family's Move to South Dakota

The D. family moved, and Mellissa was enrolled in school in Sioux Falls, South Dakota during April of 2006; Mrs. D. signed a Consent for Evaluation on April 19, 2006 (Appellants' Records at 1094), and an IEP was developed (04/24/06; Appellants' Records at 1092 - 1093, 1097-1100, and 1104-1113) Mellissa continued to have significant absences in Sioux Falls and was transferred to an alternative setting, Success Academy, where her attendance improved (Appellants' records at 1102-1103) Mrs. D. answered affirmatively to questions regarding whether Mellissa has been attending school at Success Academy during the 2006-2007 academic year and that their previous request for compensatory mental health services is withdrawn as the services provided have been sufficient and there does not appear to be a need for more intense services than the package put together in South Dakota. Mrs. D. did testify, however, that they are requesting compensatory educational services because "with the lapse of services she has fallen behind" (Transcript at 63-64).

### **Conclusions of Law**

The issue before this ALJ is whether the WLCSD and AEA 4 (now Northwest AEA) violated the provisions of the IDEA by failing to provide Mellissa D. the intensive mental health services she needed to benefit from her education, failing to secure an educationally adequate medical evaluation of Mellissa's mental health needs thereby forcing her parents to incur expenses in an attempt to secure this evaluation, failing to provide minimally adequate home-based instruction during the periods of time in which Mellissa's mental health needs prevented her from attending school, encouraging and/or instigating a Child in Need of Assistance (CINA) proceeding to secure the related services that Mellissa needed in order to benefit from her education, and failing to provide a technically or substantively adequate reply to the Appellants' Request for a Due Process Hearing. While several specific areas of complaint are listed, all relate to whether or not the WLCSD and AEA 4 gave proper consideration to Mellissa's mental health needs in designing and implementing a free and appropriate special education program for her. Thus, discussion will not be organized to consider each issue separately

### Burden of Proof

The U.S. Supreme Court has ruled that the burden of persuasion in a due process action under the IDEA lies with the party seeking relief [*Schaffer ex. rel. Schaffer v. Weast*, 546 (U.S. 49, 126 S. Ct. 528, 535 (2005))]. The burden of persuasion requires that the party bringing action must prove their claim by a preponderance of evidence, which is established by the greater weight of reliable, probative and substantive evidence. The Eighth Circuit has followed this decision allocating the burden to the party challenging an IEP [*School Board of Independent School District No. 11 v. Renollett ex rel. Renollett*, 440 F.3d 1007, 1011 n.3 (8<sup>th</sup> Cir. 2006)] and noting that placing the burden of proof on the incorrect party is a reversible error [*West Platte R-II Sch. Dist. V. Wilson*, 439 F.3d 782, 785 (8<sup>th</sup> Cir. 2006)] The Appellants argue that they have met this burden.

### Provisions of the IDEA

The purpose of the IDEA is to ensure that all children with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living [20 U.S.C. § 1400(d)(1)(A)]. Further, FAPE is defined as being provided at public expense, under public supervision and direction, and without charge [20 U.S.C. § 1401 (9)(A)] and in conformity with the Individualized Education Program (IEP) [20 U.S.C. § 1401 (9)(D)].

Regulations accompanying the IDEA provide further guidance regarding the issues under consideration here. The particular regulations most relevant to the present case will be highlighted. Specifically, emotional disturbance is one category under which a child to be identified as a child with a disability [34 C.F.R. §300.8 (a)]. An emotional disturbance means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance [34 C.F.R. §300.8 (a)(4)(i)]:

- (A) An inability to learn that cannot be explained by intellectual, sensory, or health factors
- (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers
- (C) Inappropriate types of behavior or feelings under normal circumstances
- (D) A general pervasive mood of unhappiness or depression
- (E) A tendency to develop physical symptoms or fears associated with personal or school problems.

Regulations accompanying the IDEA state that special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and . . . specially designed instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction to address the unique needs of the child that result from the child's disability; and to ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children. [34 C.F.R. §300.39]

Regulations accompanying the IDEA state that an Individualized education program or IEP means a written statement for a child with a disability that is written, reviewed and revised [34 C.F.R. §300.22] by an IEP team that includes the child's parent/s [34 C.F.R. §300.321], and that the public agency take steps to ensure the child's parents are afforded the opportunity to participate in the IEP process [34 C.F.R. §300.322].

