

BEFORE THE
IOWA DEPARTMENT OF EDUCATION
(Cite as 28 D.o.E., App. Dec. 365)

In re: ██████████ ██████████ a child,)	
)	Dept. Ed. Docket No. SE-399
██████████ ██████████)	(DIA No. 14DOESE004)
)	
Complainant,)	
)	
vs.)	
)	DECISION
██████████ Community School District)	
and ██████████ Area Education Agency,)	
)	
Respondents.)	
)	

Course of Proceedings

This proceeding began when ██████████ ██████████ filed a *Due Process Complaint* with the Iowa Department of Education on February 14, 2014, alleging that the Respondents have failed to comply with the federal Individuals with Disabilities Education Act (IDEA) and have denied her son's rights under the Act. Jurisdiction is based upon section 1415 of the Individuals with Disabilities Education Act [IDEA], 20 U.S.C. § 1415, and Iowa Code section 256B. The governing rules of procedure are set forth in 34 Code of Federal Regulations [CFR] Part 300 and 281 Iowa Administrative Code [IAC], ch. 41.

Preliminary proceedings: The Respondents filed an *Answer to the Due Process Complaint* on March 6, 2014. The parties and party-representatives participated in an initial prehearing conference call held on March 14, 2014. All parties were willing to explore possible resolution or mediation of the complaints. In order to avoid delay in the event the matter was not resolved, the parties agreed to hold May 19 – 23, 2014, as dates for hearing. The parties participated in mediation. A joint request for continuance of the hearing was granted to allow time for further negotiation. The case was not resolved.

Prehearing motions and rulings are included in the case file. The parties agreed that the initial hearing would address the merits of all issues raised in the complaint, including whether the student is entitled to an award of compensatory education; and that if the Complainant prevailed and compensatory education were awarded, a separate hearing would be scheduled to allow both parties to submit additional evidence regarding the appropriate nature and quantity, or valuation, of compensatory education to be awarded.

Observations regarding standing: The Complaint initiating this action was filed on the student's 18th birthday, [REDACTED]. While parents have individual enforceable rights under the IDEA, Iowa law transfers those rights to the student when the student turns 18 – the age of majority in Iowa. 20 U.S.C. § 1415(m)(1) (allowing states to transfer parental rights to student who has reached the age of majority and has not been found incompetent); 281 Iowa Admin. Code (IAC) 41.520(1) (transferring “all rights accorded to parents” under Part B of the IDEA to the child at age of majority under Iowa Code section 599.1). [REDACTED] was 18 when the complaint was filed. Ms. [REDACTED] status as his parent no longer gave her legal authority as to assert claims under the IDEA on her own or his behalf. *See Loch v. Edwardsville School Dist. No. 7*, 327 Fed.Appx. 647, 650, 52 IDELR 244 (7th Cir. 2009), *cert. denied*, 559 U.S. 991, 130 S.Ct. 1736, 176 L.Ed.2d 212 (2010).

“If a court appoints a guardian for an eligible individual who has attained the age of majority under subrule 41.520(1) and the court determines all decisions shall be made by the guardian or specifically determines all educational decisions should be made by the guardian, then the rights under subrule 41.520(1) do not transfer but are exercised pursuant to any applicable orders of the court.” 281 IAC 41.520(2). The *Due Process Complaint* does not allege that [REDACTED] has been found incompetent or that Ms. [REDACTED] has been appointed his guardian and granted legal authority to make educational decisions on his behalf. My file notes from the March 14, 2014, prehearing conference call show that [REDACTED] attorney represented that she was appointed as [REDACTED] guardian at the end of February 2014.

A search of the Iowa Courts Online docket information shows that a voluntary petition for the appointment of [REDACTED] [REDACTED] as guardian and conservator for [REDACTED] [REDACTED] was approved by the [REDACTED] County District Court on February 27, 2014 – [REDACTED] County Case No. 06571 GCPR 037410. The Complainant did not offer the guardianship order, her letters of appointment, or any other documents showing the terms of this guardianship. She has not proven the scope of her authority under the guardianship. *See Matter of Guardianship of Hedin*, 528 N.W.2d 567 (Iowa 1995) (discussing various forms of guardianships available under Iowa law). Given that the Respondents have not challenged [REDACTED] standing to maintain this action, for purposes of this ruling, I presume the court granted [REDACTED] authority to pursue this action on [REDACTED] behalf.

Hearing and submission of the case: Hearing on the merits was conducted over ten days at the [REDACTED] Area Education Agency offices in [REDACTED], Iowa on September 17, 18, 19, 22, and 23, and November 17 – 21, 2014, before Administrative Law Judge Christie Scase. Complainant [REDACTED] [REDACTED] was present throughout the hearing and [REDACTED] [REDACTED] was present for significant portions of the hearing. The Complainant was represented by attorney David Roston. Mr. Roston was assisted by Elliott Usher during the first week of hearing and by Mathias Robertson during the second week of hearing. [REDACTED] [REDACTED] and [REDACTED] [REDACTED] were present throughout the majority of proceeding as representatives for the [REDACTED] Community School District. [REDACTED] [REDACTED] was present representing [REDACTED] Area Education Agency. Attorneys Miriam Van Heukelem and Katherine Beenken appeared as counsel for the school district and AEA.

Multiple witnesses were called by both parties. Objections and rulings are detailed in the transcript of hearing. Six volumes of bound exhibits offered by the Complainant, two volumes of exhibits offered by the Respondents, and exhibits offered during the hearing were admitted into the record. The record includes: Complainant's bound exhibits pages Compl-1 through Compl-1745; additional pages: Compl-355A & 355B, Compl-1746 through Compl-1749; a DVD containing an audio recording of a portion of the May 29, 2013 IEP meeting; Respondent's bound exhibits pages Resp-1 through Resp-862; additional pages: Resp-863 through Resp-867; Respondents' Exhibits J and K.¹

The parties elected to submit briefs, in lieu of closing argument, and agreed upon a post-hearing briefing schedule.² Motions and rulings regarding extension of the briefing schedule are documented in the pleadings file. Briefs filed by both parties were accepted as timely. The parties approved requests to continue the deadline for issuance of this decision through July 2, 2015.

Protective Order: The parties agreed to the entry of a Protective Order to prevent use of copyrighted information exchanged during discovery and/or admitted into evidence at hearing outside of the context of this proceeding. (Tr. pp. 5-6) A *Proposed Stipulated Protective Order* was submitted by counsel for the Respondents on January 5, 2015. Counsel for the Complainant conveyed his agreement with the form of the proposed order on June 14, 2015. A Protective Order, in the form of the stipulated proposed order, has been approved and entered in the file on June 18, 2015.

Findings of Fact

Introduction: The case concerns ██████████ ██████████ and the question of whether the ██████████ ██████████ Community School District provided him with a free appropriate public education in compliance with the IDEA. ██████████ was born on ██████████. He resides in ██████████ with his mother and two ██████████ brothers. ██████████ has no current contact with his father, who lives in ██████████ (Tr. 44-45) ██████████ has attended

¹ With one exception, the offered exhibits were admitted into the record on stipulation of the parties. The Respondents objected to admission of an unofficial transcript of a portion of the May 29, 2013 IEP meeting (Complainant's exhibit binder pages Compl-1598 through Compl-1718), based on concerns regarding the completeness and accuracy of the transcript. (Tr. pp. 19-21) Ruling on the objection was tabled with the understanding that either party could use the transcript during questioning, subject to objections at that time. At the close of hearing, the parties agreed that the transcript, and a DVD containing an audio recording of the IEP meeting, were to be included in the record, with the Respondents' concerns regarding the reliability of the transcript noted. (Tr. pp. 2585-2696)

² In addition to the post-hearing briefs, the Complainant filed a Prehearing Memorandum that was filed and delivered to opposing counsel late on the afternoon prior to the start of hearing. Respondents moved to strike the memorandum, based on the timing of the filing and the absence of an agreement or order for the filing of prehearing briefs. The motion was overruled.

the [REDACTED] schools since he entered middle school in the fall of 2008. He was an 18-year-old 12th grade student at [REDACTED] High School at the time of hearing in the fall of 2014.

The 26-page Due Process Complaint initiating this action contains extensive factual allegations and broad reaching challenges to the Respondents' compliance with the IDEA; the sufficiency of the evaluations; the adequacy of the individualized educational programs (IEPs) developed for [REDACTED] and the implementation of his IEPs. Given that these claims encompass nearly every aspect of [REDACTED] education, it is not surprising that the hearing record is extensive. Nor is it surprising that the parties often disagree with each other's interpretation of testimony and present different views of facts established by this record. I find it both impractical and unnecessary to attempt to issue findings on each disputed fact. Rather, the findings in this decision focus upon the evaluations of [REDACTED] disability; the content of his IEPs; the implementation of the IEPs; and [REDACTED] educational progress – the facts which I believe are relevant to resolution of the issues raised.

General observations: [REDACTED] is consistently described by his teachers as a quiet, polite, and pleasant young man. (*c.f.*, Tr. 1125, 1318, 1478, 2186, 2418) He enjoys reading fiction for pleasure and regularly uses the high school and city libraries. (Tr. 1236-37) He also enjoys physical jobs and working with his hands, especially working on cars. In the spring of 2014, after taking auto tech class during his junior year, [REDACTED] convinced the owner of an auto-shop where a friend worked to give him a job – as an unpaid intern until the end of the school year and as a paid employee through the summer and into the fall. (Tr. 1227-33, 1273-74)

When [REDACTED] was younger, he had problems with impulse control and sometimes said things that got him in trouble. In response, he now prefers not to speak out in class, except when he is confident with his knowledge of the subject. (Tr. 1035-38, 1241-43) [REDACTED] is not comfortable drawing attention to himself and finds being in special education embarrassing. He does not want his friends to know that he is a special education student with a Directed Studies class. (Tr. 1055-56, 1060-61) [REDACTED] understands the accommodations that he is entitled to receive under his IEP, but sometimes refuses to accept them because he does not think it was fair to other students and does not want people to find out and ask questions. (Tr. 1092-95) [REDACTED] made it clear to his mother and his teachers that he hated being in Directed Studies. (Tr. 283)

[REDACTED] motivation and performance varies from class to class, based in part upon the pace and difficulty of the course and in part upon his interest in the subject and comfort with the teacher. He finds himself more motivated and has an easier time performing in classes on subjects that he enjoys and finds interesting. (Tr. 1235-36) He finds some teachers easy to approach and talk with and other teachers intimidating. When [REDACTED] is not comfortable with a teacher he finds it hard to self-advocate for accommodations, such as extended time to complete assignments. He finds this less difficult in classes where he has a stronger rapport with the teacher. (Tr. 1241-43)

mother, is employed as a by in . She has a Bachelor of Science degree in computer science and mathematics and is working on a graduate degree. (Tr. 44-45) is the of Ms. three sons. Her middle son is .

They both have disabilities and are receiving services under the IDEA. The claims in this case relate only to .

Ms. has no formal education or training related to teaching and spent very little time observing in the classroom in recent years. (Tr. 341-43) She wants to receive the best education available and has been a fierce advocate on his behalf since he entered the school district. Ms. appears to sincerely believe that the school district has not listened to her or provided adequate educational services to prepare to advance and succeed as an independent adult. During the two-year period at issue she had frequent, sometimes daily, email communication with staff at the school.³ She often questioned the propriety of the teaching methods and curricula the school used with and was at times resistant to follow the suggestions from school representatives. She believed the school was often not fully responsive to her inquiries.

The special education teachers and administrators who worked with were highly qualified and experienced. Those who testified at hearing appeared to genuinely like . To a person, they made an effort to identify and implement appropriate instructional strategies to help him improve his reading, writing, and organizational skills. However, some members of the school staff were intimidated or frustrated by the amount and tone of communication from Ms. (Tr. 1864-65, 2232-33) occasionally received an email message from school staff that she found disrespectful and offensive.

Unfortunately, by the time this action went to hearing Ms. appeared to have lost respect for nearly all teachers and administrators at the school. She did not believe district staff was truly trying to do what was right for . was openly hostile during parts of her testimony and expressed, in her words, “an absolute lack of trust” for the school. (Tr. 2664-65)

Overview of early education and evaluations prior to 2012: began his education in the public school system. He had difficulty learning the alphabet and failed to meet educational milestones in kindergarten and first grade. He was enrolled in a dyslexia program in May of 2003, near the end of first grade. was evaluated by school personnel during second grade (the 2003-2004 school year). They found mild speech-language impairment, with specific learning disabilities in the areas of oral expression, basic reading skills, reading comprehension, and written expression. A psychological evaluation done at the school in February of 2004 included administration of the Wechsler Intelligence Scale for Children, fourth edition (WISC-

³ Much of this correspondence, as well as email correspondence between school personnel about in included in the record in Volumes 2 – 4 at pages 409 – 1257.

IV). The results placed his intellectual functioning within the average range: verbal comprehension index of 99; perceptual reasoning index of 98; full scale IQ of 103. (Compl. 9-10, Tr. 48-52)

Near the end of 2nd grade, ██████ was referred to the Kennedy Krieger Institute (KKI) in Baltimore for neuropsychology and educational evaluations. The KKI neuropsychology evaluation, done in April of 2004, confirmed that ██████ was “a youngster of generally average range intelligence with specific learning disabilities, particularly in the area of reading.” This evaluation also found that ██████ exhibited “attentional difficulties that will interfere with learning, behavior, and performance at his optimal capability level . . . compatible with a diagnosis of Attention-Deficit/Hyperactivity Disorder [ADHD].” The evaluator, Jan Kunze, Ph.D., offered general recommendations for behavioral strategies to address ██████ attentional difficulties and classroom modifications and accommodations to address learning problems and referred ██████ for an educational evaluation. (Compl. 5-6)

The educational evaluation was completed at KKI by Marjorie Fessler, Ed.D. in June of 2004. The evaluator found deficits in some phonological processing skills (affecting his ability to decode and encode words, read fluently, derive full meaning from text, and write sentences) and difficulty with graphomotor skills. This evaluation identified substantial skill difficulties in the areas of reading, written language, and mathematics computation impeding ██████ academic progress. (Compl. 12-16) The diagnostic impressions were: ADHD; specific learning disabilities in reading and written language (dyslexia) and math calculation; and graphomotor disorder. (Compl. 17) The evaluation report included recommendations for school programming – including continued use of the AlphaPhonics Reading program used by the school with ██████ at that time or use of another Orton-Gillingham-based program – and accommodations. (Compl. 9-11)

██████ was identified as a student eligible for special education and related services and had an individualized education program [IEP] in place throughout the remainder of his elementary grades, middle school, and high school. He attended school in ██████ for three more years, before the family moved to Iowa. ██████ was not progressing as hoped academically. Ms. ██████ and school officials decided to have him repeat third grade. (Tr. 69-70)

The family moved to Iowa in 2007 and ██████ attended fifth grade (the 2007-2008 school year) in the ██████ School District. (Tr. 69-76) At Ms. ██████ request, a referral was made to ██████ Area Education Agency in December of 2007 for an assessment of ██████ reading achievement. An AEA Special Education Consultant administered the Qualitative Reading Inventory (QRI-4). Based on ██████ performance on this measure, the consultant estimated he was reading independently at the second grade level and estimated the third grade level as his instructional reading level.⁴ (Compl. 24-25)

⁴ Three benchmarks are commonly used to describe overall reading competency: frustration level, independent level, and instructional level. Frustration level text is too difficult for the reader to use to gain new reading skills. Independent level text is optimal for free reading, but

entered the [REDACTED] School system in the fall of 2008, enrolling at [REDACTED] Middle School where he attended sixth, seventh, and eighth grade. AEA staff conducted another evaluation in the fall of sixth grade – between October 14 and November 5, 2008, at Ms. [REDACTED] request, “to gather further data to determine appropriate strategies to move [REDACTED] towards grade level performance.” (Compl. 28) The Behavioral Assessment System for Children, second edition, (BASC-2) was administered to [REDACTED] his classroom teachers, and his mother; classroom observations were conducted; and [REDACTED] completed questionnaire surveys regarding motivation, interests, and academic and behavioral characteristics. (Compl. 26-35) The classroom observations included monitoring of [REDACTED] reading aloud a passage from a sixth grade literature textbook. [REDACTED] overall fluency and accuracy score on the passage ranked at the top of his special needs class. When compared against sixth grade fall fluency norms obtained by the AEA, he scored in the 39th percentile. (Compl. 30)

In the spring of 2009, during [REDACTED] sixth grade year, Ms. [REDACTED] requested an Independent Education Evaluation to examine why he did not appear to be closing the gap academically in middle school. (Tr. 87) A neuropsychology evaluation to assess [REDACTED] cognitive functioning was performed at the University of Iowa Hospitals and Clinics (UIHC) – Center for Disability and Development in March of 2009. Selected subtests of the WISC-IV were administered to assess his verbal and nonverbal reasoning ability. [REDACTED] overall performance in the Verbal Comprehension domain (47th percentile) and Perceptual Reasoning domain (30th percentile) were both in the average range for his age. Assessment of academic abilities using the Wide Range Achievement Test, fourth edition (WRAT-4) and Scholastic Reading Inventory (SRI) showed [REDACTED] abilities were significantly below average in word reading (mid third-grade level); his spelling skills were low average (early fifth grade). [REDACTED] reading proficiency, as measured by the SRI was below grade level. He performed at or slightly above grade-level (late sixth grade) in math computation.

