

BEFORE THE IOWA DEPARTMENT OF EDUCATION
(Cite as 29 D.o.E. App. Dec. 180)

In re [REDACTED],)	
)	
[REDACTED],)	
)	Dept. Ed. Docket No. SE-418
Complainant,)	DIA No. 15DOESE013
)	
v.)	
)	
[REDACTED] COMMUNITY SCHOOL)	
DISTRICT and [REDACTED] AREA)	
EDUCATION AGENCY,)	
)	DECISION
Respondents.)	

On or about June 19, 2015, [REDACTED] filed an amended due process complaint against Respondents [REDACTED] Community School District (“LEA” or “district”) and [REDACTED] Area Education Agency (“AEA”) pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400 et seq., as implemented by 281 Iowa Administrative Code chapter 41. The original due process complaint, filed May 19, 2015, included only [REDACTED] as complainants. Prior to the filing of the amended complaint, Respondents filed a motion to dismiss. Respondents argued that the complaint was deficient in its failure to identify the date of last violation and in alleging no violation that occurred no more than one year prior to the filing of the complaint. In addition, Respondents argued that the student’s parents lacked standing as the student was over age 18. By order dated June 30, 2015, Administrative Law Judge Carol Greta dismissed the due process complaint and amended due process complaint on two bases: 1) [REDACTED] lacked standing to bring the complaint; and 2) [REDACTED], the student, had standing as a complainant, but presented no claim that was not time barred.

[REDACTED] subsequently filed a complaint in federal district court appealing the ALJ’s order dismissing the initial and amended due process complaints. By order dated August 24, 2018, the United States District Court for the Northern District of Iowa accepted and adopted Magistrate Judge C.J. Williams’ Report and Recommendation dated July 27, 2017. The Magistrate’s Report and Recommendation reversed the ALJ’s order dismissing the initial and amended due process complaints and remanded the matter for further proceedings. On appeal, [REDACTED] did not challenge the ALJ’s finding that his parents lacked standing to file a due process complaint. On remand, therefore, [REDACTED] is the sole complainant in this action. In addition, the Magistrate’s Report and Recommendation concluded that the amended due process complaint relates back to May 19, 2015, the date the original due process complaint was filed.

Hearing in this matter was held on April 23 through April 26, 2019 at the offices of [REDACTED] Area Education Agency in [REDACTED], Iowa. Attorney David Roston represented Complainant, who attended the hearing.¹ Attorney Dustin Zeschke represented the district and the AEA. [REDACTED], director of special education, attended the hearing as representative of the AEA. [REDACTED], director of student services, attended the hearing as representative of the district.

The following witnesses testified at the hearing: [REDACTED]; Thomas Anderegg; Martha Gould; Patrick Flynn; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

Complainant's Exhibits A through Z, AA through AZ, BA through BZ, CA through CZ, DA through DZ, EA through EY, and FA were admitted. Respondents' Exhibits 1 through 32 and 34 through 51 were admitted.

Testimony of Dr. Christine McGrath Wetjen: As memorialized in the April 22, 2019 Order Granting Motion to Quash Subpoena, the parties agreed for the hearing record to be held open until May 10, 2019 in order for Complainant to arrange for and take the deposition of Dr. Christine McGrath Wetjen and for that deposition to be included as part of the hearing record. Along with his post-hearing brief, Complainant submitted a transcript from Dr. McGrath Wetjen's deposition, taken May 10, 2019. Pursuant to the April 22, 2019 order, the transcript of the deposition is included as part of the hearing record.

Complainant's counsel questioned Dr. McGrath Wetjen at her deposition about Exhibit FG, a publication entitled The Complete Guide to Asperger's Syndrome by Tony Attwood. The exhibit is 401 pages long. Exhibit FG was not admitted at hearing in this matter. The parties had a discussion at the conclusion of the hearing regarding this exhibit. A determination was made that Complainant's counsel could offer the exhibit at Dr. McGrath Wetjen's deposition if he wished to do so and Respondents' counsel could lodge any objection at that time. The deposition transcript does not reflect that Complainant's counsel offered the exhibit.² Despite Complainant's counsel's reference

¹ Over Respondents' objection, Complainant's parents, [REDACTED], were allowed to be present in the hearing room for the duration of the hearing. Complainant's parents are not parties to the action, but as the majority of the events leading up to the filing of the due process complaint occurred when Complainant was a minor, his parents were allowed to be present in the hearing room in order to facilitate Complainant's full participation in the hearing and presentation of relevant evidence.

² Complainant's counsel asked Dr. McGrath Wetjen whether she was familiar with Attwood's book, whether she was familiar with the book's reputation in the community of mental health professionals, and whether the book was something she would rely on. Dr. McGrath Wetjen responded that she was familiar with the book, she could not speak to the reputation of the book in the mental health professional community, and that she would not rely on the book. That was the extent of the testimony that was elicited regarding the book. (Deposition of Christine McGrath Wetjen, pp. 22-24).

to Exhibit FG in the deposition, it is not part of the record in this case and was not considered in rendering this decision.

Requested Testimony of Yvette Saeugling: On April 23, 2019, counsel for Yvette Saeugling filed a Motion to Quash Subpoena of Yvette Saeugling. In the motion, Saeugling asserts that she received a subpoena to appear and testify by telephone in this matter. Saeugling asserts that the subpoena was not personally served on her, nor did she accept service; instead, the subpoena was e-mailed to Saeugling by Complainant's counsel. Hearing in the matter had commenced at the time the motion was received; accordingly, the parties discussed the motion at hearing. On April 23, 2019, counsel for Complainant asserted that he did not intend to call Saeugling as a witness in the matter. Accordingly, counsel for Saeugling was notified that the motion to quash was considered granted.

At the end of hearing testimony on April 25, 2019, the third day of the four-day hearing, counsel for Complainant asserted that he wished to call Yvette Saeugling to testify at the hearing but that she was unavailable on April 23 and April 24, the dates on which Complainant was scheduled to present his case. Complainant requested that he be permitted to take the deposition of Yvette Saeugling after the conclusion of the hearing and that the record be held open until May 10, 2019 in order for that deposition to take place. Respondents objected to Complainant's request. Respondents noted that Complainant's counsel failed to properly serve Saeugling with the subpoena prior to the hearing.

Complainant's request to hold the record open in order to take the deposition of Saeugling and to submit the deposition in lieu of hearing testimony was denied. Complainant requested a subpoena for Yvette Saeugling to testify by telephone from the office of the undersigned on April 15, 2019; the subpoena was issued to Complainant's counsel on April 16, 2019. It is unknown when Complainant's counsel e-mailed the subpoena to Saeugling, but it cannot have been more than five business days prior to the start of the hearing. E-mail is not an appropriate method of service for a subpoena.³ Under these circumstances, Complainant's request to hold the record open for Saeugling's deposition testimony was denied.

Post-Hearing Briefing: At the conclusion of the hearing in this matter, deadlines were set for the parties to submit post-hearing briefs.⁴ Immediately prior to the due date for his brief, Complainant filed a motion to extend the briefing schedule. Respondents resisted the three-week extension proposed by Complainant, but expressed agreement to a shorter extension of time. Pursuant to an order dated June 10, 2019, Complainant was to submit an initial brief no later than June 16, 2019, Respondents were to submit a

³ See 481 Iowa Administrative Code (IAC) 10.14(3) (requesting party is responsible for arranging service of a subpoena, which is accomplished by a person over 18 years old and not a party to the proceeding delivering a copy to the named person and, if demanded, tendering the fees for one day's attendance and traveling fees to and from the proceeding).

⁴ A staggered schedule was set with Complainant filing a brief, Respondents filing a brief one week after Complainant's brief, then Complainant filing a reply brief 12 days after Respondents' brief.

brief no later than June 21, 2019, and Complainant was to submit a reply brief no later than July 3, 2019.

Complainant filed his post-hearing brief on June 17, 2019. Respondents did not object to Complainant's late filing of the brief. Respondents filed their post-hearing brief on June 21, 2019. On July 15, 2019, Complainant filed a reply brief along with Complainant's Motion for Leave to file Posthearing Brief.⁵ In the motion, Complainant asserts that his counsel did not receive Respondents' post-hearing brief by e-mail and did not open the copy Respondents sent him by mail until July 10 or 11. Complainant asserts that his counsel "had in mind that when he received respondents' posthearing brief by email he would have to find time to deal with it." Complainant asserts that his counsel completed the reply brief as soon as possible after discovering Respondents' brief.

On July 15, 2019, Respondents filed Respondents' Resistance to Complainant's Motion for Leave to File Post-Hearing Reply Brief. In the resistance, Respondents assert that they e-mailed a copy of their post-hearing brief to counsel for Complainant and sent a copy by regular mail. Respondents attached a copy of the July 15, 2019 e-mail sent to the undersigned and Complainant's counsel that attached their post-hearing brief.⁶

On July 17, Complainant filed Complainant's Re[p]ly to Resistance to Motion for Leave to file Posthearing Brief. In the reply, Complainant asserts that he did not receive the e-mail copy of Respondents' brief and provides a detailed description of how e-mail is received in his e-mail system. Complainant also asserts that his counsel's failure to file the reply brief within the time period allowed was inadvertent. Complainant's counsel asserts that his choice to rely on the receipt of Respondents' brief by e-mail to trigger his memory that a reply brief was due was a reasonable way to fulfill his professional obligations and was in furtherance of counsel's attempt to maintain a paperless law office.

Regardless of whether or not Complainant's counsel actually received the e-mail attaching Respondents' post-hearing brief is of little consequence. The briefing schedule was well known to the parties and was memorialized in the June 10, 2019 order. The fact that Complainant's counsel failed to calendar this deadline in any fashion is what led to his failing to submit the reply brief by the applicable deadline. Electronic calendars exist on which attorneys may record important deadlines. The goal of a paperless office is not incompatible with adherence to mandatory case-related deadlines.

Under these circumstances, Complainant's reply brief is stricken as untimely and is not considered in rendering this decision. This is not a case of a brief being submitted several hours or even several days late. Complainant submitted the post-hearing reply brief 12 days after it was due. To allow Complainant to benefit from his failure to

⁵ The reply brief is titled Complainant's Posthearing Brief; in order to avoid confusion with the initial brief filed by Complainant, however, it will be referred to as the reply brief.

⁶ A search of the undersigned's e-mail communications also revealed this e-mail from Respondents, which included Complainant's counsel as a recipient.

appropriately keep track of the briefing deadlines by granting him an additional 12 days for briefing is unfair to Respondents, who have adhered to the briefing schedule.

Timeline for Final Decision: Pursuant to 34 C.F.R. § 300.515(a), a final decision must be reached in the hearing no later than 45 days after the expiration of the 30 day resolution period. This timeline had previously been extended at the request of the parties to accommodate the hearing schedule. At the conclusion of the hearing, the parties made a joint motion to extend the 45 day timeline until July 31, 2019 to accommodate the agreed-upon briefing schedule and the drafting of a decision in the case. Upon the granting of the Complainant's requested extension of the briefing schedule, the parties agreed to extend the deadline for final decision to August 16, 2019.

Additional Evidence: In Complainant's Post-hearing Brief, Complainant's counsel cites to various journal articles and other documents that were not offered or admitted as evidence in the case.⁷ These documents are not part of the record in the case and they have not been considered in making this decision.

ISSUES PRESENTED

Pursuant to 34 C.F.R. 300.511(d) and 281 Iowa Administrative Code 41.511(4), the issues in this hearing are limited to those issues raised in the amended due process complaint and addressed in the Magistrate's Report and Recommendation.

As noted in the April 9, 2019 Order, Complainant has indicated that he is relying only on the exception contained in 20 U.S.C. § 1415(f)(3)(D)(ii) in arguing that the two year timeline from the date the parent knew or should have known about the alleged action forming the basis of the complaint should not apply. Complainant does not allege that the exception contained in 20 U.S.C. § 1415(f)(3)(D)(i) is applicable in this case.

IDENTIFICATION OF WITNESSES

In the interest of protecting the privacy of [REDACTED], [REDACTED] will be referred to as Student or Complainant. [REDACTED] will be referred to as Mother and Father, respectively, and collectively as Parents.

FINDINGS OF FACT

Background: Student is a 24 year-old man who attended schools in Respondent district from kindergarten through his high school graduation in 2013.⁸ Student began

⁷ See, e.g., Complainant's Post-hearing Brief, pp. 28 (footnote 5), 33, 35-37.

⁸ For ease of reference, Student's grade level, corresponding academic year, and corresponding school are listed below:

2000-01	K	[REDACTED]
2001-02	1	[REDACTED]
2002-03	2	[REDACTED]
2003-04	3	[REDACTED]
2004-05	4	[REDACTED] / [REDACTED]

kindergarten in the 2000-01 academic year and graduated from high school in the 2012-13 academic year. Student attended ██████ Elementary from kindergarten through the second trimester of fourth grade. ██████ was the principal at ██████ from Student's first grade through fourth grade years. In the third trimester of fourth grade, Student transferred to ██████ Elementary. ██████ was principal at ██████ while Student attended that school. Student attended ██████ Middle School from sixth through eighth grade. ██████ was principal at ██████ Middle School during that time period. Student attended ██████ High School for ninth through twelfth grade. ██████ was the principal at ██████ for part of Student's tenure there. ██████ was assistant principal. (████████████████████ testimony).

