

BEFORE THE IOWA DEPARTMENT OF EDUCATION
(Cite as 30 D.o.E. App. Dec. 105)

<p>In re [REDACTED] a child:</p> <p>[REDACTED] and [REDACTED],</p> <p style="padding-left: 40px;">Complainants,</p> <p style="padding-left: 40px;">v.</p> <p>WOODWARD-GRANGER COMMUNITY SCHOOL DISTRICT and HEARTLAND AREA EDUCATION AGENCY,</p> <p style="padding-left: 40px;">Respondents.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Dept. Ed. Docket No. SE-531 DIA No. 21DOESE2003</p> <p>DECISION</p>
--	--	---

On or about April 5, 2021, Complainants [REDACTED] and [REDACTED] filed a due process complaint against Respondents Woodward-Granger Community School District (“LEA” or “district”) and Heartland 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 41.¹

Hearing in this matter was held on June 21 through June 24, 2021 by videoconference. Attorney Wendy Johnson represented Complainants [REDACTED] and [REDACTED]. Attorneys Katherine Beenken and Elizabeth Heffernan represented Respondents. Matt Adams attended the hearing as representative of the district. Kristi Upah and Misti Christensen attended the hearing as representatives of the AEA.

The following witnesses testified at the hearing: [REDACTED]; [REDACTED]; Kristi Upah; [REDACTED]; Nancy Lehman; Matt Adams; [REDACTED]; [REDACTED]; [REDACTED]; Misty Christensen; and [REDACTED].

Complainants’ Exhibits 1 through 24 were admitted as evidence. Respondents’ Exhibits RESP-001 through RESP-764 were admitted as evidence. Additionally, the parties agreed that two links from the Iowa Department of Education’s i3 webpage, referenced during the testimony of Upah, would be included in the record. The June 22, 2021 e-mail from attorney Katherine Beenken containing those links is included in the record.

The parties requested that a schedule be established to submit post-hearing briefs. Complainants’ brief was due July 29, 2021. Respondents’ brief was due August 23,

¹ In the due process hearing request, Complainants listed Ankeny Community School District as the district where Owen attends school. Respondents subsequently filed a motion to dismiss Ankeny CSD as a party to the action. That motion was granted by separate order dated May 6, 2021. Accordingly, Ankeny CSD is not a party to this action.

2021. Complainants' reply brief was due September 13, 2021. The parties timely submitted briefs according to this schedule.

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 October 8, 2021 to accommodate the agreed upon briefing schedule and the drafting of a decision in the case. The motion was granted.

IDENTIFICATION OF WITNESSES

In the interest of protecting the privacy of [REDACTED], [REDACTED] and the following individuals will be referred to by the following designations in this Decision:

[REDACTED]: Student

[REDACTED]: Mother

[REDACTED]: Father

[REDACTED]: Parents

Special education teacher [REDACTED]: SE Teacher

FINDINGS OF FACT

Background: Student is an eight year old boy who has a diagnosis of Down syndrome with associated speech delays and cognitive delays. Student is a resident in Respondent Woodward-Granger Community School District. Student attended school in the district from the time he turned three years old through the 2019-20 academic year. Student has three siblings who attend [REDACTED] (“[REDACTED]”), an accredited private school. (Father, Mother testimony).

Student is an eligible individual under the IDEA and has had throughout his time in school goals in the academic areas of reading, writing, and math, as well as in the areas of communication and behavior. While family members and others who regularly interact with Student can understand him fairly regularly, strangers have difficulty. Student is a multimodal communicator; he uses verbal speech, sign language, a communication device, and gestures. Student’s speech significantly impacts his ability to communicate with others and navigate in the world, including impeding meaningful participation in some activities. In addition, Student’s cognitive delays impact his speech. (Mother, Father, [REDACTED] testimony).

Mother is a licensed teacher in the state of Iowa. Prior to staying home to care for her children, she was employed by Ankeny CSD for seven years as a fifth grade teacher, one year as a media specialist, and two years as an instructional coach. Mother does not hold any license or certification related to special education and did not conduct evaluation of students eligible for special education in the context of her prior work as an educator. (Mother testimony).

2018-19 School Year: During the 2018-19 school year, Student initially began attending the transitional kindergarten (TK) program in the district. The decision to enroll a student in the TK program versus the district's traditional kindergarten program is one that is made by parents, typically after discussion with a student's preschool teacher. The preschool teacher typically makes a recommendation based on data and observations of the student, then parents decide which program they wish their student to attend. (Mother, SE Teacher testimony).

SE Teacher was Student's special education teacher during the 2018-19 school year. It was her first year teaching in the district; she has been a licensed Iowa teacher for 11 years. SE Teacher has a master's degree in curriculum instruction and holds an elementary education licensure and a K-8 special education endorsement. Since SE Teacher was not employed by the district during the 2017-18 school year, she was not involved in the discussions with Parents regarding whether to enroll Student in the TK or the traditional kindergarten program. (SE Teacher testimony).

During the summer of 2018, prior to beginning TK, Student's verbal communication skills were limited; he would typically first attempt sign language paired with attempted speech that was difficult to understand. Student received ESY services with regard to his communication goal from speech language pathologist ██████████ during the summer prior to entering TK. Once the school year began, Student received speech services from ██████████ approximately two times per week for fifteen minutes a session. The sole focus of the sessions was verbal communication skills and Student made good progress in ██████████ opinion. (██████████ testimony).

During fall 2018 parent teacher conferences, SE Teacher was involved in discussions with Parents regarding Student's progression to the next grade. Parents wanted Student to progress to first grade in the 2019-20 school year directly from TK. In SE Teacher's experience, children typically progressed from TK to traditional kindergarten to first grade. After conversations with the building principal and others, SE Teacher went back to parents to describe the differences between TK and traditional kindergarten standards and what Student would be missing if he progressed directly from TK to first grade. SE Teacher recommended to Parents that Student continue in TK then move to traditional kindergarten the following academic year, highlighting the benefits of TK for Student, including work on social play, letter sounds, and reading. Parents decided to move Student from TK to traditional kindergarten in mid-October rather than to have him continue in TK and move to traditional kindergarten in the 2019-20 academic year. Parents expressed to SE Teacher that they did not want Student to be left behind from his peers. (SE Teacher, ██████████ testimony).

Parents became much more aware of how discrepant Student was from his peers when he started in kindergarten. Mother testified that it "took [Parents'] breath away" to see Student's assessment data and standardized test results at the end of the kindergarten year. (Mother testimony).

Student received extended school year (ESY) services for his communication goal during summer 2019 from ██████████. Student had recently obtained a speech generating device and the team recommended that Student receive ESY services to maintain what he had

learned with respect to the device over the summer. (RESP-050-51, 060; [REDACTED] testimony).

November 8, 2019 IEP: Student entered first grade in the 2019-20 school year. Student's IEP was amended in November 2019. Information in this IEP shows progress monitoring from April 2019, when the IEP team had most recently met to review the IEP, through November 2019. SE Teacher helped write the academic and behavior goals and Parents had involvement in the development of goals. It was SE Teacher's common practice to share data with Parents when she began thinking about and drafting goals and to get Parents' input prior to the IEP meeting. A discussion with the full team, including Parents, would also occur at the IEP meeting.² (SE Teacher testimony; RESP-287-334).

Student had three reading goals when the IEP team met in November 2019:

Reading Goal 1: In 36 school instructional weeks, given specially designed reading instruction and using a reading rubric that includes identification of uppercase letters and lowercase letters using a 1-4 scoring system, [Student] will identify individual letters of the alphabet to be able to obtain 95% of rubric points for uppercase letters and 90% of rubric points for lowercase letters for 3 of 4 consecutive data points. (RESP-291).³

Reading Goal 2: In 36 school instructional weeks, given specially designed reading instruction and using a reading rubric that includes identification of who, what, when questions after being read aloud a story once and using a 1-4 scoring system, [Student] will answer questions who, what where, using multi-modal communication, to obtain 95% of rubric points for 3 of 4 consecutive data points. (RESP-292-93).

Reading Goal 3: By 03/31/2020, given specially designed reading instruction and using a reading rubric that includes identification of letter sounds using a 1-4 scoring system, [Student] will identify individual letter[] sounds to be able to obtain 95% of rubric points for 3 of 4 consecutive data points. (RESP-306-07).

Student met Reading Goal 1 by the time the IEP was amended in November 2019 therefore that goal was discontinued. (RESP-291, 310; SE Teacher testimony).

² This is why on some of the November 8, 2019 IEP goals there is a notation indicating that there was an amendment on November 7, 2019. This was an amendment that SE Teacher would have made after discussing with Parents but prior to the full team meeting; it was discussed again at the IEP team meeting on November 8, 2019 as well. (SE Teacher testimony; RESP-308).

³ The 1-4 scoring system referenced on a number of Student's academic goals was a way for his teachers to identify the level of support he required to complete the task; a higher number of points correlated with Student completing the task more independently or with less support. (See, e.g., RESP-298, 306-07).

Student had also made progress on Reading Goal 2 from April 2019 through November 2019. The team decided to keep this goal in Student's IEP because of inconsistencies in progress monitoring data; they wanted to make sure that progress would continue. Additionally, Mother related to the team that the inconsistencies in progress related to Student's lack of interest in the story selected; if he did not like the story, he did not perform well on the questions. The team discussed and SE Teacher implemented moving more to nonfiction stories, as these interested Student more. While Student was below the aim line on progress monitoring for Reading Goal 2, more challenging books had been introduced when Student transitioned to first grade and SE Teacher was working on adjusting books to reflect Student's preferences. (RESP-312; SE Teacher testimony).

Student made steady progress on Reading Goal 3 and was above the aim line on progress monitoring from November 2019 through March 2020, right before the COVID-19 closure began. (RESP-327; SE Teacher testimony).

Student also had three math goals in the November 2019 IEP:

Math Goal 1: In 36 instructional weeks, given specially designed math instruction and using a math rubric that includes identification of numbers 1-20 using a 1-4 scoring system, [Student] will identify the numbers, using multi-modal communication, to obtain 95% of rubric points for 3 of 4 consecutive data points. (RESP-294).

Math Goal 2: In 36 school instructional weeks, given specially designed math instruction and using a math rubric that includes counting manipulatives between 1 and 10 from a larger quantity and identifying which set of two manipulatives between 0 and 10 has more, [Student] will apply math skills that allow him to obtain 10/15 rubric points, or 66% of rubric points, on 3 of 4 consecutive trials. (RESP-296).

Math Goal 3: By 3/31/2020, given specially designed math instruction and using a math rubric that includes counting manipulatives between 1 and 10 from a larger quantity, [Student] will apply math skills that allow him to obtain 9/10 rubric points, or 90% of rubric points, on 3 of 4 consecutive trials. (RESP-308).

Student had a slight dip in Math Goal 1 after the summer break, but rebounded quickly to where he had been at the end of kindergarten. Student was making progress in this goal that was slightly below the aim line; SE Teacher was monitoring this but it did not give her significant concern. In response to a slight dip in progress monitoring data in January and February 2020 she switched up the sorting activities that Student was completing to make the work more hands on. He rebounded to the trend line in March 2020 prior to the COVID-19 closure. (SE Teacher testimony; RESP-314-15).

Math Goal 2 was discontinued as part of the November 2019 IEP amendment. Student met the part of the goal related to identifying which set of manipulatives had more, but

was still struggling with counting manipulatives from a larger quantity.⁴ The second part of the goal related to counting manipulatives from a larger quantity was moved to a separate goal (Math Goal 3). Student's baseline on Math Goal 3 in November 2019 was 20%, with a goal of 90% by March 2020. SE Teacher would typically not have included a goal that required that amount of progress during approximately four months of instructional time, but in conversations with Parents they identified that the end date of particular IEP goals did not concern them. They wanted rigorous goals for Student and were focused on overall growth.⁵ Parents did not want to keep goals out of an IEP because the goal would not be able to be met by the next IEP review date. SE Teacher included a 90% target for the goal because that was what would indicate that Student had met the goal. She and Parents understood that achieving the 90% target was unlikely to happen by March 2020. (RESP-296, 308, 316; SE Teacher testimony).