Regulations accompanying the IDEA describe necessary steps for the development, review, and revision of the IEP [34 C.F.R. §300.324]. Sections of special relevance to this case will be highlighted.

- (a)(1) Generally, in developing the child's IEP, the IEP team must consider
  - (i) The strengths of the child
  - (ii) The concerns of the parents for enhancing the education of their child

- (iii) The results of the initial or most recent evaluation of the child; and
- (iv) The academic, developmental, and functional needs of the child . . .
- (a)(2) The team is expected to consider special factors
  - (i) In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior . . . and
- (b)(1) the IEP Team
  - (ii) Revises the IEP, as appropriate, to address –
    - (A) Any lack of expected progress toward the annual goals
    - (B) The results of any reevaluation conducted
    - (C) Information about the child provided to, or by, the parents
    - (D) The child's anticipated needs

Regulations accompanying the IDEA state the many provisions that must be included in the IEP [34 C.F.R. §300.320]. The necessary components most relevant for consideration in the current case include

- (2)(i) A statement of measurable annual goals, including academic and functional goals designed to
  - (A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and
  - (B) Meet the child's other educational needs that result from the child's disability
- (4) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child –
  - (i) To advance appropriately toward attaining the annual goals;
  - (ii) To be involved in and make progress in the general education curriculum . . . and to participate in extracurricular and other nonacademic activities; and
  - (iii) To be educated and participate with other children with disabilities and nondisabled children

Finally, regulations accompanying the IDEA describe related services that are required to assist a child with a disability to benefit from special education are described in great detail [34 C.F.R. §300.34]. Again, noting those services most relevant for consideration in the present case, the following are included among related services described:

- Counseling services . . . provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel [34 C.F.R. §300.34(c)(2)]
- Medical services . . . provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services [34 C.F.R. §300.34(c)(5)]
- Parent counseling and training . . . assisting parents in understanding the special needs of their child; providing parents with information about child development; and helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP . . . [34 C.F.R. §300.34(c)(8)]

- Psychological services including . . . . obtaining, integrating, and interpreting information about child behavior and conditions relating to learning; consulting with other staff members in planning school programs to meet the special educational needs of children as indicated by psychological tests, interviews, direct observations, and behavioral evaluations; planning and managing a program of psychological services, including psychological counseling for children and parents; and assisting in developing positive behavioral intervention strategies [34 C.F.R. §300.34(c)(10)]
- Social work services including . . . group and individual counseling with the child and family; working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment to school; mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and assisting in developing positive behavioral intervention strategies [34 C.F.R. §300.34(c)(14)]

#### Discussion

Mellissa D. is a child eligible for and in need of special education services. The parties do not dispute this, and the description of her behaviors, her mental health, and her educational records provides evidence necessary to support that. There is some dispute as to whether the evaluation of Melissa completed during the fall of 2004, concerns reported by her parents, and her educational records during that period of time should have alerted the WLCSD and the AEA 4 to her need for special education services at that time. The record contains ample evidence that the WLCSD and AEA 4 were aware that Mellissa had significant mental health needs during the fall of 2004. Specifically, the events of October 27, 2004, during which Mellissa refused to enter the school building and was taken home by the county sheriff, were fairly dramatic. During the fall of 2004, Mellissa's attendance had become irregular, her parents began transporting her to school because she refused to ride the bus, and her academic performance was poor. These events were described during testimony and by the records. The Consent for Full and Individual Initial Evaluation (09/21/04) identified concerns about Mellissa's social emotional status. Mr. Oas' report stated that, "It is also evident that Mellissa has some significant mental health issues that need to be addressed and hopefully brought under control before she will be able to achieve success academically". Ms. Vander Velde's report (12/07/04), recounted several events that had occurred during the fall of 2004, including the incident with the sheriff and a meeting (11/09/04) with Mr. and Mrs. D., the school social worker, the school psychologist, the school liaison officer, and the principal scheduled to "discuss interventions designed to improve Mellissa's school attendance". Ms. Vander Velde's report is the only record of the meeting of November 9<sup>th</sup>; thus, it is unclear what intervention options were discussed, whether Mr. and Mrs. D. brought up the subject of home schooling, or whether development of an IEP was discussed. According to Ms. Vander Velde's report, Mellissa attended school only two days after this meeting and, "on December 6, 2004, the school principal informed the special education team that Mellissa would be home schooled by her parents for the rest of the year, with plans to transition her back into the school setting at the beginning of the next school year". The report concluded by stating that Mellissa is not in need of special education services, her parents are educating her at home, her mental health needs are being addressed by outside service providers, and school personnel should be involved when Mellissa is ready to transition back to school". Therapy notes from Ms. Klesel state that Mellissa "does not want to go to school" (10/20/04; Appellants' Records at 1199) and that Mrs. D. "wanted this therapist to call the school and recommend the client be