Respondents' Child Find Mechanisms: During the time Student was in elementary school, the district and AEA had set up a three stage process for determining eligibility for special education services. At stage one, a teacher who was concerned about a student's progress in a particular area would raise those concerns and put in place interventions to address the issue. At stage two, the teacher and building team would monitor progress with the interventions in place and, if necessary, intensify interventions or attempt additional interventions. If not enough progress was seen even with interventions, stage three was typically a full initial evaluation (FIE) for eligibility for special education. (████████████████████ testimony).

At ██████ the child find process included a weekly team meeting of a core group that included the AEA special education consultant, AEA school psychologist, and the school social worker, through which general education teachers rotated every three weeks in order to present data they had collected regarding academic progress and social/emotional behavior. Each grade was discussed approximately once every three weeks. Teachers had the opportunity to raise concerns about students about whom they had concerns. If a teacher raised a concern about a particular student, the student would be placed on the agenda for the weekly meeting. The building principal and guidance counselor would also attend the weekly meetings. This process was focused on creating interventions and assessing their efficacy and, if warranted, beginning the process of evaluating a student to determine whether the student was eligible for special education services. (████████████████████ testimony).

At ██████, the child find process involved an instructional coach, who had a professional background in instruction and curriculum, meeting with teachers to discuss student needs, interventions, and data collected through interventions. Follow up on students who were the subject of interventions was done on a monthly basis. If the intervention

2005-06	5	█████
2006-07	6	██████████
2007-08	7	██████████
2008-09	8	██████████
2009-10	9	██████
2010-11	10	██████
2011-12	11	██████
2012-13	12	██████

(Exh. A-1).

was unsuccessful, the student's case was referred to a problem solving team that included the principal, the student's general education teacher, the instructional coach, building special education teachers, an AEA school psychologist, an AEA social worker, and other specialists as needed (i.e. physical therapist, occupational therapist, etc.). The instructional coach met monthly with each teacher; the problem solving team met weekly. Teachers could raise concerns with an instructional coach during the monthly meetings if they had concerns regarding a particular student. Instructional coaches could raise issues with teachers as well if data indicated that a particular student was struggling. (██████████ testimony; Exh. 21).

At ██████████, each grade was separated into two "houses." During Student's time there, teachers from each house met every week to discuss students for whom concerns had arisen. In addition to the general education teachers for the students in each house, an instructional coach and a special education teacher also attended the house meetings. Additional meeting attendees included specialist teachers, guidance counselors, and administrators; typically not all of these individuals would be present at the same meeting. At stage one, the teachers and instructional coach would typically meet to develop interventions. If those interventions did not seem to be effective, they would move to stage two; the instructional coach at that point would sometimes ask the AEA school social worker for ideas. If they moved to stage three in the area of social/emotional concerns, the house team would meet with a group that included an AEA school social worker with expertise in that area. (██████████ testimony).

At ██████████ the school social worker, who is employed by the AEA and assigned to the building, received referrals through the guidance counselor or assistant principal for students about whom teachers expressed concerns regarding a potential disability and need for special education or about whom parents raised concerns. Once a referral was received, the concerns were discussed and a plan of action was developed. Typically in such a case the school social worker gathered information about the student through a file review, including past grades past teacher notes, any interventions received, and medical reports if any had been shared with the school. Additionally, the school social worker typically interviewed the student's teachers. After this information had been collected, there would typically be a suspect disability meeting with school staff and parents to review the information collected. If the suspect disability meeting resulted in the conclusion that a disability was suspected, Respondents moved forward with a full initial evaluation for special education with consent from the parents. (██████████ testimony).

Respondents' child find process was not limited only to identifying academic performance deficiencies. Teachers and teams were also focused on identifying students with social, emotional, or behavioral difficulties that interfered with a student's own learning or with others' learning. Teachers, instructional coaches, and teams accessed data from a variety of sources, including grades, standardized testing, attendance records, office referral information, daily behavior charts, and bullying complaint forms. The data consulted depended upon the student and the particular need identified. No one indication or data point was determinative in the child find process; teachers and other school personnel focused on a constellation of data. (██████████ testimony).

Elementary School: Student was absent 10.5 days in kindergarten, 18 days in first grade, 15 days in second grade, 15.5 days in third grade, and 17 days in fifth grade.⁹ (Exh. 1-5).

At hearing, Student's kindergarten teacher described him as a typical kindergarten student. At the first kindergarten conference, the teacher discussed with Parents how Student should deal with other children pushing and hitting. This behavior is common in kindergarten as it is, for many children, the first experience in a formal setting with peers learning social skills. The teacher also recommended that Student practice cutting to develop his fine motor skills. This was also a common recommendation for the teacher to make for kindergarten students, who are still developing fine motor skills. In general, the items or skills that Student's teacher noted that he was working on or developing were consistent with a kindergarten developmental level and did not indicate any discrepancy from peers. (██████ testimony; Exh. 1-14).

Beginning very early in Student's academic career in the district, Mother started expressing concerns about how other students were treating Student. In December of 2001, during Student's first grade year, Mother reached out to ████████, the elementary school principal, with concerns about what she perceived as bullying behavior. After talking with ████████, who believed the matter had been resolved to Mother's satisfaction, Mother called the superintendent's office and reported that she would be getting a lawyer if anything happened. Mother then called another district-level administrator and reported that she had someone monitoring all of the recesses and watching the duty teachers to see how they were handling things. Mother reported that if this person observed anything that was inappropriately handled by school staff, this person would come on to the playground to confront the adult in charge. ████████ passed along to staff that she was working on taking care of the situations that Mother was concerned about. (Exh. 4-3).

During Student's spring conference in first grade, his teacher noted that Parents expressed many peer and social concerns and "often perceive that [Student] is picked on." The teacher wrote, "I am not seeing this happening. In general, [Student] gets along well both in the classroom and on the playground. [Parents] appear to be overly concerned about small occurrences." The teacher noted that Student was a "good average 1st grader with a wide variety of interests." (Exh. 1-14).

Parents took Student for treatment with Dr. Marsha Gould, a pediatric psychologist, in January 2002, during his first grade year. Parents sought treatment due to concerns about anxiety related to some conflicts with neighbors. Parents reported that Student was having a very good year in school, with his teacher reassuring Parents she has no concerns about Student. Neither Parents nor Student reported any current concerns about school at that time. Dr. Gould's treatment notes from March 2002 indicate that Mother had school conferences recently and reported Student was doing "fantastic" in school. (Exh. 44-16, 44-19-21).

⁹ The school attendance records for fourth grade do not appear to include Student's time at ████████ therefore it is unknown the exact number of absences Student accrued in that grade. (Exh. 1-5).

In a July 2002 letter to Mother, ██████ noted at least three occasions during Student's first grade year when Mother reached out to ██████ about peer concerns. ██████ addressed each of those situations as they arose, gathering information about what occurred and taking appropriate action where necessary. ██████ attempted to communicate with Mother in order to address her concerns, but Mother would often take her complaint up with the superintendent or other district-level administrators after talking with ██████, even when ██████ believed they had had a productive conversation. (Exh. 4-4; ██████ testimony).

Superintendent ██████ also wrote Mother a letter in July 2002 referencing a phone call the two had on July 17. ██████ noted that he spoke with ██████ in response to Mother's concerns regarding Student's experiences during the previous school year. ██████ encouraged Mother to continue communicating openly with ██████ so that they could ensure that Student had a positive school experience going forward. (Exh. 5-3).

██████ met in person with Parents at their request on August 9, 2002 to discuss their concerns for Student's safety at ██████ and their dissatisfaction with the school's response to their complaints. Parents indicated they felt too little credence was given to Student's complaints of harassment and bullying and that insufficient follow-up was made. Additionally, Parents expressed that they believed the playground was inadequately supervised and that adults on the playground were insufficiently attentive to student behavior. Burgart asked Parents to call to set up a meeting with ██████ directly in order to discuss these issues. (Exh. 5-6).

In response to this communication between ██████ and Parents, ██████, ██████, the ██████ school counselor, and ██████, the district's equity director, met with Parents in August 2002. Parents expressed their concern that they received too little personal contact from the school in situations where Student was allegedly hit, harassed, or intimidated. A letter from ██████ summarizing the meeting states, "Principal ██████ and the parents had different memories as to the frequency, timing and context for interactions about [Student's] situation in 2001-02." In response to this concern, ██████ encouraged Student to approach any teacher, counselor, or her directly if an incident occurred. Additionally, Parents and school personnel agreed to communicate via appointments or telephone in the event of any incidents that warranted discussion. (Exh. 5-7).

Additionally, Parents expressed concerns at this meeting that Student felt he had no one to go to when he felt verbally or physically mistreated at school. Parents also stated that Student had expressed reluctance to go to school and "emotional desperation" on occasions. In response, ██████ involved Student in play groups initiated by ██████ during Student's second grade year. The groups were available to all students and were designed to address individual needs of students in strengthening social skills and interpersonal relationships. This was the only general education intervention that was implemented for Student during his academic career in the district. (██████ testimony; Exh. 1-47, 5-8).

██████ did not observe that Student had any peer or friendship issues while at ██████, nor did she believe that Student was the target of bullying. ██████ and ██████ both observed that Mother brought things to their attention that school personnel did not observe in the school setting and that were inconsistent with their own observations of Student in the school setting. ██████ also did not observe Student to be discrepant from his peers in terms of interpersonal relationships during elementary school. ██████ testimony).

In March 2003, Mother took Student to see a neurologist. The medical record from this visit notes that Student had been having headaches without nausea or vomiting. Mother reported that there was no particular pattern nor any specific triggers. Mother also noted that Student was doing very well at school and was in advanced reading classes. The doctor noted that Student was in the 50th percentile for weight and that his muscle tone, strength, gait, and coordination were normal. (Exh. 49-7-8).

In August 2003, Mother called the school to report that another student had “punched” Student three times during lunch recess. ██████ called Mother back to discuss this issue. ██████ informed Mother she was surprised to hear this as the student who Mother accused of punching Student had a one-to-one associate at school; ██████ noted that the associate would have to have seen this. After ██████ asked whether Student was hurt by the punches, Mother stated that Student had actually blocked all of the punches. ██████ discussed with Mother the idea that Student was old enough to know and understand individual differences and noted that the other student likely interpreted this as a game. In an e-mail to other district personnel documenting the conversation, ██████ noted, “Know that this is a mom who is quick to react and who believes everything her son says, so we need to keep a close eye on [Student] and [the other student’s] interactions.” (Exh. 4-7).

At some point in October 2003, in response to issues between Student and other peers, an arrangement was made where Student and these peers would alternate using gym equipment on school days in order to minimize conflict. At hearing, ██████ did not have any independent recollection of this arrangement. Student testified that he did not recall how long this lasted, but believed it might have been as short as one week. (Exh. 4-9; ██████, Student testimony).

Parents took Student to Dr. Thomas Anderegg, a licensed psychologist, in October 2003, at the beginning of his third grade year. The information that Dr. Anderegg received about why Parents sought out treatment for Student came from Parents. In his intake interview, Dr. Anderegg documented that Student had begun having anxiety about going to school. Dr. Anderegg noted that Student reported having friends in school and “does not appear to be isolating himself in this environment.” Dr. Anderegg also noted that Student had a friend in the neighborhood that he liked to play with. Additionally, Dr. Anderegg noted that Student was actively involved in a number of activities, including karate, guitar lessons, boy scouts, and German class. Dr. Anderegg diagnosed Student with adjustment disorder with mixed anxiety and depressed mood. Adjustment disorder is not full-blown anxiety disorder; in Dr. Anderegg’s professional opinion, adjustment disorder typically is time limited and goes away after a time. The anticipated length of treatment on the intake documents was listed as six to eight

sessions. As of November 7, 2003, Dr. Anderegg noted that Student was having much less anxiety at school. This was the only follow-up appointment that he had with Student after the initial intake. At that point, Dr. Anderegg felt the situation had sufficiently resolved. Student did not see Dr. Anderegg again until September 2006. (Exh. 41-2, 41-4, 41-5-7; Anderegg testimony).

Student's report card for third grade reflected that he was exceeding expectations and making progress in the areas of communicating effectively in small and large group discussions and understanding when listening. With regard to reading, his teacher noted that he had really learned to respect his peers and was listening much better. It was also noted that Student "added much to our Literature discussions." (Exh. 1-39, 1-43).

At some point in the fall of 2004, when Student was in fourth grade, Mother wrote a letter addressed to [REDACTED] and the district.¹⁰ In the letter, Mother references numerous contacts with the school regarding Student's classmates "belittling" him by calling him names. Mother states that Student's self-esteem is "almost non-existent" and that he comes home from school crying and confused. Mother asserts that Student feels like he gets "overlooked" at times and states that he is experiencing migraine headaches, nightmares, and anxiety attacks. Mother wrote, "I can't understand why these students continue to hurt my son or why these students are not brought up on charges of harassment . . . Does [Student] have to have a nervous break down before these children are finally reprimanded?" The letter references an October 2004 meeting with [REDACTED], Student, and herself. Mother noted that [REDACTED] "showed great concern and understanding while discussing the problem [Student] was having with his classmates. [Student] was told that it's alright to speak up and to tell the bullies to stop and leave him alone. She let [Student] know that these children's behavior was not acceptable, and that [Student] had a legitimate complaint." (Exh. 5-10).

Mother also referenced an incident that took place on December 21, 2004 where a student threatened to beat Student up. A bullying complaint form in the record reflects that that incident was investigated by [REDACTED] and that the student in question received certain consequences. [REDACTED] sent Parents a copy of the written complaint form and invited them to call her if they had any questions. (Exh. 5-10, 7-1).

During fall of his fourth grade year, Student's teacher noted at his conference that Parents were very pleased with Student's growth and progress. The teacher also wrote, "We will continue to watch for 'picking on,' baby talk, or questioning his own ability." (Exh. 1-15).