Student struggled with Math Goal 3, which was a rigorous goal for him. SE Teacher was having difficulty figuring out why the concept was not connecting for Student; during the course of the 2019-20 school year, she consulted with multiple people, including other teachers who worked with students with intellectual disabilities and an AEA consultant, regarding Student's lack of progress on this goal. (SE Teacher testimony).

In addition to the reading and math goals, Student also had a writing goal relating to printing letters. Student had struggled with this goal during the 2018-19 school year but made significant improvement during the 2019-20 school year. (RESP-318-19; SE Teacher testimony).

While the goals in Student's IEP were rigorous, they were not age inappropriate. Each goal contained different components that are introduced in pre-kindergarten and carried into kindergarten. SE Teacher modified the specially designed instruction that Student was receiving based upon how Student was performing within each goal area, including which parts he had mastered and areas where he needed additional work. Even where Student had met goals, she spiraled instruction back to offer practice on concepts that he had mastered. SE Teacher employed a four point decisionmaking model, in which she would use a constellation of four data points to determine whether instructional change was necessary in a particular goal area. (SE Teacher testimony).

Student also had a behavior goal related to transition behaviors. He showed some regression on this goal between the end of kindergarten and the beginning part of first grade in fall 2019. First grade is more rigorous than kindergarten, with more sitting, less play, and less free choice permitted; a regression under these circumstances was not unexpected. In response to the changing expectations in first grade, SE Teacher began using a new visual format for the "first next then" strategy used with Student. This was discussed at the November 2019 IEP team meeting. Additionally, the team noted that Student needed more frequent breaks so began to work on Student asking for breaks. The team talked to Parents about using "first next then" to help Student get through the

⁴ SE Teacher continued to spiral back to the portion of the goal that Student had met, as she did with all of her instruction to Student. (SE Teacher testimony).

⁵ At hearing, Mother testified that she wanted "stretch goals" for Student; that is, bigger goals with more pieces. (Mother testimony).

day and understand the progression of tasks. (RESP-300-01, 320; SE Teacher testimony).

Student met the fine motor goal contained in his April 2019 IEP related to pencil grasp, stabilizing paper, and pencil manipulation by the time the November 2019 IEP was developed, therefore that goal was discontinued. (RESP-304-05, 336).

During the 2019-20 school year, █████ continued seeing Student twice per week for 15 minute sessions. The primary focus during the sessions was verbal communication skills, but as Student is a multimodal communicator █████ would follow his interest regarding the mode in which he wanted to communicate. In addition to improvement with verbal speech sound production skills, █████ noted Student made progress utilizing his speech generating device. In May 2019, he was improving his ability to produce three or more word utterances independently with the device in the context of requesting items or activities in the classroom. By October 2019, █████ noted that Student could use the speech generating device to request items in full sentences when given one verbal prompt. Parents did not raise any concerns with █████ about Student's progress in the area of speech until the spring 2020 COVID-19 closure. (█████ testimony; RESP-336).

March 25, 2020 Draft IEP: On March 25, 2020, a draft IEP was produced in anticipation of an IEP team meeting in the spring. Prior to the draft being circulated to team members, Parents had significant input into the content, including input into each of the goals in the draft. SE Teacher had multiple conversations by telephone and in person with Parents, especially since Student would be transitioning to a new building for second grade and would no longer have SE Teacher as his teacher. SE Teacher wanted to make sure that she and Parents were on the same page with respect to goals and accommodations. Parents reemphasized their commitment to "rigorous" goals for Student. After her discussions with Parents regarding goals, SE Teacher took baseline data on all the draft goals prior to spring break, approximately the last week of February or beginning of March. (SE Teacher, Mother testimony).

The team initially planned to meet for an IEP team meeting to discuss the draft IEP on March 25, 2020. That meeting was postponed based on the COVID-19 school closure, discussed in greater detail below. The meeting was rescheduled twice and ultimately held on May 12, 2020. Due to the school closure, no instruction in any of the goal areas took place between March 2020 and May 2020. (RESP-117; SE Teacher testimony).

Spring 2020 Statewide School Closure: Respondent Woodward-Granger CSD closed for spring break on March 13, 2021. On approximately March 16, 2020, Governor Kim Reynolds made the decision to close all Iowa schools for three weeks due to the COVID-19 pandemic. No students in the district were receiving instructional services at the onset of the COVID-19 closure. (Upah; Adams testimony).

At the beginning of the closure and continuing through spring 2020, district and AEA administrators participated in almost daily meetings about the closure and its impact. Kristi Upah, chief student services officer for the AEA, participated in many emergency AEA director meetings, sometimes multiple times per day, with Barb Guy, the director

of special education for the Iowa Department of Education (DE), to discuss recent changes in interpretation or new guidance at the state and national level. The AEA frequently consulted with other AEA special education directors and Guy, as well as other bureau chiefs at the DE and DE general counsel Thomas Mayes. Likewise, district superintendent Matt Adams was also attending near daily meetings regarding the school closure, including with the DE, local superintendent groups, and public health entities. (Upah, Adams testimony).

The DE published guidance frequently during the spring of 2020. Additionally, it hosted frequent webinars for superintendents and AEA directors; these were scheduled at least weekly or more frequently from March through May 2020. Upah attended all of these webinars. Under the AEA's communication plan, any guidance went out to AEA staff, AEA practitioners working in schools if relevant, and to superintendents. District and AEA staff were expected to respond quickly to guidance that could change from hour to hour. (Upah, Adams testimony).

In addition to state guidance, national guidance provided by the United States Department of Education was shifting during the course of spring 2020. The DE typically brought new federal guidance to the attention of the AEAs. (Upah testimony).

A US DOE fact sheet published March 16, 2020 provided that “[s]chool districts and postsecondary schools have significant latitude and authority to take necessary actions to protect the health, safety, and welfare of students and school staff.” On the same date, which was the date that the initial school closure was announced by the governor, the DE published a guidance document setting out school district responsibilities with respect to students with disabilities in different situations:

Schools Closed and No Services Provided. If a school district closes its schools to slow or stop the spread of COVID-19, and does not provide any educational services to the general student population, then it would not be required to provide services to students with disabilities during that same period of time.

Schools Closed and Services Provided. If a district continues to provide educational opportunities to the general student population during a school closure, the district must ensure that students with disabilities also have equal access to the same opportunities, including the provision of FAPE under Section 504 and Title II of the Americans with Disabilities Act.

If services are provided to all students, the Department, school districts, and schools must ensure that, to the greatest extent possible, each student with a disability can be provided the special education and related services identified in the student's IEP developed under IDEA, or a plan developed under Section 504.

(RESP-463-64; 467).

In a guidance document issued the following day, the DE noted that if a district continued to provide “educational opportunities” to the general student population during a school closure, the district must ensure that students with disabilities also have equal access to the same opportunities. The guidance provided an example of equal access to opportunities:

For example, if packets are being sent home, can the eligible individual access the information in the packet and complete assignments? IEP teams may need to consider whether the individual can receive FAPE through online learning if the school is providing online learning to all students. The IDE is developing tools and supports for IEP teams to consider when making this determination.

(RESP-470).

The DE guidance also noted that IEP teams should consider using alternative ways of meeting instructional needs of students and to document alternative service provision, the effect of the services, and which services were not able to be met. In webinars that the DE held, it was communicated that this documentation of unmet services would be useful as students returned to more normal school schedules to determine the potential degree of recovery services that would be needed. (RESP-470; Upah testimony).

On March 20, 2020, the DE updated its COVID-19 Frequently Asked Questions (FAQ) document, including the following:

If we offer a variety of options for distance learning opportunities (optional – in either paper or electronic formats) for all of our students, attached with a message that says “if these activities aren’t appropriate for your child, please contact your teacher for additional options,” what else should we take into consideration?

It depends. If the options include a variety of ways to access, for example different languages, or websites accessible to individuals with disabilities, then a statement of who to contact for more supports is helpful. If, however, the district has not attempted to provide broadly accessible materials, then such a statement is not sufficient. The responsibility to ensure educational opportunities are for all students belongs to the district, not parents. If the district is providing any options for educational activities, it needs to ensure from the outset that the opportunities are universally accessible. If the district is using the materials as educational services, special education teachers need to adapt and modify the materials as appropriate to the individual.

...

New (3-26-20): What does it mean to ensure equitable access for special education students and what needs to be considered?

Equitable access to education occurs when individuals with disabilities can acquire the same information, engage in the same interactions, and enjoy the same programs and activities as their nondisabled peers, with substantially equivalent ease of use. This includes individuals who are blind, deaf, or hard of hearing, those who have motor or physical impairments that limit their ability to use standard peripheral devices and individuals with cognitive disabilities.

Many individuals with disabilities use assistive technology to navigate websites, access documents, and interact with online content. Some examples of assistive technology include screen readers that convert visual information into speech, closed captioning which displays text of the audio content, and speech recognition software which transcribes spoken language to text. These assistive devices are easily incorporated into the daily routines of schools and classrooms. It becomes more difficult, however, to ensure students can use their assistive devices to access educational services and opportunities when not in a routine educational environment.

...

New (3-26-20): What is the role of AEA special education services if the district is closed but providing optional educational enrichment opportunities?

If the district is closed to all students and no educational services are being provided, the AEA is not required to provide IEP services to individuals as specified in each individual's IEP.

If the district is closed to all students and is providing optional educational enrichment opportunities, the AEA may offer consultation services to district administrators, teachers, and other educational staff to ensure access to educational enrichment activities. The AEA is not required to provide IEP services to individuals as specified in each individual's IEP. An AEA may provide general consultation to community members at the discretion of the AEA.

(RESP-493-94).

In a guidance document prepared for families of students with disabilities receiving special education services, the DE noted that when school resumes a child may be eligible for services to make up for the services the child missed that were essential for FAPE during the time of closure. The guidance document indicated that more information would be provided by the DE at a later date. (RESP-496).

During the original three week closure, the district was focused on how to keep families engaged and connected during what it believed would be a relatively short pause. Teachers worked over spring break to have educational enrichment opportunities ready

to go the first week after break. As of March 26, 2020, the end of spring break, the district was closed but providing optional educational enrichment opportunities to students. The primary purpose of the voluntary educational enrichment opportunities provided during this time frame was engagement and connection. DE guidance to schools was clear that they could not take attendance or grade assignments during the closure; all activities were voluntary. (Adams testimony).

Communication between AEA, District, and Parents during Spring 2020 Closure:

Student's general education teacher sent an e-mail to all parents on March 22, 2020 attaching learning opportunities for students to work on at home in the areas of reading, math, writing, science, and social studies. She invited parents to have students do as much as they were able and to reach out with questions or if they needed assistance. The next day, SE Teacher sent Mother a two page e-mail communicating her plan to support the materials that Student's general education teacher had sent out to all students. SE Teacher noted that she would be sending an e-mail regarding modifications to material whenever the general education teacher provided instructional materials. In this e-mail, SE Teacher included her suggestions specifically for Student related to the general education teacher's March 22 e-mail. The general education teacher had included a number of web-based options for students. SE Teacher included information about what level Parents should select for Student within these resources and how to customize the instruction for Student; for example, not using timed games and activities because they would not allow enough processing time and having Student use his communication device to answer questions after reading articles to him. SE Teacher communicated that she had set an account up for Student on a website providing access to guided reading books at individual reading levels. She suggested that Mother choose level AA or A books. She also provided account information for a phonics program that would allow Student to take a placement test to start; she suggested that Mother sit with Student while completing it because otherwise Student would enjoy pushing buttons at random. SE Teacher provided a website for sight words and gave Mother information about the level Student had been working on. She also identified five specific math activities that Student could practice and identified two websites that could be used for additional practice. In the e-mail, SE Teacher also volunteered to type out lesson plans if it would be helpful; she noted, however, that she did not want Parents to feel forced to do these voluntary activities. (RESP-734-36).