home schooled. She was told that she should address this issue herself as it was her decision to home school. . . . was told this therapist would only assist with this issue if she ran into any difficulties doing so" (10/27/04; Appellants' Records at 1198). It is not clear from the record if, when, or how this information was shared with school personnel.

The Appellants' argue correctly that the parents' decision to educate Mellissa at home does not relieve the WLCSD and AEA 4 of their responsibility to complete a special education evaluation (Iowa Code § 299A.9). Further, they argue that since Ms. Vander Velde did not complete her report within 60 days, they failed to complete an appropriate evaluation. It appears, however, that appropriate assessment procedures were undertaken by both the school psychologist and the school social worker. Unfortunately, since the plan to facilitate Mellissa's school attendance is not documented in any way other than this report, it is impossible to determine the range of findings shared, topics discussed, or options considered. The fact that Mr. and Mrs. D. participated in this meeting and that Mellissa did attend school at least a couple of days after development of the plan support the notion that they were in agreement with the plan. It is curious that Mellissa's school records contained no documentation of home schooling or of competent private instruction; it is unclear whether such an agreement was developed. However, this matter is not covered directly by the IDEA; eligibility for special education services does not alter a parent's right to make decisions regarding a child's home schooling. It is not clear that development of an IEP would have induced Mr. and Mrs. D. to make a different decision regarding home schooling Mellissa, and development of an IEP would not have mandated that they keep her enrolled in school.

Records from the 2005-2006 academic year, however, lead to quite different conclusions. The Consent for Full and Individual Initial Evaluation signed by Mrs. D. within the first few days of the school year (08/29/05) states a relationship between Mellissa's social emotional issues and her school absences. Indeed, Mellissa's attendance became problematic within the first few days of the school year. A Response to Intervention (RTI) team developed a plan to facilitate Mellissa's school attendance (Appellants' Records at 1017-1018). Mellissa's attendance did not improve and few weeks later, an IEP was developed. Again, Mellissa's attendance did not improve. Mrs. D. requested that Mellissa receive homebound instruction, and Ms. Vander Velde made numerous attempts to contact Mellissa's therapist and psychiatrist. Ms. Vander Velde and Ms. Klesel did have some e-mail communications; Ms. Klesel's therapy and consultation notes support a need for homebound instruction; and Judy Morrison, a parent advocate from the ASK Resource Center, sent Mrs. D. an e-mail (10/27/05) stating that it was her opinion that Mellissa was unable to attend school on a regular schedule and that she would be best served by home schooling with the school providing work materials and teaching plans for her parents (Appellants' Records at 1147). The record is not clear regarding if, when, or how this information was shared with school personnel, but the information must have been shared because Ms. Vander Velde wrote letters to Dr. Budu (Appellee's Records at 80) and Ms. Klesel (Appellee's Records at 79) on this same day seeking recommendations regarding Mellissa's participation at school.