After an approximately three year gap, Parents again took Student to see Dr. Gould in March 2005 during Student's fourth grade year due to reported concerns of peer problems at school. Dr. Gould noted that Student had some friends with whom he enjoyed trading game cards and was active in karate, boy scouts, and swimming lessons.

¹⁰ The letter is dated October 19, 2004, but references an incident that the letter states took place on December 21, 2004. Consequently, the actual date that the letter was drafted and sent is unknown. (Exh. 5-10-11).

Mother also reported to Dr. Gould that she was concerned that Student had sometimes not been challenged at school. Mother noted that Student had received some talented and gifted (TAG) programming at school. (Exh. 44-12).

Dr. Gould's notes regarding the presenting problem for the visit are as follows:

The parents have felt for a long time that [Student] has some peer problems. He has recently started saying that he does not want to go back to school because of some of these other kids. [Student] complains of "people being mean to me." He finds it hard to be very specific. He does describe some name-calling. [Student] recently started having some more physical problems. He has had hives that the parents feel may have been stress related. He has also been diagnosed with migraine headaches and has had some complaints of stomachaches. The parents feel that these things could all be stress related and related to some of the stress over the peer problems. However, there is a pattern where [Student] is ill for every holiday. The parents agree that this is probably not consistent with a problem where he is experiencing stress related to his peers. [Student] does not hang out a lot with other children his age. He sometimes does express some sadness about this. This is partly because there are not a lot of kids who live close by and are good candidates for him to hang out with and partly because there have been some problems with some of the kids who do live closer. For example, there was one time recently when [Student] apparently saw some pornography over at another kid's house. He was genuinely disturbed by this. The parents have considered open enrolling [Student] at a different school. They are seeking some guidance about this.

(Exh. 44-12-13).

Dr. Gould was familiar with the criteria for autism spectrum disorder and Asperger's syndrome under the applicable version of the DSM at this time. No one ever asked her to evaluate Student for autism spectrum disorder or Asperger's syndrome. Dr. Gould never observed stereotypic behavior in Student, which is one of the diagnostic pieces for autism spectrum disorder. Likewise, while she observed that Student might have had some difficulties with social communication, there are many other scenarios under which a child can have those difficulties that would not be indicative of an autism spectrum disorder diagnosis. (Gould testimony).

In approximately March or April of 2005, Student's fourth grade year, Parents moved Student from ██████████ to ██████████ Elementary School. Mother chose ██████████ because she thought it would be helpful for Student to be away from all the students she thought bullied Student at ██████████. Mother felt that Student got along fine at ██████████ and did not have as many problems as she felt he did at ██████████. (Mother testimony).

One of Student's social studies teachers at ██████████, recalled him as a student who was in other kids' business frequently; he tended to be concerned with what other students were doing. Student did not strike ██████████ as a student who was in need of

special education. [REDACTED] followed the process for identifying students needing special education on many occasions in his 19 years of teaching; if he had believed Student was potentially in need of special education, he would have followed the district process. [REDACTED] testimony).

Student's academic performance at [REDACTED] was average to above average. Generally speaking, the comments teachers made on Student's report cards in elementary school, both at [REDACTED], reflect that Student was working hard, making good progress, and showing enthusiasm for the majority of his work. Student was meeting or exceeding nearly all of the grade level expectations outlined. No concerns were noted regarding interpersonal relationships or difficulties with peers. (Exh. 1; [REDACTED] testimony).

In physical education, Student's report cards from elementary school show him generally making steady progress and meeting grade level expectations. His physical education teachers commented on his hard work and solid effort in class, noted that he participated productively in groups, and praised his willingness to try new activities. (Exh. 1-21, 1-29, 1-40, 1-44, 1-56, 1-67).

Student had one or two people who he considered friends in elementary school, both at [REDACTED]. He participated in extracurricular activities, including karate, boy scouts, guitar lessons, and swim lessons. (Student testimony).

Middle School: Student was absent 16 days in sixth grade, 11 days in seventh grade, and 14 days in eighth grade. (Exh. 1-5).

In September 2006, at the beginning of Student's sixth grade year, Parents took Student to see Dr. Anderegg again related to reported anxiety about bullying and harassment at school. Dr. Anderegg diagnosed Student with generalized anxiety disorder. Dr. Anderegg noted that Student had become fixated on a classmate at [REDACTED] Middle School and was trying to avoid this classmate. Dr. Anderegg noted that Student did not have anxiety about being physically attacked. The estimated length of treatment at initial intake was to be 10 to 20 sessions. Dr. Anderegg had nine sessions with Student between September 2006 and May 2007. At hearing, Dr. Anderegg recalled that Student was fixated on events that had occurred in grade school. (Exh. 41-6-17; Anderegg testimony).

On September 15, 2006, school nurse's notes indicate that Student reported two students were pushing him into a stall in the bathroom. The nurse noted that Student had a dime-sized bump/bruised area above his left eyebrow. The school counselor contacted Mother to pick Student up. After Mother picked Student up at school, she took him to her sister's house, where she made a video of Student discussing the incident. Mother and her sister repeatedly questioned Student about the incident, asking several times in a row, "It wasn't horseplay? You weren't just playing around?" Student stated in the video that he was pushed into a bathroom stall, the other students held the door, then Student let the door go and it flew open, hitting him in the head. Student stated on the video that he was not afraid of the boys, he just wanted to get out of the stall. He stated that he did not think the boys were going to hurt him. Student's

affect on the video is very matter of fact; he does not appear upset about the incident. (Exh. 8-3, 39).

At hearing, Mother could not recall whether she contacted the school about this incident. After making the video, however, Mother took Student to the police station to file a police report alleging that an assault with injury had occurred. Mother was very frustrated as police personnel expressed to her that they believed she was leading Student to respond to questions in certain ways. There is no evidence in this record that any charges were filed against the alleged perpetrators. (Exh. AV; Mother testimony).

Approximately a month after the bathroom incident, Student fainted or had a seizure in health class, where [REDACTED] was the teacher.¹¹ Mother was contacted and she took Student for a medical evaluation immediately following this incident. (Exh. 49-11-12).

Mother testified that Student no longer felt comfortable using the restroom at school after the restroom incident and would wait to go to the bathroom until he got home each day. Student testified that he did not feel comfortable using the restroom after the fainting episode took place, fearing that he would be incapacitated in a place where no one could help him. Neither Student nor Mother reported this fear of using the bathroom to school personnel. (Student, Mother testimony).

In contrast to this testimony, therapy notes from Dr. Anderegg from September 29, 2006 indicate that Student was doing better, was no longer hiding from A.M., one of the students involved in the restroom incident and the student who Dr. Anderegg described Student as fixated on, and could put his head up and walk out of school. Dr. Anderegg noted that Student's grades were improving as well. (Exh. 41-9).

On October 25, 2006, Dr. Anderegg sent [REDACTED], the school counselor at [REDACTED], a letter noting that Student was in counseling with him for treatment of an anxiety disorder relating to bullying experienced while at [REDACTED].¹² The letter states,

The anxiety is currently affecting his willingness to go to school, his sense of safety while he is there, and his interpersonal relationships in general. [Mother] is reluctant to sign a release of information to allow me to collaborate with you. I will continue to discuss this option with her and let you know if she should change her mind.

¹¹ The evidence does not demonstrate conclusively whether Student fainted or had a seizure. [REDACTED] testified at hearing that Student passed out; Mother testified that she was told Student had a seizure. Parents followed up in an attempt to determine whether Student had some sort of seizure disorder and kept the school apprised of this testing. Subsequent testing did not reveal that Student had a seizure disorder and there is no evidence that he has had any seizure activity since this time.

¹² [REDACTED] is currently retired from the district and her medical conditions have affected her memory to the point that she remembers very little about the years she worked in the district. [REDACTED] testimony).

(Exh. 41-11).

Mother did not want Dr. Anderegg to share information with the school because she felt the school blamed her for Student's problems. This was the only communication that Dr. Anderegg had with any district personnel about Student. (Exh. 41-11; Anderegg testimony).

Student made three written complaints about bullying or harassment while at [REDACTED]:

- Student reported that R.T. was sent over to tell Student that R.T. was friends with A.M. Student felt like A.M., through the use of R.T., was trying to intimidate or annoy him, based on their history. (September 8, 2006)
- Student reported that R.T. said inappropriate things to him. (December 13, 2006)
- Student reported that F.D. said inappropriate things about Student's mother. (December 15, 2006)

(Exh. 6-1-3).

At [REDACTED], principal [REDACTED] or the assistant principal were responsible for investigating bullying complaints. The typical process was to interview the students involved and any witnesses to the alleged event. If the principal or assistant principal determined that the complaint was founded, they would issue discipline. This is the process that was followed with regard to the above complaints. The first and third complaints above were founded and discipline was imposed. With regard to the second complaint, [REDACTED] concluded that "inappropriate comments were stated by both sides of the table." Nothing about the bullying complaints that were investigated during Student's time at [REDACTED] led [REDACTED] to suspect that Student was in need of special education. ([REDACTED] testimony; Exh. 6-1-3).

While in middle school, Student was invited to apply for a statewide student talent search through the University of Iowa on the basis of his performance on the Iowa Tests of Basic Skills. The criterion for the opportunity was a score at or above the 95th percentile in one of the subtests and nomination by a teacher. [REDACTED] selected one student to nominate for each category; Student was one of the students selected through the teacher nomination process. (Exh. 10).

Student's teachers throughout middle school consistently noted on his report cards that he worked cooperatively with others, behaved appropriately in various situations, treated others with respect, demonstrated leadership, accepted responsibility for his actions, and offered service to others. His eighth grade language arts teacher noted, "He is engaged in the classroom discussion and adds his opinions often. He is enjoyable to have in the classroom!" (Exh. 3-6, 3-8, 3-11).

Student's grades in physical education in middle school were consistently in the A and B range; over the nine trimesters of middle school, he received four As, three A-minuses, and two B-pluses. (Exh. 1-3).

Student had three or four people he considered friends in middle school, as well as other acquaintances. When Mother submitted an open enrollment application for Student to attend ██████ instead of his neighborhood high school, she noted, “[Student] is now finishing 8th grade at ██████ Middle School were [sic] [he] has made and kept a few good friends that help him cope with stress as well as anxiety and panic attacks. [Student] says he feels more comfortable attending ██████ High along with the other students that he has gotten to know for the last three years. [Student] walks out of school talking and laughing with a school buddy unafraid of being beaten up.” (Exh. 9-3; Student testimony).

High School: Student was absent 21.5 days in ninth grade,¹³ nine days in tenth grade, 14.5 days in eleventh grade, and one day in twelfth grade. (Exh. 1-8).

██████████ was the school counselor at ██████ who was assigned to Student during his time there. There were days during Student’s high school years that ██████ would receive between three and 10 phone calls per day from Mother. While he documented some of the calls, the volume was such that he did not document all of them. Mother typically spoke loudly on the phone, screamed, and yelled. ██████ tried a number of de-escalation techniques in order to defuse the calls with Mother, but he did not find any of these to work.¹⁴ (Exh. 12; ██████ testimony).

In March 2010, Mother contacted ██████ and indicated that Student was experiencing anxiety based upon an upcoming dental surgery later that week. Mother was very upset, but was able to calm down when the school nurse relayed that, with Mother’s permission, she would update Student’s teachers regarding his fears and anxiety related to the upcoming dental appointment and would let the school nurse know so she could correspond with Student’s teachers as necessary. ██████ brought up a potential 504 plan in order to help support Student’s anxiety, but Mother and Student refused, insisting that Student is very intelligent. ██████ explained that a 504 plan was not a referendum on a student’s intelligence, but rather a way in which additional services could be provided. ██████ offered the option of a 504 plan mainly to deal with Mother’s concerns; Student did not show any indication to ██████ of needing a 504 plan. ██████ felt that the 504 plan would have benefited Mother more than Student. At the same time, ██████ put Student on a regular rotation to see him for check-ins. (Exh. 12-1-2; ██████ testimony).

In May 2011, Mother complained to ██████ that Student’s German teacher, ██████, was bullying or harassing Student. When asked for specifics, Mother stated that the teacher was showing “pornographic” pictures in class. Mother told ██████

¹³ Student had a dental surgery with some subsequent complications in the spring of his ninth grade year. (Exh. 12-1-2).

¹⁴ ██████, the assistant to the superintendent for the district, received similar calls from Mother that stood out to her in their tone. ██████ found it very difficult to reason with Mother; while she tried to listen to Mother’s concerns and help where possible, she testified that there was simply no helping once Mother became agitated. Over her more than 20 years in the superintendent’s office, Mother is the individual from whom ██████ fielded the greatest number of phone calls. (██████████ testimony).

that Student had been repeatedly bullied in elementary and middle school and had been belittled by the principal. She stated that she would not stand for this in high school. After some investigation, it turned out that ██████ had passed around a book with pictures of paintings by Gustav Klimt, a German artist who the class was studying.¹⁵ Student did not express any concerns in class about the book, nor did he express concerns to ██████. When asked by ██████ for examples of how ██████ was singling him out, Student did not have any examples to provide. ██████ observed ██████ class unannounced on a number of occasions in response to Mother's concerns. When ██████ reported back to Mother the results of his investigations she was very displeased. She continued to call ██████ about ██████ and related ██████ alleged treatment of Student to past bullying and harassment and subsequent trauma. Mother would sometimes call as many as five times in one hour and would get increasingly upset, insulting ██████ during the conversations. (Exh. 12-3-4; ██████ testimony).