On March 27, 2020, SE Teacher sent another e-mail to parents to check in. In this e-mail, she wrote:

Please let me know what you'd like from me. I am planning on sending home PDF packets and links to worksheets but I don't want to give you too much stuff so please let me know what you would like and I will get things ready for next week. If you are good with what you have just let me know. I'm open to anything.

(RESP-737).

SE Teacher also had a Zoom conference with Mother to talk about different possibilities for instruction during the closure. SE Teacher obtained access as a co-teacher to one of

the electronic platforms that the general education teacher was using so that she could post live activities and accommodations for Student as appropriate. SE Teacher and Mother also specifically talked about some of Student's math goals; SE Teacher had created some resources as part of a discussion about Student's math goals and she shared those materials with Mother. At the beginning of the COVID-19 closure, SE Teacher was communicating with Parents approximately once per week. (SE Teacher, Mother testimony).

Student's general education teacher hosted classroom Zoom meet-ups on a weekly basis during the closure that students could join if they wished to. Students would share and the teacher would provide them ideas of activities that they could do. Mother did not get the impression that many of the children were engaged and she did not think Student would be able to benefit from the presentation-based portions. Student had his communication device at home during the closure. Father indicated that Student could have used the communication device during the online class sessions, but Parents preferred for Student to use sign language and speech at home. Some of the difficulties that Student experienced in accessing the opportunities were shared by other same age peers, such as using video independently and accessing the learning platforms that teachers were using. (Mother, Father, Adams testimony).

On April 3, 2020, Mother sent an e-mail to SE Teacher, the building principal, and [REDACTED]. Mother requested updates on services and speech for IEP students moving forward. Mother noted, "[SE Teacher] has offered lots of resources and modifications, but now that we are in this for a longer haul, I'd love to know the larger plan." SE Teacher responded that there was going to be a special education Zoom meeting on April 8, after which she would get in touch with more information to figure out next steps. (RESP-756).

On April 7, 2020, Father sent a follow-up e-mail inquiring about when Student would be offered speech services, which he had already missed at that point for approximately two weeks. [REDACTED], Student's SLP, responded and enclosed the language from the March 26, 2020 guidance document regarding AEA special education services. [REDACTED] indicated that she could provide resources and consultation to families and attached a Speech and Language Enrichment Opportunities document. Pursuant to the DE guidance, the AEA permitted its speech language pathologists to provide general consultation to community members. The document that [REDACTED] sent to Parents was developed by the AEA as part of their consultation services; the document provided online and print resources separated by age range to support speech and language skills and to address articulation and fluency. [REDACTED] indicated that she was also willing to provide consultation via phone, Zoom, or e-mail if the family wished. (RESP-738-39; Comp. Exh. 9; Upah testimony).

On April 9, 2020, Mother sent an e-mail to SE Teacher indicating that Parents were working with the district superintendent on options for speech services, but wondered whether any one-on-one distance learning options via video would be available for Student with SE Teacher. SE Teacher responded, "I am happy and love to continue sending resources and can call to give you some ideas on how to support him or do a fun

Zoom call just with him so he can show me things around the house or just say hi but I am unable to provide 1:1 distance learning.” (Comp. Exh. 10).

On April 13, 2020, SE Teacher called and talked to Mother and offered consultation via phone, e-mail or Zoom. SE Teacher noted that she could help with ideas on increasing communication opportunities in activities Student was already working on at home and share or go over materials that had been sent home. SE Teacher noted that she could also talk to Student via Zoom regarding topics of interest to him. She indicated this would be a “touch base/hello” type of interaction. SE Teacher noted that she could not provide specially designed instruction at this time. As of the date of this phone call, the first grade classes were doing weekly Zoom conferences and SE Teacher discussed ways in which Student could engage with that opportunity, including using gestures, sign language, and his communication device. (RESP-757; SE Teacher testimony).

SE Teacher called and talked with Mother again on April 24, 2020. Mother informed SE Teacher that Parents were upset with how things were being handled and did not wish to take advantage of any Zoom conference or phone call opportunities with her. SE Teacher reiterated her willingness to assist if Parents changed their minds. (RESP-758; SE Teacher testimony).

SE Teacher sent another e-mail to Mother on May 1, 2020, informing her that the district’s policy had changed in line with recently released DE guidance and the district would be providing instructional supports. SE Teacher wrote:

The state has altered the guidelines on the types of support teachers and AEA direct service providers may provide students with IEPs in a Voluntary Educational Enrichment Opportunity allowing us now to provide some instructional opportunities that are more aligned with current IEP goals. These updated lessons/activities are voluntary. Please let me know if you would like to have your child participate in these lessons/activities until the school year ends on May 22, 2020. If you determine that you would like this opportunity, we will arrange a meeting via phone to discuss times to provide the lessons/activities[.]

(RESP-759).

On May 4, Mother, SE Teacher, and ██████ had a one hour Zoom conference related to Student. Mother provided an update regarding activities she and Student had been doing at home, including reading activities, sight word practice lists, and writing and tracing activities. Mother reported that she had a handle on academics but wanted speech services from the school. ██████ offered to provide speech services consistent with Student’s IEP; essentially, twice a week for 15 minute sessions. The group decided that SE Teacher would join in the Tuesday sessions to provide a consultation piece in order to assist Mother with academic activities after speech sessions were completed. ██████ informed Mother there would be no progress monitoring in order to allow for more instructional time. ██████ also informed Mother that the IEP team would discuss ESY for speech in more detail at the May IEP meeting and indicated she was willing to

be flexible and would do whatever worked best for the family during the summer. (RESP-760).

Parents' position throughout the time of the closure was that Student needed speech services and one-to-one assistance to meaningfully access the voluntary opportunities that the district was providing. Parents were willing to be flexible in how Student received these services, including via teletherapy. Parents were not interested in having Student participate in the activities that were being offered for general education students. Mother did not feel that Student would be able to meaningfully participate with his speech and language delays. Mother declined offers from SE Teacher and [REDACTED] to meet up with Student to continue their rapport. She viewed this as a distraction to her as it threw off Student's routine and schedule. (Mother, Father testimony).

Mother testified that she was not aware of how discrepant Student was from his same-age peers until the school closure when she was with him all the time. During the school closure, Parents began discussing among themselves the option of homeschooling Student during the upcoming academic year. Mother felt that Student was not making progress and believed she could get him performing closer to grade level. (Mother testimony).

April 20, 2020 Outside Evaluation: In April 2020, Parents had Student evaluated in the areas of speech and math by Enrichment Therapy & Learning Center, P.C. Parents undertook the evaluation due to concerns they had regarding the instruction available to Student during the COVID-19 school closure and their belief that Student was not making adequate progress in grade-level learning in math. Parents provided the evaluation reports to the IEP team shortly before or at the May 2020 IEP team meeting. Regarding speech, the evaluator noted that Student was using an augmentative and alternative (AAC) device to communicate at school, but use of the device was not consistent at home. On the Clinical Evaluation of Language Fundamentals-5 (CELF-5) assessment, Student's scores for core language, expressive language, and sentence structure were in the <.01 percentile rank, which are in the severe range.⁶ Student's intelligibility was judged to be poor via the assessment tools; during informal observation, the evaluator judged Student to be about 25% intelligible to unfamiliar listeners. The evaluator concluded, based on an interview with Mother, assessment results, and informal observation, that Student presents with a severe mixed expressive and receptive language disorder as well as a severe phonological impairment. She recommended a 30 minute speech therapy session two to three times per week. (Comp. Exh. 3; Lehman, Father testimony).

The math evaluator noted that Student was not able to complete the assessment tool. She concluded that it was likely that the test did not show Student's true math abilities due to his speech and language deficits and noted the barriers Student would face in

⁶ The evaluation report notes that the evaluation was completed online and that the standardized assessments used in the evaluation are not currently normed for online use, therefore the accuracy and validity of the results for clinical purposes is not known and the results should be interpreted with caution. (Comp. Exh. 3).

answering questions that required him to verbally produce an answer and understand initial multi-step directions in order to produce an answer. Based on the assessment, she recommended that instruction for Student should be multi-sensory and designed for him to pick his answers from a list of options where he can point or answer yes or no questions. She recommended that questions should not require Student to produce the correct answer verbally but that skill should still be modeled and practiced. She recommended that Student work on verbal production but noted it would not be a good indicator of what he understands. She recommended the following math goals: 1) matching the correct value when shown a number 1-20; 2) counting the correct amount of manipulatives and matching the amount to a picture card; 3) putting value cards representing numbers 1-20 in order; and 4) putting cards with numbers 1-20 in order. (Comp. Exh. 3).

May 12, 2020 IEP Team Meeting: Shortly before the May IEP team meeting, Parents presented the IEP team with a letter explaining their concerns regarding Student's education. Parents noted that after having outside evaluations in the areas of speech and math they believed that significant discrepancies remained between Student and same age peers in these areas and that he was moving further from the level of his peers.⁷ In the letter, Parents explained that they wanted to take on academic instruction at home during the following academic year, while still exposing Student to a "full curriculum and access to peer relationships and modeling within a general education classroom." They wished for Student to receive speech services and the support of a special education associate to be included in a classroom at █████, where they planned to send Student for "specials." Parents specifically noted that they believed Student had shown little growth academically since beginning IEP services. They asserted that his goals had not progressed to challenge him and work toward functional reading and math skills. They believed too much time had been spent working on letter sounds and number identification and not on "real applications to reading and math." Parents also noted that they wished to see virtual speech therapy sessions continue through the summer. The team referenced the letter in the IEP dated May 12, 2020. (Comp. Exh. 15; RESP-065; Lehman, █████ testimony).

Parents, along with other IEP team members, attended the May 12, 2020 IEP team meeting. Nancy Lehman, director of special programs for Ankeny Community School District, attended the meeting as a guest as Parents had indicated that Student would potentially be attending █████ in Ankeny; Ankeny CSD delivers special education services to students enrolled at ACA. As of the date of the meeting, Parents had neither enrolled Student in ACA nor had they completed the required paperwork to homeschool Student during the 2019-20 school year. The district's special educator coordinator informed Parents that IEP changes related to any change in enrollment for Student would be deferred until the appropriate paperwork had been filed. The district informed Parents where they could find that paperwork. (Lehman, █████ testimony).

Discussion of the IEP document itself was difficult at the May 2020 IEP team meeting. Parents expressed at the meeting a general unwillingness to discuss Student's goals.

⁷ At the IEP team meeting, Parents provided a copy of the speech and math evaluations to the team as well.

Father was adamant that he did not care what the IEP said; he just wanted to get rid of the goals and provide academic instruction to Student through homeschooling. Father testified at hearing that he felt the May 2020 meeting was a waste of everyone's time; he believed any IEP created would be "useless" as Student would be in a different setting the following year. Father further testified that he and Mother essentially did not participate in the meeting; they were there physically but did not care what went into the IEP. Father could not recall whether goals were changed or added during that meeting. (SE Teacher, Father testimony).

The May 12, 2020 IEP contained one reading goal and two math goals and provided for Student to receive 1,520 minutes, or 18% of school time, outside of the general education setting each month. The team determined that Student had met Reading Goal 3 with a median score of 90% over the most recent five data points, taken prior to spring break. Accordingly, a new reading goal was added related to recognition of sight words. (RESP-068-69, 092).