The NEPSY-II phonetical processing subtest was administered to assess [REDACTED] current level of phonetic awareness. He performed below average, exhibiting difficulty identifying and modifying component sounds in words read to him, indicating some continuing difficulty with phonological processing. [REDACTED] mother completed the Pediatric Behavior Scale and indicated concerns only in the areas of coordination and learning problems. Ms. [REDACTED] also completed the Behavior Rating Inventory of Executive Function (BRIEF), which assesses executive function across multiple domains. She did not endorse significant concerns in the areas of inhibition or working memory, but did report mild concerns about [REDACTED] self-monitoring and organization skills. (Compl. 46-47)

The diagnoses of dyslexia, dysgraphia, and ADHD remained intact. (Compl. 48) The UIHC evaluators recommended accommodations and direct remedial services, including:

generally does not provide a challenge for purposes gaining new reading skills. Instructional level text is the optimal level to use in an instructional setting to gain new reading skills. *See* Explanation in 2014 reading evaluation, Compl. 60.

- Intensive support in reading and writing from a specialist trained in remediation of dyslexia.
- Intensive reading instruction using structured phonics-based strategies, as well as work on building reading fluency and strategies for comprehension.
- Continued accommodation of having printed material read to him on tests, help in organizing what he is reading through outlines, pre- and post- reading questions, content summaries, and discussion.
- Instruction in keyboarding and use of a word processor, use of story mapping and outlining strategies to develop better organizational skills for writing, and potential use of speech recognition software.
- Use of methods other than reading to help him learn new information, such as strategies that emphasize active hands-on learning activities and multimedia presentations, books on tape, and reduced or simplified reading, so that he is exposed to grade-level content with fewer demands on extensive reading.
- Avoidance of punishment-based strategies that might increase [REDACTED] resistance to academic work and use of frequent positive rewards for effort; noting it was important that [REDACTED] not be allowed to escape tasks that are within his capabilities by learning to engage in disruptive or off-task behavior – to reduce this problem he should be given enough adult guidance and support to set the stage for successful completion of the task, should be given frequent breaks, and rewarded for completing a specific amount of work in a specific time period.

(Compl. 48-49) [REDACTED] continued to receive special education services and accommodations throughout middle school.

FBA and BIP developed / spring 2011. Two IEP meetings were held in the spring of 2011, near the end of [REDACTED] eighth grade year – the first on April 14th and the second on May 12th. [REDACTED] mother expressed concerns about his limited reading progress; the accuracy of ongoing progress monitoring; the lack of a qualified special education teacher for a portion of the prior school year; and the lack of recent classroom observations to offer insight into [REDACTED] situation. She requested assessments in regard to his persistent receptive and expressive oral language deficits and his difficulty maintaining motivation and persistence at levels necessary that are common in adolescents with [REDACTED] set of disabilities. (Resp. 76)

After the first meeting, the IEP team made a referral to the AEA, to evaluate the effectiveness of behavioral supports and recommend additional considerations for behavioral programming to increase on-task behavior and work completion.⁵ [REDACTED]

⁵ No assessment of [REDACTED] receptive and expressive oral language skills was conducted. Nor do any of the prior or subsequent educational evaluations identify particular deficits in [REDACTED] oral language skills. The KKI Neuropsychology and Educational Evaluations completed in 2004, note that a speech-language evaluation by his school found a mild language impairment (Compl. 3, 10). In February of 2011, when he was in 7th grade, [REDACTED] was referred for an informal screening by a [REDACTED] AEA Speech/Language Pathologist [REDACTED] [REDACTED] [REDACTED]

had IEP goals at that time in the areas of reading (“using and describing strategies for comprehension of nonfiction grade level textbooks”), writing, and work completion goals. An applied behavior analyst from the AEA reviewed [REDACTED] IEP and past evaluations, received input from [REDACTED] teachers, and conducted observations during multiple class periods. Based on her observations and interviews of [REDACTED] teachers, the consultant advanced the hypothesis that [REDACTED] off-task behavior was reinforced by avoidance of tasks, work, or assignments that were not-preferred or that he perceived as difficult. She recommended a functional behavior assessment (FBA) to identify the antecedents and consequences relevant to [REDACTED] struggles with on-task and work completion behavior. (Compl. 50A-50C)

The FBA was completed by school and AEA staff in May of 2011, before the second IEP meeting. (Resp. 0110-0112) The behavior of concern was identified as inconsistent work completion. The descriptive summary explained:

[REDACTED] responds best to subtle prompts, such as proximity, and redirection by checking for understanding. Baseline data for work completion goal indicates that he has currently completed 55% of his assignments in core classes. Based on psychological reports, [REDACTED] executive functioning skills are an area of weakness, which can result in exacerbated work completion problems in classes or on assignments in which this skill is in high demand. Formal observations indicate inattentive behavior is reinforced by escaping situational demands and avoiding nonpreferred tasks.

(Resp. 0111) Skill deficits related to the behavior of concern are listed as: executive functioning, writing organization, reading fluency and vocabulary. A detailed description of [REDACTED] patterns of behavior related to assignment completion, derived from classroom observations and input from [REDACTED] and his teachers is included in the FBA. The antecedents to [REDACTED] behavior are described as follows:

[REDACTED] has difficulty working in settings that require multi-tasking or set shifting due to difficulties with executive function. There is frequently extended latency in initiation of on-task behavior at the beginning of in-class assignments. In addition, [REDACTED] often curtails on-task work when he becomes aware that he will have insufficient time to complete the assignment before the end of class. These factors, combined with a somewhat slowed work pace on written assignments, results in a significant reduction in completion of in-class work. It is likely that these factors manifest in a similar fashion when [REDACTED] works on assignments at home. Finally, [REDACTED] is often very behind in his work completion which results in feelings of helplessness and hopelessness and reduced motivation to complete assignments.

found [REDACTED] displayed no articulation errors during conversation and his “oral communication skills were well within normal limits.” (Compl. 50)

(Resp. 111) The hypothesized function of the behavior was avoidance of tasks, work, or assignments that are non-preferred or that he perceives as difficult. (Resp. 112) [REDACTED] mother agreed with the accuracy of a majority of the observations in the FBA. She believed that skill deficits affecting his ability to record and follow through with assignments, in addition to avoidance of non-preferred tasks, contributed to his failure to complete assignments. (Tr. 155-160)

Upon completion of the FBA, a behavior intervention plan (BIP) was developed as recommended in the assessment. (Resp. 106-107, 112) The BIP focused on work completion, established a goal of 100% assignment completion, and set forth the following implementation plan:

Prevention Strategies: What changes in instruction, choices, environment, and so forth are needed to decrease or prevent behavior(s) of concern?

Action: When redirection is needed, [REDACTED] should be given nonverbal redirection, and verbal redirection that identifies the target behavior rather than identifying the undesired behavior. When needed, teachers will check for understanding of assignments with [REDACTED]. When possible, information will be front-loaded or summarized as an anticipatory set. Long-term assignments and assignments with multiple components will be broken down into manageable parts. Modeling at the beginning of assignments and periodically throughout at strategic points will provide scaffolding for completion of extensive assignments.

Who will be responsible for this action? General and Special Education Teachers.

Teaching Alternative or Replacement Behaviors and Skills: This behavior will replace the behavior(s) of concern for the student to obtain the same results.

Action: [REDACTED] will maintain his assignment agenda and present it to each teacher daily for review and to check for understanding. [REDACTED] will build insight into strengths and weaknesses and begin to identify types or aspects of assignments that pose difficulty or are relatively easy and use that information to formulate a plan to complete each assignment.

[REDACTED] will identify potentially challenging assignments and discuss a plan for completion with the general and/or special education teacher. Long-term assignments and assignments with multiple components will be broken down into manageable parts.

Who will be responsible for this action? General and Special Education Teachers.

Response Strategies: Teacher/parent/caregiver responses.

Action: When redirection is needed, [REDACTED] should be given nonverbal and verbal redirection that identifies the target behavior rather than identifying the undesired behavior. When needed, teachers will check for understanding of assignments with [REDACTED]

(Resp. 107) The FBA and BIP were incorporated into ██████ IEP for the 2011-2012 school year – 9th grade – during the May 12th IEP team meeting. (Resp. 103)

School-provided reading instruction / summer 2011: In response to Ms. ██████ concern about the lack of a qualified special education teacher during the first half of his 8th grade year, the school district offered tutoring in reading for ██████ for three hours per week outside the school day using the Orton-Gillingham methodology. ██████ mother declined the school's initial offer in March of 2011, because she did not want ██████ to be required to be involved with additional school-related activities outside of the school day. (Resp. 117) The offer was extended and accepted during the summer. The school district hired ██████ a retired special education teacher trained and experienced in the Orton-Gillingham reading instruction methodology to provide this instruction. ██████ worked with ██████ three hours per week for six weeks during the summer of 2011. (Tr. 96-97, 600) She administered pre- and post-tutoring assessments of his decoding skills and reading accuracy/fluency. Results from the Gates Oral Reading Paragraph assessment show his word reading accuracy/fluency increased more than half of a grade level equivalent from grade 5.1 at the beginning of the summer to 5.7 when the tutoring sessions ended. (Compl. 355; Tr. 608-09)

Development of IEP for 2011-2012 school year / 9th grade: The 2011-2012 IEP was finalized on September 19, 2011. This was the IEP in place at in February of 2012, at the beginning of the limitation period for this action. The IEP includes a list of his diagnoses, brief summaries of prior evaluations, and the following general description of the effect of ██████ disability on his involvement and progress in the general education curriculum.

██████ is progressing through the general curriculum.⁶ He is most successful in classes that have discussion and hands-on activities and demonstrations. ██████ has a disability in the areas of reading, writing and spelling. This disability coupled with his reluctance to write makes involvement in the general education curriculum challenging at times. During his 8th grade year, ██████ received his LA instruction in Read 180 and a pull-out section of Language Arts. In high school, ██████ will be in a co-taught general education LA class. ██████ will benefit from the level of support in these settings. In addition, ██████ needs extra support and encouragement to maintain quality of work and a good work completion rate. Reading and writing are critical skills in independent adult life. ██████ needs to increase his skills in those areas to meet his post-secondary goals for education and to have the level of employment that he and his parents plan for him.

⁶ When the IEP team met in April of 2011, ██████ was passing all of his classes except science, which he was failing due to missing assignments. (Resp. 77)

(Resp. 78) Reports of prior evaluations, including the above-described 2004 KKI evaluations and the 2009 UIHC evaluations were attached to the IEP as associated files and were available to the IEP team. (Tr. 934-35, 1133-34, 1163, 1197)

Public schools in Iowa use a unified procedure manual and a single standardized IEP format, using the Iowa IDEA System. (Tr. 802-03) The basic content of the form including style and wording of section headers, questions to be answered by the IEP team, and progress monitoring graphs, is built into the form template and cannot be modified. (Tr. 513-14, 747-48) Federal law requires IEPs that will be in effect for and after the year when the student turns 16 to address post high school transition, by including postsecondary goals and transition services needed to assist the student in reaching those goals. 20 U.S.C. § 1414(d)(1)(A)(i)(VIII). Iowa has opted to impose this requirement beginning with the IEP in place when the student turns 14. 441 Iowa Admin. Code 41.320(2). The IDEA System automatically provides and prepopulates an alternate format “transition IEP” for use when a student’s age triggers the transition requirement. Correctly completing the form requires the IEP team to address required elements of transition assessments. (Tr. 745-46, 2336-40)

Because ██████ was over age of 14 when the 2011-2012 IEP was developed, the law required his IEP to address post high school transition. His 2011-2012 IEP was in the format of a transition IEP. The results of transition assessments administered in April of 2011, including a Transition IEP Questionnaire, Independent Living Assessment, and What’s your Learning Style Inventory and I Have A Plan entries completed by ██████ as well as a parent interview.⁷ (Compl. 77) Information about ██████ life skills, current academic progress, career interests, post-secondary expectations, and course requirements needed for ██████ to meet graduation requirements is included in the “Present Levels of Academic Achievement and Functional Performance” section – the “B pages” – of the IEP. No need for IEP goals addressing independent living or work was noted on the IEP. ██████ was unsure what he wanted to do after high school. He indicated several areas of interest, many of which require some post-secondary education. Learning was endorsed as a transition goal area. (Compl. 77-79)

The 2011-2012 IEP includes annual goals for reading comprehension, writing, and organizational strategies/assignment completion. (Resp. 80, 85, 90) ██████ was to receive specially designed instruction in reading comprehension, writing mechanics, organizational skills, self-advocacy dialogue and practice, PowerSchool⁸, and work

⁷ Ms. ██████ asked that further transition assessments be delayed until after ██████ settled into high school. The following note appears in the “Additional Information” section of the 2011-2012 IEP:

Mother stated that she did not want transition assessments completed in preparation for his transition to high school this fall, therefore for the purposes of this current IEP, statements from previous 2010-2011 IEP were used and updated through a student interview to determine current transition planning.

(Resp. 103)

⁸ PowerSchool is an online student information platform designed to allow students, staff, and parent to access current information about a class assignments and grades. It can serve as a

completion; provided one-to-one by a special education teacher in a Directed Studies classroom one period daily. (Resp. 97) Additional specially designed instruction in reading comprehension and writing mechanics was to be provided through a co-taught Language Arts class, with instruction to focus on pre-reading strategies, outlines for both reading and written work, and summary formats. (Resp. 98) Lists of potential teaching strategies to be used in high school and strategies that had been utilized successfully with ██████ in the past, are included in the “Additional Information” section of the IEP. (Resp. 104)

The following accommodations, applicable to all general education classes, were included in the IEP:

- Reading support (read aloud, recorded text, alternate materials where appropriate). Tests read aloud, material may be first read and then second ██████ allowed to listen to using technology where appropriate.
- Word processing or oral responses when appropriate.
- ██████ Ms. ██████ and the Special Education Teacher will design [an] assignment communication procedure at the outset of the 2011-12 academic year. This will be completed on a daily basis by ██████ and the general education teachers and will be monitored by the special education teacher. If ██████ needs additional time to complete assignments, he must self-advocate for clarifications and/or additional time to complete and receive instructions in how he can best complete for full credit.
- Chunking for large projects in a planned way in collaboration with ██████ special education teacher, and general education teachers. Modeling at the beginning of assignments and periodically throughout extensive assignments at strategic points will provide scaffolding for completion.
- Needs summary of what is to be covered in class before instruction or “front loading” (summary) of concepts to be covered in each class.
- Positive verbal prompts (i.e. identifying the target behavior) should be used.
- All teachers will read the entire IEP per parent request.