For her part, ██████ observed that Student was a "nice kid" and she did not observe him experiencing any bullying or interpersonal problems in her classroom. ██████ noticed that if she discussed something with Student in class, she would often get an e-mail later that day from Mother critiquing ██████ actions. While ██████ got along well with Student, she had numerous problems with Mother and considered her to be a very difficult parent. At spring conferences, Mother told ██████ that it was ██████ fault when Student did not complete homework as he hated her class. (██████ testimony).

In May 2011, ██████ noted:

We are in the pattern of [Mother] becoming very upset and saying a number of negative comments, but when she calms down, she then thanks me for my help and states she is happy with [Student] going to ██████ high school. After that, then [Mother] continues the conversation saying [Student] is a victim. I tried to redirect [Mother] to focus on what we can assist with here at ██████ high, but then she starts talking about his PTSD and continues to say how poorly he was mistreated at ██████ middle school. I have again suggested the potential of [Student] needing to get connected with a community counselor and I have a consultant I use that could call her to assist. She then stresses to me that [Student] refuses to go to counseling.

(Exh. 12-6-7).

In January 2012, Mother called ██████ to complain about bullying and harassment that was occurring. ██████ asked for specifics and Mother referenced comments and stares by other students; she could not provide any specific examples. Mother suggested that ██████ talk to Student directly. ██████ brought Student in and asked about the bullying and harassment that Mother had reported. Student reported that he did not get

¹⁵ Student viewed the piece entitled "Dancer" on p. 65 of the book, which depicts a woman whose breasts are visible. When this occurred, Student was a sophomore in high school. (Exh. 51).

along with a student in his math class; Student stated the problem would be solved if he could move into a different math class. ██████ accommodated this request and moved Student into a different math class. Student could not provide specifics as to how this Student was allegedly bullying or harassing him. ██████ requested that Student let him know if he had concerns about issues at school. ██████ also stressed that if Student felt he was in danger or had anxiety he could come to guidance office or the assistant principal's office. ██████ also informed Student that if he needed to contact parents or leave a classroom, he should let the teacher know it is an emergency and inform them where he is headed. (Exh. 12-8).

In March 2012, Mother called to complain again about bullying and harassment without specific information. Mother stated that the family was pursuing counseling for Student and informed ██████ they would sign a release with the counselor in order for the school to share information in order to best assist Student. (Exh. 12-9).

On May 10, 2012, Mother called ██████, yelling and falsely insisting that she had been trying to get ahold of ██████ all morning. Mother insisted that ██████ needed to find Student immediately, yelling, "now, now, now!" Mother ultimately got in touch with Student by cell phone and he came to the guidance office; his demeanor when he arrived was calm and ██████ did not observe Student to be in any distress. Shortly after Student arrived in the guidance office, Father arrived. Student mentioned another student in his band and tech ed class who he stated had dragged him to the other side of the room. Upon being asked for more details, Student stated that the other student did not physically touch him, but was waving him over to the other side of the room. Student stated he knew this other student's intention was to pick on him. Student also mentioned another student in the band room who told Student he needed to practice more. Student felt this statement constituted bullying and harassment. ██████ engaged in a discussion with Student and Father about problem solving skills and using communication to find out what an individual's intentions are. ██████ and ██████ encouraged Student to continue to let them know if he had concerns in the school setting. (Exh. 12-10; ██████ testimony).

██████ continued to attempt to engage with Student during this time frame in order for Student to share any concerns he had regarding bullying, harassment, or other issues. Student typically did not respond when ██████ sent passes for him to come to the guidance office, called him in the classroom, or encouraged Parents to have Student come talk to him. Mother stressed to ██████ that he should not pressure Student to do anything. ██████ let Mother know that it was difficult for the school to assist if they were unaware of what was going on. (Exh. 12-9; Santiago testimony).

During his interactions with Student and based on his observations of Student in the school setting, ██████ perceived Student to be a very bright and capable young man. ██████ did not see any red flags to indicate that Student was not accepted by his peers. ██████ felt that he was able to connect with Student when communicating with him one-on-one. Often Student's perception of an event or resolution of an issue would change after he spoke with Mother. ██████ observed that Student would talk to him about an issue up to a point, then would say he needed to talk to Mother and get back to ██████. Student did not mention anxiety much during his conversations with

██████████. The series of schedule adjustments and accommodations that the school made for Student were more to help de-escalate Mother than to deal with any anxiety Student was feeling. (██████████ testimony).

Assistant principal ██████████ made similar observations. He noticed that Student's demeanor changed when he was accompanied to school by Mother to talk about an issue. There were occasions where Student would raise an issue and ██████████ would talk to him about the issue and they would reach a resolution. The next day Mother would come in with Student and Student's demeanor and approach would be totally different; he would not talk or engage when he was with Mother. This extended to simple hallway greetings. Student would respond to ██████████ hallway greetings if he was alone; if he was with Mother, his affect was different and he would not engage. (██████████ testimony).

██████████ observed that Mother was quick to look backward at negative incidents; during his first interaction with her at new student registration he told Student that he knew he was coming from ██████████ and hoped he'd have a good experience at ██████████. Mother immediately stated that Student had a terrible experience at ██████████ and was bullied non-stop. ██████████ called over to ██████████ to inquire about what had occurred. Staff there told ██████████ that Student was fine but that Mother was very difficult. (██████████ testimony).

██████████ investigated a complaint that Mother made regarding Student being bullied during band practice during the spring of his junior year. After receiving the complaint, ██████████ talked to Student, who stated that the section leader yelled at him; Student did not describe the conduct as either bullying or harassment. Student reported that some students were screwing around and the section leader said to knock it off. Student confirmed that band members, including himself, were off task and the section leader was trying to get them back in line and practicing. ██████████ talked with the band teacher and other band members as well and got the same story. ██████████ reported the results of this investigation to Mother, who was not happy. The next day Student would not talk to ██████████ at school. (██████████ testimony).

Student made two written complaints of bullying in high school, both in May 2012. In the first, Student alleged that J.S. sent him a threatening text message on May 11. In the complaint, Student alleged that he was victimized from February through March in the lunchroom. Student noted that he refused to go to the lunchroom due to a fear of being "bullied and beaten." Principal ██████████ investigated these incidents. With regard to the lunchroom incident, Parents reported that Student was stabbed with a fork by D.M. in the lunchroom. Student reported that D.M. made a stabbing motion with a fork in his direction, but Student pulled his hand away and the fork did not touch him. Student reported that he moved down the table, but later left the lunchroom because D.M. was doing this to other students and it bothered Student. Student had begun eating lunch in the band room, which he seemed to consider an acceptable alternative.

██████████ also talked to Student about eating lunch in Mr. ██████████ area as he felt comfortable there.¹⁶ (██████████ testimony; Exh. 6-4-5).

With regard to the second incident, Student showed administrators a text from J.S., a student in his band section that stated, “Me, ██████████, ██████████ and ██████████ r gonna punch u in the face on monday.” The text was sent while the band was on a trip to Des Moines for a performance. Student decided not to go because some of the trumpet players in his section told him not to play because he was not good. Since the event was on or near Mother’s Day and his mother’s birthday, Student decided to stay home and celebrate. (Student testimony; Exh. CE-1).

██████████ investigated Student’s complaint regarding the text. J.S. reported to ██████████ that he meant the text as a joke and did not think Student would take it seriously since they were friends. ██████████ recalled that another student, D.M., had hidden J.S.’s backpack in recent weeks and Student had helped J.S. to get the backpack back. It was ██████████ impression after this incident that J.S. and Student were friends, therefore he was surprised about the bullying allegation. J.S. admitted that he sent the text and school administrators were able to view the text. The bullying complaint was determined to be founded and ██████████ had a conference with J.S. to address the issue. (██████████ testimony; Exh. 16-6).

At some point during high school, Parents sought treatment for Student with Patrick Flynn, a licensed clinical social worker who worked primarily with combat veterans through the Veterans Administration. Flynn was seeing Father for individual counseling and had diagnosed Father with post-traumatic stress disorder (PTSD), which led later to individual counseling with Student. Flynn diagnosed Student with PTSD based on information provided by Student and Parents.¹⁷ (Flynn testimony).

On May 14, 2012, Mother sent a letter addressed to ██████████ the district, and the Iowa Department of Education. In the letter, Mother states that Student has recently been diagnosed with PTSD due to “several years of ongoing bullying at the hands of classmates along with the victimizing and belittling by the teachers and principals.” In the letter, Mother alleges that Student suffers from migraine headaches, rashes, upset stomach, and nightmares as a result of attending the district’s schools. In the letter, Mother states, “[Student] continues to be bullied by other students while the staff belittles our son’s panic and anxiety problems.” The letter reiterates the incidents that occurred with the text message and in the lunchroom, described above. Additionally, the letter mentions the bathroom incident from ██████████ and the “nightmare” that began at ██████████ including incidents “too numerous to mention.” The letter

¹⁶ At some point, a decision was made to ban food from the band room. Many students ate lunch in the band room and this decision was related to concerns regarding sanitation; it was entirely unrelated to Student. Student testified that he stopped eating lunch at that point, though he did not tell anyone at school that he was not eating lunch.

¹⁷ Flynn no longer has any records relating to his treatment of Student. His office records, including those of Student, were collected by the Veterans Administration after he retired in June 2013. Due to the lack of records, Flynn does not recall how long he saw Student. (Flynn testimony).

concludes, "I am telling the ██████████ Community School System as [w]ell as ██████████ High School stop the bullying. Quit blaming our son. Start taking responsibility for not doing their jobs." (Exh. 5-14-17).

Flynn wrote a letter to ██████████ dated May 21, 2012. In that letter, Flynn stated that Student suffers from PTSD, likely caused by early school life traumas and exacerbated by recurrent bullying. Flynn stated in his letter that he had not accessed any school records and that all information he obtained came from Student and Parents. Flynn noted in the letter that Student plans to attend college when he graduates and "will do well in life." In the letter, Flynn made the following recommendations:

1. Staff education regarding and [sic] understanding of PTSD
2. An attitude of understanding, not defensive blaming
3. Implement the "Bullying Policy", as this is a major trigger for [Student] and others in the future. It is not enough to "just pay lip service" to this very serious problem.
4. Require teachers and students to view the recent documentary on bullying [sic]
5. Have an [assistant principal] meet weekly with [Parents] to enhance communication, understanding and work cooperatively in solving problems. I would be willing to be a part of the initial meeting.

(Exh. 43-2-3).

In another document that he prepared for the school, Flynn listed "[c]ritical steps" school personnel should take when Student is experiencing a stress reaction. These steps were:

1. Listen seriously to his request. Do not assume you know what is best for him.
2. Allow [Student] to leave the building when he is experiencing a stress reaction. He is striving to get away to a safe place to calm himself.
3. [Student] needs to carry his cell phone in case of medical, psychological emergencies.
4. Do not force [Student] to interact with a student who is "bullying him".
5. [Student] will most likely have a stress reaction in crowded places. He should be given the option to leave these situations if problems develop. Assemblies and the lunchroom (where he was traumatized last year) are problem areas.
6. Do not allow anyone to blame the victim. This may be the easy way out but the wrong focus.
7. If necessary, in a crisis, have available a staff member with whom [Student] trusts and feels safe.
8. Develop an alternative, for [Student], to eating in the lunchroom.

(Exh. 43-4).

The district prepared a Section 504 Accommodation Plan for Student on August 21, 2012. Areas of concern are listed as PTSD, severe and chronic, and Ehlers-Danlos Disorder. The school incorporated all of Flynn's recommendations in the 504 plan. (Exh. 17-1-2; Flynn testimony).

On August 28, 2012, Flynn wrote another letter to ██████ referencing Student's "difficult start to the school year" and noting that his PTSD-related anxiety has manifested in panic attacks, for which he is being treated medically and psychologically. Flynn's letter states that due to the problem's association with the school setting he supports continued educational services being provided by the district in Student's home, "where he feels the most comfortable and safe." Flynn notes that if there are classes that Student can attend without provoking anxiety, he supports Student attending those classes. Flynn adds that Student reports feeling safe in Mr. ██████ shop classes. The letter concludes, "█████ continues to be a good student with no behavioral issues. I encourage you to consider this alternative." (Exh. 43-5).

At Parents' request, and in response to Flynn's recommendation, the district allowed Student to take the majority of his classes online his senior year. ██████ understood from conversations with Student and Parents that Student had anxiety in the school setting. Online classes were an option that were available to students in the district. Student took a shop class, ██████, in person at ██████ fall semester of his senior year; he also took online classes in American Government, Economics, and Speech that semester. During the second semester, Student took another shop class, Auto Diagnostics I, in person at ██████ and an online U.S. Literature class. While students at ██████ were typically required to take three courses per semester, the school allowed Student – at his request – to take only two classes his second semester as he only needed two classes to graduate. Student graduated on schedule in spring 2013. Student received three As, two B-minuses, and a C in the classes he took during his senior year. This was consistent with the range of Student's grades during his first three years in high school. He was elected to National Honor Society and graduated with a class rank of 121 out of 401. (█████ Student testimony; Exh. 1-7).

Student took a variety of honors and advanced placement classes in high school, including honors English, honors biology, and advanced placement world and U.S. history. He received average and above average grades during high school. In tenth grade, he took a pre-ACT standardized test where his composite score placed him in the 85th percentile; in English he was at the 57th percentile, in math he was at the 57th percentile, in science he was in the 98th percentile, and in reading in the 87th percentile. Student's national percentile scores on the Iowa Assessments in eleventh grade ranged from the 80th percentile to the 92nd percentile, with a composite score in the 87th percentile. Also in eleventh grade, Student took the PSAT and the ACT. He scored at the 52nd percentile on the PSAT and got a composite score in the 62nd percentile on the ACT. Student's cumulative GPA for high school was 3.3644. (Exh. 1-3, 1-7; Stevens testimony).