Mrs. D. testified that she was told she needed to have a doctor's recommendation for home schooling in order for the school to provide that. It is not clear whether that specific statement was made though Mr. Jiskoot's testimony corroborated that notion. Mrs. D. apparently sought such a recommendation. Mrs. D. testified that Dr. Budu would not make a

recommendation about Mellissa's education, and she soon terminated Dr. Budu's services, took Mellissa to have a psychological evaluation, and begin seeing a new psychiatrist (11/18/05; Appellees' Record at 103) Melissa's new psychiatrist, Dr. Segreto reported from her first appointment with Mellissa that Mrs. D., Mellissa's therapist, and the parent advocate "all want Mellissa to have homebound schooling but they need a letter from the psychiatrist saying that she needs homebound schooling and Dr. Budu refuses to recommend that". Dr. Segreto stated that she could not make a recommendation regarding Mellissa's schooling because she didn't know her well enough; that she could not be certain about Mellissa's diagnosis, hallucinations, or panic attacks, and that she believed Mellissa had learned to manipulate the system and had her mother on her side (Appellee's Records at 186-189).

In the meantime, the WLCSD had reported Mellissa's truancy to the Lyon County Attorney who scheduled a mediation session regarding the matter and later initiated a CINA proceeding (Appellants' Records at 1029-1030). Following this meeting, Mrs. D. took Mellissa to Iowa City for an evaluation at the Center for Disabilities and Development (01/03/06) Principal Doug Jiskoot testified that the County Attorney had requested this evaluation but that he thought it would be a good idea. However, Mrs. D. made the appointment, transported Mellissa to the appointment, and incurred costs to cover travel, lodging, and assessment costs not covered by insurance.

The IDEA and past litigation make it clear that the IEP team has an obligation to not simply develop a plan that is reasonably calculated to confer educational benefit [*Board of Education of the Hendrick Hudson Central School District v. Rowley*, 102 S. Ct. 3034, 553 IDELR 656, (U. S. Supreme Court, 1982)] but to revise a plan that it is not meeting the child's unique needs. Also, the related services that the IDEA requires must be considered, and provided if needed to assist a child with a disability to benefit from special education, make it clear that it is not appropriate to draw a bright line of responsibility at the school house door, with the school responsible for providing educational services only if the parents ensure the child's attendance.

Understanding Mellissa's educational needs and developing an appropriate program for her was, no doubt, a confusing and daunting task for the WLCSD and AEA 4 personnel. It appears that everyone was optimistic that the IEP developed on 10/12/05 would serve Mellissa well. It did not, and that fact became apparent almost immediately. Mellissa hardly attended school, and her parents (and possibly her therapist and parent advocate) informed school personnel of their recommendations for homebound instruction. Ms. Vander Velde did attempt to get further recommendations regarding this from Mellissa's mental health providers. They did not get clear guidance from these mental health providers, but there is no evidence that the WLCSD or AEA 4 made efforts to arrange for further medical evaluation when it appears that they wanted that before making a change in Mellissa's program. School personnel testified that the IEP did not have a chance to work and that they couldn't complete further assessments because Mellissa did not come to school. Further, they focused on recommendations from mental health providers that Mellissa would be best served by a return to school, but it appears they did not consider fully the recommendations from the Center for Disabilities and Development and Ms. Klesel that Mellissa be supported in her transition back to school. It is impossible to know, in retrospect, whether it would have been possible to make an adjustment, even a temporary one, to Mellissa's IEP and placement that would have facilitated her transition back to school or

whether Mr. and Mrs. D. would have refused to cooperate with anything other than homebound instruction. It appears that "a line was drawn in the sand". Rarely are the interests of parties served when this happens – not those of public agencies, not those of families, and certainly not those of minor children. It is not incumbent upon schools to provide any program that a parent requests, or even demands. But, it is incumbent upon schools to ensure parents' participation in educational decision making, give thorough consideration to available information, obtain assessment information they need to make sound educational decisions, and consider a full continuum of programming options. This ALJ is troubled that the record contains no evidence that school personnel attempted to hold follow-up meetings with the IEP team to discuss options, revise the IEP in any way even on a temporary basis, or communicate with Mr. and Mrs. D. on a systematic basis.