(Resp. 96) Assistive technology supports, including: word processing, audio voice technology, online books (CD ROMs), iPad, recorded texts, and alternative materials; were to be made available to ██████ (Resp. 96)

Implementation of 2011-12 IEP: During 9th grade, ██████ attended in the Directed Studies classroom one period each day and took the following general education classes: Language Arts 9; 1st year algebra; fundamentals of science; concert band; Japanese 1; and physical education (one trimester). Two special education teachers were assigned to work with ██████ that year. Dr. ██████ was his roster teacher and was

useful tool for monitoring assignment completion, but there is some variation in how frequently teachers update information in the system and how much detail they provide. (Tr. 1517, 2574-75) The school had no uniform policy regarding how teachers were to enter, or identify, past-due assignments in PowerSchool. (Tr. 1528-29, 2615-16) As a result, information posted to PowerSchool seldom presented a comprehensive report of all outstanding assignments.

responsible for IEP goal progress monitoring. (Tr. 1324) [REDACTED] [REDACTED] was responsible for providing direct instruction to [REDACTED] during his Directed Studies class. (Tr. 1317) Ms. [REDACTED] holds a bachelor's degree in special education and a master's degree in learning disabilities. She is certified as a special education instructional strategist at the 5th to 12th grade levels with endorsements for mental disabilities – mild/moderate, learning disabilities, and multi-categorical classrooms. (Tr. 1307) Ms. [REDACTED] was employed by the [REDACTED] School District for 25 years and served as the chairperson of district's special education department for seven years before leaving the district in 2013 to take a position at [REDACTED] [REDACTED] College. (Tr. 1304-05)

Ms. [REDACTED] worked one-to-one with [REDACTED] during the first class period each day. She provided daily reading instruction using the Monterey Reading Program. (Tr. 1318) As described by Ms. [REDACTED] the Monterey program is designed to deliver 15 to 20 minutes of instruction each day, with the first portion the lesson applying a phonetics-based approach to a list of words and sounds and the second portion going through practice readings with scoring for fluency and accuracy. (Tr. 1318-19; 1355-58) Ms. [REDACTED] chose this methodology because the lessons are fairly short and designed for small group or one-to-one instruction and she has had good results using the program with other students in the past. (Tr. 1320-21; 1370; 12379)

Dr. [REDACTED] typically used passages from 9th grade text books as reading comprehension probes to monitor [REDACTED] progress toward his IEP reading goal. Often the probes were taken from [REDACTED] science book. (Tr. 1324, 1402) Progress monitoring shows inconsistent results and a slightly downward trend line. (Resp. 81) Despite this, based on the results Ms. [REDACTED] observed during Monterey program reading lessons, she felt that [REDACTED] reading confidence and fluency improved through the year. (Tr. 1328-29) Ms. [REDACTED] administered a Woodcock –Johnson reading achievement test that confirmed [REDACTED] reading level improved during his 9th grade year. (Tr. 1379, 1402) She did not have results of these tests at hand during her testimony, but recalled that his performance on these tests was within his grade level. (Tr. 1466-67)

The bulk of [REDACTED] writing instruction was delivered in his Language Arts class, which Ms. [REDACTED] co-taught with general education teacher. (Tr. 1329-30) Ms. [REDACTED] characterized [REDACTED] writing as “not sophisticated, but complete, for the most part;” essentially in the middle of what she would expect from a group of special and general education 9th grade students. (Tr. 1332-33)

Ms. [REDACTED] also worked directly with [REDACTED] and his organizational / homework completion goal. She reviewed his planner with him each morning and worked on time management – reviewing assignments and prioritizing tasks to make sure he was set for the day. (Tr. 1317, 1335) [REDACTED] was using a paper planner. Ms. [REDACTED] checked the planner daily and felt he was generally able to accurately write down assignments from his general education classes. (Tr. 1336-37) Occasionally, Ms. [REDACTED] would also assist [REDACTED] with breaking down, or chunking, large assignments. (Tr. 1340-41)

The Complainant believes the Monterey Reading Program is an unproven teaching strategy that was wholly inappropriate for [REDACTED] She requested information about

this program in the spring of 2013. The school provided limited information, generally describing the components of the method. The Complainant could find, and the school district produced, no evidence to show that the program is supported by peer-reviewed research. (Tr. 136-37, Compl. 1253-57) Ms. ██████ believes this program harmed, rather than improved ██████ reading comprehension. She testified that ██████ told her that Ms. ██████ told him to skip unfamiliar words – a habit which ██████ believes continues to hinder his ability to comprehend grade-level text books. (Tr. 137-38) Ms. ██████ explained that she teaches students a process of dissecting unfamiliar words – breaking off prefixes, suffixes, separating syllables, and considering context. She denied instructing ██████ to skip unfamiliar words and could not recall observing him skip words when he was reading with her. (Tr. 1358-62) ██████ was not asked about skipping words at hearing. He was asked about his ability to figure out what words mean by their context and said that he was pretty good at this, for the most part. (Tr. 1078)

Performance under the 2011-2012 IEP. ██████ earned As, Bs, and Cs in his general education courses and finished his 9th grade year with a 3.092 grade point average on a 4-point scale.⁹ (Resp. 58) Progress monitoring data and standardized academic achievement test results document that ██████ made progress on each of his goals and his reading, writing, and homework completion skills improved during 9th grade – the 2011-2012 school year.

Reading:

- Spring 2011 (end of 8th grade), current level of achievement / baseline:
 - SRI = 809 Lexile¹⁰

⁹ ██████ High School operates on a trimester system. ██████ transcript for 9th grade (Resp. 58):

Course	T1	T2	T3
Language Arts 9	B-	C	B
1 st Yr Algebra	A-	B-	B-
Concert Band	A+	B+	A+
PE / Waiver / Basketball	A+	S	S
Fundamentals of Science	B+	B-	B
Directed Studies	A	B+	A-
Japanese 1	B-	C+	C

¹⁰ A Lexile measure for a text reflects the difficulty of the words and the complexity of the sentences in that text. Lexile measures are reported as a numeric value commonly between 200L and 1700L. Low values indicate easier-to-read texts, while higher values reflect more demanding text. Lexile measures are an open standard and are widely used to rate the difficulty of a variety of reading material, including textbooks, fiction and nonfiction books, and articles.

The Scholastic Reading Inventory – SRI – is a reading comprehension assessment designed to measure reading comprehension using the Lexile scale. The measure represents a student's level on a developmental scale of reading ability, intended for use in identifying teaching material at the appropriate difficulty level for the student. The measure does not relate directly to grade levels, as students at each grade level will display a range of reading ability. To lend context to the measures the developer of the scale, MetaMetrics®, has studied Lexile ranges for

- Jamestown reading comprehension passages/8th grade level = median 90% accuracy
- Reading probes over 8th grade textbook passages – social studies = 60 %, science = 80%, average of two = 70%
(Resp. 80)
- Iowa Tests of Basic Skills – April 2011, national percentile rank:
Vocabulary – 52nd percentile (9.0 NGE – National Grade Equivalent)
Reading Comprehension – 52nd percentile (9.0 NGE)
Reading total = 53rd percentile (9.1 NGE)
(Resp. 161)
- IEP reading goal 9/19/11: “Given instruction in reading comprehension strategies, in 36 weeks when given grade level reading comprehension probes covering unfamiliar text, the student will answer comprehension questions with 85% accuracy in 3 out of 4 trials.” (Resp. 80)
- Spring of 2012 (end of 9th grade), current level of achievement / baseline:
 - SRI – various points during 9th grade:
8/29/2011 = 944 Lexile
11/14/2011 = 967 Lexile
3/1/2012 = 1024 Lexile
 - Jamestown Reader series comprehension passages, or probes, at 11th grade level in February and March, 2012, median 90% accuracy
 - Jamestown Reader series probes from book 10, at 13+ grade level¹¹ in April and May of 2012, mean 80% accuracy:

students in specific grades and published a chart of Lexile-to-Grade Correspondence showing the middle 50% (interquartile range) of reader measures (25th percentile to 75th percentile) at the mid-point of the year for each grade level. The interquartile ranges for middle school and high school years are:

Grade level	Interquartile range (25 th percentile to 75 th percentile)
6 th	665L to 1000L
7 th	735L to 1065L
8 th	805L to 1100L
9 th	855L to 1165L
10 th	905L to 1165L
11 th & 12 th	940L to 1210L

See The Lexile Framework for Reading: A System for Measuring Reader Ability and Text Complexity, published by MetaMetrics®, available online at: http://teacher.scholastic.com/products/sri_reading_assessment/pdfs/SRI_LexileProfessionalPaper.pdf (last visited 5/26/2015); *see also* hearing transcript at pages 2265-66).

¹¹ Book 8 in the Jamestown Timed Readings Plus series is written at the 11th grade level; book 9 at the 12th grade level; and book 10 at the 13+ grade level, based on the Fry Readability Scale. (Tr. at pp. 848, Compl. 381)

4/17/2012 = 80% comprehension
 5/1/2012 = 70% comprehension
 5/7/2012 = 90% comprehension
 (Resp. 161)

- Iowa Assessments¹² – April 2012, national percentile rank:
 Reading = 55th percentile (10.6 NGE) (Resp. 72)

Writing:

- Current level of achievement / baseline spring 2011:
 - Score of 80% fluency and 77% content development on writing assignments.
 - Iowa Tests of Basic Skills – April 2011, national percentile rank:
 Vocabulary = 52nd percentile (9.0 NGE)
 Spelling = 19th percentile (6.1 NGE)
 Capitalization = 48th percentile (8.5 NGE)
 Punctuation = 44th percentile (8.0 NGE)
 Usage and expression = 27th percentile (5.7 NGE)
 Language Total = 34th percentile (6.9 NGE)
 (Resp. 85, 167, 209)
- IEP writing goal 9/19/11: “Given instruction in the writing process, [REDACTED] will independently compose and revise articles of a least four paragraphs scoring at least 4 (80%) in content development and fluency on the attached rubric in order to become proficient in skill needed for learning, independent living, and future care choices in 3 / 4 trials.” (Resp. 85)
- Current level of achievement / baseline spring of 2012:
 - Median scores of 90% on fluency and 70% on content development on three most recent writing assignments. (Resp. 167)
- Iowa Assessments – April 2012, national percentile rank:
 Written language = 41st percentile (8.6 NGE)
 Vocabulary = 35th percentile (8.5 NGE)
 English Language Arts Total = 45th percentile (9.3 NGE)
 (Resp. 72, 209)

Assignment completion:

- Current level of achievement / baseline spring of 2011:

¹² In 2012, Iowa Assessments replaced the Iowa Test of Basic Skills (ITBS) as the standardized assessment administered to students annually throughout the [REDACTED] AEA. Both tests are norm-based summative assessments that indicate how a student is doing from year-to-year and how the student is performing as compared to peers. (Tr. pp. 1139-40, 2303-04)

- “██████████ has 45% missing work versus 5% for general education peers. Assignment completion varies, at this time there are 0 assignments late in core subject areas of LA and Science. In Math there are 8 missing assignments and 5 late assignments in Social Studies. (Resp. 90)
- IEP goal 9/19/11: “Given instruction in organizational strategies, in 36 weeks ██████████ will complete 85% of assignments in 3 out of 4 weeks.”
- Current level of achievement / baseline spring 2012:
 - “██████████ has had two assignments that were more than two days late in the third trimester. On the last three assignment completion checks his mean assignment completion percentage was 95%.” (Resp. 173)

Interim IEP / April 2012. ██████████ was due for a three-year reevaluation in May of 2012. (Resp. 192) His IEP team met on April 9, 2012. Ms. ██████████ came to the meeting with a list of concerns about the implementation of ██████████ IEP and his lack of progress, including the following:

██████████ progress in learning to communicate effectively is not advancing quick enough for him to perform daily, life functions of someone his age [then 16]. His inability to read adequately prevent[s] him from reading his prescription and vitamin labels, from grocery shopping effectively and from fixing something as simple as a frozen dinner. I am extremely concerned that in the state of Iowa ██████████ will be able to receive his driving permit, but he will be unable to manage his own health care.

(Resp. 122) The school agreed to obtain assessments of ██████████ current levels of reading and writing achievement for the reevaluation. An interim IEP was completed to allow time for data from an education evaluation at the University of Iowa to be considered by the IEP team as the IEP for the following school year was written. (Resp. 121, 148, & Tr. 165)

Written language assessment & educational evaluation – April 2012. ██████████ IEP team referred him to the AEA for a written language assessment in April of 2012, near the end of his ninth grade year. The Test of Written Language – fourth edition (TOWL-4) was administered. During the spontaneous writing portion of the test, ██████████ took all of the allotted five minutes to create his outline and all of the allotted 15 minutes to compose his story. He was unable to finish in that time. His scores for the contrived writing exercise were within the average range on vocabulary, punctuation, and sentence combining; below average for spelling; and poor on logical sentences. His scores for the spontaneous writing exercise were in the average range on both skills assessed, contextual conventions and story composition. His overall writing skills score fell in the 39th percentile – the average range – compared to others at his grade level. (Compl. 51)

The evaluator concluded that ██████████ needed extra support and guidance in the areas of recognizing, revising and producing sentences that are more consistently syntactically

correct (the grammatical rules of the English language), free of spelling errors, subject-verb disagreement, and key word omissions. The evaluator also observed that while “he is very capable of producing age/grade appropriate ideas and written products, [REDACTED] appears to need extended time to complete his writing and to be able to review and edit for changes. It appears in the day-in, day-out pace of the day, [REDACTED] can tend to easily overlook some of these correctable work omissions so that his overall product is below his expected level.” (Compl. 52)

Also in April of 2012, an educational evaluation at the UIHC Child Psychiatry Clinic was requested by the AEA to assess [REDACTED] progress in reading comprehension, writing, and spelling in order to measure the effectiveness of specially designed instruction. The Wechsler Individual Achievement Test, third edition (WIAT-III) was the only assessment tool used. The evaluation report provides the following explanation of the test results:

Reading: [REDACTED] reading skills were assessed using the Word Reading, Pseudoword Decoding, Oral Reading Fluency, and Reading Comprehension subtests. On the Word Reading subtest, [REDACTED] was given a list of words to read aloud; his performance was in the below average range [percentile 10/grade equivalent 5.0]. The Pseudoword Decoding subtest required [REDACTED] to use his phonetic knowledge to sound out nonsense words; his performance was toward the lower end of the average range [percentile 18/grade equivalent 4.6]. Analysis of the Word Reading and Pseudoword Decoding subtests shows errors in misreading common prefixes and suffixes. The Oral Reading Fluency subtest was administered to assess [REDACTED] ability to read grade appropriate passages smoothly and fluently. His performance on the Oral Reading subtest is within the below average range [percentile 9/grade equivalent 5.7]. The Reading Comprehension subtest assessed [REDACTED] literal and inferential comprehension skills. He was asked to read short passages and then answer questions about the main idea, specific details, and order of events. He was also asked to answer questions which required him to make inferences and draw conclusions. His performance on the Reading Comprehension subtest is within the average range [percentile 27/grade equivalent 4.7]. Error analysis shows [REDACTED] has the most difficulty answering reading comprehension questions which require inferential thinking. [REDACTED] overall performance on the Basic Reading Composite, which is comprised of the word reading and pseudoword decoding subtests, is below average [percentile 13]. His score on the Reading Comprehension and Fluency Composite is below average [percentile 10]. On the Total Reading Composite, which includes all reading subtests administered, his score is within the below average range [percentile 10].

Writing: [REDACTED] writing skills were assessed using the Spelling, Sentence Composition, and Essay Composition subtests. The Spelling subtest was administered to assess [REDACTED] skill at spelling words which contained sound to letter correspondence for vowels, consonants, and

consonant blends. [REDACTED] performance on the spelling subtest is within the below average range [percentile 6/grade level equivalent 4.4]. The sentence composition subtest measured [REDACTED] ability to write sentences which included correct grammar, syntax, semantics, and mechanics. He was asked to combine two or three sentences into one sentence that included all essential information from the original sentences. He was asked to write one complete sentence which included a given word. On this subtest, [REDACTED] had difficulty combining two or more sentences into complex or compound sentences. He performed much better when he was required to use a word in sentences he generated on his own. Of the twelve sentences [REDACTED] wrote, he included correct capitalization and punctuation in nine of them. His performance on the Sentence Composition subtest was in the average range [percentile 23, grade level equivalent 6.3]. The Essay Composition subtest measured [REDACTED] written productivity, theme development, and text organization. He wrote his essay as one long paragraph, which included an introduction. He used transition words and included reasons to support his topic. His performance on the Essay Composition subtest was in the average [range - percentile 53/grade level equivalent 9.3]. Due to below average performance in spelling, [REDACTED] overall performance on the Written expression composite is toward the lower end of the average range [percentile 18].

(Compl. 55-56) [REDACTED] reading and writing abilities were characterized as within the range typically found among students receiving instruction in general education classes. The IEP team was encouraged to provide [REDACTED] with the opportunity to receive reading and language arts instruction in the general education setting, with accommodations as outlined in his IEP. Reading remained a slow and laborious process for [REDACTED] because his decoding skills were not yet automatic. Extended time for examinations was recommended. Also recommended was providing the opportunity to talk through assigned material with an adult, to help [REDACTED] get at the concepts and remember them and to review pronunciation and meaning of unfamiliar words, and use of a dictionary or electronic speller in all classes. (Compl. 56)

Development of IEP for the 2012-2013 school year / 10th grade. The reevaluation was conducted during an IEP team meeting was completed on May 17, 2012. (Resp. 192) Reports from the AEA and UIHC evaluations, grade reports, and IEP progress monitoring data were available for review by the team. (Resp. 159, 186) The template form for this IEP includes a series of reevaluation questions. The team observed that while [REDACTED] had been able to develop skills with the support of specially designed instruction and had used accommodations to be successful in the general education environment, his performance continued to be discrepant from expected progress in reading and math skills. The team concluded [REDACTED] remained eligible for a continuation of special education and related services, and found that “[n]o additional modifications to special education and related services other than those specified in his current IEP are needed at this time.” (Resp. 186)

The IEP notes that Ms. [REDACTED] expressed concern about [REDACTED] continued access to accommodations in the IEP as recommended by the recent assessment, including: oral exams, extended time on exams, and extended time on assignments when [REDACTED] self-advocates. [REDACTED] expressed a desire for the directed studies class to be more structured, so it was more than a glorified study hall. The parent also asked for spelling to be addressed in an academic goal, expressed concern that it was time to begin the process of documenting the need for accommodations of the PSAT, and asked for discussion regarding [REDACTED] scheduling to take place in her presence. No parental request for additional assessment of [REDACTED] educational needs was noted in the IEP. (Resp. 158)

Changes were made to the IEP for 2012-2013, [REDACTED] 10th grade year. Summaries of the recent evaluations were included in the IEP and the evaluation reports were added as associated files. The description of the effect of [REDACTED] disability on his involvement and progress in the general education curriculum noted and an emerging concern regarding reading and writing fluency.