Student had between three and six people he considered friends in high school and between five and 20 acquaintances. (Student testimony).

Iowa Civil Rights Commission Complaint: Mother, on behalf of Student, filed a complaint with the Iowa Civil Rights Commission in May 2012. She alleged that Respondent district, along with [REDACTED] [REDACTED] and [REDACTED] had discriminated against Student by denying him accommodation/modification, denying benefits, and harassing him. Mother alleged that Student was denied TAG programming even though his ITBS scores were always 95% or higher until his senior year. Additionally, Mother alleged that Student was always in fear of attending schools in Respondent district due to “bullying and re-victimising by staff.” Mother alleged that the district refused to get Student medical attention or call the police related to a physical assault that occurred in the bathroom at [REDACTED]. Additionally, Mother alleged that Student was threatened in the lunch room at [REDACTED] and referenced the text message from J.S. There is no evidence in the record of the outcome of the complaint. (Exh. 15).

Post-High School Education/Activities: After graduating from [REDACTED] Student went to [REDACTED] [REDACTED] Community College ([REDACTED]) and earned an associate of arts degree. His cumulative GPA was 3.557. He was a member of an academic honor society at [REDACTED] and was nominated to the All-USA Academic Team. Additionally, he had a work/study job in the school’s office of disability services. Part of that job involved peer mentoring for new students with disabilities. Student was also a volunteer with an organization called Impact, which organized campus events for students. As part of his volunteering with Impact, Student helped give tours of the campus. Student reported having a number of friends and acquaintances at [REDACTED] (Student testimony; Exh. 25-2; 32).

After getting his associates degree at [REDACTED] Student began attending University of [REDACTED] [REDACTED] in 2016. As of the time of the hearing, he was still a student there. He is projected to graduate in May 2020 with a degree in mechanical engineering. His cumulative GPA is 2.734. Student reports having a number of friends and acquaintances at [REDACTED] [REDACTED] (Student testimony; Exh. 26-3).

Student is also an airbrush artist and, while he was at [REDACTED] volunteered his time as lead painter to do six murals on the campus. Several other painters assisted him in the project. (Student testimony; Exh. 26-4).

Student has worked as a consultant with [REDACTED] Air-Brush Co. for some time since graduating from high school. Student consults on product design and provides engineering expertise and assistance to the company. Student has an offer to work at [REDACTED] after college. (Student testimony; Exh. 27).

Student is also a chair of the candidates and campaigns section of his county political party. In that role, he is the first line of contact for a politician or campaign who is coming to town and wants to organize an event. He has been involved in his county political party since approximately 2016. In that role, he has done phone banking and door knocking. During the most recent presidential election, he did door knocking approximately once or twice per week. (Student testimony).

Subsequent Treatment with Dr. Anderegg: Dr. Anderegg began seeing Student again in July 2013 after he had graduated from high school.¹⁸ At that point, Dr. Anderegg diagnosed Student with panic disorder with agoraphobia. Dr. Anderegg noted that Student's anxiety had grown and intensified; the more Student avoided, the more anxious he got about the things he was avoiding. Dr. Anderegg never reviewed any school records, including attendance records. All of the information he received came from Student and Parents. Dr. Anderegg's treatment notes from December 2013 indicate that Student has decided to pursue a lawsuit against the school district for not protecting him from bullying. (Exh. 41-21, 41-28; Anderegg testimony).

Dr. Anderegg's treatment with Student in 2013 and 2014 focused on teaching cognitive behavior techniques such as deep breathing and relaxation and exposing Student to places and experiences he viewed as threatening in an effort to decrease his panic and anxiety. (Exh. 41-20-47).

Autism Diagnosis: Parents took Student to be evaluated for autism by Christine McGrath Wetjen, a licensed clinical psychologist, on May 15, 2015, approximately two years after he graduated from high school. Student was 20 years old at the time. The diagnostic appointment was the only appointment Dr. McGrath Wetjen ever had with Student. She spent one hour with Student and Parents on that date and has not seen Student since then. (McGrath Wetjen deposition; Exh. EC-3, 46-1).

Dr. McGrath Wetjen diagnosed Student with autism spectrum disorder and generalized anxiety disorder. She relied upon the following sources of information in making these diagnoses: 1) interviews with Student and Parents on May 15; 2) a diagnostic questionnaire that was filled out by Parents prior to the May 15 visit; and 3) her observations of Student's behavior during the one hour diagnostic appointment. Dr. McGrath Wetjen assumed that all information provided to her by Student and Parents was accurate and reliable. (McGrath Wetjen deposition; Exh. EC).

Dr. McGrath Wetjen reached no conclusions about when Student first exhibited symptoms of autism spectrum disorder. In 2017, Mother contacted Dr. McGrath Wetjen's office and requested a letter stating that Student had autism prior to age 18 in order for Student to stay on Parents' insurance. In response, Dr. McGrath Wetjen wrote a letter stating that the results of her evaluation suggested that Student had a history of failure to develop and maintain age appropriate peer relationships, significant deficits in social communication, and repetitive behaviors/perseverative interests characteristic of an Autism Spectrum Disorder. Based on information Parents provided to her, Dr. McGrath Wetjen wrote, "These behaviors have been apparent since early childhood and prior to the age of 18-years-old." All information that Dr. McGrath Wetjen had about Student's childhood behaviors came from Student or Parents. (Exh. 46-3, 46-15; McGrath Wetjen deposition).

Ehlers-Danlos Syndrome Diagnosis: Parents took Student to see Dr. Bagby, their general practitioner, in 2005 with concerns about Student's gait; specifically, they noted

¹⁸ Dr. Anderegg's treatment notes indicate that Student stopped seeing Flynn in December 2012. (Exh. 41-20).

that he did not seem to bend his knees while running. Parents stated that Student had not had clumsiness or frequent falls. Dr. Bagby noted that while running up steps and on a level surface Student had “a bit of a clumsy gait.” Dr. Bagby reassured Parents that this would likely improve with time. He noted in the chart, “I do believe he is as flexible as one would expect with Ehlers-Danlows [sic] syndrome. Would just give it time and see how he progresses.” (Exh. 49-10).

Student was evaluated at the University of Iowa Connective Tissue Disorders clinic on three occasions – January 11, 2010, December 5, 2011, and April 5, 2012. Each time the doctors there determined that Student did not meet the criteria for Ehlers-Danlos syndrome. The notes from the April 5, 2012 visit indicate that Student has been able to participate in PE along with concert band and marching band. The notes also indicate that Student did not have hypermobility upon exam. (Exh. 49-18-21).

In October 2014, over one year after Student graduated from high school, Parents took him to Dr. Bradley Tinkel, who diagnosed him with Ehlers-Danlos syndrome. Tinkel spent 60 minutes with Student. (Mother testimony; Exh. 48).

Credibility: After listening to four days of hearing testimony in this case, it is abundantly clear that the parties’ recollections about Student’s experiences in the school setting – including perceived deficiencies or problems, or lack thereof – are at odds. While Mother testified for approximately six hours about the abysmal treatment Student received at the hands of Respondents during the entire 13 years of Student’s school career, school personnel who interacted with Student in the school setting during that time period largely noted that Student did not stand out in any negative way.

Due to the fact that Complainant alleges violations of the IDEA dating back to elementary school, a large portion of the support for the allegations comes from testimony from Mother. Respondents called a number of witnesses who taught Student and who interacted with Parents, but due to the passage of time there were some witnesses who might have had relevant information that were simply unavailable.¹⁹

For a variety of reasons, I conclude that Mother is not a particularly reliable or credible reporter of events. First, Mother set forth in her direct examination a particularly bleak version of Student’s entire academic career. Mother testified that Student experienced near constant bullying and victimization, beginning in kindergarten and continuing through high school. In Mother’s direct testimony, she asserted that Student had no friends and that, aside from one birthday party during all his school years, he was never

¹⁹ ██████████, the district’s director of student services since 2006, assisted Respondents’ counsel in attempting to track down witnesses from the relevant time period. ██████████ presented credible testimony that many witnesses were unavailable for various reasons. The principal at ██████████ from Student’s kindergarten year, along with ██████████ the district’s director of equity, have both passed away. Several individuals, including ██████████ the director of equity after ██████████ and Mr. ██████████ the assistant administrator at ██████████ during Student’s time there, have retired or left the district. No one who ██████████ could find in the district knew where Student’s first and second grade teachers currently are and they are no longer employed by the district. (██████████ testimony).

invited to other kids' houses to play, and that he never interacted with other children at recess. On cross examination, Mother refused to acknowledge – even when there was documentary evidence to the contrary, and even in some cases where that documentary evidence was authored by her – any positive events or feelings about Student's 13 years in school. For example:

- In a follow-up appointment with Dr. Gould in 2002, Dr. Gould wrote that Mother felt that Student's mood and feeling about school had changed for the better. Dr. Gould observed that Student appeared cheerful and relaxed. On cross-examination at hearing, Mother testified that she could not recall any of that.
- Dr. Gould's treatment notes from January 2002 indicate regarding social history that Student has always gotten along with other children in a wide age range. While Dr. Gould testified that any social history information she obtained would have come from Parents, Mother denied at hearing that she or Father reported this to Dr. Gould. Mother likewise denied reporting to Dr. Gould that Student was having a very good year in first grade and that his teacher was very reassuring and expressed no concerns, all of which were documented in Dr. Gould's notes.
- On the open enrollment application for ██████ Mother wrote that Student had been walking out of school at ██████ talking and laughing, unafraid of being beaten up. At hearing, Mother testified that she could not recall that.

Mother admitted on cross-examination, when asked about treatment notes from Dr. Andregg that refereced a neighbor that Student enjoyed playing with, that her prior testimony that Student never engaged in any peer interaction was inaccurate.

Mother also testified to occurrences whose absence in other documentation is noteworthy and calls into question her credibility. First, Mother testified that Student stated at some point in early kindergarten that he wished to kill himself. Both ██████ and Student's kindergarten teacher credibly testified that they were never made aware of such an event. Nowhere in the documentation from school does such a report appear. Likewise, despite the fact that Parents sought treatment for Student from mental health providers during elementary, middle, and high school, there is no indication that they ever mentioned to any of these providers any suicidal ideation on the part of Student. Mother testified that she did not seek any help for Student at the time that he stated he wanted to kill himself, but could not provide any explanation for why she did not do so. Given Parents' actions in other contexts, it is not credible that Student made such a claim and that Parents did not pursue the issue with the school or with an outside provider.

Mother also testified that she told ██████ when Student was in third or fourth grade that he was displaying signs of PTSD. As with the issue of suicidal ideation, there is no indication in any of the provider records or school records from that time period that Mother raised the issue of Student displaying signs and symptoms of PTSD. Consequently, I did not find Mother's assertion that she told ██████ Student had PTSD credible.

Additionally, Mother's assumption of bad motives on the part of others where none appeared to exist skewed her perspective and understanding of certain situations. As one example, in her testimony about Student passing out in [REDACTED] health class in middle school, Mother told a detailed and emotionally charged narrative about arriving at the school and, from her perspective, being sent from room to room before she could locate Student. Mother testified that by the time she got to Student, who was with paramedics, she was angry. She testified that she was thinking, "Somebody better tell me where my son is at; this isn't funny!" It is simply beyond belief based on the evidence in this record that school personnel would have deliberately sent Mother on a wild goose chase around the school while her son was being attended to by paramedics. Based on Mother's testimony, however, this is apparently what she believed then and what she still believes.

Mother got off on the wrong foot at [REDACTED] based on her belief that school personnel wanted Student to attend full day kindergarten in order that they would not lose federal grant money. In the May 2012 letter that Mother wrote, referenced above, cataloging her complaints with the district through the years, she wrote,

Our nightmare started with [REDACTED] Elementary School upon [Student] being tested prior to attending Kindergarten. [REDACTED] School tried insisting that our son needed to attend all day classes because he did not do well on his testing. We informed the staff at [REDACTED] that [Student] always surpassed all of the testing through [REDACTED]. After arguing they went back over the scores and miraculously discovered they were wrong. The principal then informed us that [REDACTED] School was given a certain number of federal grants, and if they didn't use them all they would lose part of that funding. We told them to fill the spot with someone who needs it not our son.

Mother wrote that letter in 2012 as Student was finishing up his junior year in high school about events that occurred in 2000 or earlier, fully 12 years prior. The [REDACTED] principal from that time period has passed away, therefore there is no additional evidence in the record regarding what precisely happened at that time. Nevertheless, Mother's level of investment in the issue 12 years after it happened and her explanation of it as the beginning of the "nightmare" at [REDACTED] reflects a pattern that emerged over Student's years in school. Mother would infer bad motives, then that impression of the person with whom she was dealing would lead to a very difficult relationship going forward. This happened with [REDACTED] and with [REDACTED] as well. Mother believed that they were treating Student unfairly, which colored her subsequent interactions with them. Even where they attempted to address Mother's concerns, she was unwilling to accept that they were ever acting in Student's best interests. This resulted in Mother assuming an extremely adversarial posture in many situations with Respondents. After talking to one person at the school, Mother would often proceed to make additional calls to other school personnel and sometimes even involve the police or the Department of Human Services. For legitimate reasons, school personnel were wary of accepting what

Mother said at face value, relying instead on what they observed themselves regarding Student in the school setting and asking Student directly for his input.²⁰

Mother testified at hearing that she has significant anxiety and has been diagnosed with PTSD. Mother testified that she attended school in person through the eighth grade, then got her GED; she did not attend high school because she was too “anxiety ridden.” The record reflects that her own anxiety played into her perception of events and caused her, at times, to embellish either what had occurred or its impact on Student. Adding to Mother’s anxiety was the fact that Student’s reports to Parents of what was occurring at school were not always accurate. Student would report that he was punched, dragged, or stabbed; upon further investigation, these claims would turn out not to be entirely accurate. Student would have evaded these actions, or would admit that they did not occur.