A child's emotional disability must interfere with her learning in the educational setting to require special education services under the IDEA *Katherine S v. Umbach* 36 IDELR 63 (M.D. AL 2002). Additionally, behaviors that do not result from an emotional disturbance, but can be explained in some other way (e.g., substance abuse or intentional inappropriate actions), even if they do interfere with a student's educational performance, do not support eligibility under the IDEA *Des Moines Independent Community School District* 105 LRP 52893 (SEA IA 2005); *Maricus W. v. Lanett City Board of Education*, 34 IDELR 233 (M.D. al 2001); *West Chester Area School District*, 32 IDELR 275 (SEA PA 2000). However, it must be noted that an emotional disability can interfere with a child's learning in many ways, one of which is to interfere with the student's access to learning *Venus Independent School District*, 36 IDELR 185 (D.C.N.D. TX 2002); *Johnson v. Metro Davidson County*, 108 F. Supp. 2d 906 (D.C.M.D. TN 2000); *Maine State Educational Agency* 35 IDELR 174 (SEA ME 2001).

The courts have recognized truancy as a behavioral indication of an emotional disability that should be addressed by the educational plan. Ruling in a case that involved a chronically truant student, the Eighth Circuit Court has stated that analysis of a student's behavior cannot "be limited to a stark distinction between unwillingness and inability to behave appropriately. There is a grey area between normal, voluntary conduct and involuntary physiological response, and that area is where Congress has chosen to locate behavioral problems such as A.C.'s" *Independent School District No. 284, v. A.C. ex rel. C.C.* 35 IDELR 59 (8<sup>th</sup> Circuit, 2001). Mellissa's truancy should be recognized similarly.

The WLCSD and AEA 4 argue that they did not have clear documentation from mental health professionals that Mellissa's truancy was due to her emotional disability, and thus warranted home bound instruction. However, several parts of Mellissa's educational record documented the relationship between Mellissa's mental health needs and her poor school attendance. Additionally, Mrs. D. had stated this was the case, and it appears that communications from parent advocate Judy Morrison and/or therapist Julianne Klesel must have been shared with school personnel. School personnel made attempts to get recommendations regarding Mellissa's educational needs from her mental health providers and/or verify Mellissa's need for homebound instruction, and they expressed frustration that they did not have such documentation. They did not, however, seek an independent evaluation. Some communications from mental health providers advocated for Mellissa to attend school, but it appears that the school personnel interpreted those as meaning that Mellissa should necessarily return to school.

immediately. It appears that the school personnel may have overlooked, or at the very least not have considered carefully, statements to the effect that Mellissa should be supported in her transition back to school.

Several court rulings have supported the notion that schools must consider carefully information about a child's behaviors and the relationship between those behaviors and school participation. Ignoring behaviors that indicated an emotional disturbance, failing to consider those behaviors as disability related, and thus refusing to provide homebound instruction for a middle school student due to lack of appropriate medical documentation resulted in award of compensatory academic services in one recent instance *Houston Independent School District* 103 LRP 52813 (SEA TX 2003). Also, courts have recognized, for several years, that schools must make adjustments to special education programs that are not meeting children's unique needs. In the last decade, courts have endorsed placement in a program identified by parents when an IEP was

“not designed to address the student's individual needs . . . the district appears to disregard the recommendations of various professionals . . . the district lacked an understanding of the student's educational and emotional needs . . . the IEP did not address counseling, extended year services or the student's deteriorating behavior, despite the district's awareness of the need to address these issues”

*Philadelphia School District* 27 IDELR 1111 (SEA PA 1997).

Another court awarded compensatory education for time during which FAPE was not provided when it found that a school did not consider a student's mental health needs fully when designing and implementing the student's educational program which was, in turn, associated with his lack of school attendance *Keystone Central School District v. E.E. ex rel. H.E.* 46 IDELR 16 (U.S. District Court, M.D. PA 2006). Yet another court awarded placement in a specialized program and reimbursement for the costs of an after-school program because the school failed to take responsibility for coordinating across-agency work needed to ensure that a student receive needed services and/or provide an alternative route to those services when the initial plan failed to do so *Medford Public Schools* 27 IDELR 1020 (SEA MA 1998).