Math Goal 3 from the November 2019 IEP was retained in the May 2020 IEP. Additionally a new math goal was added related to measuring and identifying bills and coins. One of the primary things that SE Teacher and Parents discussed in drafting this IEP was crafting more functional goals for Student. SE Teacher expressed the opinion that Student would not academically be ready for some of the second grade reading and math standards. Because of that, the math goals were aligned to more functional skills, such as time and money. Mother indicated that she was not as concerned with time, but liked the idea of Student learning about the math skills involved with money. Student had really been struggling with the counting manipulatives goal; the idea with transitioning to a money goal was continuing to teach the counting skill in a more functional context with coins and bills. (RESP-070-73; SE Teacher testimony).

Developing goals for Student at this time was challenging in some respects. Student's speech difficulties made it hard for him to express what he knew. SE Teacher and ██████ worked together to ensure that the academic goals accommodated Student's speech and communication issues. SE Teacher also sought input from a person who is expert in Student's particular communication device, as well as other teachers of learners with cognitive disabilities in drafting the goals. (SE Teacher testimony).

SE Teacher noted that Student's writing goal in particular was a challenge for this IEP. She discussed the writing goal with Parents in advance of the March 2020 draft IEP. Student had mastered letter formation and knew how to write his name and to write letters. He could copy a sentence that was dictated, although the spelling might not be correct. In consultation with ██████ and with teachers at the district's school for students with significant cognitive delays, SE Teacher decided to use the Expanding Expressions Toolkit (EET) for Student's writing goal. Student would be shown a picture of a familiar object and use a graphic organizer to answer questions related to group, action, description, parts, and location. SE Teacher discussed the use of EET with Mother while working on the March 2020 IEP draft; Mother was excited about it and liked that it was aligned to writing and speech. Walker felt that EET would be useful for Student as well as it would allow Student to get the ideas in his head to be understood by others. The team felt that EET would be an effective method of melding writing and

communication for Student to help him get his thoughts out in a clearer fashion.⁸ (SE Teacher, ██████ testimony).

Student's speech minutes were increased in the May 2020 IEP from 100 minutes per month to 120 minutes per month. Additionally, the IEP team implemented extended school year (ESY) services for Student for speech; he received 24 sessions of ESY speech services. Student had received ESY services for speech the two preceding summers as well. The additional speech services were added based on parent input regarding a need for increased speech services. ██████ initial proposal for ESY services for speech was less than what the team originally settled on; Parents' input regarding the need for additional speech services was a key reason for the increase. (Mother, ██████ testimony; RESP-119).

FAST Assessments: The district utilizes Formative Assessment System for Teachers (FAST) assessments as a universal screener for reading and math in grades kindergarten through five. The timed assessments must be given three times a year to each student. A student must take the assessment unless he is on an alternative assessment path. SE Teacher talked with Parents when Student first began in kindergarten about the fact that the FAST screener scores are not accurate measures of Student's ability because of the timed nature of the assessments and Student's need for additional time for processing. The IEP team had discussed that these were data points that were not particularly effective in monitoring Student's progress. The team was already aware that the areas being screened through FAST were areas where Student had deficiencies and needed specially designed instruction. Goals and instruction were in place to address those needs. The classwork completed and progress monitoring done with regard to Student's IEP goals gave a more accurate picture of his progress than the FAST assessments. (SE Teacher testimony).

The team had discussed the possibility of alternative assessment when Student began in transitional kindergarten. In order to conduct alternative assessments, the team would have had to increase the minutes that Student spent in special education under the IEP in order for the special education teacher to conduct the assessments. Parents did not want Student to participate in alternative assessment; they wanted to prioritize Student having more minutes in the general education setting over receiving alternative assessment in the special education setting. The team was not concerned with this preference by Parents as they were able to get accurate information about Student's progress from frequent progress monitoring regarding his IEP goals. (SE Teacher testimony).

⁸ Special education teacher ██████ also testified about the use of EET with students with speech difficulties. In her opinion, EET hits all of the elements of comprehensive literacy, including reading, writing, communication, and vocabulary. EET allows students to make associations, identify what group a word belongs to, what the word's function is, what the word looks like, and where you can find the word. It is an effective way to make connections and associations to existing vocabulary in order to increase vocabulary. ██████ finds it a good tool to use for pre-writing as well. (██████ testimony).

Student's FAST scores in 2019 and 2020 in reading and math placed him in the 1st percentile among peers locally and in a national sample. The scores indicated Student was at high risk relative to meeting future benchmarks. Student's scores were the lowest of his grade level peers within the school building. (Comp. Exh. 1, p. 8; RESP-006, 068, 070).

Enrollment in Competent Private Instruction (CPI): Ahead of the May 2020 IEP meeting, Parents began thinking about providing homeschool instruction to Student for the 2020-21 academic year. In Iowa, parents essentially have three options for children with disabilities in order to receive special education services: 1) enroll in a public school; 2) enroll in an accredited nonpublic school; or 3) enroll in competent private instruction (CPI) and select dual enrollment for special education. Dual enrollment is not a placement decision made by the IEP team; rather, it is a parent enrollment choice. There is no way for a student whose parent elects competent private instruction to receive special education services without dual enrolling for special education services. Once dual enrollment for special education is approved and initiated, parents remain the ultimate decisionmakers regarding whether to accept FAPE for their student or to revoke consent for special education services. (Upah testimony; RESP-543).

The family initially believed that they would need to open enroll in the Ankeny CSD since they wanted Student to attend █████ for a portion of the school day in order to receive special education services there. Parents wanted Student to have peer modeling and communication at █████, therefore they arranged for him to attend lunch, recess, and music there. Parents did not intend to enroll Student in ACA or the Ankeny CSD for compulsory education purposes; they wanted Student to have some limited access to peers in addition to the homeschool curriculum Mother was planning to deliver at home. (Mother, Upah testimony).

On July 2, 2020, Mother submitted to the district Form A, the competent private instruction (CPI) enrollment form, for the 2020-21 school year.⁹ On the form, Mother noted that she would be the appropriately licensed Iowa teacher providing the instruction. Question 8 on Form A asks whether the child is currently identified as a child requiring special education. Question 9 asks whether the family desires dual enrollment in the public school for, among other things, special education. Mother did not mark any response for either question 8 or question 9. Receipt of Form A is what triggers the district to initiate discussions with a family regarding homeschooling. (RESP-451-52; Adams testimony).

Respondents' counsel reached out to Parents' counsel in late July 2020 to clarify whether Parents were requesting special education services for Student for the upcoming academic year. Respondents' counsel noted that special education services

⁹ Parents had previously submitted an application to open enroll Student into the Ankeny CSD. When Adams received that application, he was confused and reached out to some of the attendees from the May IEP meeting. Adams called Mother to attempt to clarify the situation and gave her contact information for a DE staff member to discuss open enrollment. At the same time that they submitted the CPI paperwork, Parents clarified to Adams that they wanted to withdraw the open enrollment paperwork. (RESP-450; Adams testimony).

for homeschool students are provided through dual enrollment. Respondents' counsel indicated that because special education services were being requested, an IEP team meeting would need to be scheduled and proposed a date and time for the meeting.¹⁰ Additionally, Respondents' counsel notified Parents' counsel that Parents would need to update their CPI request to include a request for dual enrollment. (RESP-544).

Prior to the August IEP team meeting, Respondents provided Parents with additional information regarding provision of special education services in the dual enrollment context.¹¹ As Student would be attending █████, through an existing arrangement between Ankeny CSD and █████, Ankeny CSD would take primary responsibility for providing the services in Student's IEP. Respondents clarified, however, that Woodward-Granger CSD continued to be the resident school district with IDEA obligations to Student. Additionally, Respondents noted:

The public agencies have an obligation to consider what [Student] requires for FAPE and then propose a delivery model through dual enrollment to make FAPE available.

...

The parents should be candid with the rest of the team about their requests; however, we may need to remind the parents that under Iowa law, the public agencies could not rewrite the IEP to reflect an arrangement that does not meet the FAPE standard. As one example, if the parents did not want [Student] to receive SLP services, but the rest of the team knows he needs those services for FAPE, the parents could not simply refuse SLP services but maintain other parts of the IEP.

In other similar situations, public agencies have found ways to honor the FAPE requirement to the child as well as parent vision for homeschooling.

(RESP-547).

August 11, 2020 IEP Team Meeting: On August 11, 2020, Parents and other members of the IEP team convened for an IEP team meeting. Both Parents and Respondents were represented by legal counsel at this meeting. (RESP-125-26).

¹⁰ If the family of a child receiving special education services elects dual enrollment for special education within the context of CPI, the next step is an IEP team meeting to discuss and determine what services are necessary for the student. The assumption for homeschool students, as well as for students who change schools or enroll in a private school after already receiving special education services, is that the IEP team will start with the existing IEP to address what is necessary for the student to receive FAPE. (Upah testimony).

¹¹ Much of the communication from summer 2020 onward between Parents and Respondents took place between the parties' respective legal counsel. (See *e.g.*, RESP-544-611). For ease of reference, some of this correspondence is simply referred to as taking place between Parents and Respondents.

At the meeting and consistent with the prior communication that their attorney had with Respondents' counsel, Parents expressed their goal of having Mother deliver instruction to Student in core academic areas and for Student to attend [REDACTED] on a limited basis to receive speech services and to obtain communication practice with peers. Mother did not believe that Student would have to have all of the specially designed instruction that had been previously listed in his IEP when the family transitioned to homeschooling; she wanted to take on all of the academic pieces of Student's education. (Mother testimony).

Mother signed the Home Schooling for Students in Special Education Parent Notification and Acknowledgment form electing for Student to dual enroll to receive special education services at the meeting. The form informs parents who elect to dual enroll for special education that:

- CPI with dual enrollment for special education will require the family to work with the school in developing an IEP that provides adequate supports for the student to make progress on his/her goals. Since the child is not enrolled in school for a full day, the child may miss substantial education services. ***The IEP team will determine the necessary special education services to provide a free appropriate public education.***
- Prior to starting CPI with dual enrollment, the AEA Director of Special Education must approve the appropriateness of the proposed CPI program for the child requiring special education, considering the child's individual disability. This process could require the IEP team to reconvene if there are concerns with the plan. Once approved, parents will receive a letter from the Director.
- Families choosing CPI with dual enrollment for special education must make the child available for instruction at the time/location determined by the school district. The school determines when teachers are available to provide the needed instruction and supports. Attendance laws apply for the dual enrolled portion of the school day.

(RESP-456-57) (emphasis added).

The form also indicates that for dual enrollment an IEP will be developed for the portion of the day the child attends school and that, while the IEP services are designed to help the child make progress on their goals, the supports are different than if the child attended school full-time. It is the responsibility of the IEP team to determine what services and supports are necessary for the student, considering the student's unique circumstances as a result of the disability. Mother signed the form because she understood that Student could not access a paraprofessional at [REDACTED] and speech therapy services if the family checked the box to discontinue special education services. (RESP-457; Upah, Mother testimony).

At the meeting, the IEP team proposed a temporary suspension of academic specially designed instruction as a compromise between Parents and other team members. This idea came from Misty Christensen, AEA regional director, who described it as an “out of the box” idea, which she had not seen in her 29 years of experience as an educator in Iowa. Student’s academic goals were not changed from May to August 2020; they were simply suspended for the first quarter of the school year. The team did not want to remove the goals because of a belief that Student was eligible and needed services in the areas of reading, math, writing, and behavior. This compromise position was utilized as a way to ensure that Respondents could keep working with Student and his family to see how he was progressing, especially coming off of the prolonged closure period. (Upah, Christensen testimony; RESP-125-56).

Student’s speech services were increased in the August 2020 IEP; the IEP provided for 200 minutes per month, or ten minutes per day, during the 2020-21 school year. The change was made based on the team’s belief that Student would be most successful receiving communication services in shorter, daily sessions and Parents’ request to prioritize speech services due to Student’s age and maturity. (RESP-193-94; ██████████ testimony).