Mother testified that she was very afraid of losing Student and that fear, by her own admission, affected her relationship with personnel in the district. Mother testified that she was fearful that Student was going to be severely hurt or die as a result of bullying therefore she often escalated interactions beyond a rational point. School personnel were aware that Mother’s accounts of what had occurred were often inconsistent with what they were observing with Student in the school setting. They noticed as well that Mother’s reaction to events at school was often much more extreme than Student’s reaction to events. While Student complained of some events of bullying throughout these years, Mother’s reaction to this was disproportionate to what was actually occurring.

Mother’s response to her own fears was to hover around school, inserting herself whenever she perceived there to be a problem. Mother testified that the family’s home was just blocks from ██████ so she was always within blocks of the school during Student’s years there. After Student moved on to ██████ then to ██████ and ██████ Mother testified that she always either parked right outside the school during the school day or was within a several block proximity of the school. Mother testified she stayed close to school so that Student would know she was close and so she could come get him or intervene immediately if he had problems.

It was clear from Mother’s testimony at hearing that many of these items are still very fresh to her. She testified to remembering minute details of conversations she had with other parents, teachers, and school administrators while Student was in early elementary school. She was still visibly angry about her belief that Student’s elementary school art teacher said that Student’s art project would be thrown away. Her recall of events during Student’s school career, however, appears to be limited entirely to events

²⁰ It is noteworthy that Mother attempted at various times during Student’s academic career to prohibit school personnel from speaking with Student directly without her or Father present. In elementary school, Parents wrote a letter stating that Student feels he is “blamed for everything” even when other children are at fault. Parents wrote that they insisted they be present at any and all meetings or discussions with Student at school. In May 2012, when Student was in high school, Parents again requested that they be present any time there was any meeting or interview, formal or informal, with Student. (Exh. 5-9, 5-18).

that she perceived as negative. As such, her account of this time frame is inherently unreliable and extremely lopsided.

By high school, Mother admitted that she was not evaluating what Student reported to her to determine whether it warranted her intervention. If Student brought up an issue and it bothered him, she would escalate the issue with the district, even if she did not agree. When Student reported to Mother that his German teacher had shown the class pornographic pictures of nude women, Mother admitted that she did not undertake any independent investigation to determine what actually occurred or what pictures were actually shown to the class. Instead, she immediately complained to ██████████ about the teacher. When asked at hearing why she would not have discussed the issue with Student at home before escalating the matter, perhaps engaging in a discussion of art versus pornography, Mother testified that Student would not hear of this. She testified that Student was being bullied and having a number of problems and he needed someone in his corner and needed Parents to “stick up for him.” By this time, Mother interpreted everything the district did through an adversarial lens, with the belief that she needed to stick up for Student. She appears to have had very little perspective about the issues that Student was reporting to her or any ability or desire to independently evaluate those issues to determine whether they warranted action or intervention by Respondents.

Relatedly, Mother was susceptible to believing information that may not have been particularly reliable if it painted Respondents in a negative light. For example, Parents reported on a questionnaire for Dr. McGrath Wetjen in 2015 that Student had experienced a seizure in school, then someone stomped on his head. At hearing, Student testified that he was told some years later, in high school, by another student that this student stomped on Student’s head when he passed out in ██████████ class. There is no information in the contemporaneous medical records of the fainting/seizure incident to indicate that Student had injuries consistent with someone stomping on his head and this information was relayed to Student many years after the fact. Additionally, the fainting episode happened in class; the teacher, who was present when it occurred and witnessed it, never indicated any belief that Student had been assaulted by another student at the time it occurred. Nevertheless, Mother took the information at face value and reported it going forward in Student’s medical appointments.

There is an inherent difficulty in synopsisizing 13 years of Student’s experiences in the district. Due to the volume of evidence in the record, it is impossible to catalog every assertion that Mother or Student has made and to identify whether or not it is deemed credible. For these purposes, however, it is sufficient to note that the evidence presented by Mother and Student is not as credible as the contemporaneous documentation contained in the school records, treatment records from outside providers, and testimony from non-family witnesses.

CONCLUSIONS OF LAW

I.

Applicable Statutory and Regulatory Provisions

IDEA Overview: One of the principal purposes 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.”²¹ The IDEA offers states federal funding to assist in educating children with disabilities and, in exchange for acceptance of such funding, the state must agree to, among other things: 1) identify, locate, and evaluate children with disabilities who are in need of special education and related services; and 2) provide a free appropriate public education to all children with disabilities residing in the state between the ages of 3 and 21.²²

Child Find Obligation: All children with disabilities residing in the state, regardless of the severity of their disability, and who are in need of special education and related services, must be identified, located, and evaluated, and a practical method must be developed and implemented to determine which children are currently receiving needed special education and related services.²³ Child find must include a child who is suspected of being a child with a disability and in need of special education, even though the child is advancing from grade to grade.²⁴

A child who is suspected of being a child with a disability and in need of special education is not automatically eligible under the IDEA; an initial evaluation must be undertaken to determine the child’s eligibility.²⁵ A request for an initial evaluation to determine whether a student is a child with a disability may be made by either the parent or the district.²⁶

A school district is responsible, as a component of high-quality general education instruction, to provide additional support and assistance to all students who may need such additional support and assistance to attain the educational standards that are applicable to all children. Receipt of such additional support alone does not create a suspicion that a child is an eligible individual under the IDEA.²⁷

IDEA Eligibility: Only children with disabilities are eligible for coverage under the IDEA.²⁸ A child with a disability means a child –

- (i) with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to in this chapter as

²¹ 20 U.S.C. § 1400(d)(1)(A).

²² 20 U.S.C. § 1412(a)(1)(A), (a)(3)(A).

²³ 20 U.S.C. § 1412(a)(3)(A); 281 IAC 41.111(1).

²⁴ 34 C.F.R. § 300.111(c)(1); 281 IAC 41.111(3)(a).

²⁵ 34 C.F.R. § 300.301(a).

²⁶ 34 C.F.R. § 300.301(b).

²⁷ 281 IAC 41.111(2)(a).

²⁸ See 20 U.S.C. § 1412(a)(1)(A) (mandating that a state is eligible for financial assistance under the IDEA only if the state, among other things, provides a free appropriate public education “to all children with disabilities”); see also 281 IAC 41.8 (defining “eligible individual” as synonymous with “child with a disability” and “child requiring special education”).

“emotional disturbance”), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and

(ii) who, by reason thereof, needs special education and related services.²⁹

Special education is defined as specially designed instruction to meet the unique needs of a child with a disability across a range of settings, including in the classroom, in the home, in hospitals and institutions, and in other settings.³⁰

Specially designed instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction –

(i) To address the unique needs of the child that result from the child’s disability; and

(ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.³¹

A school district must examine information from a variety of sources in determining eligibility and educational need, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child’s physical condition, social or cultural background, and adaptive behavior.³²

Due Process Complaint: Under the IDEA, a parent or public agency may file a due process complaint relating to the identification, evaluation, or educational placement of a child with a disability, or the provision of a free appropriate public education (FAPE) to the child.³³ The burden of proof in an administrative hearing on a due process complaint is on the party seeking relief.³⁴ Complainant, therefore, bears the burden of proof in this proceeding.

Limitations: A parent must request a due process hearing within two years of the date the parent knew or should have known about the alleged action that forms the basis of the complaint.³⁵ The two year limitations period does not apply if the parent was prevented from requesting the hearing due to:

(i) specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint; or

²⁹ 20 U.S.C. § 1401(3)(A); *see also* 34 C.F.R. § 300.8(a)(1).

³⁰ 20 U.S.C. § 1401(28).

³¹ 34 C.F.R. § 300.39(b)(3).

³² 34 C.F.R. § 300.306(c).

³³ 34 C.F.R. § 300.507(a); 281 IAC 41.507(1).

³⁴ *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 61-62, 126 S.Ct. 528, 163 L.Ed.2d 387 (2005).

³⁵ 20 U.S.C. § 1415(f)(3)(C); 281 IAC 41.507(1)(b), 41.511(5).

(ii) the local educational agency's withholding of information from the parent that was required under this subchapter to be provided to the parent.³⁶

Procedural Safeguards Obligation: A copy of the procedural safeguards available to the parents of a child with a disability shall be given to parents one time a year, except that a copy shall also be given to the parents:

- (i) upon initial referral or parental request for evaluation;
- (ii) upon the first occurrence of the filing of a complaint under subsection (b)(6); and
- (iii) upon request by a parent.³⁷

II.

Procedural History and Scope of Remand

Amended Due Process Complaint: Complainant alleges that he has five disabilities that qualify him as eligible under the IDEA: autism spectrum disorder, Ehlers-Danlos syndrome, general anxiety disorder, social anxiety disorder, and PTSD. The amended complaint alleges that the district was aware that Student's social skills were discrepant from peers beginning in third grade and that Mother notified the district that Student was diagnosed with social anxiety disorder in 2006 when Student was attending middle school. The amended complaint alleges that Student was "not learning the social skills that other students learn" and that he could not do so without specially designed instruction outside of the general education environment. The amended complaint also alleges that during the time he attended school in the district Student was physically attacked regularly – almost every day, according to Student and Mother – by bullies. The amended complaint also alleges that Student's social isolation led to "emotional collapse" during the spring and summer of 2012, leading Student to attend only one class on campus his senior year, with the remaining classes taken at home in an online format.

The amended complaint alleges that Respondent did not engage in the child find required by 20 U.S.C. §1412(a)(3) and that, had Respondents discharged their child find duties they would have found that Student had discrepancies from neuro-normal peers that interfered with his ability to progress in the general education curriculum and develop the life skills needed to live as an independent adult. Additionally, Complainant alleges that Respondents failed to provide Student's parents with a prior written notice finding that Student was not an eligible child under the IDEA. Finally, Complainant alleges that Respondents failed to provide him with FAPE by: 1) not providing him with specially designed instruction in academic areas of reading, writing, language arts, and math where he was discrepant from peers; 2) not providing him with specially designed instruction in social skills and pragmatic languages required by his social skill discrepancies resulting from autism; 3) not providing him with appropriate related services to deal with mental health problems; 4) not providing him with supplementary

³⁶ 20 U.S.C. § 1415(f)(3)(D); 281 IAC 41.511(6).

³⁷ 20 U.S.C. § 1415(d)(1)(A).

services to protect him from bullying and harassment; 5) not providing supplementary services to school staff to enable them to understand and deal with Student's unique educational needs; 6) not providing supplementary services to Student's parents to help them better deal with academic and social problems resulting from autism; 7) not providing compensatory education to make up for past failures to meet his needs under the IDEA; 8) not providing him with extended school year services in recognition of his needs that had built up over many years from their failure to engage in child find; and 9) not providing Student instruction in the least restrictive environment.

The amended complaint requests that Respondents provide Student with compensatory education and related and supplementary services in the areas of social skills and social pragmatics and in academic subjects in which Student would have had instruction during high school had he received FAPE. Additionally, the amended complaint requests that Respondents provide Student with compensatory related services in the area of mental health therapy to make up for services that Respondents did not provide and to compensate for injury caused to Student by their policies.

The amended complaint does not identify any specific instance prior to third grade that should have cued Respondents to identify Student under the child find process.³⁸ The Magistrate's Report and Recommendation also references the third grade time period as the beginning of Complainant's allegations against Respondents.³⁹ Accordingly, the time period from third grade on is the time period addressed in this decision.⁴⁰

Magistrate's Report and Recommendation: The Magistrate's Report and Recommendation separately addresses: 1) the tolling provision of the IDEA and its applicability to Complainant's claims; and 2) the merits of Complainant's child find allegation.

With regard to the merits of the child find allegation, the district court notes that whether child find obligations has been met is highly fact intensive and distinct with respect to each situation.⁴¹ The district court concluded that there was insufficient evidence at the time of the motion to dismiss in 2018 for the ALJ to determine whether Respondents' child find obligations applied to Complainant and whether Respondents failed in those obligations. Consequently, the district court remanded in order for an inquiry into whether Complainant was a child who should have been evaluated under child find and, if so, whether Respondents met their obligations in evaluating him under

³⁸ Paragraphs 38 and 45 specifically reference third grade and allege that when Student's parents' rights under the IDEA transferred to Student, their rights to file a "due process complaint for relief for events going back to as early as third grade transferred to [Student]."

³⁹ See Magistrate's Report and Recommendation, p. 25 ("In this case, plaintiff alleges that his parents notified defendants of plaintiff's difficulties in school at the beginning of each school year, beginning as early as third or fourth grade, through plaintiff's graduation.").

⁴⁰ While the time period from third grade on is what is addressed in the decision, it is worth noting that the conclusions reached apply equally to the time period from kindergarten through second grade.

⁴¹ See Magistrate's Report and Recommendation, p. 25.

child find.⁴² As part of this determination, the district court noted that additional evidence would need to be presented by the parties on the question of whether Complainant was an eligible individual – otherwise stated, a child with a disability – with the meaning of the IDEA.