Conversely, courts have recognized the efforts of schools to attempt a variety of options to provide appropriate special education services and make adjustments when indicated. One example is a ruling that a school did not violate Section 504 by reporting a student's truancy as that “district held several IEP meetings in an effort to remedy the student's attendance problems. Still, the student refused to attend” *Roane County (TN) Sch. Dist.* 34 IDELR 94 (OCR, S.D. TN 2000). An earlier case even more similar to the present case resulted in a court ordering a parent to return a child to school despite the parent's complaint that the district was not capable of providing the child with a safe environment. In this instance, however, the school had made numerous contacts with the family and had offered a transition plan that included home tutoring on an interim basis *Muethen Public Schools* 21 IDELR 325 (SEA MA 1994). The Eighth Circuit found for a school district when, despite the parents' claims that the district had failed to provide FAPE to the student, the district had made numerous adjustments to the student's program, including providing instruction at a neutral location for a period of time; hiring and training aides; purchasing materials and equipment; allowing the parent to remain at the school; and the school produced notes from weekly meetings held with the student's teachers, other school



personnel, and the student's parents *David B ex rel. Thomas B. v. Arkansas Department of Education* 45 IDELR 149 (8<sup>th</sup> Circuit, 2006).

The Appellants claim that the WLCSD and AEA 4 violated provisions of the IDEA by encouraging and/or instigating a CINA proceeding to secure the related services Mellissa needed in order to benefit from her education. This claim is not supported clearly by the record. Mrs. D. testified that school personnel encouraged her and her husband to initiate a CINA proceeding, early in the fall of 2005, in order to get additional services for Mellissa. Both Mr. Jiskoot and Ms. Vander Velde, however, strongly denied this during the Hearing. The letter from Lyon County Attorney regarding Mellissa's truancy and Mr. Jiskoot's testimony that he reported Mellissa's truancy are clear. However, the record does not demonstrate clearly that this truancy report was an attempt to initiate a CINA proceeding. The Appellants' claim that Ms. Vander Velde's letter (02/21/06) addressed To Whom It May Concern, was attached to the CINA Petition filed by the Lyon County Attorney (02/23/06). Ms. Vander Velde testified that the County Attorney requested additional information regarding Mellissa, which this letter provides. The record does not support the notion that this letter was prepared in order that the CINA Petition should be filed to secure services Mellissa needed in order to improve her school attendance. If that was the case, it would have been more logical to have delivered such a letter at the time of the initial truancy report. The e-mail Dawn Kellen sent to Mrs. D. is the only piece of information in the record, other than Mrs. D.'s testimony, that school personnel discussed the CINA process with the family and that occurred after the mediation session regarding truancy that had been called by the County Attorney. Ms. Vander Velde's letter (02/21/06) undoubtedly provided support for the County Attorney's CINA Petition, but the Appellee's argue appropriately that they were bound to report Mellissa's truancy, the County Attorney requested information which they supplied, and that the County Attorney was not an agent of the school. Courts have supported the notion that truancy reports are legally required and not necessarily a retaliatory action against a family or a violation of the IDEA *Roane County (TN) Sch. Dist. 34* IDELR 94 (OCR, S.D. TN 2000). In addition, the settlement agreement with the Iowa Department of Education, detailed above, speaks to this issues stating, "This policy does not limit or impair the good faith reporting of child abuse or truancy, nor does it apply to recommendations or proposals that are not intended to secure services that are solely or primarily needed to enable a child with disabilities to benefit from his or her education". Even change in parental custody, though this is likely to be a dramatic change in the child's life, does not necessarily, in and of itself, constitute a change in a child's educational placement.

Finally, the Appellants claim that the WLCSD and AEA 4 failed to provide a technically or substantively adequate reply to their Request for a Due Process Hearing which, they claim, limited their ability to prepare their case adequately. The Appellees argue appropriately (Appellee's Brief at 3) that the IDEA requires that the local education agency that has not sent a prior written notice shall send the parents a response [20 U.S.C. § 1451(c)(2)(B)(i)] that addresses several matters including the range of placement options considered. The WLCSD and AEA 4 did, in fact, prepare a Written Prior Notice of a Proposed or Refused Action (Appellants' Records at 1028; Appellees' Records at 40), which Mrs. D. signed the same day the IEP was developed (10/12/05). Inadequacies of efforts made by the WLCSD and AEA 4 to revise that IEP are detailed above, but it is not clear that a different response at the time of the filing of the Request for a Due Process Hearing would have contributed to different preparation of the