[REDACTED] is currently taking all of his classes but one in the general education setting. He is currently in a one on one Directed Studies for one period daily as well as co-taught science and social studies. [REDACTED] has a disability in the areas of reading and writing. Reading comprehension tends to be somewhat higher than his reading rate. Due to reduced reading and writing fluency relative to peers, classes with high demands in these areas will be challenging for [REDACTED]. Reading and writing are critical skills in independent adult life. [REDACTED] needs to increase his skills in those areas to meet his post-secondary goals for education and to have the level of employment that he and his parents plan for him.

(Resp. 159-160) [REDACTED] completed a Transition Planning Inventory in September of 2011 and a Student Transition Assessment Tool – Revised (STAT-R) in May of 2012. (Resp. 383-71) The results of these assessments and a May 2012 student interview are summarized in his 2012-2013 IEP. The IEP includes a review of [REDACTED] progress toward graduation course requirements. Learning remained the targeted activity of concern in preparation for transition. (Resp. 158-160)

The three goal areas from the 9th grade IEP – reading, writing, and organization/ assignment completion – were carried into the 10th grade IEP. Current academic progress and baseline data was incorporated into each goal. Comprehension remained the focus of the reading goal with target increased from 85% accuracy in 3 out of 4 trials on grade level reading comprehension probes covering unfamiliar text to 90% accuracy on grade level comprehension probes covering unfamiliar text. (Resp. 161) The goal of independently writing four paragraphs scoring at least 80% on the scoring rubric was essentially the same as the prior year. A change was made identifying the source of material to be used for progress monitoring as writing samples taken for a class assignment. (Resp. 167) The assignment completion goal was changed from “[REDACTED] will complete 85% of assignments in 3 out of 4 weeks” to “[REDACTED] will complete 85% of assignments.” (Resp. 136, 173)

No substantive change was made to the specially designed instruction [REDACTED] was to receive or to the available assistive technology. The only change to accommodations was removal of the first portion of the third accommodation from the prior year, which required [REDACTED] Ms. [REDACTED] and the special education teacher to design an assignment communication procedure to be used on a daily basis and monitored by the special education teacher. (Resp. 178-179)

Community college writing course / Summer 2012: Over the summer between 9th and 10th grade, 2012, [REDACTED] took a course titled “Basic Writing” at [REDACTED] Community College. Ms. [REDACTED] characterized the course as a remedial writing class, “a level below English 101 for college freshman.” (Tr. 462) [REDACTED] had access to the college’s tutoring center and was allowed extended time for exams. (Tr. 481, 1041) He finished the course with grade of B- and earned 3 college credits and 7.5 high school language arts credits. (Resp. 58; Tr. p. 462)

Implementation of 2012-2013 IEP: During his 10th grade year, [REDACTED] attended the Directed Studies classroom one period each day and took a full general education class schedule, including: Language Arts 10; Geometry; Biology; Band; Japanese 2; and Advanced Placement (AP) European History. [REDACTED] was [REDACTED] roster teacher and was primarily responsible for providing instruction during Directed Studies class that year. Mr. [REDACTED] holds a bachelor’s degree in special education and is certified as a special education level 2 (moderate/severe/profound) instructional strategist for grades K-12 and level 1 (multi-categorical) strategist for grades 8-12. (Tr. 1476) He has been employed as a special education teacher at [REDACTED] High School since 2004. (Tr. 1475)

This year, [REDACTED] attended Directed Studies in a group resource room setting – referred to as the “Learning Center” – with 10-15 other students and three instructors, Mr. [REDACTED] and two other licensed special education teachers. (Tr. 1457-58, 1478-79) Mr. [REDACTED] provided instruction to [REDACTED] in areas of reading, writing, organizational skills and transition skills.¹³ The Learning Center implemented a district-developed transition curriculum with lessons delivered in 20 to 30 minute blocks twice each week. [REDACTED] participated in approximately half of these sessions when he found the topic relevant. (Tr. 1536-38) Examples of lessons he engaged in include: goal setting, transcript analysis – with an eye toward graduation requirements, and self-advocacy for IEP accommodations. (Tr. 1540-42)

¹³ [REDACTED] [REDACTED] [REDACTED] special education teacher from the prior year, also worked with [REDACTED] in Directed Studies at the beginning of 9th grade, providing reading instruction using the Read 180 reading program. (Tr. 1349, 1479) A few weeks into the school year, [REDACTED] refused to participate in Read 180 lessons, telling Ms. [REDACTED] that he had done Read 180 in middle school. (Tr. 1349-50) At hearing, [REDACTED] said that he used the Read 180 program in middle school and refused to start it again. He explained, “I passed it and I didn’t really want to get into it again, and it also felt elementary. It didn’t feel it was at grade level.” (Tr. 1083) The Read 180 instruction materials that Ms. [REDACTED] used with [REDACTED] were not taken from the middle school program, but from a more advanced program that included individualized reading options at or above [REDACTED] grade level. (Tr. 1348-49)

Mr. ██████ testified at length about the instructional strategies he used with ██████. He provided reading support and for ██████ general education coursework, including offering to read aloud and discuss difficult material. ██████ delivered reading instruction after ██████ stopped working on Read 180 with Ms. ██████. This reading instruction focused on vocabulary, comprehension, and fluency. ██████ used materials from “Stretch to Read – Stretch to Text” – a lexile-based program that incorporated both reading and writing tasks and instruction. (Tr. 1480-82) ██████ also used strategies from the Write Tools program – which he described as a program designed to front load writing with brainstorming, organization, analyzing the prompt – to help ██████ organize his writing. (Tr. 1506-07)

Mr. ██████ recognized that unfamiliar vocabulary presented a barrier to comprehension, particularly in some of the higher level courses ██████ was taking. He installed an application on ██████ school-provided iPad with dictionary and thesaurus functions. The program was tied to a microphone. Words could be spoken and the device would provide a definition. Alternatively, words could be typed and the device would provide both pronunciation and definition. After instruction, ██████ was able to successfully use the application. (Tr. 1494-85) I found this testimony detailed and credible, even though ██████ testified that he was never told to look up words in a dictionary or given any type of electronic device to help him figure out what words meant. (Tr. 1078-79)

Mr. ██████ described ██████ work completion/organizational goal as “a driving force in what we did daily in Directed Studies.” (Tr. 1518) He and ██████ began each day by looking at ██████ planner, course schedule, and/or PowerSchool reports; and analyzing and prioritizing tasks that needed to be done. (Tr. 1518-29) ██████ modeled use of the planner to track assignments, trying to build ██████ skills so that he could use this tool more independently, with little success. Use of the paper planner was discontinued in January.¹⁴ ██████ then identified several calendaring applications with reminder functions that he loaded on to ██████ iPad, and asked ██████ to look at them and decide which he would like to use going forward. ██████ seldom brought the iPad to school and did not follow-up on this request.¹⁵ (Tr. 1525-26)

¹⁴ ██████ made it clear that he did not like using the paper planner. (Tr. 1520-22) After a discussion of the ineffectiveness of the planner at a meeting attended by ██████, ██████, Ms. ██████ and the High School Principal in early January 2013; and the Principal suggested they stop using a paper planner. (Compl. 575-76, Tr. 210, 1522-23)

¹⁵ ██████ and his mother both testified that his resistance to bringing the iPad to school stemmed from the fact that his iPod was stolen when he left it with his things during basketball weightlifting during his freshman year. When the school provided the iPad ██████ had to sign a statement that he was responsible if the iPad was lost or damaged and ██████ was afraid to take it to school. (Tr. 219-20, 1074-75, see Compl. 1748-49) Despite being repeatedly told to bring the iPad to school, ██████ did not tell Mr. ██████ or anyone else at the school that this was why he usually left the iPad at home. (Tr. 1256-57)

██████████ an associate director of special services with the ██████████ school district, met frequently with Mr. ██████████ during the year to provide support and discuss strategies and interventions. In March or February of 2013, she shared with him training materials that she received during a session addressing executive function strategies for students with ADHD and autism spectrum disorder. (Tr. 2428-30) ██████████ continued to monitor and discuss coursework with ██████████ daily, using a simple checklist system to track assignments and continued to model and coach ██████████ how to prioritize assignments based on their importance throughout the year. (Tr. 1519-20, 1529-33) Mr. ██████████ had regular email communication with Ms. ██████████ to keep her informed of ██████████ outstanding work.¹⁶ (Tr. 1534-36)

Mr. ██████████ also had regular contact with each of ██████████ general education teachers. At the beginning of the year he provided a copy of ██████████ IEP to each of the teachers with a memorandum highlighting the IEP requirement for each teacher to read the IEP. (Resp. 412, Tr. 1549) ██████████ maintained regular contact with the general education teachers throughout the year to ensure that he knew enough about the requirements of the classes to effectively assist ██████████ and to the general education teachers in addressing ██████████ needs and monitor the implementation of accommodations. (Tr. 1550-52)

AP European History proved to be a very hard class for ██████████ which he ultimately failed. ██████████ High School administrators and staff encourage potentially college-able students to take at least one advanced placement course during high school. (Tr. 2377) This message is conveyed to all students, with the understanding that a student can enroll and try an AP class and, if the class proves too difficult, can drop the course and move back to a regular class. (Tr. 290) It appears that ██████████ High School had no established skill-based eligibility factors for taking AP European or other advanced placement courses. High school Principal ██████████ ██████████ Ed.D., spoke with Ms. ██████████ and provided her with information about a couple of lower intensity advanced placement classes that the principal felt might be appropriate for ██████████ (Tr. 2376-77, 2381)

██████████ chose to enroll in AP European History – an intense advanced course requiring significant reading and writing – during 10th grade year. Principal, ██████████ ██████████ was concerned that the course would be too rigorous for ██████████ but chose not to counsel him against taking the course because his mother had reacted harshly after his special

¹⁶ Ms. ██████████ refused to sign a release allowing ██████████ to have access to the internet at school because she interpreted the school policy on internet use as requiring her to accept responsibility for his internet use and she did not believe he had sufficient self-regulation skills to be trusted with unsupervised internet access. (Tr. 324-35, *see* Resp. 864-66) ██████████ limits ██████████ at home internet access to weekends, for similar reasons. (Tr. 340) Because of this, the school could not make use of a web-based electronic planner that could have provided him, his mother, and all teachers to communicate in real-time about outstanding assignments – as suggested by Dr. Jasper. (Tr. 458) The lack of internet access made it difficult for ██████████ to use the “I Have a Plan Inventory” as a postsecondary transition planning tool. (Tr. 324-25)

education teacher talked to ██████ about her similar concerns. (Tr. 2378-84) ██████ had difficulty with the volume of reading and new vocabulary in the class and began to struggle with the course early in the school year. (Tr. 1081) The teacher counseled students who were not performing C or D level work to drop the class. ██████ took the teacher's comments personally, wanted to prove he could do the work, and refused to drop the course. (Tr. 290-292, 1039-40, 2647-49) He received a D- for the first trimester and failed the second and third trimesters. Ms. ██████ cites his failure in AP European History as an example of the school district allowing ██████ to take classes that were too hard for him. (Tr. 289-90)

Principal ██████ conveyed credit recovery options to Ms. ██████ after ██████ failed the advance placement class. (Resp. 775, Tr. 2387) The principal also sent ██████ an email explaining the credits that ██████ still needed to meet graduation requirements to ensure that she and ██████ were fully aware of what he needed. ██████ also outlined various options for course schedules for the next two years that would allow ██████ to stay on track to graduate with his class. (Resp. 733-34, Tr. 2372-74)

Performance under the 2012-2013 IEP. Although ██████ failed AP European History, he earned passing grades in his remaining classes and finished the year with a 2.111 GPA.¹⁷ Progress monitoring data and standardized assessment results show that ██████ made some progress on his reading and writing skills during 10th grade – the 2012-2013 school year. No improvement in homework completion is documented. Rather, it appears that ██████ was further behind on homework assignments that he was during the previous school year.

Reading:

- Current level of achievement / baseline spring of 2012:
 - SRI – baseline from 5/17/2012 = 1025 Lexile
 - Jamestown Reader series comprehension passages, or probes, at 11th grade level in February and March, 2012, median 90% accuracy
 - Jamestown Reader series probes from book 10, at 13+ grade level in April and May of 2012, mean 80% accuracy. (Resp. 161, 209)
 - Iowa Assessments – April 2012, national percentile rank

¹⁷ ██████ transcript for 10th grade (Resp. 58):

Course	T1	T2	T3
Language Arts 10	C+	B-	D
Geometry	D	D-	C+
Band	A	A	A
[PE] Waiver / Exc-Rhythmic	S	S	S
Biology	C-	B-	C-
AP European History	D-	F	F
DS General	C+	B	A
Japanese 2	C	C-	C-

Reading = 55th percentile (10.6 NGE)
(Resp. 72)

- IEP Reading Goal 5/17/2012: “Given instruction in reading comprehension strategies, in 36 weeks when given grade level reading comprehension probes covering unfamiliar text, the student will answer comprehension questions with 90% accuracy.” (Resp. 161)
- Spring of 2013 (end of 10th grade), current level of achievement / baseline:
 - SRI – various points during 10th grade:
 - 9/5/2012 = 1068 Lexile
 - 11/14/2012 = 1066 Lexile
 - 1/31/2013 = 1125 Lexile
 - 5/3/2013 = 1121 Lexile
 (Resp. 209)
 - May 2013 IEP baseline statement: “At time of the IEP ██████ scored an average of 88% on 10th grade reading level comprehension probes and an average of 87% at 11th grade reading comprehension probes.”¹⁸
(Resp. 213)
 - Iowa Assessments – April 2013, national percentile rank:
Reading = 60th percentile
(Resp. 210)

Writing:

- Current level of achievement / baseline spring 2012:
 - Median scores of 90% on fluency and 70% on content development on three most recent writing assignments per IEP. (Resp. 167)
 - Iowa Assessments – April 2012, national percentile rank:
 - Written language = 41st percentile (8.6 NGE)
 - Vocabulary = 35th percentile (8.5 NGE)
 - English Language Arts Total = 45th percentile (9.3 NGE)
 (Resp. 72, 209)
- IEP Writing Goal, 5/17/2012: “In 36 weeks, given instruction in the writing process, ██████ will independently compose and revise written work of at least four paragraphs scoring at least 4 (80%) across all six areas of the

¹⁸ The source of these percentages is unclear. Progress Monitoring Log for ██████ reading goal for the 2012-2013 year lists the date and outcome for each probe given. During the fall of 2012 ██████ choose to complete probes from Book 10 of the Jamestown Reader series. Eleven probes from Book 10 were administered between September 10 and December 17, 2012. ██████ averaged 85.45% accuracy on comprehension questions for these probes. In the spring of 2013 the teacher returned to use of grade level probes to gain current functioning data. Nine grade-level probes were administered between January 7 and May 13, 2013. ██████ averaged 82.22% accuracy on comprehension questions for these probes. (Resp. 165)

attached rubric in order to become proficient in skills needed for further learning, independent living, and future career choices.” (Resp. 167)

- Spring of 2013 (end of 10th grade), current level of achievement / baseline:
 - ██████ scored an average of 55% (as scored by the 6-trait writing rubric) on writing samples. (Resp. 168, 214)
 - Iowa Assessments – April 2013, national percentile rank:
 - Written expression = 66th percentile
 - Vocabulary = 42nd percentile
 - English Language Arts Total = 66th percentile
- (Resp. 210)

Assignment completion:

- Current level of achievement / baseline spring 2012:
 - “█████ has had two assignments that were more than two days late in the third trimester. On the last three assignment completion checks his mean assignment completion percentage was 95%.” (Resp. 173)
- IEP Assignment Completion Goal, 5/17/2012: “Given instruction in organizational strategies, in 36 weeks, ██████ will complete 85% of assignments. (Resp. 173)
- Current level of achievement / baseline spring 2013:
 - Throughout the 2012-12 school year ██████ demonstrated an assignment completion average of 85% across the core academic courses in which he has been enrolled. During the spring term ██████ demonstrated an assignment completion average of 77% in core academic classes. (*note: above average absences during spring term.) (Resp. 215)

Development of IEP for 2013-2014 school year / 11th grade. Two IEP meetings to develop ██████ IEP for 11th grade were held in the spring of 2013, near the end of his 10th grade year – the first on April 16th and the second on May 29th. In addition to mandatory IEP team members – including ██████ attorneys representing Ms. ██████ and the school district and AEA attended the meetings. (Resp. 207) The resulting IEP includes essentially the same description of the effect of ██████ disability on his involvement and progress in general education as the IEP from the previous year.¹⁹ (Resp. 211)

¹⁹ Ms. ██████ thought that several things in the finished version of the 2013-14 IEP were worded differently than and inconsistent with what they agreed upon during the May 29th IEP meeting. (Tr. 242-44) A draft version of the IEP was provided to ██████ and her attorney on June 7, 2013, and they were given an opportunity to provide feedback on the draft. Their only comment about the draft in reply was a request for the date to be changed from the date of the first meeting to the date of the second meeting. (Tr. 741-43; Resp. 863) Although Ms. ██████ felt there were many errors in the IEP and considered trying to negotiate changes, she chose not to alert the

Prior to the meeting, ██████ mother completed a Transition Planning Inventory (TPI) and ██████ again completed the TPI and a STAT-R. ██████ expressed interest in the military and auto-mechanics as potential career options and indicated he had not worked on an educational development plan and was uncertain what school classes he needed or how to get help in selecting appropriate classes. (Resp. 241-53) His 2013-14 IEP noted that ██████ felt he needed additional support or resources regarding seeking and securing further education, training, and employment and that “█████ would benefit from support in the area of career decision-making and employment.” (Resp. 210)

Holly Mateer, a rehabilitation supervisor with the Iowa Division of Vocational Rehabilitation Services (DVRS), attended both IEP meetings in May of 2013. Ms. ██████ and her attorney had an opportunity to question Mateer during the IEP meeting. (Tr. 674) Mateer explained the services available through DVRS and provided a brochure and application for services. DVRS has staff available on site at ██████ High School on a regular basis. (Tr. 659-62) DVRS staff can provide general information to an IEP team, as Mateer did in this case, before a student applies or is found eligible for DVRS services. DVRS cannot directly provide assessments or other services to a student unless the student or parent files an application and the student is found eligible for services. (Tr. 665-66, 668) Neither ██████ nor Ms. ██████ on his behalf applied for DVRS services. (Tr. 676)

Changes were made to the IEP goals based on the reading and writing evaluations and parental input. The focus of the reading goal shifted from comprehension to “automaticity.”²⁰ (Resp. 213) The single writing goal was replaced with two goals; the first aimed at meeting general education writing assessment criteria and the second addressing spelling and writing fluency. (Resp. 214, 216) The measure for the

school to these concerns because she figured any attempt to request significant changes would be futile. (Tr. 2662-63)

²⁰ This is the first of ██████ IEPs to use the term “automaticity” to describe of his current level of reading performance and his reading goal. ██████ the ██████ AEA Regional Administrator for the ██████ region joined ██████ IEP team in the spring of 2013. She explained the term automaticity, as she uses it, is nearly synonymous with oral reading fluency. (Tr. 2307-08, 2344-45):

Automaticity is actually a word that you may not find widely in reading literature. However, it is a term that is gaining some more interest. ‘Automaticity’ is a word that I like to use because it helps educators understand that automaticity means more than just rate, sometimes. So this is really the same – almost synonymous with oral reading fluency. However, sometimes oral reading fluency can be misunderstood to mean rate and it’s not rate. Its rate and accuracy and some other things like prosody, reading for comprehension, those types of things.

(Tr. 2307-08) ██████ reading problem had not changed; it was just being identified with a different label. (Tr. 231-32)

organizational goal was expanded to address completion of all general education coursework tasks (assignments, quizzes, projects, tests, etc.), rather than merely assignment completion. (Resp. 215)

The 11th grade IEP also included a change in the specially designed instruction. ██████ would continue to spend one 55 minute period in Directed Studies classroom, where he was to receive instruction in reading, organizational skills, self-advocacy dialogue and practice and instruction to improve work completion, “focusing on development of self-monitoring skills, organization of materials, and management of planner/calendar.” All writing instruction was now to be provided in the general education setting, with the special education teacher collaborating with general education teachers to review ongoing curriculum needs, effective instructional strategies, progress monitoring data, and accommodation implementation. (Resp. 228a-228b) The accommodations section of the IEP was unchanged, but for the omission of reference to the assignment communication procedure and the addition of “altered passing to allow for individual to follow up with general ed teacher to review accurate recording of assignments.” (Resp. 228)

School-provided reading instruction summer 2013 through 2013-14 school year: Ms. ██████ felt that ██████ was still struggling to read grade-level text books and requested additional reading instruction using the Orton-Gillingham strategy. Even though Iowa Assessment results and progress monitoring showed that ██████ reading skills were progressing, as a good will gesture the school agreed to provide Orton-Gillingham reading instruction up to 2 times weekly for up to 8 weeks or as mutually agreed upon. (Resp. 238, Tr. 740-42) The school hired ██████ the same Orton-Gillingham tutor who worked with ██████ in the summer of 2011, to work with him in the summer of 2013. (Tr. 600-01)

██████ decoding skills and reading accuracy and comprehension improved as a result of the summer sessions and the district employed ██████ to continue instructing ██████ twice each week throughout 11th grade, the 2013-14 school year. (Compl. 355, Tr. 601) Between June 2013 and May 2014, his performance on Prescription for Reading Success reading passages used to assess reading accuracy and comprehension, increased from grade level 7.0 to grade level 9.7. (Compl. 355) At hearing ██████ was asked how ██████ overall functioning compared to other students she had worked with. She said, ██████ was “functioning at the highest level of anybody she [had] worked with.” (Tr. 633)

Implementation 2013-14 IEP: During 11th grade, ██████ attended the Directed Studies classroom one period each day and took a full general education class schedule, including: Auto Tech/Auto Trans/ Welding; Perspectives in Literature and Composition; Algebra II (1st trimester only); Band; U.S. History; and Japanese 3. ██████ was ██████ Directed Studies and roster teacher that year. Mr. ██████ holds a music degree from Iowa Wesleyan College and Master of Arts degree in teaching from the University of Northern Iowa. He is certified to teach K-12 music and special education – learning disability, behavior disorders, mild disability, and multi-

categorical and level 1 instructional strategist for grades 5-12. He has been a special education teacher at the high school level for the past 24 years. (Tr. 1793-95)

Although ██████ attended Directed Studies in the Learning Center during his junior year, he received all instruction during this class period individually rather than in a group setting. Ms. ██████ provided Orton-Gillingham reading instruction two days each week and did progress monitoring for ██████ reading goal. Mr. ██████ spent the remaining three days of the week providing one-to-one instruction focused on writing strategies and organizational skills/homework completion and monitoring progress in these goal areas. (Tr. 1799-1803)

Mr. ██████ worked with a curriculum consultant from the AEA to identify the instructional strategy he used at the beginning of the year to improve ██████ writing fluency – essentially a free-writing exercise. (Tr. 1801-02) Later in the year ██████ implemented strategies from the Write Tools program, which he described as “a more structured method for helping reluctant writers in the process of writing.” (Tr. 1802-03) ██████ consulted almost daily with Language Arts instructor ██████ ██████ to identify what they were working on in the LA class and what ██████ was struggling with and to collaborate on strategies for helping him. (Tr. 1803-04)

Mr. ██████ testified at length about the specially designed instruction he provided ██████ in the areas of organizational skills, work completion, self-monitoring, use of a planner, and alternative methods to track assignments. ██████ ██████ the associate special services director who worked with Mr. ██████ during ██████ sophomore year, met with a district curriculum consultant during the summer of 2013 to review various available curricula related to executive functioning. They discussed available options with ██████ and selected Advanced Skills for School Success (ASSS) for use with ██████ (Tr. 1814, 2431-32) ASSS is a high school level scripted curriculum that includes four modules addressing: (1) school behaviors and organizational skills; (2) completing daily assignments; (3) effective reading of textbooks; and (4) learning from verbal presentations and participation in discussions. (Resp. exhibit J) ██████ regularly worked through the ASSS lessons with ██████ attempting to relate the lessons to ██████ current work. (Tr. 1817-18, 1828) Some of the lessons covered very basic concepts, which ██████ found childish and embarrassing. Others addressed skills that he thought he could use in classes. (Tr. 1260-61)

In addition to working through ASSS lessons, Mr. ██████ addressed ██████ organizational skill deficits by helping him monitor outstanding assignments, prioritize assignments, and determine when he needed to self-advocate for additional time to complete assignments. (Tr. 1830) He worked with ██████ to find a task-planner or agenda format that would work for him and coached him to consistently use the planner. (Tr. 1822-25) Ms. ██████ talked to ██████ and High School Principal ██████ about her continuing concern that ██████ was not keeping track of his assignments during parent-teacher conferences in the fall of 2013. In an attempt to reinforce ██████ use of the agenda, ██████ proposed a system that called for each teacher to check and sign-off on ██████ on the agenda to make sure that he correctly recorded daily assignments and for ██████ to initial the agenda at night to acknowledge

that she had seen it. (Tr. 1822) ██████ found this process awkward and embarrassing. (Tr. 1054-56) ██████ refused to initial the planner because, based on failed attempts at using the planner in prior years, she felt it had been “dissolved as a workable tool.” (Tr. 466-67, Resp. 592).

Prior to the start of the school year, Ms. ██████ and Principal ██████ drew up a grid showing approximately how much time would be devoted to each Directed Studies activity. (Resp. 486) Mr. ██████ used this as a guide to make sure that he delivered all required components of ██████ specially designed instruction. ██████ also kept contemporaneous notes of the Directed Studies instruction provided to ██████ each day. (Tr. 1828, 1839, Resp. 487-517) In addition to delivering instruction and IEP goal progress monitoring, ██████ met with each of ██████ general education teachers on a daily basis to be certain the needed accommodations were being provided, respond to questions about the accommodations, and track daily assignments. (Tr. 1842-46; Resp. 518-48)

Mr. ██████ discussed post high school education and career goals with ██████ and talked to him about scheduling classes to provide experience related to his goal areas. ██████ also administered a Transition Planning Inventory (TPI) to ██████ in March of 2014. (Tr. 1855-57) ██████ indicated on the TPI that he felt he had the knowledge and skills needed to search for and get a job and that he knew how to perform daily self-care tasks and had no concerns about his emotional or physical health. He reported that he needed more information about how to get into postsecondary programs and how to access financial aid programs and community services. (Resp. 292-300) ██████ found these responses consistent with his observations of ██████ (Tr. 1857-60)

The ██████ school district has a partnership in place with the “██████ ██████ at ██████ Community College that makes job shadowing opportunities available to 10th through 12th grade students. The program is widely advertised to all high school students and representatives from the program are available on site at ██████ High School three or four times through the year. (Tr. 2537-38) In response to an email inquiry from Ms. ██████ in January of 2014, Principal ██████ offered to get ██████ connected with this program. (Resp. 592-93) ██████ the Attendance Facilitator at ██████ met with ██████ in early February, explained the job shadow application process, and helped him begin completing the application. ██████ emailed ██████ to tell her about the meeting and the application deadline, which was the first week of September for fall program opportunities. He offered to take the application whenever it was completed. (Tr. 2539-41, Resp. 805) Ms. ██████ contacted ██████ after she received ██████ email and learned that few job shadow options remained available for the current year. ██████ was already trying to get the auto shop job and they decided not to apply for the job shadow program. (Tr. 2655-57)

When it became clear that ██████ was failing and would be dropping Algebra II, Principal ██████ talked to him about other available math class options. The principal reiterated math course alternatives in an email to Ms. ██████ He also agreed to grant an exception to standard district policy and allow ██████ to apply for high school credit if

he took second year algebra at the community college the next summer. (Resp. 737, Tr. 2558-50) Ms. [REDACTED] appreciated the information, but was irritated that [REDACTED] spoke directly to her son without including her in the conversation. (Resp. 737)

Performance under the 2013-2014 IEP. [REDACTED] maintained passing grades in all classes except Algebra II, which he dropped after failing the first trimester. He finished the year with a 2.59 GPA.²¹ IEP progress monitoring data shows inconsistent performance in all four goal area. (Resp. 216-27) [REDACTED] achieved the following national percentile rank on the Iowa Assessments administered in April of 2014:

Reading = 57th percentile (13+ NGE)
 Written expression = 52nd percentile
 Vocabulary = 40th percentile
 English Language Arts total = 52nd percentile
 Mathematics = 41st percentile (10.2 NGE)
 Computation = 50th percentile
 Math Total = 44th percentile
 Core Composite = 49th percentile

(Resp. 67-69, 73)

Further evaluation of reading skills – May 2014. Near the end of [REDACTED] 11th grade year and after the complaint initiating this proceeding was filed, his mother requested an evaluation to determine why – despite his ability to read some materials at grade level – he continued to have difficulty keeping up with grade level textbooks. This evaluation was conducted in late May of 2014 by a school psychologist with the [REDACTED] district and an AEA literacy consultant. Several assessment tools were used. On Woodcock-Johnson III – Tests of Achievement, a norm referenced test of reading skills that compares results with same age peers across the nation, [REDACTED] performance fell in the average range on reading fluency, story recall, passage comprehension, and reading vocabulary; was below the average range on letter-word identification; and was above average on story recall delayed. The evaluators concluded that “the results of this assessment as summarized in the Broad Reading score, would indicate no significant concerns with [REDACTED] overall reading skill at this time.” (Compl 58-59)

²¹ [REDACTED] transcript for 11th grade (Resp. 58):

Course	T1	T2	T3
Trans Tech / Auto Trans 2 / Welding	A-	A	A-
Perspectives in Lit. and Comp.	B-	D-	D
2 nd year Algebra	F		
Band	B+	A+	A
Waiver / Exc-Rhythmic / DS PE	S	S	A+
US History	D-	C-	C-
DS General	A+	A+	A+
Japanese 3	C-	D-	D-

Additional data regarding [REDACTED] reading rate, accuracy, and comprehension was gathered using oral reading passages followed by comprehension questions. Passages from Jerry L. Johns' Basic Reading Inventory (BRI) and the Florida Assessments for Instruction in Reading were used. Six passages – three at the 11th grade level and three at the twelfth grade level – were used. [REDACTED] read the 11th grade passages at a median rate of 116 correct words per minutes (CWPM) and median accuracy of 97% and read the 12th grade passages at a median rate of 87 CWPM and median accuracy of 95%. He displayed strong comprehension of two passages on which comprehension questions were given (9/10 correct on the 11th grade passage, 10/10 correct on the 12th grade passage). His reading rate on grade-level passages was low, between the 10th and 15th percentile. (Compl. 59-61)

Read aloud passages from Jamestown Education Timed Readings Plus were used to further assess reading automaticity – accuracy and rate, based on regional grade level norms compiled by the [REDACTED] AEA. On three passages from this source, [REDACTED] rate ranged from 93 to 121 CWPM and his decoding accuracy ranged from 95 to 98%. His accuracy on comprehension questions included scores of 6/10, 9/10, and 10/10. The median CWPM placed [REDACTED] automaticity in the 7th percentile compared to other eleventh grade students tested in the spring semester using this instrument. (Compl. 61-62) The evaluators summarized the overall test results as follows:

Convergence of data indicates that while [REDACTED] overall reading skills are in the typical range, fluency data collected warrant further consideration. More specifically looking at the rate component of fluency, [REDACTED] word per minute rate is lower than expected using Jamestown and BRI. Fluency as measured on the Woodcock-Johnson is in the average range. Reduced fluency often leads to lower accuracy in word recognition and comprehension. [REDACTED] word recognition and comprehension do not appear to be adversely effected by his lower rate. Even when reading the Jamestown with decreased rate [REDACTED] word accuracy was 95% and his comprehension 100%. He may read slowly to ensure comprehension.

The data indicates that [REDACTED] would benefit from instruction that focuses on fluency primarily in the area of rate.