Regarding the tolling provision, the district court determined that the record was insufficient to reach a ruling at the motion to dismiss stage. The court, however, provided “recommendations as to the applicable law that may govern the statute of limitations issue, depending on the ALJ’s new findings of fact on remand,” as follows:

If defendants’ child find obligations applied to plaintiff, *and* if defendants failed in their child find obligations with respect to plaintiff, *and* if failing in defendants’ child find obligations amounts to a refusal to evaluate, only then will the tolling provision be applicable to plaintiff’s claims.

...

It follows that the statute of limitations would be tolled under the IDEA’s tolling provision if procedural safeguard notices are not given as a result of failed child find obligations. To hold otherwise would be to allow school districts greater protections for both failing in their child find obligations and notice obligations than would be afforded if a school district merely failed in its child find obligations. Stated otherwise, the procedural safeguards become relevant only if a local education agency withholds information that is otherwise required to be provided under the IDEA. 20 U.S.C. §1415(f)(3)(D). A local education agency becomes obligated to provide such information, *inter alia*, upon its refusal to evaluate a child who is suspected to be disabled. 20 U.S.C. § 1415(b)(3). The child find obligations are a natural precursor to such an evaluation because by way of child find, local education agencies identify those children who should be evaluated.⁴³

III. Analysis

Did Respondents Fail in their Child Find Obligations to Complainant?

Under the scope of the district court’s remand, the first question to answer is whether Respondents should have identified Student under child find. The answer to this question will determine whether the limitations period for filing the due process complaint is tolled.

As an initial matter, Complainant does not allege in his amended complaint that Respondents failed to have any child find mechanisms in place at the time he was in school; rather, he alleges that Respondents did not engage in appropriate or adequate

⁴² *Id.* at p. 26; *see also* August 14, 2018 Order (accepting Magistrate’s Report and Recommendation).

⁴³ Magistrate’s Report and Recommendation, pp. 23, 27.

child find with regard to him specifically. The record in the case supports that Respondents had systems and structures in place during Student's school years to identify children to evaluate for possible special education instruction under the IDEA, including students who were exhibiting academic discrepancies from peers and who were exhibiting social, behavioral, or interpersonal concerns. Student was simply not identified as a student for whom such evaluation was required.

The IDEA's child find requirement does not demand that schools conduct a formal evaluation of every struggling student.⁴⁴ Particularly where the alleged signs of a disability are relatively common and age appropriate, a school district is not required to immediately jump to the conclusion that the student has a qualifying disability under the IDEA.⁴⁵ This is especially the case where a student's report cards and conference forms show intermittent progress and academic success.⁴⁶

A. Elementary School through Eleventh Grade

Central to this case is the fact, amply supported by the evidence, that what Mother reported Student was experiencing in the school setting and what school personnel observed Student experiencing in the school setting was very disparate throughout his educational career. Additionally, as discussed in more detail above, Student and Mother's current recollections of what was occurring from 2000 through 2013, while Student was enrolled in the district, are in important respects different from what they contemporaneously reported to various people, including mental health professionals, during that time period.

Mother had frequent and emotionally intense interactions with school personnel during all of the 13 years that Student was enrolled in the district. As a result of these interactions, Student was brought to the attention of teachers and administrators on a regular basis. Not a single teacher or administrator during all of the years that Student was enrolled in Respondent district ever suspected that he had a disability that adversely affected his educational performance.

The bulk of Complainant's argument that Respondents should have suspected that he was a child in need of a disability requiring special education rests on Complainant's assertion that he met the criteria for emotional disturbance under the IDEA based on his anxiety and PTSD diagnoses. The evidence reflects that Student's academic performance throughout his years in the district was average to above average; he took advantage of advanced programming in the form of honors and advanced placement classes in high school. His standardized test scores did not reflect any noteworthy

⁴⁴ *D.K. v. Abington School Dist.*, 696 F.3d 233, 249 (3d Cir. 2012) (citing *J.S. v. Scarsdale Union Free Sch. Dist.*, 826 F.Supp.2d 635, 661 (S.D.N.Y. 2011)); see also *T.B. v. Prince George's County Board of Education*, 897 F.3d 566, 574 (4th Cir. 2018).

⁴⁵ *Id.* at 251 ("The School District was not required to jump to the conclusion that D.K.'s misbehavior denoted a disability or disorder because hyperactivity, difficulty following instructions, and tantrums are not atypical during early primary school years.") (citations omitted).

⁴⁶ *Id.*

discrepancy from peers. He graduated on time and was elected to National Honor Society his senior year.

While advancement from grade to grade and academic success in the form of grades and test scores are not the only consideration for child find, the totality of the evidence does not reflect that Respondents should have suspected a disability that adversely affected educational performance prior to Student's senior year of high school. In addition to his academic success, Student's teachers did not observe that he was discrepant from peers in social skills or that he had significant interpersonal problems. While Student was treated by outside mental health providers periodically throughout his years in the district, the evidence does not reflect that either Dr. Gould or Dr. Anderegg communicated to the district that Student was having problems that adversely affected his educational performance. Dr. Anderegg's 2006 letter to the [REDACTED] school counselor stated that Student's anxiety was affecting his willingness to go to school, his sense of safety there, and his interpersonal relationships. Student's attendance, however, did not notably change during this time period and this account was inconsistent with what district personnel were seeing at school. Dr. Anderegg did not review any school records; all of the information he obtained came from Student and Parents. The 2006 letter did not trigger Respondents' child find obligations.

While Complainant also asserts that the bullying and harassment he endured should have been sufficient to trigger Respondents' child find obligation, there are significant reasons to question Mother and Student's factual assertions about what was occurring. Some of Mother's claims – such as that Student exhibited suicidal ideation in kindergarten and that peers threatened to kill him in elementary school – are simply not credible. During middle school, when Mother alleged that the most severe incident of bullying occurred, Student's teachers consistently made positive remarks regarding his social and interpersonal skills.

Student's attendance was consistent throughout his school years and did not give Respondents reason to suspect that he might have had a qualifying disability. Mother has testified that Student experienced physical symptoms, such as headaches, hives, and weight loss, as a result of his experiences at school; some of Student's mental health providers even documented this based on reports from Parents and Student. There is reason to question, however, whether these symptoms were caused by stress at school, as Complainant asserts. Other explanations exist within the record. For example, Student was diagnosed in early elementary school with an allergy to food dye that caused him to break out in hives.⁴⁷ Mother also reported to the school nurse in middle school that some scents, such as Axe body spray, caused Student to experience migraine headaches.⁴⁸ While Mother has asserted that Student's anxiety caused him to lose a great deal of weight between his junior and senior years in high school, medical documentation from that time period indicates that this may have been caused by an allergic reaction to fish.⁴⁹ Additionally, treatment records from Dr. Gould reflect that when Parents identified peer interactions at school as a possible trigger for migraine

⁴⁷ See Exh. 4-1.

⁴⁸ See Exh. 8-13.

⁴⁹ See Exh. 49-33-45.

headaches and stomachaches during elementary school, Dr. Gould helped Parents identify a pattern where Student was ill for every holiday, strongly suggesting that the headaches and stomachaches were not consistent with stress related to peers. Finally, the school nurse at Student's middle school noted in her documentation, "Mother calls frequently to give health updates on [Student] or family members, but [Student] has very rarely been in health office." Mother's reports regarding Student's physical symptoms were, at times, exaggerated and inaccurate.

Complainant's assertions that Respondents should have identified him as in need of special education based on his assertions that he tried not to use the bathroom and that he was not eating lunch after his complaint of bullying in the lunchroom in the spring of his junior year are likewise unpersuasive. Even if these assertions are true, neither Complainant nor Parents ever informed the school district. This was not something that Respondents could have figured into their equation of whether they suspected Complainant of having a disability that required special education.

The contemporaneous documentation of Student's school years reflects that Mother typically had a much stronger reaction to incidents at school than did Student. The totality of the evidence shows that, at each school Student attended, the staff and teachers responded appropriately to the issues raised by Parents and Student and attempted to make Student's experience positive. While staff and teachers at ██████ attempted to make accommodations for Student, they credibly testified that these accommodations were directed more at attempting to appease Mother than based on any perceived need by Student. School personnel were simply not observing anything in the school setting that they believed warranted an evaluation of Student.

Complainant's argument that he exhibited behaviors indicative of autism throughout his school years sufficient to invoke Respondents' child find responsibilities is unpersuasive and relies almost entirely on Mother and Student's after the fact testimony about how Student presented during his school years. In this regard, it is particularly noteworthy that not a single one of the mental health providers that Student saw during his school years ever suggested an autism diagnosis or recommended further evaluation based on behaviors consistent with an autism diagnosis. Likewise, none the teachers or other education professionals with whom Student came into close and sustained contact during his 13 years in the district ever suggested that Student be evaluated further based on behaviors characteristic of autism or Asperger's syndrome. Student was diagnosed with autism by a provider he met with for 60 minutes two years after graduation from high school based on information provided solely by Parents and Student.

Finally, Complainant argues that he should have been identified through child find based on the impact of Ehlers-Danlos Syndrome on his handwriting and on his progress in physical education. These arguments are not supported by any credible or persuasive evidence. Student met expectations in physical education throughout his school years and there is no evidence that either Parents or any district personnel raised concerns about his progress in physical education.⁵⁰ There are a few stray references to Student's

⁵⁰ Student did in July 2012, prior to his senior year of high school, seek an excuse from his doctor not to attend physical education class. The doctor's notes reflect that Student had never

handwriting in educational documents throughout his 13 years of schooling in the district, but nothing that required Respondents to evaluate him for a disability on this basis.

B. Twelfth Grade

There is very little evidence in the record regarding the process that Respondents engaged in when Mother and Flynn first identified Student as having a PTSD diagnosis in the spring of his junior year in high school. A meeting was held in August 2012, the summer before Student's senior year, at which time a 504 plan was developed that incorporated Flynn's suggestions for Student. A short time after that meeting, and presumably around the beginning of the school year, Flynn wrote a letter to the high school principal noting that Student's PTSD-related anxiety was manifesting in panic attacks that Student was receiving "medical and psychological" treatment for. Flynn recommended that Student be provided educational services in his home, where he felt the most comfortable and safe.

The substance of Flynn's letter in relation to whether Student has a qualifying disability under the IDEA will be discussed below. For child find purposes, however, it is enough to note that in the fall of 2012 a treating mental health professional informed the district that Student needed partial instruction in the home setting due to a mental health diagnosis and anxiety in the school setting. This assertion should have triggered Respondents to request consent from Parents to conduct a full initial evaluation under their child find obligations.

While the record is largely silent as to why this did not happen, reading between the lines it does not appear that Respondents gave much credence to Flynn's opinion. The information Flynn provided was out of sync with what Respondents' personnel had previously observed of Student in the school setting and Respondents had a long history of fielding complaints by Mother that were exaggerated or inaccurate. Notwithstanding that, the record does not contain any evidence that Respondents engaged in any follow up after this communication, apart from granting Student permission to take classes online and, later, waiving the requirement that he take three classes during the spring semester. Had Respondents taken additional steps to probe the extent and nature of the limitations that Flynn believed supported his recommendation of partial at home schooling, they may not have violated their child find obligations.⁵¹ This information,

been denied or restricted participation in sports or any other activity by a doctor and had experienced no injuries or illnesses since his last check up or sports physical. Ultimately, the doctor wrote him a note restricting him to participation in "nonstress sports." (Exh. 49-25-28). Student had just been evaluated at University of Iowa in April 2012 for the third time for Ehlers-Danlos syndrome; the doctors there again concluded that he did not meet the criteria for diagnosis. In the notes from that visit, the doctor noted that Student had been able to participate in physical education and participates in concert and marching band. (Exh. 49-19). Even Dr. Tinkle, who ultimately diagnosed Student with Ehlers-Danlos syndrome in 2014, noted that he "experiences little pain or complications from his EDS." (Exh. 48-1).

⁵¹ See, e.g., *M.G. v. Williamson County Schs.*, 720 Fed. Appx. 280, 285 (unpublished) (finding that a district did not overlook clear signs of disability or lack rational justification in deciding

however, was sufficient to raise a suspicion that Student was a child with a disability in need of special education.

Did Respondents Fail to Comply with Procedural Safeguards under 20 U.S.C. § 1415(d)(1)(A)?

The language of the exception outlined in subsection (ii) of the IDEA's limitations provision plainly indicates that only the failure to supply statutorily mandated disclosures can toll the statute of limitations. A complainant must show that the district failed to provide him or her with a written notice, explanation, or form specifically required by the IDEA statutes and regulations in order to invoke this exception.⁵²

In the fall of 2012, after receiving the letter from Flynn, Respondents should have requested consent to undertake a full initial evaluation in order to determine whether Student was a child with a disability in need of special education. The district is required, upon initial referral of a student for evaluation, to provide a copy of the procedural safeguards to parents.⁵³ At this point, the district effectively withheld information from Parents that was required to be provided under the IDEA.

Establishing evidence that one of the exceptions applies, however, is insufficient to toll the limitations period. It must also be shown that the misrepresentations or withholding of information caused the complainant's failure to request a hearing or file a complaint on time. Therefore, where the evidence shows that parents were already fully aware of their procedural options, they cannot excuse a late filing by pointing to the school's failure to formally notify them of the safeguards.⁵⁴ In this case, there is no evidence to suggest that Parents were aware of the procedural safeguards under the IDEA. Student had never been evaluated for special education previously, therefore there is no point at which Parents would have been provided this information. While Parents attempted to redress similar grievances against the school district in their 2012 complaint filed with the Iowa Civil Rights Commission, it is not the knowledge of the facts underlying the cause of action that is relevant for the tolling of the limitations period, but knowledge of procedural options under the IDEA. The fact that Parents filed a complaint with the Iowa Civil Rights Commission in fact bolsters the argument that Parents were unaware of procedural protections under the IDEA; had they known about their right to file a due process complaint, they likely would have done so at that point.