AEA Approval of CPI with Dual Enrollment: The AEA special education director approved the application for CPI with dual enrollment for special education in a letter dated August 26, 2020. The letter reiterated that Student would not be receiving all of the instruction and supports provided if attending school full time. The letter noted that the approval required the family to work with the IEP team to develop adequate supports for the student to ensure Student makes appropriate progress in light of his individual circumstances. It specifically provided:

This approval is based on the IEP team’s decision regarding your child’s specific circumstances. This approval is subject to the ongoing involvement of the IEP team and the decisions of the team regarding necessary education services. The team will monitor progress throughout the year and will reconvene the IEP team if needed. If [Student] fails to progress adequately, the appropriateness of the CPI dual enrollment arrangement will need to be reviewed and possibly revised.

(RESP-548-49).

Baseline Data Collection during Fall 2020: ██████████, a special education teacher employed by the Ankeny CSD with 20 years of experience and a master’s degree in special education, did the baseline data collection for Student in fall 2020. ██████████ also attended the August 2020 IEP team meeting, as it was anticipated that Student would be on her roster of special education students. Between the IEP meeting and the time that baseline data was collected, ██████████ familiarized herself with Student’s IEP and consulted with SE Teacher about Student’s goals and the ways he had been assessed in the past so that her assessment could be an accurate comparison and would be familiar to Student. (██████████ testimony).

Baseline data collection occurred over a period of approximately six or seven days at an elementary school in the Ankeny district. Each session lasted approximately one-half hour. Respondents accommodated Parents' request to view the baseline data collection in real time on Zoom. Three data points were collected for each of the goals: one reading goal, two math goals, one behavior goal, and one writing goal. (RESP-622; ██████, Lehman, Mother testimony).

Parents were provided the videos of the baseline data collection so they would be able to do assessments the same way. Additionally, they were provided the rubrics that were used for the data collection. Parents did not request any additional guidance or support during the first nine weeks of the 2020-21 school year. (██████ testimony).

While the baseline testing was ongoing, the IEP team met again on September 9, 2020 to make additional changes to Student's IEP to reflect his schedule at ██████ and paraeducator support he would receive there, in addition to temporarily suspending certain accommodations that did not have relevance while Student's academic goals were suspended. Additionally, the team determined that three data points would be obtained during the baseline data collection and that the median scores would be used in determining Student's baseline for academic and behavior goals. The team offered to schedule the second collection of progress monitoring data during the week of October 19, 2020. Parents shared that they had not yet begun home instruction and requested a full nine weeks between the time home instruction began and data collection. The team determined that progress monitoring would take place over a five day cycle during the week of November 9, 2020. (RESP-278-80; Lehman testimony).

Fall 2020 Instruction: Mother provided the majority of Student's instruction during fall 2020 between 8 and 10 AM, which was when he was most prepared to work. Their schedule, including instructional time for each subject, varied each day. Mother testified that Student does best with short periods of practicing, which she would do throughout the day. Math instruction focused mainly on quantity and number correspondence. The content areas of science and social studies were worked into instruction on reading and literacy. Mother did not have a lesson plan each day; she worked things in throughout the day as needed. (Mother testimony).

██████████, a speech language pathologist for the AEA, provided speech services to Student during the 2020-21 school year. ██████████ worked with Student at ACA and provided services for approximately ten minutes per day. Additionally, ██████████ provided speech support to the paraeducator who was assisting Student at ACA in the form of coaching conversations so that the paraeducator knew how to best support Student's communication in the classroom or playground and lunchroom settings. (██████████ testimony).

Mother attended most of Student's sessions, which was not typical of ██████████ experience with the majority of her students. ██████████ noticed that Mother's presence could be distracting to Student, as he would ask her about things coming up in the day in the family's schedule. During the time ██████████ worked with Student during the 2020-21 school year, Student made progress in the area of speech. Mother shared with ██████████ that she observed some growth in verbal expression at home;

for example, Student would sing songs she had not heard him sing before. (██████████ testimony).

November Progress Monitoring: The nine-week progress monitoring sessions were similar to the September data collection with sessions recorded. ██████████ again collected the data during the sessions. (Mother testimony).

██████████ created a document reflecting the results from the data collection in September and November 2020. The results were as follows:

Goal Area	September 2020	November 2020
Reading (sight word phrases)	Trial 1: 28% Trial 2: 7% Trial 3: 27%	67%
Math Goal 1 (counting objects)	Trial 1: 40% Trial 2: 20% Trial 3: 10%	0%
Math goal 2 (coin/bill match, ID, value)	Trial 1: 8% (coin); 50% (bill) Trial 2: 58% (coin); 75% (bill) Trial 3: 50% (coin); 58% (bill)	25% (coin); 58% (bill)
Behavior (transition)	Day 1: 67% Day 2: 67% Day 3: 58%	Day 1: 59% Day 2: 33% Day 3: 61%
Writing	Trial 1: 39% Trial 2: 25% Trial 3: 36%	50%

(RESP-655).

Prior to the December 2020 IEP team meeting, the parties were in communication through their legal counsel related to issues of discussion for the meeting. Parents' counsel related that they were confident Student would show progress, but that the thought of meeting every nine weeks and taking up "countless hours" with data collection by the LEA was not desirable going forward. Parents wanted to discuss the potential for dual enrollment for speech services only and an associate at ██████████ for safety and speech purposes, with a permanent suspension of academic goals and no continued progress monitoring by the LEA or AEA. (RESP-558).

Respondents' counsel responded that Respondents' position had not changed since the August meeting; that is, Respondents must write an IEP that offers Student a FAPE. Respondents' counsel noted that if Student had met his academic goals, the team could discuss whether there was still a need in the domain area and whether new goals were

necessary. Respondents' counsel noted that if Student continued to have a need in academics, speech, or behavior, Respondents would be legally obligated to provide special education services in those areas and it would be up to the IEP team to discuss whether the current arrangement, including periodic progress monitoring at the school, was sufficient or whether a different arrangement was appropriate. (RESP-556).

Parents' counsel responded and agreed that home instruction is not special education, but expressed the position that Respondents could not compel Parents to agree to all academic goals under the current IEP as a contingency for receiving other special education services that Student would have received had he been enrolled in public school. Respondents' counsel responded that while Student is entitled to special education and related services under the IDEA while under CPI with dual enrollment, Parents do not have the right to cherry pick only the services they want Student to receive if there is data showing unmet needs in other areas. The parties remained at an impasse on this issue prior to the December 2020 IEP meeting. (RESP-554-55).

December 2020 IEP Team Meeting: An IEP team meeting was held on December 18, 2020. Mother was present and accompanied by Parents' attorney. Various personnel from the district, AEA, Ankeny CSD, and █████ were present; Respondents' attorney was also present. The meeting lasted approximately one and one-half hours. (RESP-764).

The meeting began with a progress monitoring update. █████ shared information about Student's progress in speech and █████ shared information from the September baseline and November progress monitoring data in core academic areas and behavior.¹² The information that █████ shared was the same information contained in the table above, which all parties had been provided prior to the meeting. Generally speaking, the data showed progress in reading and writing, varied outcomes in math, and slightly lower performance in behavior. (Lehman testimony; RESP-764).

Mother shared information about the content areas she had been focusing on in home instruction for Student, including number identification and early math concepts. Mother identified that she had not been providing much instruction on coin and bill match as she felt there were other more foundational skills that were more important. Mother had been working on sight words with Student and also on writing/tracing sight words. Additionally, she was working with Student on adding to a very short story with an additional detail and tracing the story words as well as creating a graphic representation of the story. When asked about instructional delivery and strategies that were helpful to Student, Mother mentioned that homeschool allowed her to be flexible and responsive to Student at the times when he is ready to learn. She also stated that they had been successful in establishing a good routine, with Student understanding when work time would begin and end. Mother also mentioned that she was spiraling instruction, returning to things that Student had already learned to practice; Mother stated that children with Down syndrome experience a barrier to demonstrating

¹² IEP team members from the district and AEA did not discuss their opinions of the November data prior to the meeting; Lehman and █████ discussed the data briefly in order for Lehman to ensure that all the required data had been collected. (Lehman testimony).

mastery of a skill over and over again. With regard to behavior and transitions, Mother stated she was successfully using the “first then” strategy that had been previously added to Student’s IEP at the suggestion of SE Teacher. (RESP-764).

After progress monitoring information was shared and Mother talked about her instructional content and strategies, Adams offered his opinion that the data did not support a termination of academic goals and behavior, as Complainants had advocated for at the August 2020 IEP team meeting and in their correspondence with Respondents’ counsel prior to this IEP team meeting. Adams shared his proposal for Student to receive instruction from Mother, a qualified general education teacher, supplemented with specially designed instruction from a licensed special education teacher. In essence, Adams proposed stopping the temporary suspension of academic and behavior goals that had been put in place by the team at the August 2020 IEP team meeting. (RESP-764).

When asked for Parents’ input on this proposal, Mother stated that her biggest concern was that Student’s goals as written were not an appropriate starting point. She believed Student needed more foundational reading, writing, and math skills to get him where she believed he should be. Mother also expressed the opinion that she did not believe that school-based instruction was what Student needed; she felt he was making more progress in the one-on-one homeschool setting. Mother expressed the belief that she could provide everything that Student needed in terms of instruction except for speech services. Mother expressed that she did not want to waste time shuttling Student to other locations to receive instruction that she did not think would be useful. (RESP-764).

In response to Mother’s concern about the appropriateness of Student’s goals, the AEA facilitator noted that Student’s mandatory three-year reevaluation was due in May 2021, but that it was not necessary to wait until that time to begin conducting the reevaluation; if there was a concern that Student’s goals were not appropriate, the reevaluation could begin sooner. The purpose of the reevaluation would be to take a deeper dive into what Student could and could not do and the causes for that, as well as to develop a proposal for instruction based upon that information. The AEA representatives noted that their significant disabilities team would be available to conduct the evaluation. (RESP-764).

Parents were frustrated by the district and AEA team members’ proposal to do a reevaluation of Student. Mother felt she would continue to have to prove competence and growth and was not interested in doing that every nine weeks. Mother felt she was being asked to do more than other homeschool parents were in terms of progress monitoring. Parents were not interested at this point in having Student do any academic work in the school setting. Mother and her attorney both expressed that Parents did not wish to continue any services in the IEP except speech and paraeducator services at [REDACTED]. Mother asked whether she could consult with [REDACTED] by telephone or e-mail without [REDACTED] actually providing instruction to Student. Adams expressed that he did not believe that the district would be fulfilling its responsibility to provide FAPE to Student without delivering specially designed instruction to Student. (RESP-764; Mother testimony).

Parents' attorney asked whether it would be possible to continue the suspension of academic goals and conduct a reevaluation of Student in the summer or at the beginning of the next school year. The AEA representatives expressed the opinion that if Student's goals were not presently appropriate, they were obligated to determine what appropriate goals for Student would be; consequently, delaying the reevaluation would be problematic. Respondents' counsel noted that an individual student's needs are not static, which is why the IDEA requires reevaluation every three years. Respondents indicated that the team members were willing to have a discussion about how the reevaluation would proceed, including how the team to reevaluate would be selected. Responsive to Parents' concerns regarding the time that would be taken up by the reevaluation, Lehman noted that the reevaluation would be functional in nature and would provide instruction to Student in an effort to tease out his instructional needs. The goal would be to work with the special education teacher in the areas of instruction to figure out why progress was not occurring in certain areas with Student and to address the deficits instructionally. (RESP-764).

Ultimately, Respondents proposed a reevaluation in speech, academics, reading, writing, math, and behavior. They believed Student would need time – approximately one month – to acclimate to the school setting, then the reevaluation could begin in February 2021. Respondents informed Parents that they could choose whether to consent to the reevaluation. Parents declined to consent to the reevaluation, citing their belief that Student would not benefit from the time spent in evaluation and needed more one-to-one instruction from Mother in the homeschool setting. (RESP-764).