(Compl. 62) The evaluators noted that the data they collected did not indicate that [REDACTED] reading rate negatively impacted his recall or comprehension, his “decreased rate of reading could impact his ability to read grade level texts with efficiency.” They provided several examples of evidence-based repeated reading strategies focusing on fluency, primarily in the area of rate, that [REDACTED] might benefit from. (Compl. 62)

Independent neuropsychological evaluation – spring 2014. Also in the spring of 2014, the Complainant engaged Clinical Neuropsychologist Bruce Jasper, Ph.D., to conduct a neuropsychological evaluation of [REDACTED]. Dr. Jasper conducted the evaluation over two meetings on March 26 and May 2, 2014. He conducted a clinical interview with [REDACTED] and his mother; administered a comprehensive battery of cognitive tests; and reviewed background academic and evaluation materials provided to him by the

Complainant: school records including IEPs, reading probes/progress tracking, email communications; prior evaluations including the cognitive and educational evaluations from KKI in 2004, school psychological evaluation from 2008, and pediatric neuropsychological evaluation from 2009. (Tr. 381-82; Compl. 64-66) Dr. Jasper had no direct contact with the school or [REDACTED] teachers and did not have the benefit of their current observations of [REDACTED] functioning. (Tr. 423, 425)

Dr. Jasper confirmed the diagnosis of ADHD and offered the following summary and impressions:

[REDACTED] [REDACTED] is an 18 year old; male, with a long history of cognitive disorders including Learning Disabilities (e.g., dyslexia, dysgraphia, dyscalculia) and Attention-Deficit/Hyperactivity Disorder (ADHD). Current neurocognitive assessment confirms that [REDACTED] continues with these conditions, which are persistently symptomatic with particular deficits manifest in areas of attention/concentration, processing speed, executive function and associated applied academic functioning. [REDACTED] [REDACTED] cognitive deficits and ADHD are neurobiological conditions that are not “curable” and will therefore never entirely go away. [REDACTED] [REDACTED] *recent IEP reviewed by this examiner, as well as past school/psychological/neuropsychological evaluation reports, each prescribe and outline interventions and accommodations that are appropriate given his cognitive deficit profile.* That said, executive function deficits including problems with planning, organizing and applied problem-solving may need intensified intervention so as to better address ongoing academic concerns.

(Compl. 71 – emphasis added) Dr. Jasper’s report concluded with a number of recommendations addressing [REDACTED] executive function deficits and difficulty sustaining attention. (Compl. 71-75)

Dr. Jasper testified at some length regarding additional strategies and therapies available for rehabilitating executive function deficits. (Tr. 399-405) After reviewing the Advanced Skills for School Success teacher guide for the first lesson of Module 1 (contained within Respondent’s Exhibit J), Dr. Jasper observed that with appropriate tailoring to take into account [REDACTED] age, intelligence, and prior knowledge, it could be a helpful tool for an educator in helping [REDACTED] executive skill deficits. (Tr. 438-440) Dr. Jasper reviewed the evaluation process and conclusions in testimony at hearing and confirmed that the previously recommended accommodations were appropriate, though not exhaustive. (Tr. 397-98)

Conclusions of Law

General principles: A discussion of the basic framework and requirements of the IDEA is set forth below, followed by consideration of the specific procedural and substantive challenges the Complainant lodges regarding the development of [REDACTED] IEP and the delivery of special education services and accommodations.

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

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

A parent or guardian who believes that a school district has failed to comply with the IDEA may seek relief by filing a complaint initiating due process proceedings with respect to “any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” 20 U.S.C. § 1415(b)(6). “The IDEA’s legal requirements are fulfilled if a school district (1) complies with the law’s procedures in developing an IEP, and (2) the resulting IEP is ‘reasonably calculated to enable the child to receive educational benefits.’” *M.M. v. District 0001 Lancaster County School*, 702 F.3d 479, 487 (8th Cir. 2012), quoting, *Rowley*, 458 U.S. at 206-07.

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

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

In a suit by an aggrieved party under the IDEA, the court inquires whether the school district met the IDEA’s procedural and substantive requirements. Procedurally, the school district must follow the procedures set forth in the IDEA to formulate an IEP tailored to meet the disabled

child's unique needs. To pass substantive muster, the IEP must be "reasonably calculated to enable the child to receive educational benefits." If the school district has met these requirements, it "has complied with the obligations imposed by Congress and the courts can require no more."

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

While both procedural and substantive violations of the IDEA may serve as a basis for actions to enforce the act, proof of procedural deficiencies does not necessarily entitle a parent or student to relief under the act. "If a school district fails to comply with IDEA procedures, however, the IEPs that result from the violation are not necessarily invalid." *K.E. v. Independent Sch. Dist. No. 15*, 647 F.3d 795, 804 (8th Cir. 2011), citing *Renollett*, 440 F.3d at 1011. The law in this circuit is well-settled – a procedural error provides a basis to set aside an IEP, only if "procedural inadequacies compromised the pupil's right to an appropriate education, seriously hampered the parents' opportunity to participate in the formulation process, or caused a deprivation of educational benefits." *Fort Osage R-1 Sch. Dist.*, 641 F.3d at 1002-03, quoting *Lanthrop R-II Sch. Dist. v. Gray*, 611 F.3d 419, 424 (8th Cir. 2010); 34 CFR § 300.513(2); also *K.E. v. Independent Sch. Dist. No. 15*, 647 F.3d at 804; *Renollett*, 440 F.3d at 1011.

The adequacy of an IEP hinges upon the requirement to offer a free appropriate public education (FAPE). This requirement is generally satisfied when "a school district provided individualized education and services sufficient to provide disabled children with some educational benefit." *Fort Osage R-1 Sch. Dist.*, 641 F.3d at 2003, quoting *Blackmon v. Springfield R-XII Sch. Dist.*, 198 F.3d 648, 658 (8th Cir. 1999). "The standard to judge whether an IEP is appropriate under IDEA is whether it offers instruction and supportive services reasonably calculated to provide some educational benefit to the student for whom it is designed. 'Some educational benefit' is sufficient; a school need not 'maximize a student's potential or provide the best possible education at public expense.'" *Park Hill School Dist. v. Dass*, 655 F.3d 762, 765-66 (8th Cir. 2011), quoting *Lanthrop R-II Sch. Dist. v. Gray*, 611 F.3d at 427, and *Gill v. Columbia 93 Sch. Dist.*, 217 F.3d 1027, 1035 (8th Cir. 2000); *K.E. v. Independent Sch. Dist. No. 15*, 647 F.3d at 809. "Since each child's needs and abilities are unique, the law does not mandate the acquisition of specific knowledge or 'strict equality of opportunity or services.'" *M.M. v. District 0001 Lancaster County School*, 702 F.3d 479, 485 (8th Cir. 2012) quoting *Rowley*, 558 U.S. at 198.

Specific results are not required, but a student's academic progress can be an "important factor" in determining whether an IEP complies with the IDEA and academic progress can tip the determination in either direction. The fact that a student is falling behind or failing to make academic progress is an indicator that current programming is not sufficient to meet the student's needs. See *C.B. v. Special School Dist. No. 1*, 636 F.3d 981, 989-990 (8th Cir. 2011) (holding that public school failed to provide a FAPE, where despite student's average intellectual ability, positive attitude, and willingness to work, the educational program offered by the school did not assist him in making progress in reading during the fourth and fifth grade); and *Independent School Dist. No. 284*,

Wayzata Area Schools v. A.C., 258 F.3d 769,776-778 (8th Cir. 2001) (residential placement found necessary for FAPE, where – despite the absence of a learning disability – student’s emotional and behavioral problems led to truancy and disruptiveness caused her to fall behind).

On the other hand, a showing that a student is progressing academically at an average rate, despite psychiatric illness and behavior problems is an indicator that current programming is reasonably calculated to provide educational benefit. *CJN v. Minneapolis Pub. Schools*, 323 F.3d 630, 642 (8th Cir. 2003), *see also School Bd. of Independent School Dist. No. 11 v. Renolett*, 440 F.3d 1007,1012 (8th Cir. 2006) (holding that where student made academic progress despite cognitive and behavioral disorder, he was provided with meaningful educational benefit and the substantive requirements of the IDEA were satisfied). FAPE is provided and the IDEA’s requirements are satisfied “when a school district provides individualized education and services sufficient to provide disabled children with ‘some educational benefit.’” *Blackman ex rel. Blackmon v. Springfield R-XII School Dist.*, 198 F.3d 648, 658 (8th Cir. 1999), quoting *Rowley*, 458 U.S. at 200, 102 S.Ct. 3034.

The Complainant’s 182-page Post Hearing Memorandum alleges a wholesale denial of FAPE without referencing the standard of review or including a single citation to *Rowley*, the leading United States Supreme Court decision addressing FAPE. In her Reply Brief, the Complainant contends that because “the facts and issues in the present case are vastly different from those presented to the Supreme Court in *Rowley*,” . . . the “‘meaningful educational benefit’ standard has limited application in the present case.” (Compl. Reply brief at p. 8-13) She argues:

This case is not about educational benefit. It is about Respondents’ failure to identify . . . [REDACTED] unique needs and their decision that [REDACTED] did not needs [sic] postsecondary goals and result oriented services to get him to those goals. Everything else which [REDACTED] complains about follows from those failures. The *Rowley* standard comes into play only in cases like *Rowley* where there is no issue about the propriety of evaluations and identification of goals. [REDACTED] complaint is totally unlike the run-of-the-mill IEP case in which the need is identified and the argument is about the services to meet the need.

Id. at p. 107.

This argument misstates the *Rowley* standard and ignores extensive Eighth Circuit precedent applying the *Rowley* educational benefit standard to procedural and substantive IEP challenges very much like the claims lodged here. The *Rowley* court looked to whether the student’s IEP was “reasonably calculated to enable the child to receive educational benefits.” This does not necessarily equate to substantial or “meaningful” educational benefit. Unlike appellate courts in several other circuits, to date, the Eighth Circuit Court of Appeals has not adopted “meaningful educational benefit” as the proper standard in this context. Rather, in resolving procedural and substantive challenges in IDEA cases, the court has uniformly looked to whether the

educational program was reasonably calculated to provide “*some* educational benefit.” *C.f. K.E. v. Independent Sch. Dist. No. 15*, 647 F.3d at 810; *Park Hill School Dist. v. Dass*, 655 F.3d at 765-66; *C.B. v. Special Sch. Dist. No. 1, Minneapolis*, 636 F.3d 981, 989 (8th 2011) and cases cited there.²²

K.E. v. Independent Sch. Dist. No. 15, provides a recent example of application of the *Rowley* standard to an IDEA case quite similar to this case in many respects. There the court faced a broad range of challenges to the educational program provided to an 11-year-old student with intelligence in the low-average range and multiple disabilities, including: ADHD, fetal alcohol syndrome, disruptive behavior disorder, and bipolar disorder. Following a nine day hearing, the ALJ found that the school district failed to comply with several procedural requirements of the IDEA, failed to conduct appropriate evaluations, failed to include the results of both outside evaluations and its own evaluations in IEPs, failed to develop an appropriate IEP and BIP and revise them as necessary to address K.E.’s lack of progress, and as a result of these errors failed to provide K.E. with a FAPE. 647 F.3d at 802. The district court reversed, concluding that FAPE was provided.

On appeal to the Eighth Circuit, the parent advanced claims of various procedural violations, including claims that the district failed to provide the parent meaningful participation in the IEP process, failed to consider the results of outside evaluations, and developed IEPs that were in many respects deficient and did not “set forth her deficits in organizational skills and explain how they affected her academic achievement and functional performance;” failed to state annual goals intended to meet her needs – because she made “no demonstrable progress” in the area of organizational skills; disregarded her bipolar diagnosis; and failed to incorporate many of the adaptations and supports that the district implemented. 647 F.3d at 804-09. The parents also alleged a substantive denial of FAPE, arguing that K.E. failed to make adequate academic progress. 647 F.3d at 809. The court applied the *Rowley* “some educational benefit” standard in reviewing both the procedural and substantive claims and upheld the district court’s finding that K.E. was not denied a FAPE. 647 F.3d at 804-05, 810-11. Similarly, in *Fort Osage R-1 School District v. Sims*, the court applied the *Rowley* “some educational benefit” standard when reviewing claims that the IEP of a student was procedurally and substantively flawed because the school district failed to properly evaluate and fully identify the student’s disabilities. 641 F.3d at 1003-05.

A review of cases from other jurisdictions reveals a handful of cases in which courts have found a school’s failure to evaluate a student in all areas of suspected disability so egregious a procedural violation of the IDEA as to equal a denial of FAPE. *C.f. N.B. and C.B. v. Hellgate Elementary School Dist.*, 541 F.3d 1202 (9th Cir. 2008); *K.I. v. Montgomery Public Schools*, 805 F.Supp.2d 1283 (M.D. Ala. 2011). Each of these cases involves a school district’s total failure to acknowledge and assess or evaluate the

²² See S. Johnson, *Rowley Forever More? A Call for Clarity and Change*, 41 J.L. & Educ. 25 (Jan. 2012) (discussing spit amount the circuits an implications of these different educational benefit standards).

student's needs in relation to a suspected disability.²³ As detailed below, ██████ was evaluated to some degree in all areas of suspected disability. The Complainant's challenge to the sufficiency of these evaluations does not rise to the level of a *per se* denial of FAPE. The *Rowley* educational benefit standard, as interpreted and applied by the Eighth Circuit, is the appropriate standard of review in this case.

Analysis of Issues Presented: The Complainant identifies many areas in which she alleges the school district failed to comply with the IDEA. Her presentation is at times circular and often conclusory, making it extremely difficult to distinguish fact claims from legal arguments. With that said, the bulk of the Complainant's claims flow from one central premise: that ██████ IEP team failed to conduct adequate evaluations to determine the "root cause" of his performance discrepancies and identify his unique needs. She argues that without an adequate understanding of ██████ unique needs the IEP team: could not properly describe how his disabilities affected his involvement and progress in the general education curriculum; could not draft appropriate annual goals; could not identify appropriate progress monitoring tools; and could not provide teachers with sufficient information to develop specially designed instruction. The Complainant also asserts that the school district failed to comply with the IDEA's requirements for post-secondary transition planning and failed to consistently provide the accommodations required by his IEP.

Scope and sufficiency of evaluations: The IDEA includes related, but distinct, requirements for initial evaluations and reevaluations. "[A] full and individual initial evaluation" must be completed by the local education agency (LEA) "before the initial provision of special education and related services to a child with a disability." 20 U.S.C. § 1414(a)(1). The purpose of an initial evaluation is to determine "whether a child is a child with a disability," as defined by the IDEA, and "to determine the educational needs of such child." 20 U.S.C. § 1414(a)(1)(C).

²³ *Hellgate* involved a student found by a doctor to be have an autistic component complicating his performance before he transferred to the district at age three. Despite classroom observation reports that speech language therapy provided under the student's prior IEP caused the student to "shut down" and "refuse to talk" in the classroom and teachers reporting that they needed more information about the student's educational needs, the district failed to evaluate the student for autism. Instead, the school referred the parents to a child development center where they could obtain free autism testing, which delayed the development of an appropriate IEP by nearly a full school year. The Court held that "without evaluative information that [the student] has autism spectrum disorder, it was not possible for the IEP team to develop a plan reasonably calculated to provide [the student] with meaningful educational benefit." 541 F.3d at 1210. The student at issue in the *Montgomery Public Schools* case had severe physical disabilities rendering her wheelchair bound and unable to speak, raise her arms, or eat by mouth. She attended a school district and was educated in a self-contained school for children with specialized medical needs for approximately five years without cognitive function or assistive technology assessments. The court held that "without any idea what [the student's] intellectual functioning may be, it is impossible to determine reasonable academic goals" or design an appropriate IEP. 805 F.Supp.2d at 1293-95.

If the initial evaluation results in a finding that the child is a child with a disability and is eligible for services under the IDEA, all subsequent evaluations will be reevaluations. A reevaluation must be done “at least once every 3 years, unless the parent and the local education agency agree that a reevaluation is unnecessary.” 20 U.S.C. § 1414(a)(2)(B).

“To the extent possible, the public agency must encourage the consolidation of reevaluation meetings for the child and other IEP meetings for the child.” *OSEP Letter to Anonymous*, 48 IDELR 136, 107 LRP 45732 (2/6/2007), citing 20 C.F.R. § 300.324(a)(5).

Initial evaluations and reevaluations both must be conducted in compliance with the procedural requirements of subsection 1414(b).

(2) Conduct of evaluation. In conducting the evaluation, the local educational agency shall

- A. use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining –
 - (i) whether the child is a child with a disability; and
 - (ii) the content of the child’s individualized education program, including information related to enabling the child to be involved in and progress in the general education curriculum . . .
- B. not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child; and
- C. use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

20 U.S.C. § 1414(b)(2). The LEA shall ensure that: assessments and evaluation materials are properly administered; “the child is assessed in all areas of suspected disability;” and “assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.” 20 U.S.C. § 1414(b)(3)(A)-(C).