Was Student an Eligible Individual under the IDEA?

As Complainant has acknowledged, a school's failure to comply with child find obligations is a procedural violation of the IDEA.⁵⁵ Under the IDEA, a procedural violation denies FAPE only where the procedural inadequacies:

not to evaluate a student where it effectively utilized general intervention strategies and later an individualized Section 504 plan to ensure that the student was making adequate progress).

⁵² *D.K.*, 696 F.3d at 246.

⁵³ 20 U.S.C. § 1415(d)(1)(A).

⁵⁴ *D.K.*, 696 F.3d at 246-47.

⁵⁵ Complainant's Post-hearing Brief, p. 34; *see also D.K.*, 696 F.3d at 249.

- (I) impeded the child's right to a free appropriate public education;
- (II) significantly impeded the parents' opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education to the parents' child; or
- (III) caused a deprivation of educational benefits.⁵⁶

Having determined that Complainant can allege violations going back to August 2012 under subsection (ii) of the IDEA's tolling provision, it is necessary to determine whether, had Respondents evaluated Student during that time period, he would have been eligible for special education under the IDEA. In order to be eligible for a remedy for a child find violation, a student must be found to have a qualifying disability and need special education as a result of that disability. The IDEA does not penalize districts for not timely evaluating students who do not need special education.⁵⁷

The question of whether a child is an eligible individual under the IDEA includes two considerations: 1) whether the child has a qualifying disability; and 2) whether, by reason of that disability, the child needs specially designed instruction.⁵⁸

A. Disability

Complainant alleges that, had they conducted an evaluation, Respondents would have found him to be eligible under the IDEA as a child with a disability based on five separate diagnoses: 1) autism spectrum disorder; 2) Ehlers-Danlos syndrome; 3) generalized anxiety disorder; 4) social anxiety disorder; and 5) post-traumatic stress disorder.

Autism: Autism is a disability listed under the IDEA that may qualify a child for special education.⁵⁹ Autism is defined under the implementing regulations as a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.⁶⁰ Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance.⁶¹

Student saw a number of mental health providers during his school years, including Dr. Gould, Dr. Anderegg, and Dr. Flynn. All of these providers addressed, in one way or another, interpersonal issues that Student was dealing with during his school years. Not a single one of these providers diagnosed Student with autism, not is there any evidence that any of these providers even raised the possibility that Student might have an autism

⁵⁶ 20 U.S.C. §1415(f)(3)(E)(ii); 34 C.F.R. § 300.513(a)(2).

⁵⁷ *D.G. v. Flour Bluff Indep. Sch. Dist.*, 481 Fed. Appx. 887, 891 (5th Cir. 2012) (unpublished).

⁵⁸ 20 U.S.C. § 1401(3)(A); *see also* 34 C.F.R. § 300.8(a)(1).

⁵⁹ 20 U.S.C. § 1401(3)(A)(i).

⁶⁰ 34 C.F.R. § 300.8(c)(1)(i).

⁶¹ 34 C.F.R. § 300.8(c)(1)(ii).

spectrum disorder. All of these providers spent significantly more time with Student than did Dr. McGrath Wetjen, and did so at times when Student was enrolled in the district. The fact that they did not observe anything that led them to evaluate Student for or diagnose Student with autism spectrum disorder greatly undermines Complainant's argument that Respondents' personnel failed to notice obvious markers of this diagnosis and that an evaluation at any point during Student's years in Respondent district would have revealed this diagnosis.

Additionally, while Dr. McGrath Wetjen did author a letter – at Parents' request and in conjunction with attempts to keep Student on their insurance – stating that her evaluation suggested that Student had a history of behaviors associated with autism spectrum disorder that were apparent since early childhood, she explicitly testified at hearing that she reached no conclusions about when Student first exhibited symptoms of autism spectrum disorder. She did not meet Student until he was 20 years old and, even then, spent approximately one hour with him. In addition, all of the information she had about Student's behaviors during early childhood came from Student and Mother, whose credibility on these points is questionable, at best.

The credible evidence does not support the conclusion that Student was eligible under the IDEA by reason of autism in the 2012-13 school year.

Ehlers-Danlos Syndrome: Ehlers-Danlos syndrome, which is a connective tissue disorder, is not specifically listed in the IDEA or its implementing regulations as a qualifying disability. A child may be considered a child with a disability, however, if the child has “an other health impairment.”⁶² Other health impairment under the IDEA means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment and is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome. Additionally, the impairment must adversely affect the child's educational performance.⁶³

The parties dispute whether Student was actually diagnosed with Ehlers-Danlos Syndrome while he was enrolled as a Student in Respondent district. Mother asserts that Student was diagnosed in 2005. The evidence, however, reflects that Student's general practitioner noted a suspicion of Ehlers-Danlos syndrome in 2005, but indicated he believed Student's somewhat clumsy gait would improve over time. The University of Iowa Connective Tissue Disorder clinic three times determined that Student did not meet the criteria for Ehlers-Danlos syndrome, in 2010, 2011, and 2012. Student received this diagnosis in 2014, after he had already graduated from high school. Dr. Tinkel spent approximately one hour with Student before giving him the diagnosis.

⁶² 34 C.F.R. § 300.8(a)(1).

⁶³ 34 C.F.R. § 300.8(c)(8).

While there is some evidence that Student's shoulders may have hurt as a result of hypermobility and that the school allowed him, during at least one academic year, to have an extra set of books at home in order to avoid lugging a heavy backpack, there is no credible or persuasive evidence that any issues related to hypermobility adversely affected Student's educational performance. Since an adverse affect on educational performance is required, it is not necessary to delve deeply into whether this issue resulted in limited alertness with respect to the educational environment such as to qualify as an other health impairment. A cursory examination reflects that it did not. This was not an issue that had a detrimental impact on Complainant's alertness with regard to the educational environment.

Complainant has also cited to difficulties with running, messy handwriting, and upper body coordination and strength problems, allegedly as a result of Ehlers-Danlos syndrome. With the exception of some stray comments in Student's educational records over his 13 years of schooling in the district about handwriting, there is no persuasive evidence that Ehlers-Danlos syndrome caused Student to be unable to access the general education curriculum. Student's kindergarten teacher's direction to practice cutting is entirely consistent with age appropriate skill development and does not evidence any peer discrepancy as a result of a disability. When Student was evaluated by a neurologist in second grade, the neurologist noted that Student's muscle tone, strength, gait, and coordination were normal. The majority of the evidence that Complainant cites in support of this argument is testimony from himself and Mother related to limitations. As discussed above, this testimony is not considered reliable for a variety of reasons.

Emotional Disturbance: Emotional disturbance is defined under the IDEA regulations as:

[A] condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

- (A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.
- (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
- (C) Inappropriate types of behavior or feelings under normal circumstances.
- (D) A general pervasive mood of unhappiness or depression.
- (E) A tendency to develop physical symptoms or fears associated with personal or school problems.⁶⁴

As already discussed above, Student did not exhibit any signs that he had a disability that adversely affected his educational performance prior to the fall of 2012. What changed in the fall of 2012 was Flynn's assertion that Student's diagnosis of PTSD was

⁶⁴ 34 C.F.R. § 300.8(c)(4)(i).

causing panic attacks and his support of educational services being provided in Student's home.

It is worth noting that Flynn's letter does not change the long pattern of incongruence between what was being reported by Mother about Student and what was being observed by school personnel in the school setting. It is likewise important to consider that all of the information that Flynn obtained about Student came from Student and Parents. Flynn did not access any school records and he testified at hearing that he had no evidence that he reviewed any of Student's records from other health care providers, including mental health providers. Accordingly, Flynn made his conclusions about what learning environment would be best for Student without any input from school personnel. As of the date of hearing, Flynn no longer had his treatment records of Student; consequently, apart from Flynn's recollection and the two letters that he sent to the school, there is little additional evidence regarding Flynn's treatment of Student or the basis of his conclusion about Student's need for education in the home environment.

Complainant has not presented any evidence about what specifically occurred during the beginning of the August 2012 school year to prompt Flynn to recommend that Student be allowed to access online courses at home. ██████ testified that the school allowed Student to access the online courses at Student's request and based upon Flynn's recommendation. There is no indication that any educator or other district staff member either suggested or endorsed the idea that there were barriers to Student learning in the school setting his senior year. While there were a couple of bullying complaints that were filed at the end of Student's junior year, Student successfully completed his coursework during the spring semester of 2012 and ended up with 4 As, a B, a B-minus, and a C-minus that semester. The C-minus was in advanced placement U.S. History, a course Student had received a C-plus in during the fall semester of his junior year.⁶⁵ His absences during his junior year were not notably different or greater than his absences in his preceding years in the district. None of the school personnel who interacted with Student regularly in either the spring of his junior year or fall of his senior year expressed any belief that Student was experiencing academic or social/interpersonal deficits in the school setting. The opinions of teachers in this regard are particularly instructive, even when they conflict with the opinions of outside professionals or evaluators, as they spend more time with students than do outside evaluators.⁶⁶ In this case, the opinions of Student's teachers and other school personnel are particularly instructive as these are likely the only people who saw Student without Mother during this time period.

Complainant has likewise not presented any evidence to indicate that the time he spent in the school building during the 2012-13 school year posed problems. Complainant has stressed that in order to be in the building for one class that year he had to have one or both of his parents sitting outside of the building in their car. Mother's testimony, however, established that she did this anyway, all throughout Student's school career. It is unclear how Student's senior year was different.

⁶⁵ See Exh. 1-7.

⁶⁶ See *D.L. v. Clear Creek Indep. Sch. Dist.*, 695 Fed. Appx. 733, 737 (5th Cir. 2017) (unpublished).

In response to a question about whether Student exhibited improvement while working with him during the 2012-13 academic year, Flynn testified that he thought so and stated that just becoming aware of the problem was a big help. Without treatment records, however, there is scant evidence in the record about Student's mental health during the 2012-13 academic year. There is some indication, however, that reducing the time Student spent at school was actually detrimental to him. When Dr. Anderegg started seeing Student again in July 2013, after his graduation from high school, he noted that Student's anxiety had intensified the more he avoided things that caused him stress. Dr. Anderegg began therapy that focused on exposing Student to things that caused him stress, rather than avoiding them. Dr. Anderegg also did not diagnose Student with PTSD.

Complainant has not proven that any mental health issue in the 2012-13 school year adversely affected his educational performance such that he was an individual with a qualifying disability under the IDEA. Respondents, who had a long history of conflict with Mother, allowed Complainant at the family's request to complete his coursework online as he was nearing graduation. Respondents' desire to minimize conflict with the family and to allow Student, who had a history of academic success, to complete his coursework at home and graduate was a reasonable decision under the circumstances. Because Student was not an individual with a qualifying disability, he was not eligible for special education during the 2012-13 school year and Respondents' violation of the child find requirements does not entitle him to any remedy.

While Respondents did implement a 504 plan for Complainant, the eligibility requirements for a 504 plan and the IDEA differ in significant respects. Eligibility under Section 504 requires only that a student have a physical or mental impairment that substantially limits one or more major life activities, without regard to the ameliorative effects of mitigating measures such as therapy.⁶⁷ There is no requirement, as under the IDEA, that the impairment adversely affect the student's educational performance. Regardless of those differences, however, this proceeding need not answer the question of whether Respondents accurately classified Student for purposes of Section 504. Respondents' implementation of a 504 plan is not dispositive on the issue of whether Student is eligible under the IDEA.

B. Need for Specially Designed Instruction

Eligibility under the IDEA requires a qualifying disability as well as the need for specially designed instruction as a result of the disability. As Complainant has not proven that he had a qualifying disability during the relevant time period, there is no need to discuss the necessity of specially designed instruction.

Summary

While the relationship between Complainant's family and Respondents was marked by significant conflict during his school years, Complainant has not proven that

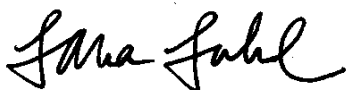
⁶⁷ See 28 C.F.R. § 35.108(a)(1)(i), (d)(1)(viii), (d)(4).

Respondents had any reason to suspect that he had a qualifying disability that may have necessitated special education until August 2012, which was the start of his senior year in high school. Because Respondents did not seek consent for a full initial evaluation at the time that their child find obligations were triggered and did not, therefore, provide Parents with the procedural safeguards document that is required under the IDEA, the two-year limitations period for filing a due process complaint is tolled back to August 2012. Complainant, however, has failed to prove a qualifying disability that would have resulted in his eligibility under the IDEA. Consequently, he is entitled to no remedy for the procedural child find violation.

ORDER

Complainant has not proven that Respondents violated the IDEA as alleged in the due process complaint. Complainant's requested relief is therefore denied and the due process complaint is dismissed.

Dated this 16th day of August, 2019.



Laura E. Lockard
Administrative Law Judge

cc:
Cheryl Smith, IDOE (via electronic mail)

David Roston, Attorney for Complainant (via electronic and first class mail)
Roston Law Firm
2000 Forest Hill Circle
Coralville IA 52241

Dustin Zeschke, Attorney for Respondents (via electronic and first class mail)
Swisher & Cort PLC
528 W 4th Street
PO Box 1200
Waterloo IA 5074-1200