Appellants' case in any substantive way or to a substantive difference in the decision rendered here

### Decision

The Appellants have prevailed in part. This ALJ finds that the WLCSD and AEA 4 failed to secure an educationally adequate medical evaluation of Mellissa's mental health needs which resulted in her parents incurring expenses in their efforts to produce such an evaluation and that the WLCSD and AEA 4 failed to provide the mental health services that Mellissa needed to benefit from her education. Thus, this ALJ finds that WLCSD and AEA 4 did not provide Mellissa with FAPE during the 2005-2006 academic year due to failure to revise her IEP after it became apparent that she was not benefiting from the services in place. While this finding differs somewhat from the claim made in the Appellants' Request for a Due Process Hearing (that the WLCSD and AEA 4 failed to provide minimally adequate home-based instruction during the periods of time in which Mellissa's mental health needs prevented her from attending school), this ALJ has explained that parents' request for services need to be considered but not necessarily met. However, IEP teams do have responsibility to not only develop an IEP reasonably calculated to confer educational benefit but also to revise a child's IEP when necessary

The Appellants will be reimbursed for expenses they incurred related to Mellissa's evaluation at the Center for Development and Disabilities in Iowa City in January, 2006. In addition, compensatory educational services (not to exceed the equivalent of 21 weeks of compensatory educational services) are awarded. Crafting appropriate compensatory educational relief in this matter is a delicate balancing act; type of services to award and the amount of time to consider are both unclear. Mellissa is currently enrolled in a special education program in another state, and her mother testified that Mellissa is receiving appropriate mental health and educational services and that she "is doing excellent" (Transcript at 63). Mr. and Mrs. D. originally requested compensatory mental health services but have revised this and are now requesting compensatory educational services, specifically tutoring. Given Mellissa's remarkable mental health history and reports of current progress, it is imperative that the educational team working with Mellissa at present be involved in determining the specific set of services that would be appropriate at the present time. The Iowa Department of Education will provide a consultant knowledgeable about emotional disability and mental health issues as they relate to educational programming to work with Mellissa's parents and her current educational team in Sioux Falls, South Dakota. Meetings pursuant to developing this plan should be undertaken within a month of filing this decision. Amount of time awarded is based on the amount of time Mellissa was absent from school from a period of time two weeks after development of her IEP (10/12/05), when it should have been clear that the IEP team needed to meet to consider possible revisions and Mellissa's parents had requested homebound instruction, until her enrollment in WLCSD was terminate during the first week of April, 2006. In other instances, four hours per week of homebound instruction have been provided *Houston Independent School District* 103 LRP 52813 (SEA TX 2003); *Iowa Valley Community School District and Grant Wood Area Education Agency* 40 IDELR 114 (SEA IA 2003). This should serve as a guide for reasonable calculation for the total amount of compensatory educational services to be provided.

The Appellees have prevailed in part. The Appellants have failed to prove by a preponderance of evidence that the WLCSD and AEA 4 violated the IDEA by encouraging and/or instigating a Child in Need of Assistance (CINA) proceeding to secure the related services that Mellissa needed in order to benefit from her education. The Appellants have failed to prove by a preponderance of evidence that the WLCSD and AEA 4 failed to provide a legally adequate response to their Request for a Due Process Hearing that impeded their ability to prepare their case adequately.

Motions and objections not previously ruled upon, if any, are hereby over-ruled.

Any party aggrieved by the findings and decision presented here may bring civil action through an appeal into an appropriate court under [20 U.S.C. § 1415 (i)(2)(A)]. If this ruling is not challenged through civil action, it will become the final decision in this matter. A party initiating civil action in federal court shall provide an informational copy of the petition or complaint to the Department of Education within 14 days of filing the action. The action may be brought in any state court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy [Iowa Administrative Rules of Special Education, 281—41.124(2) I.A.C.].

May 7, 2007  
May 7, 2007

Carla A. Peterson

Carla A. Peterson  
Administrative Law Judge