To provide FAPE to Student, Respondents proposed removing the temporary suspension of academic goals that had been put in place by the team in August 2020 and resuming specially designed instruction in Student's goal areas. The team acknowledged Mother's skill as a general education teacher, but their position was that specially designed instruction needed to be provided by a special education teacher in Student's academic and behavior goal areas. Parents' attorney clarified that Respondents were proposing to reinstate the academic goals then to discuss where and when specially designed instruction would be provided. After receiving confirmation on that point, Parents' attorney unequivocally stated that Parents were not interested in any special education services other than speech and the paraeducator at [REDACTED]. Parents indicated that they did not agree with the team's proposal and planned to exercise their procedural safeguards. (RESP-764; M. Christensen testimony).

The PWN following the December IEP meeting described the action proposed as follows:

1. The IEP team, with the exception of the parent, proposed reinstatement of [Student's] specially designed instruction and goals in academic and behavior domains, as well as reinstatement of the accommodations and supports for school personnel that were temporarily suspended per the September 9, 2020, IEP. In order for [Student] to receive a free and appropriate public education (FAPE), he requires specially designed instruction in the areas of reading, math, writing, behavior, and speech

and the LEA and AEA are prepared to deliver all necessary services on the campus of an Ankeny or Woodward Granger school building with the Speech and Language services delivered at Ankeny or Woodward Granger school building or the Ankeny Christian Academy.

2. The LEA and AEA proposed initiating the reevaluation process in order to identify [Student's] unique needs to assist with identifying appropriate IEP goals and services while [Student] receive[s] all specially designed instruction in his special education service areas of reading, math, writing language, behavior with a special education teacher in the Ankeny Public School.

(RESP-382).

In explaining why these actions were proposed by the school, the PWN noted the "modest increases" that Student made on his reading and writing goals, but noted that he had not met either goal; the LEA and AEA staff felt he still needed specially designed instruction in those goal areas. The PWN also indicated that Student had regressed on his coin match goal, maintained without growth on his bill match goal, and regressed slightly on his behavior goal. The LEA and AEA team members felt Student still needed SDI in the areas of math and behavior as well. (RESP-382).

With regard to the reevaluation, the PWN indicated that Student was due for a three-year reevaluation no later than May 23, 2021. The LEA and AEA proposed beginning the reevaluation process in order to identify Student's unique needs and assist with identifying appropriate IEP goals and services. Mother had shared with the IEP team that she felt the current goals were not appropriate given Student's current performance and unique needs. The LEA and AEA considered starting the reevaluation process closer to the May 2021 deadline but rejected that option as all team members agreed that Student's current goals were not appropriate given his current performance and unique needs. Mother noted during the meeting that she would not consent to additional assessments as part of a reevaluation process. Mother discussed some of the strategies she was using with Student, including a touch point instructional strategy for math and a sight word curriculum designed for students with Down syndrome. LEA and AEA team members noted that considering these methodologies and strategies, updating SDI, and refocusing Student's goal areas based on Student's current needs would all be addressed through the reevaluation process. (RESP-382-83).

The PWN identified that services in all goal areas were scheduled to begin January 19, 2021, the first day of the second semester. The LEA and AEA team members felt that starting at the beginning of the second semester would allow for a smoother transition for Student. (RESP-383).

In addition to denying Parents' request to continue the suspension of academic goals and to allow the provision of speech services and paraeducator assistance at [REDACTED] only, the IEP team also decided to reject Mother's proposal to implement a consultative model of communicating with the Ankeny special education teacher regarding academic goals and the behavior goal as a manner of delivering specially designed instruction.

The PWN indicated that this proposal was rejected because Respondents believed that a qualified special education teacher would be needed to deliver the specially designed instruction that Student requires. Respondents respected Mother's abilities as a general education teacher and did not have concerns about her ability to provide quality core instruction; however, they believed that there needed to be a special educator providing instruction in order to break down skills in a way that would be useful to Student. Respondents believed that a partnership for service delivery between a licensed special education teacher and Mother, a licensed general education teacher, would be the best vehicle to move Student forward. (RESP-384; Lehman testimony).

Pre-Appeal Mediation Request: Pursuant to the DE's procedures, Parents filed a request for a pre-appeal mediation conference on December 21, 2020, asserting that the denial of the request to suspend academic goals in the current IEP without proper consideration by the IEP team constituted a substantive denial of FAPE and a procedural violation of the rights of Parents to participate as members of the IEP team. (RESP-692-96).

From the outset, Parents communicated to the DE that they were unable to attend mediation outside of the work day and would require a mediation time either after 5 PM or on a weekend. The DE repeatedly informed Parents that mediations could not be scheduled after 4 PM or on weekends due to the availability of its mediators. (RESP-704-08).

After a scheduling call at which Parents' counsel was present, mediation was set for January 28, 2021 from 12:30 to 4:30 PM via Zoom videoconference. On January 21, Parents' counsel informed the DE that due to "unforeseen circumstances" the mediation would need to be rescheduled. Father testified at hearing that Parents declined to attend this mediation because Parents were unwilling to attend a mediation during regular business hours.¹³ (RESP-721; Father testimony).

The DE attempted to reschedule the mediation and Respondents provided multiple available dates during the months of January and February. Parents were not agreeable to mediation on a weekday before 5 PM. Respondents proposed serial mediations over three lunch hours. The DE indicated that this would be workable for its mediators. Parents did not respond with availability for this option. (RESP-726-732).

On February 10, Respondents informed Parents' counsel and the DE representative responsible for scheduling mediation that if a mediation date was not agreed to and calendared by March 1, Respondents would withdraw from the pre-appeal mediation process. No date was set by March 1. On March 2, Respondents notified Parents' counsel and the DE that Respondents were withdrawing from the mediation process due to the inability to arrive at an agreeable date. (RESP-730, 733).

¹³ Parents' counsel represented in an e-mail to the DE on February 23, 2021 that, at her urging, Father attempted to get time off from his work to attend the previously scheduled mediation but that permission for time off was denied. Father is VP of administration at Kramer and Associates and testified at hearing that he did not request time off from his employer for the January 28 mediation. (Father testimony; RESP-726).

Communication following the December 2020 IEP Team Meeting: On January 12, 2021, Lehman reached out to Parents to discuss the provision of SDI at Prairie Trail Elementary in the Ankeny CSD. Lehman's e-mail indicated that the district would be prepared to begin SDI for Student on Tuesday, January 19, 2021 and that instruction would take place from 1:00 to 2:15 PM daily. Lehman noted that the time frame would allow Student to continue attending [REDACTED] for music, lunch, and recess with associate support. Additionally, Lehman informed Parents that the district was prepared to provide transportation for Student between [REDACTED] and Prairie Trail. (Lehman testimony).

On the same day, Parents' counsel sent a response to Lehman indicating that Parents had requested pre-appeal mediation through the DE. Parents' counsel indicated that Parents expected Student's speech services and paraeducator support at [REDACTED] to continue, but indicated that Parents would not be making Student available for specially designed instruction in academic goal areas. Student did not attend any specially designed instruction sessions at [REDACTED] between January 19, 2021 and the end of the academic year. (RESP-665-69; Comp. Exh. 21; Lehman testimony).

Reevaluation Process: Parents did not wish to consent to a reevaluation after the December IEP team meeting as they believed that they were fundamentally at odds with Respondents regarding how dual enrollment for special education in the CPI context should work. Parents felt that until this fundamental issue was resolved there was no point in engaging in a reevaluation. (Mother testimony).

Despite Parents' objections, Respondents did not believe that inaction was an appropriate response to questions regarding the appropriateness of Student's goals. The LEA and AEA team members felt that a reevaluation would allow them to delve deeper into understanding Student's abilities to prioritize the areas of instruction that would make the most sense with regard to grade level expectations. Respondents felt that a deeper diagnostic dive would also be useful in determining the types of instruction and goals that would be most beneficial to Student. (Lehman, M. Christensen testimony).

Respondents wanted to undertake a functional evaluation consisting of information and records review, interviews with parents, teachers, and others working with Student, and observation of Student receiving instruction in multiple settings and completing tasks and tests. Respondents hoped to figure out what appropriate goals would be for Student based on grade level standards by identifying how he performs as a learner in different settings and environments and with different instructional opportunities. A reevaluation is much more comprehensive than simply taking baseline data on a student's performance; it requires providing some level of instruction in order to see how a student responds to different instructional strategies. Where the reevaluation reveals that Student does not have a particular skill, the team can look at what needs to be taught so he can achieve that skill. (M. Christensen testimony).

Beginning on March 10, 2021 and continuing through April 7, 2021, Parents and Respondents continued to communicate through counsel regarding Respondents' request to reevaluate. On March 10, Respondents' counsel sent a letter to Parents'

counsel noting that Student's three year reevaluation meeting was required to be held no later than May 23, 2021. The letter stated, in relevant part:

Parents previously indicated that they would decline to consent to re-evaluation assessments. It would seem to meet the goals of all parties for the parents to consent to the re-valuation and permit the public agencies access to [Student] for the purpose of evaluation. During the re-evaluation, the public agencies would provide some level of services directly to [Student], particularly in his academic domain areas. The resulting re-evaluation IEP would use the information from the re-evaluation to revise [Student's] goals in order to refocus the SDI in those areas based on [Student's] current needs.

Re-evaluations typically take about 60 days to conduct the necessary assessments, prepare "R-page" summaries of the information, and develop recommendations for full IEP team consideration. If your clients promptly consent to the re-evaluation and provide access to [Student], we could complete the necessary assessments in time for the meeting that will be held on or before May 23. Therefore, we respectfully request your clients sign the attached consent for re-evaluation form and return it no later than March 15, 2021.

...

[Student's] three year re-evaluation will include a review of existing information, including information provided by outside agencies. The public agencies have proposed to re-evaluate in the areas of Reading, Writing, Math, Behavior, and Speech. Due to [Student's] age, the public agencies are not required by law to consider post-secondary transition needs (post-secondary living, learning, working) but we are open to expanding the scope of the re-evaluation if there is a specific area your clients feel should be included.

(RESP-572).

The letter also noted that the AEA's approval of CPI with dual enrollment was contingent on Student receiving FAPE. Respondents noted that Student's eligibility for dual enrollment would be denied effective March 15, 2021 unless Student reported to class for specially designed instruction the week the letter was sent. Respondents noted, however, that if Parents consented by March 15 to provide access to Student for purposes of conducting a reevaluation the AEA would consider Student's participation in the reevaluation to be reason to continue the approval of a CPI dual enrollment arrangement. (RESP-573).

Through counsel, Parents sent a conditional consent for reevaluation to Respondents on March 17, 2021. Parents conditioned consent for reevaluation on two items: 1) Mother or Father would be present for any in person assessments with Student; and 2) the August IEP would remain in place until either the completion of the reevaluation or the

adjudication of any due process hearing.¹⁴ Parents indicated that refusal to consent to the two conditions listed would constitute revocation of consent to re-evaluate. (RESP-575).

On March 23, 2021, Respondents rejected the conditions Parents set forth for reevaluation. Respondents noted in their letter that they had had limited access to Student over the preceding 12 months and explained that the reevaluation would be more functional and comprehensive than simply assessment or baseline testing. Respondents proposed to observe Student during instruction based on various methodologies and to assess whether Student could retain instruction over the course of the reevaluation period. Respondents noted that in order to provide the type of environment that models a school setting, Student would need to attend school at regular intervals. Respondents proposed a schedule that required Student to be available at [REDACTED] for two hours five days a week from April 5 through May 7, 2021. Respondents noted that the schedule was necessary to allow the reevaluation team to put in place the routine and structure needed to investigate strategies for Student's educational programming and to see if those strategies were effective with consistent delivery. The schedule was developed taking into consideration Student's current schedule at [REDACTED]. Respondents agreed to provide transportation from [REDACTED] to [REDACTED] on the days Student was attending [REDACTED]. Respondents also noted that the reevaluation would include information that Parents had previously shared from outside providers, as well as parent interviews, record review, and other relevant information. (RESP-578-79).