The purpose of a reevaluation is essentially the same as the purpose of an initial assessment, to determine ongoing eligibility and identify whether changes to the child’s educational program are needed, but the reevaluation process must take into account prior assessments and evaluation data. The first step of the process is a review of existing data, to determine if any additional information is necessary to determine the child’s current educational needs.²⁴ The purpose of this review is to determine what, if any, additional information is needed to determine: (i) whether the child continues to

²⁴ Each reevaluation must begin with review of existing evaluation data on the child; including: “(i) evaluations and information provided by the parents of the child; (ii) current classroom-based, local, or State assessments, and classroom-based observations; and (iii) observations by teachers and related services providers.” 20 U.S.C. § 1414(c)(1)(A).

have a qualifying disability; (ii) present levels of academic achievement and related developmental needs of the child; (iii) whether the child continues to need special education and related services; and (iv) whether additions or modifications of the special education and related services are needed to enable the child to meet the measurable annual goals set out in the individualized education program of the child and to participate, as appropriate, in the general education curriculum. 20 U.S.C. § 1414(c)(1)(B).

Evaluations and reevaluations under the IDEA are used to identify the educational needs arising from a child's disability.

One of the express purposes of the IDEA is “to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their *unique needs* and prepare them for further education, employment, and independent living.” 20 U.S.C. § 1400(d)(1)(A)(emphasis added). Consistent with this purpose, the IDEA directs school districts to evaluate qualifying children “in all areas of suspected disability” and customize educational programs to their specific needs. 20 U.S.C. § 1414(b)(3)(B), (d); *see also [Blackmon ex rel. Blackmon v. Springfield R-XII School Dist., 198 F.3d 648, 659 (8th Cir. 1999)]* (“A school district must tailor such education to meet the unique needs of each disabled child.”). The federal regulations interpreting the IDEA further reinforce this individualized, need-oriented approach, stating in part that school districts must ensure that: “In evaluating each child with a disability ..., the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.” 34 C.F.R. § 300.532(h) (2006) (current version at 34 C.F.R. § 300.304(c)(6)).

Fort Osage R-1 School Dist. V. Sims, 641 F.3d 996, 1003-04 (8th Cir. 2011) (emphasis original).

The bulk of the Complainant's claims are founded on her belief that the school district failed to conduct adequate evaluations to fully identify ██████ unique educational needs. ██████ underwent an initial evaluation and was determined to be a child eligible for special education and services under the IDEA years before he transferred to the ██████ school district. Reports from the neuropsychological and educational evaluations done by KKI in 2004 were given to the school by Ms. ██████ when ██████ transferred to the district in 2007. ██████ has remained an eligible student throughout his enrollment in the district. At no time was the district required to perform another “full and individual *initial* evaluation.”

The IDEA clearly distinguishes between an initial evaluation and a reevaluation. In the event of a reevaluation, . . . the IDEA and its implementing regulations do not require the District to perform anew the full scope of testing properly included in a child's initial evaluation.

Robert B. v. West Chester Area School Dist., 44 IDELR 123, 2005 WL 2396968 (E.D. Pa. 2005). Repeated assessment of known disability is particularly unbeneficial where a student has well-know and clearly established needs in all areas of suspected disability and is progressing through the general education curriculum with the special education and related services currently in place.

The [REDACTED] district was obligated to ensure that a reevaluation was conducted at least once every three years. The Complainant asserts that a proper reevaluation of [REDACTED] eligibility and needs was never done by the district.

[REDACTED] most recent reevaluation was conducted over the course of two IEP meetings in the spring of 2012. By design, the reevaluation process begins with a review of existing evaluation data, including: prior formal assessments, current classroom-based local and state assessments; and observations by teachers and related service providers. 20 CFR § 300.305(a)(1); 281 IAC 1.305(1)(a); *see also* OSEP *Letter to Anonymous*, 48 IDELR 136, 107 LRP 45732 (2/6/2007) (“The reevaluation commences with the review of existing data in accordance with 34 CFR § 300.305(a).”). Additional assessments are required only when the team determines on the basis of this review, and input from the child’s parents, that additional data is needed to determine continuing eligibility and whether any additions or modifications to the student’s special education and related services are needed to enable the child to meet annual IEP goals and participate in the general education curriculum. 20 CFR § 300.305(a)(2); 281 IAC 1.305(1)(b); *see also* OSEP *Letter to Anonymous*, 48 IDELR 136.

[REDACTED] underwent comprehensive neuropsychology and educational evaluations in 2004 at the Kennedy Krieger Institute (KKI) in Baltimore. These evaluations identify [REDACTED] as a child of average intelligence with attentional difficulties/ADHD, specific learning disabilities in reading and written language and math calculation, and graphomotor disorder; and include detailed recommendations for school programming and accommodations. The reports from these evaluations were available to the IEP team on April 9, 2012, at the time of the first reevaluation meeting. In addition, [REDACTED] file included reports from:

- the reading achievement assessment conducted by the [REDACTED] AEA in the December of 2007;
- the assessment of appropriate teaching strategies, including classroom observations, done by the [REDACTED] AEA in the fall of 2008;
- the neuropsychology evaluation of cognitive functioning (including extensive assessments of [REDACTED] intellectual functioning, memory, visual-spatial/ motor functioning; academic achievement; behavior; and executive functioning) completed at the University of Iowa Hospitals and Clinics, Center for Disabilities and Development in March of 2009;
- classroom observations conducted by an applied behavioral analyst / challenging behavior consultant from the [REDACTED] AEA in April of 2011 to assess the effectiveness of current behavioral support, particularly in the areas of off-task behavior and work completion;

- the functional behavior assessment (FBA) addressing inconsistent work completion conducted in May of 2011; and
- IEP progress monitoring results, grade reports, and results from annual state-wide assessments.

These assessments identified [REDACTED] as a student of average intellectual ability with specific learning disabilities in the areas of reading, writing, and math; detailed specific sub-skill deficits in these areas; recommended educational strategies and accommodations; and provided a picture of his progress in these areas over time. The 2004 KKI evaluations also diagnosed [REDACTED] with ADHD and recommended a broad array of accommodations to minimize the effect of this disorder on his educational performance. Many of these accommodations were incorporated into the IEPs that were in place during the years at issue here. The 2009 UIHC neuropsychology evaluation documented mild concerns regarding [REDACTED] executive function in the areas of self-monitoring and educational skills. The 2011 FBA, identified difficulties with executive function, including: organizational skills, time management, identification of potential barriers to completion, and self-advocacy; as components of the behaviors of concern – off-task behavior and poor home-work completion.

Ms. [REDACTED] came to the April 9, 2012 IEP meeting with a list of concerns about [REDACTED] progress in learning to communicate effectively and reading. With [REDACTED] consent, the IEP team made referrals for two additional assessments – a written language assessment by the [REDACTED] AEA and an educational evaluation by the University of Iowa Hospitals, Child and Adolescent Psychiatry Clinic. These assessments again identified specific reading and writing sub-skill deficits. His reading skills remained below average in the areas of word reading and oral reading fluency and at the lower end of the average range in pseudoword decoding – a measure of his phonetic knowledge and ability to sound out words. His spelling skills were below average, while skills in the areas of sentence and essay composition were in the average range.

The 2012 reevaluation was completed when [REDACTED] IEP team reconvened on May 17, 2012. The IEP finalized on that date includes a reevaluation section with data regarding [REDACTED] progress and performance in relationship to peers; a finding that he remained eligible for special education and related services; and a finding that no additional modifications to special education and related services other than those specified in the current IEP were needed. *See* Resp. 186. The goals, categories of specially designed instruction, and accommodations included in the IEP were crafted based on historic and current information regarding [REDACTED] skill deficiencies and educational needs. The district complied with the IDEA procedural requirements in conducting the 2012 reevaluation of [REDACTED] eligibility and educational needs.

The Complainant maintains that the evaluations performed by the school district were substantively insufficient, because they focused on determining whether [REDACTED] has a discrepancy from his peers rather than on determining his unique needs to be met by specially designed instruction. She argues the district failed to adequately evaluate [REDACTED] oral language deficits – as she requested at the 2011 IEP meeting; failed to identify the specific needs stemming from his ADHD; failed to connect ADHD to his

homework completion issue; and failed to assess his math skills – even though this was an identified area of learning disability in the KKI evaluation; and failed to appropriately evaluate his reading skills, so that automaticity could be identified as a problem before 2013.

██████████ oral reading fluency was a consistent component of reading and educational evaluations; including the evaluation completed at the UIHC in April of 2012. The record includes no evidence to support a suspicion of additional “oral language deficits” beyond the area of oral reading fluency. No further assessment concerning oral language deficits was required or justified.

The educational evaluation done by KKI in 2004, found that ██████████ had a learning disability in math.²⁵ The education evaluation performed at UIHC in 2009 found ██████████ was performing at or slightly above grade level on basic math calculation skills. He passed general education first year algebra during the 2011-2012 school year with trimester grades of A-, B-, and B-. He passed general education geometry the following year with lower grades of D, D-, and C+. He dropped algebra II after failing the first trimester in the fall of 2013. While this failure could have raised concerns about ██████████ math skills, he said that his difficulty with the course was in reading the problems and his performance in the mathematics components of the annual Iowa Assessments consistently placed his performance at or near grade level proficiency. (Compl. 832; Resp. 260-61) No further assessment in the area of math skills was required or justified.

Multiple assessments of ██████████ reading skills – through formal testing and observations – were conducted by or at the request of the ██████████ school district. Academic achievement and reading tests were administered during the UIHC evaluations in March of 2009 and May of 2012 and during the ██████████ AEA assessment in May of 2014. Evaluation reports from each of these testing sessions provided analysis of ██████████ performance on various reading sub-skills, including: phonetical processing, letter-word identification, word and pseudoword recognition, oral reading fluency, and comprehension. Contrary to the Complainant’s claim, these evaluations did not overlook or miss ██████████ problem with reading automaticity – they simply used the term “oral reading fluency,” rather than automaticity, to identify the problem. As understood by Ms. ██████████ the person who brought the term “automaticity” into the IEP, automaticity is virtually synonymous with oral reading fluency. No further assessment concerning reading sub-skill deficits was required or justified.

The Complainant contends that the school district failed to obtain a full assessment of ██████████ ADHD and failed to explore the degree to which functional skill deficits stemming from ADHD contributed to his reading and writing difficulties and work

²⁵ A list of the diagnoses from the KKI evaluation was included in the “Other Essential Information” section of ██████████ IEP as Ms. ██████████ request. “Specific learning disability in math calculation” is included as item 4 on this list. (Resp. 78, 159, 211) The IEPs for ██████████ high school years contain no other reference to a disability in the area math calculation.

completion problems. While the school did not conduct or procure a neuropsychological evaluation focused upon ██████ ADHD, the KKI evaluations – which contained diagnostic information and recommendations for accommodations – were available to the IEP team. Weaknesses in executive function consistent with ██████ ADHD, including problems with staying on task, organizational skills, and time management are documented in the 2011 FBA. The FBA appropriately focused on the nature and function of ██████ behavior, rather attempting to diagnose the underlying cause of the behavior.²⁶ As recommended by the FBA, a Behavior Intervention Plan (BIP) including multiple strategies designed to keep ██████ on task, ensure he understands assignments, and help him build skills to independently complete assignments was put into place.

The Complainant strenuously argues that a more thorough assessment of ██████ ADHD and executive function weaknesses would have provided further information regarding the degree to which ██████ ADHD affected his academic skill deficits; allowed a greater understanding of his unique educational needs; and enabled the design of a better educational program, more appropriately designed to meet these needs. Although this is possible, a showing that the IEP could have been better – or that the behavioral supports and instruction methodologies could have been improved – does not establish a denial of FAPE. “[A]n IEP must provide only ‘sufficient specialized services’ to enable a student to benefit from [his] education, and it need not be designed either to ‘maximize a student’s potential or provide the best possible education at public expense.’” *K.E. v. Ind. Sch. Dist. No. 1*, 647 F.3d at 809, quoting *Fort Zumwalt Sch. Dist. v. Clynes*, 119 F.3d 607, 612 (8th Cir. 1997), cert. denied, 523 U.S. 1137, 118 S.Ct. 1840, 140 L.Ed.2d 1090 (1998); see also *Mackey v. Board of Educ. for Arlington Central School Dist.*, 373 F.Supp.2d 292, 299 (S.D. N.Y. 2005) (“IDEA does not compel a school district to perform every sort of test that would arguably be helpful before devising an IEP for a student.”).

The critical question is not whether the IEP could have been better informed by additional assessment. The law governing evaluations under the IEP only required the district to gather sufficient information to allow the IEP team to identify ██████

²⁶ The Complainant asserts that the 2011 FBA “paid lip service to the effect of ██████ ADHD and executive function deficits, but did not evaluate their role in ██████ behavior.” (Compl. Post Hearing Memorandum, p. 41) She argues that the district erred by focusing on the theoretical function of behaviors resulting from executive function weakness, rather than identifying the educational needs arising from the executive skill deficit. (*Id.* at p. 45) The FBA is a vehicle generally used in the context of student misconduct and discipline to examine the function of challenging behavior. See 20 U.S.C. § 1415(k)(1)(D)(ii), 1415(k)(1)(F)(i); and 34 CFR § 300.530(d)(2), 300.530(f)(1) (the only references to FBAs in the IDEA statute and regulations). It is not a diagnostic tool for identifying educational needs. “The ultimate goal of an FBA is ‘not to define and eliminate an undesirable behavior, but to understand the structure and function of the behavior in order to teach and develop effective alternatives.’” *IDEA State Complaint Decision 14-01*, 26 D.o.E. App. Dec. 390, 441 (Iowa DE 2013), quoting Robert E. O’Neill, Robert H. Horner, Richard W. Albin, Keith Storey & Jeffrey R. Sprague, *Functional Assessment of Problem Behavior: A Practical Assessment Guide*, at p. 6 (1st ed. 1990); see also *Questions and Answers on Discipline Procedure*, 52 IDELR 231 (OSERS 2009).

educational needs and draft an IEP to meet those needs. After initiating this proceeding, the Complainant engaged Dr. Jasper to identify the skill deficits related to [REDACTED] executive function deficit. The doctor conducted extensive neuropsychological testing and found that the findings from the 2004 KKI neuropsychological evaluation remained valid. Indeed, he observed that [REDACTED] IEP and the past educational, psychological, and neuropsychological evaluation reports that were provided to him “each prescribe and outline interventions and accommodations that are appropriate given his cognitive deficit profile.” [REDACTED] IEP team had ample assessment results and evaluations to fulfill the IDEA reevaluation requirement. No further assessment concerning executive function skill deficits was required or justified.

Sufficiency of the IEPs, specialized instruction, and accommodations: An individualized educational program (IEP) must be developed for each child found eligible for special education and services under the IDEA. The IEP is must include:

- (a) A statement of the child’s present levels of academic achievement and functional performance, including:
 - (1) How the child’s disability affects the child’s involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); . . .
 - (b) A statement of measurable annual goals, including academic and functional goals designed to meet:
 - (1) 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
 - (2) Each of the child’s other educational needs that result from the child’s disability;
- * * *
- (d) A description of:
 - (1) How the child’s progress toward meeting the annual goals described in 41.320(1)“b” will be measured; and
 - (2) When periodic reports on the progress the child is making toward meeting the annual goals, such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards, will be provided;
 - (e) 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:
 - (1) To advance appropriately toward attaining the annual goals;
 - (2) To be involved in and make progress in the general education curriculum in accordance with 41.320(1)“a,” and to participate in extracurricular and other nonacademic activities; and

(3) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this rule;

* * *

(g) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on state and districtwide assessments consistent with Section 612(a)(16) of the Act; and, if the IEP team determines that the child must take an alternate assessment instead of a particular regular state or districtwide assessment of student achievement, a statement of why the child cannot participate in the regular assessment and why the particular alternate assessment selected is appropriate for the child;

* * *

281 IAC 41.320(1); 34 CFR 300.320(a).

As noted in the findings of fact, public schools in Iowa use a standardized IEP format. The basic structure of the IEP is built into an IEP form template that cannot be modified by the school. The form includes headings and questions that cover all elements that federal and state law require to be included in an IEP. The amount of detail entered on the form is left to the discretion of IEP team and the individual designated to complete to draft the IEP.