Respondents denied Parents' request to personally observe the reevaluation sessions, noting that both the Ankeny and Woodward-Granger districts had a current prohibition on visitors to campus due to the COVID-19 pandemic and that the evaluators had raised concerns that conducting the reevaluation in a setting with Parents present would not lead to authentic evaluation results. Respondents, however, agreed to provide a weekly written summary of activities to Student's parents and to give Parents the opportunity to participate in parent interviews with evaluators and to share any additional information relevant to Student's programming. Respondents again informed Parents that if they provided access to Student during the reevaluation process eligibility for CPI could continue while the IEP team focused on completing the reevaluation and revising the IEP as necessary for implementation in the upcoming school year. (RESP-579-81).

On March 26, 2021, Parents rejected the proposed schedule for reevaluation outlined in Respondents' March 23 letter. Parents asserted that 50 hours of evaluation in an unfamiliar classroom setting for a student receiving CPI at home was "preposterous" and argued that the accuracy of the data would be compromised dramatically by the change in setting, staff, and stimuli. Parents' letter noted that they remained willing to consider other reevaluation schedules, but did not propose any particular schedule. (RESP-583).

¹⁴ Respondents had withdrawn from pre-appeal mediation over two weeks prior to this date and no due process complaint had yet been filed.

On April 1, 2021, Respondents offered an alternative and reduced reevaluation schedule, reducing Student's needed participation in the school setting to one hour per day from April 12 through May 14. Respondents informed Parents that given the IEP reevaluation deadlines, they would be unwilling to consider an alternative schedule or additional delay to the evaluation. Respondents again informed Parents that consent to the reevaluation and access to Student during the reevaluation time period could result in continued eligibility for CPI with dual enrollment. (RESP-584-85).

Parents provided Respondents with a copy of the due process complaint in this matter on April 2, 2021. On the same day, Respondents informed Parents that the existence of the due process complaint did not change their position regarding reevaluation or regarding Student's continued eligibility for CPI with dual enrollment. (RESP-586).

On April 5, 2021, Parents responded that before any in person assessment or observation of Student were to take place it would be necessary to review the data and observations from Mother, ██████████, and Student's music teacher at ██████. Parents proposed that these evaluations, observations, and data could be collected through interviews, observational reports, and progress monitoring over a period of time on-site at ██████, during speech services, and through home observations or video submissions by Mother to the IEP team. Parents indicated that they would not consent to the assessment that Respondents were proposing. (RESP-588-89).

Respondents responded to Parents' letter on April 6, 2021 and requested that Parents reconsider their position on consent to reevaluation. Respondents noted that they could use interview, observation, and review of records as part of the reevaluation without parental consent but that in Student's case the critical component of reevaluation would be "the assessment piece and [Student's] response to different instructional strategies." Respondents emphasized the importance of utilizing a trained special education teacher to deliver instruction through a variety of methodologies in order to obtain authentic information about Student's response to instruction and how to tailor instruction to meet his unique needs. Respondents noted that Parents' offer to observe Student in general education instruction with Mother, during speech services, or during music, recess, or other non-instructional time at ██████ would not allow for an adequate evaluation of his needs. Respondents reiterated their support of Mother as Student's general education teacher, but again emphasized their belief in the importance of a trained and licensed special education teacher to provide specially designed instruction to Student. (RESP-591).

On April 7, 2021, Parents' counsel informed Respondents' counsel that Parents would not consent to the reevaluation process proposed by Respondents:

[Parents] have not sought SDI through the schools (outside of speech and the paraeducator support) since they notified them in May of 2020 of their intent to provide CPI. They believe, like I stated in the letter from 4/6/21, that there is a core difference in our understanding about how this should all work for a homeschooled student and until that can be resolved through due process, they are not open to additional time spent outside of the learning environment at this time.

(RESP-599).

During this same time period, Upah continued to correspond with Parents regarding Student's eligibility for CPI with dual enrollment for special education. On March 3, 2021, Upah sent a letter informing Parents that if Student had not attended at least one specially designed instruction session by March 12, 2021, Parents' request for CPI with dual enrollment would be denied, effective March 15, 2021. The letter noted that if Student was no longer eligible for CPI with dual enrollment, he would be considered a full-time homeschooled student with no IEP services. (RESP-461).

On April 8, 2021, Upah sent Parents a second letter. That letter advised Parents that Student was not eligible for CPI with dual enrollment for special education. The letter also informed parents that, effective immediately, no special education services would be provided to Student until he was enrolled in an accredited public or private school for purposes of Iowa's compulsory attendance laws or until his CPI with dual enrollment program was approved by the AEA. Student's speech services stopped immediately. The district provided a paraeducator for Student at [REDACTED] for the remainder of the academic year. (RESP-462).

DE Guidance: Respondents' counsel solicited information from the DE regarding special education services in situations of CPI with dual enrollment; specifically, whether a parent of a child with a disability who had elected that enrollment option could "pick and choose" between services required for FAPE. On May 28, 2021, the DE responded, in relevant part:

A fundamental rule is that a child is entitled to any and all services that are required to provide a free appropriate public education. Parent cannot unilaterally demand that a service be removed from the child's special education program. The Department provided the following guidance:

Q: I am upset with my child's special education and disagree with a particular service. I want the service to stop, but the school wants it to continue. Can I stop a particular service?

A: You cannot unilaterally stop a particular service. If there is a disagreement about a service, the IEP Team meets to discuss the service. If the service can be removed and your child will still receive a FAPE, the service is to be removed. If the service cannot be removed without harming your child's right to a FAPE, the service must continue. If you disagree with the decision to continue the service, you can use the IDEA's dispute resolution options to challenge that decision.

(RESP-541-42).

CONCLUSIONS OF LAW

IDEA Overview: One of the principal purposes of the IDEA is “to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.”¹⁵ 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, provide a free appropriate public education to all children with disabilities residing in the state between the ages of 3 and 21.¹⁶

Free appropriate public education (“FAPE”), as defined by the IDEA, means special education and related services that:

- (A) have been provided at public expense, under public supervision and direction, and without charge;
- (B) meet the standards of the State educational agency;
- (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and
- (D) are provided in conformity with the individualized education program required under section 1414(d) of this title.¹⁷

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.¹⁸ Under the IDEA framework, special education and related services are provided in conformity with the student’s individualized education program, or IEP.¹⁹ “The IEP is the means by which special education and related services are ‘tailored to the unique needs’ of a particular child.”²⁰ The IEP is developed by an IEP team, which includes the child’s parents, at least one regular education teacher if the child participates in the regular education environment, at least one special education teacher or provider, a representative of the local educational agency, an individual who can interpret the instructional implications of evaluation results, other individuals who have knowledge or special expertise regarding the child, and, where appropriate, the child.²¹

¹⁵ 20 U.S.C. § 1400(d)(1)(A).

¹⁶ 20 U.S.C. § 1412(a)(1)(A).

¹⁷ 20 U.S.C. § 1401(9).

¹⁸ 20 U.S.C. § 1401(28).

¹⁹ 20 U.S.C. § 1401(9)(D).

²⁰ *Andrew F. ex rel. Joseph F. v. Douglas County School Dist. RE-1*, 137 S.Ct. 988, 994 (2017) (citing *Board of Educ. Of Hendrick Hudson Central School Dist., Westchester County v. Rowley*, 102 S.Ct. 3034, 458 U.S. at 181 (1982)).

²¹ 20 U.S.C. § 1414(d)(1)(B).

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 FAPE to the child.²² The burden of proof in an administrative hearing on a due process complaint is on the party seeking relief.²³ Complainants, therefore, bear the burden of proof in this proceeding.

In their due process complaint, Complainants argue that the district has denied FAPE to Student during three separate time periods: 1) during the 2018-19 and 2019-20 school years; 2) during the COVID-19 school closure in spring 2020; and 3) during the 2020-21 school year when Student was enrolled in CPI with dual enrollment for special education. Additionally, Complainants argue that Respondents predetermined the outcome of the May 2020 and December 2020 IEP team meetings and in so doing violated Complainants' rights as parents to participate meaningfully as members of the IEP team.

I. Denial of FAPE

Lack of Progress/Inappropriate IEP Goals and Services: April 2019 – March 2020

In their complaint, Complainants assert that Respondents failed to provide Student with FAPE prior to the 2020-21 school year based on: 1) Student remaining discrepant from his peers despite having received specially designed instruction; 2) Student repeating certain goals from year to year; and 3) Student's goals changing even when he had not yet met the targets set for the goals.²⁴ A due process complaint must allege a violation that occurred not more than two years before the date that parents knew or should have known about the alleged actions that form the basis of the complaint.²⁵ Complainants filed their due process complaint on April 5, 2021, therefore any allegations of denial of FAPE must have occurred on or after April 5, 2019.

Prior to 2017, the United States Supreme Court had only addressed the FAPE requirement in one case, *Board of Educ. of Hendrick Hudson Central School Dist., Westchester County v. Rowley*,²⁶ which was decided in 1982. The Court in *Rowley* declined to adopt either of the standards for evaluating whether FAPE had been provided proposed by the parties, instead charting a "middle path" where a child has received FAPE if the child's IEP sets out an educational program that is "reasonably calculated to enable the child to receive educational benefits."²⁷ Amy Rowley was a student who was receiving instruction in the general education classroom and was

²² 34 C.F.R. § 300.507(a); 281 Iowa Administrative Code (IAC) 41.507(1).

²³ *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 61-62, 126 S.Ct. 528 (2005).

²⁴ In their briefing, Complainants also raised Student not having received ESY services in academic goal areas as a basis for a violation of FAPE, but this allegation was not contained in the complaint. The issues at hearing are limited to those raised in the due process complaint. 281 IAC 41.511(4).

²⁵ 34 C.F.R. § 300.507(a)(2); 281 IAC 41.507(1)(b).

²⁶ 458 U.S. 176, 102 S.Ct. 3034 (1982).

²⁷ *Endrew F.*, 137 S.Ct. at 994-996 (citing *Rowley*, 458 U.S. at 207).

making excellent progress with a “substantial’ suite of specialized instruction and services offered in her IEP[.]” For a child such as Amy, who was receiving instruction in the regular classroom, the Court concluded that an educational program reasonably calculated to enable the child to receive educational benefits would generally require an IEP that was reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.²⁸

Reexamining that standard 35 years later, the Supreme Court in *Endrew F. v. Douglas County School Dist. RE-1* held:

To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.

The “reasonably calculated” qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials. The Act contemplates that this fact-intensive exercise will be informed not only by the expertise of school officials, but also by the input of the child’s parents or guardians. Any review of an IEP must appreciate that the question is whether the IEP is *reasonable*, not whether the court regards it as ideal.

The IEP must aim to enable the child to make progress. After all, the essential function of an IEP is to set out a plan for pursuing academic and functional advancement. This reflects the broad purpose of the IDEA, an “ambitious” piece of legislation enacted “in response to Congress’ perception that a majority of handicapped children in the United States “were either totally excluded from schools or [were] sitting idly in regular classrooms awaiting the time when they were old enough to “drop out.”²⁹

For the purpose of determining what FAPE looks like, the *Endrew F.* Court essentially divided children eligible for special education into two separate cohorts: 1) those who are fully integrated in the regular classroom; and 2) those who are not fully integrated in the regular classroom and not able to achieve on grade level. For the first cohort, which includes students like Amy Rowley, an IEP should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.³⁰ For the second cohort of students who are not fully integrated into the regular classroom, the Court held that the

educational program must be appropriately ambitious in light of [the student’s] circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The

²⁸ *Id.* at 996 (citing *Rowley*, 458 U.S. at 202-204).