The Complainant argues that [REDACTED] IEPs are deficient because they do not adequately describe how his disability affects his involvement and progress in the general education curriculum. For example, his IEP for the 2011-12 school year included the following question and response:

Describe the effect of this individual's disability on involvement and progress in the general education curriculum and the functional implications of the student's skills:

[REDACTED] is progressing through the general curriculum. He is most successful in classes that have discussion and hands-on activities and demonstrations. [REDACTED] has a disability in the areas of reading, writing and spelling. This disability coupled with his reluctance to write makes involvement in the general education curriculum challenging at times. During his 8th grade year, [REDACTED] received his LA instruction in Read 180 and a pull-out section of Language Arts. In high school, [REDACTED] will be in a co-taught general education LA class. [REDACTED] will benefit from the level of support in these settings. In addition, [REDACTED] needs extra support and encouragement to maintain quality of work and a good work completion rate. Reading and writing are critical skills in independent adult life. [REDACTED] needs to increase his skills in those areas to meet his post-secondary goals for education and to have the level of employment that he and his parents plan for him

(Resp. 78) The Complainant does not believe that this statement, or any other portion of the IEP, identifies [REDACTED] unique educational needs and how his ADHD and

executive function deficits affect his progress in the general education curriculum. The quoted paragraph provides an accurate basic description of [REDACTED] disabilities and how they limit his progress. Standing alone, the paragraph does little to explain his specific educational needs. But this is not the only statement in the IEP that addresses these needs.

The IEP also includes a listing of [REDACTED] diagnoses, a general description of past services, and data regarding his current level of academic performance; as well as a Behavioral Intervention Plan and Functional Behavioral Assessment, which describe the effect of his executive function deficits. In addition, reports of all prior assessments and evaluations are appended to the IEP as associated files. The Complainant does not consider these documents to be a part of the IEP and maintains that all relevant detail from the assessments and evaluations should have been incorporated into the IEP, so that all IEP team members and teachers had ready access to this information.

“There is no mechanical checklist by which an inquiring court can determine the proper content of an IEP; ‘IEPs are by their very nature idiosyncratic.’” *Lessard v. Wilton-Lyndeborough Cooperative School Dist.*, 518 F.3d 18, 23 (1st Cir. 2008), quoting *Me. Sch. Admin. Dist. No. 35 v. Mr. & Mrs. R.*, 321 F.3d 9, 20 (1st Cir. 2003). It is common practice in this state for educational evaluation reports and other assessment data to be attached as “associated files” to a student’s IEP. These files are effectively part of the IEP and are available upon request to the parent, other members of the IEP team, and a student’s teachers.²⁷ [REDACTED] was assessed in all areas of suspected disability and each evaluation report is attached as an associated file to his IEP. The fact that more detailed information about [REDACTED] reading and writing sub-skills and executive function deficits was not extracted from these reports and copied onto the body of the IEP does not constitute a violation of the IDEA.

The Complainant devotes a large portion of her post-hearing argument to dissecting and critiquing the IEPs in place and services delivered during [REDACTED] 9th, 10th, and 11th grade years. She argues that all of the goal statements and progress monitoring procedures in the IEPs were faulty and that the vast majority of the specially designed instruction delivered to [REDACTED] was inappropriate – because the goals, progress monitoring, and instruction were not adequately individualized and directed to address [REDACTED] needs. As noted above, these arguments are grounded in large part on the premise that the school failed to perform adequate assessments to identify [REDACTED] educational needs throughout those years.²⁸ Rejection of this foundational premise

²⁷ See Testimony of David Tilly, Deputy Director, Iowa Dept. of Education, at pp. 500-02, 514-15 (information regarding assessments of child’s needs will be found in the IEP and the evaluation reports); Testimony of [REDACTED] Executive Director of Special Services, [REDACTED] School District, at pp. 827-28, 1124, 1163-63 (evaluations and other information attached to IEP as associated files are part of the IEP); Testimony of [REDACTED] Regional Administrator, [REDACTED] AEA, at pp. 2295-96); see also 281 IAC 41.116(4)(b) (required information concerning special school placement may be included in the IEP or an associated or attached document).

²⁸ “Since [REDACTED] needs were never identified in his IEPs, the IEP team did not have before it crucial information that it needed to write goals.” (Compl. Post Hearing Memorandum, p. 72)

undercuts the Complainant's targeted attacks upon the goals, monitoring procedures, and instructional strategies.

As detailed in the findings of fact, the three IEPs that were in place during the two-year period at issue included measurable annual goals in the areas of reading, writing, and organization strategies/assignment completion. I have reviewed and considered the Complainant's challenges to the goals, progress monitoring procedures, and accommodations in [REDACTED] IEPs. The goal statements, progress monitoring measures, and accommodations were not completely flawless. The goals targeted cumulative skills – such as reading comprehension and assignment completion – rather than the sub-skill that affected [REDACTED] ability to read with comprehension or consistently complete assignments. The goals could have more narrowly targeted sub-skill deficits and the progress monitoring methods could have been more precise. The accommodations could have been more clearly defined. There was room for improvement. However, I conclude that the goals, progress monitoring measures, and accommodations in these IEPs were more than adequate to provide [REDACTED] with a free appropriate public education.

Again, I am compelled to observe that a showing that the IEP could have been better does not establish a denial of FAPE.

The IDEA does not promise perfect solutions to the vexing problems posed by the existence of learning disabilities in children and adolescents. The Act sets more modest goals: it emphasizes an appropriate, rather than an ideal, education; it requires an adequate, rather than an optimal, IEP. Appropriateness and adequacy are terms of moderation. It follows that, although an IEP must afford some educational benefit to the handicapped child, the benefit conferred need not reach the highest attainable level or even the level needed to maximize the child's potential.

Lenn v. Portland School Committee, 998 F.2d 1083, 1086 (1st Cir. 1993), citing *Rowley*, 458 U.S. at 198, 102 S.Ct. at 3046, and *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 987 (1st Cir. 1990), cert. denied, 499 U.S. 912, 111 S.Ct. 1122, 113 L.Ed.2d 230 (1991); see also *CJN v. Minneapolis Public Schools*, 323 F.3d 630, 638 (8th Cir.), cert. denied, *sub nom Nygren v. Minneapolis Public Schools*, 540 W.W. 984, 124 S.Ct. 478, 157 L.Ed.2d 375 (2003) (citing *Roland M.* with approval).

“It was not possible for [REDACTED] IEP team to meet their IDEA obligations once they fail to identify [REDACTED] unique needs because they lacked the information needed to set goals and create specially designed instruction.” (Compl. Reply Brief, p. 48) “As a consequence of the respondents’ failure to identify [REDACTED] unique needs, they did not create appropriate goals, progress monitoring procedures[, or] specially designed instruction.” (Compl. Reply Brief, p. 45). “Since [REDACTED] never identified [REDACTED] unique needs, his instruction could not have been specially designed to meet those needs, unless by coincidence the instruction chosen happened to meet a need.” (Compl. Post Hearing Memorandum, p. 97)

The Complainant's final challenge to the content of [REDACTED] IEPs stems from the requirements of the law concerning post-secondary transition. Under federal law, the IEP in effect when a student turns 16 must contain: "appropriate measurable postsecondary goals based upon age appropriate transition assessments, and, where appropriate, independent living skills;" and "the transition services (including courses of study) needed to assist the child in reaching those goals." 20 U.S.C. § 1414(d)(1)(A)(i)(VIII)(aa)-(bb); 34 CFR 300.320(b). Iowa has opted to impose this requirement when the student is approaching age 14.

41.320(2) *Transition services*. Beginning not later than the first IEP to be in effect when the child turns 14, or younger if determined appropriate by the IEP team, and updated annually, thereafter, the IEP must include:

- (a) Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and
- (b) The transition services, including courses of study, needed to assist the child in reaching those goals.

281 IAC 41.320(2); 34 CFR § 300.320(b). In this context,

"Transition services" means a coordinated set of activities for a child with a disability and meets the following description:

- a. Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to postschool activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;
- b. Is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes the following:
 - (1) Instruction;
 - (2) Related services;
 - (3) Community experiences;
 - (4) The development of employment and other post-school adult living objectives; and
 - (5) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

281 IAC 41.43(1); 34 CFR § 300.43(a). "Transition services for children with disabilities may be special education, if provided as specially designed instruction, or a related service if required to assist a child with a disability to benefit from special education."
281 IAC 41.43(2); 34 CFR § 300.43(b).²⁹

²⁹ Although the current definition of transition services is relatively unchanged from the definition in place prior to the 2004 amendments to the IDEA, those amendments significantly revised the statutory language regarding how transition services are to be addressed in the IEP.

The Complainant asserts that the IEPs did not reflect adequate transition assessments and the IEP did not contain a transition plan. “The IDEA does not require a stand-alone transition plan as part of an IEP.” *Lessard v. Wilson-Lyndeborough Cooperative School Dist.*, 518 F.3d 18, 25 (1st Cir. 2008); *see also Park Hill School Dist. v. Dass*, 655 F.3d 762, 766 (8th Cir. 2011) (citing this statement from *Lessard* with approval). The law does require schools to provide IDEA eligible students with age-appropriate assessments; measurable postsecondary goals based upon the assessments and current level of performance; and transition services “focused on improving the academic and functional achievement of the child with a disability” to facilitate the child’s movement to post high school activities.

The IEPs for ██████ 9th, 10th, and 11th grade year were in the format of transition IEPs; all necessary elements of a transition IEP were included on the form template. This does not necessarily establish the sufficiency of the transition assessments, goals, or services set forth in the IEP. A Transition Planning Inventory (TPI) was given to ██████ and offered to his mother annually for each of them to identify the areas in which additional information or skill was needed to move toward ██████ desired post-secondary employment or training. ██████ completed the form each year, beginning in 2011. ██████ also completed the Student Transition Assessment Tool (STAT-R) in 2012 and 2013. These assessments address the areas of living, learning, and working and were appropriate transition assessments, as far as they went. No more refined vocational assessments were administered. Based on the results of transition assessments and ██████ academic achievement, the IEP team determined that the IEP goals in the areas of reading, writing, and organizational skills – which were in place to allow him to progress through the general education curriculum and graduate from high school – were adequate as transition goals. Each of ██████ high school IEPs also included a description of his current academic achievement and progress toward graduation.

The specially designed instruction ██████ was receiving in his IEP goal areas and his courses of study were, by definition transition services. 281 IAC 41.320(2)(b). ██████ received additional transition services including: counseling regarding career alternatives; access to post-secondary planning services available to all ██████ High School students, as well as enhanced training presented through his Directed Studies classes; the optional job shadow program; and direct access to Division of Vocational Rehabilitation representatives during IEP meetings and at the school. High school principals ██████ and ██████ both presented course scheduling options to Ms. ██████ and ██████ showing pathways through which he could earn the required credits for graduation. It is possible to envision more robust transition services, but I believe ██████ district complied with the basic transition requirements of the IDEA.

Therefore, case law predating the amendment, such as *Yankton School District v. Schramm*, 93 F.3d 1369 (8th Cir. 1996) must be applied with caution. The some of the statutory requirements cited in that case, as quoted at the Complainant’s Post Hearing Memorandum at p. 152, are no longer in place. For example, the IDEA no longer requires the IEP to include “the anticipated dates of initiation and duration” of transition services.

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

The Complainant asserts that ██████ did not receive appropriate specially designed instruction to meet his unique needs and that the accommodations required by his IEPs were not consistently provided. The Complainant is very displeased with some of the specific instructional methods and curricula used by the school. She believes that the Monterey Reading Program and Read 180 reading instruction that ██████ received in 9th and 10th grade did not focus on his areas of need. She believes the Advanced Skills for School Success curriculum was presenting organizational skills regularly taught in elementary schools and, as delivered, did little to address his executive function deficits. She believes his unique needs for writing instruction went largely unaddressed by his Directed Studies and general education Language Arts teachers.

Whether the school district could have remediated ██████ disabilities more effectively is debatable. However, the intent of the IDEA is not to require public schools to correct disabilities. Rather, the intent of the IDEA is to provide students with disabilities with meaningful access to public school and a free appropriate education.

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

Klein Independent School Dist. v. Hovem, 690 F.3d 390, 397 (5th Cir. 2012), *cert. denied* _U.S. _, 133 S.Ct. 1600, 185 L.Ed.2d 580 (2013).

It is clear that the school district made significant efforts to individualize the instruction provided to ██████ to address his unique educational needs. The primary responsibility for determining appropriate methodology rests with the educators at the school; not the parent and not the reviewing tribunal. *CJN v. Minneapolis Public Schools*, 323 F.3d at 638; citing *Fort Zumwalt*, 119 F.3d at 614. The school officials and

teachers in this case fulfilled that responsibility of identifying and providing specially designed instruction to meet [REDACTED] needs as required by his IEP.

[REDACTED] teachers also made a good faith attempt to consistently provide him with each of the accommodations delineated in his IEP. They did not always succeed. There were occasions when written handout materials were not available in audio format. [REDACTED] was not always provided with a detailed summary of material to be covered in advance. In addition, [REDACTED] was resistant to some of the accommodations. He almost uniformly refused to have tests read aloud, partially because he did not want to call attention to himself, and failed to bring the district-provided iPad with him to school. Occasional omissions in the delivery of accommodations did not deny [REDACTED] FAPE.

Finally, Ms. [REDACTED] asserts that she was denied meaningful participation in the IEP meetings with respect to important issues affecting [REDACTED] education. Once again, she misconstrues the meaning of the IDEA.

The IDEA requires that the parents of a child with a disability either be “present at each IEP meeting or [be] afforded the opportunity to participate.” *Gray*, 611 F.3d at 427 (citation omitted). A school district cannot refuse to consider parents' concerns when drafting an IEP. *Schaffer v. Weast*, 546 U.S. 49, 53, 126 S.Ct. 528, 163 L.Ed.2d 382 (2005). The IDEA explicitly requires school districts to include the parents in the team that drafts the IEP, to consider “the concerns of the parents for enhancing the education of their child,” and to address “information about the child provided to, or by, the parents.” 20 U.S.C. § 1414(d)(3)(A)(ii), (d)(4)(A)(ii)(III).

M.M. v. Dist. 0001 Lancaster County Sch., 702 F.3d 479, 488 (8th Cir. 2012). The IDEA does not grant parents the right to dictate the contents of the IEP or to direct the day-to-day delivery of services under the IEP. The law merely requires the IEP team to consider the parent’s concerns.

Ms. [REDACTED] was given notice of all IEP meetings and attended the meetings. Her attorney accompanied her during the two IEP meetings held in the spring of 2013. [REDACTED] was given an opportunity to share her concerns about [REDACTED] educational program during each IEP meeting and her comments are included in the IEPs. While the consensus of the IEP team was not always to [REDACTED] liking, many of her suggestions were incorporated into the IEPs. Without question, [REDACTED] was given a meaningful opportunity to participate in the creation of each of [REDACTED] IEPs.

Closing comments: In the end, whether a student has been provided FAPE is determined based on the big picture; not the minutia. FAPE is provided when a school district allows parents to meaningfully participate in the IEP formulation process, develops an appropriate IEP, and provides individualized instruction and services sufficient for the student to receive some educational benefit. Although I do not doubt that Ms. [REDACTED] is pursuing this action because she believes the district failed to

adequately serve ██████ the preponderance of evidence in the record does not support her view of his limitations or his progress.

█████ is not an exceptionally gifted student who was failing due to a failure to provide specially designed instruction or accommodate his disabilities. Nor is he a student with severe disabilities who has been advanced from grade-to-grade despite little or no academic growth. ██████ is a student of average intellectual ability with ADHD and specific learning disabilities that interfered with his ability to read, write, and do math computation. The ██████ school district provided him with specialized instruction, services, and accommodations that allowed him to progress through the general education curriculum with his peers, earning passing grades in nearly all of his classes. Scores on the statewide Iowa Assessment examination in April of 2014 showed that ██████ was performing in the average range as compared to peers at the same grade level in all subject areas tested, including reading, written expression, and math computation. The reading evaluation in May of 2014 showed that, although his rate was slow, he was reading grade-level material accurately with strong comprehension.

By any reasonable measure, ██████ received not merely some but substantial educational benefit from the program provided to him by the ██████ school district. For all of the reasons discussed herein, I conclude the district provided him with FAPE.

Decision

The Respondents complied with the mandates of the IDEA and provided ██████ ██████ with an educational program reasonably calculated to allow him to receive some educational benefit. Respondents prevail on all issues and the Complainant is entitled to no relief.

Any allegation not specifically addressed in this ruling is either incorporated into an allegation that is specifically addressed or is overruled. Any legal contention not specifically addressed is either addressed by implication herein or is deemed to be without merit.

Issued on July 2nd, 2015.



Christie J. Scase
Administrative Law Judge

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