²⁹ *Id.* at 999 (citations omitted) (emphasis in original).

³⁰ *Id.* at 999-1000 (“The IEP provisions reflect *Rowley*’s expectation that, for most children, a FAPE will involve integration in the regular classroom and individualized special education calculated to achieve advancement from grade to grade.”)

goals may differ, but every child should have the chance to meet challenging objectives.

Of course this describes a general standard, not a formula. But whatever else can be said about it, this standard is markedly more demanding than the “merely more than *de minimis*” test applied by the Tenth Circuit. It cannot be the case that the Act typically aims for grade-level advancement for children with disabilities who can be educated in the regular classroom, but is satisfied with barely more than *de minimis* progress for those who cannot.³¹

The evidence here demonstrates that Student made progress on his IEP reading goals from April 2019 through March 2020. When Student’s progress became inconsistent for a time on his comprehension goal, his special education teacher altered instruction based on Mother’s input to offer stories of greater interest. Based on Mother’s request for more functional goals for Student, a sight word goal was added to Student’s IEP in May 2020.

Student made significant improvement on his writing goal during the 2019-20 school year after struggling with the goal during the 2018-19 school year. Student showed some regression on his behavior goal when first grade started, which is not unusual in response to the increased rigor and decreased free choice of the first grade setting. In response to this, SE Teacher began using a new visual format for Student’s transition strategy, which was discussed at the November 2019 IEP team meeting. Additionally, Student was provided instruction on asking for and taking breaks. Student also showed progress in his speech goals related to verbal speech sound production skills and made progress in using his speech generating communication device during this time period.

Student’s progress related to his math goals was more varied. In November 2019, Student had met part of one of his goals, so that goal was discontinued and a new goal added that focused on the part of that goal that he had not yet mastered. In another math goal area, SE Teacher switched the activities Student was doing in the early part of 2020 to make the work more hands on in response to a slight dip in progress monitoring data in January and February 2020. Student’s progress rebounded to the trend line by March 2020 when the COVID-19 closure began.

Complainants have focused intensely on the counting manipulatives, or “give me [x]” math goal, that was in Student’s IEP from at least April 2019 onward. They argue that the continuing presence of this goal demonstrates that Student’s IEP was not reasonably calculated to allow him to make adequate progress and that his failure to achieve the goal is evidence of his lack of progress. As an initial matter, SE Teacher credibly testified that this separate goal was included in the IEP in November 2019 with the explicit understanding of the IEP team members that Student making progress from his

³¹ *Id.* at 1000-01.

baseline of 20% to the target of 90% was likely unattainable.³² Mother had stressed her desire for Student to have stretch goals that would challenge him and she was not concerned about an IEP goal being carried over from one IEP to another.

There is no doubt from the evidence in the record that Student struggled with this goal. When Student's struggles with the goal became evident, SE Teacher consulted with experts from the AEA and with other teachers in her district who teach students with significant cognitive disabilities. In May 2020, after seeing Student continue to struggle with this goal, she kept the goal in the IEP but added a new goal related to money that would continue to enable Student to work on this skill in a more functional context. Parents had specifically expressed an interest in more functional goals for Student in their parent concern letter and in Mother's communication with SE Teacher in March while SE Teacher was working on drafting the IEP goals. Continuing with the same goal over the course of more than a year does not necessarily equal a denial of FAPE. The IDEA does not require that goals must be increased even if a student is not reaching a goal as quickly as expected; IEP revision does not necessarily require an increase of annual goals.³³

In their briefing, Complainants also focused on the addition of a writing goal using the Expanding Expressions Toolkit as reflective of the IEP not being reasonably calculated to allow Student to make progress. SE Teacher and ██████, who by May 2020 had both been working with Student for two academic years, worked together to develop this goal in light of Student's speech and cognitive delays. SE Teacher also consulted with teachers at the district's school for students with significant cognitive delays in developing this goal. Mother herself had communicated excitement about this goal when SE Teacher discussed it with her in March 2020 and approved of the fact that it aligned Student's goals in writing and speech.

Complainants have referenced two websites in their briefing which they assert show that EET is not based on peer-reviewed research.³⁴ These websites are not part of the record in this case and are not considered in this decision. Complainants have also referenced testimony from Mother that the instructor in a course she took through the AEA did not recommend using EET for emerging writers. Complainants included an e-mail exchange between Mother and this AEA employee, ██████, in which Mother references a remark she states ██████ made about EET not being appropriate for emerging writers and asks ██████s for other suggestions. ██████ recommends two other programs without making any reference to the appropriateness of EET. ██████ was listed on Complainants' witness list, but Complainants did not call her as a witness. I do not find the hearsay testimony by Mother about the opinion of ██████ on the appropriateness of EET persuasive, particularly in light of contradictory testimony from two professionals who had worked with Student extensively. There is no evidence that ██████ had any knowledge of Student, the content of his IEPs, or the progress he had

³² This goal was present in Student's IEP in April 2019 but was part of a larger goal. When Student met the other part of that goal, this goal was added as a separate goal in the November 2019 IEP, as described in greater detail in the Findings of Fact section.

³³ *K.D. v. Downingtown Area School Dist.*, 70 IDELR 203 (E.D. Pa. 2017).

³⁴ See Complainants' Post-Trial Brief at p. 29.

made. Additionally, due to the spring 2020 COVID-19 closure and Parents' decision to provide homeschool instruction to Student and the team's temporary suspension of academic goals, Respondents had no opportunity to implement EET with Student to determine whether it was a strategy that allowed him to make progress. The team's decision to use EET for Student's writing goal does not establish that he was denied FAPE.

Complainants also argue that the FAST assessments administered to Student in 2019 and 2020 and the outside evaluation of Student's math skills in spring 2020 show that Student was not making progress despite the specially designed instruction he was provided in the 2018-19 and 2019-20 academic years. The evidence in the record reflects that the educational professionals who worked with Student communicated with Parents that the FAST assessments that were the district's universal screener for all students would not provide particularly useful data with regard to Student's progress due to the fact that they were timed and would not allow Student adequate time for processing. The progress monitoring data that was collected on Student's IEP goals was much more useful in determining whether the IEP was designed to allow Student to make progress in light of his unique abilities, as *Andrew F.* requires. The IEP team respected Parents' decision not to have Student participate in alternative assessment as the team believed that the progress monitoring data was allowing them to adequately monitor Student's progress. The team was already aware that Student had deficiencies in the areas that the FAST screener monitored and he was receiving specially designed instruction to address those needs.

Complainants also argue that Student's discrepancy from his same-age peers has been growing, despite specially designed instruction. Student started kindergarten in the 2018-19 academic year and he has been discrepant from his same-age peers since that time; Mother testified that she was shocked by the discrepancy that the data showed in Student's kindergarten year. It is not clear, however, that the discrepancy is increasing; rather, as grade level expectations increase in the general education curriculum, Student's progress in the goal areas that his IEP team has set for him is not necessarily linear and the expectation that he will keep pace with the learning of his same-age peers is not necessarily a reasonable one. Where a student requires "significant foundational work," fragmented progress is a reasonable expectation and does not necessarily signal a denial of FAPE. Slow progress does not necessarily prove that IEPs were deficient and a court may not rely on hindsight to second-guess an educational program that was reasonable at the time. While courts can expect fully integrated students to advance with their grades, they cannot necessarily expect the same of less-integrated students.³⁵

Parents' concerns regarding Student's progress and their desire for him to progress more quickly are certainly understandable. Student's speech and cognitive delays are significant; the outside assessor Parents contracted with in spring 2020 as well as the educators who Student has worked extensively within the district and AEA agree that Student's speech difficulties make it more difficult to accurately assess his abilities in other core academic areas. Student's IEP team has worked diligently to craft measurable goals where progress can be monitored. Complainants' own shifting goals

³⁵ *K.D.*, 72 IDELR 261.

for Student reflect the difficulty that the team has had in determining the best approach for Student. In their concerns letter to the IEP team in May 2020, Parents noted their concern that Student's goals had not progressed to challenge him and work toward functional reading and math skills. They complained that Student had spent too much time on letter sounds and number identification and not enough on "real applications to reading and math." In response to these concerns, which Parents had also expressed to SE Teacher when she was drafting the IEP in March 2020, a functional math goal was added regarding money and a functional reading goal was added related to sight words. Yet in their post-hearing briefing, Parents complain that one of Student's reading goals for identifying letter sounds was discontinued after Student attained only 90% - rather than 95% - accuracy and that the goal was replaced with a sight word goal. Parents argue that Student should have had a goal related to blending sounds or segmenting words.³⁶ This appears contrary to the concern they expressed in May 2020 that Student was spending too much time on letter sounds. It is noteworthy as well that Mother expressed the opinion at the December 2020 IEP team meeting that too little of Student's time had been spent on foundational skills. Parents' letter from May 2020 conveyed the opposite concern, that too much time was being spent on foundational skills.

The educators on Student's IEP team were working through the same challenges that Parents confronted when Mother took over Student's instruction in the academic areas; Student needs certain foundational skills in order to progress in his goals. It is the job of the IEP team to assimilate new information into the framework that has been developed for a student's specially designed instruction and related services. There is a certain amount of trial and error involved in the process, even when team members have significant expertise, as each student's needs are unique. Student's severe speech issues combined with his cognitive delays have not always allowed for a linear progression from one goal to the next.

While Complainants have focused on a couple specific goals and on universal assessments that have little applicability to Student's unique situation in arguing that Respondents have denied Student FAPE, the overall picture from the evidence shows that the IEP team has collaborated closely with Parents to develop ambitious goals that Student can progress toward over time. From April 2019 through March 2020, Student met several goals and demonstrated measurable progress in reading, writing, and speech. The record reflects that Respondents changed instructional methods and strategies in response to progress monitoring data and increased speech services in response to concerns that Student needed more speech instruction in order to navigate core academic areas. Under these circumstances and looking at the whole picture of the services and instruction that were being provided to Student pursuant to his IEPs between April 2019 and March 2020, Complainants have not met their burden of proving that Respondents denied Student a FAPE during this time period. Student's educational program during this time was appropriately ambitious in light of his unique circumstances.

³⁶ See Complainant's Post-Trial Brief at pp. 24-25.

Access to Voluntary Educational Opportunities during Spring 2020 School Closure

There is no dispute in this case that Student was not provided the specially designed instruction and services listed in his IEP during the spring 2020 closure.

Complainants concede that Respondents' decision to offer voluntary educational opportunities during the closure, as opposed to "educational services," resulted in Respondents having no obligation to continue to provide specially designed instruction and related services during the spring 2020 closure.³⁷ Complainants argue, however, that Respondents had an obligation to take reasonable steps, including offering an IEP meeting, to ascertain whether Student could meaningfully participate in the voluntary learning opportunities being offered during the spring 2020 school closure under the principle of equitable access. Complainants argue that equitable access should have been a greater consideration for Student's teachers and support staff in light of his discrepancy from his classmates and lack of grade-appropriate skills.

As set forth in the Findings of Fact, the DE guidance to districts and AEAs emphasized the importance of ensuring equitable access for special education students where voluntary educational opportunities were being provided. Districts were to ensure that opportunities were universally accessible and that individuals with disabilities could acquire the same information, engage in the same interactions, and enjoy the same programs and activities as nondisabled peers, with substantially equivalent ease of use. The guidance specifically referenced the availability and use of assistive technology.

The evidence reflects that the district's voluntary educational opportunities for Student and his same-age general education peers during the closure were limited primarily to dissemination of resources, including websites and written materials, and weekly Zoom check-ins where students would share information about themselves and the general education teacher would suggest activities that the students might be interested in. There were no activities that were turned in or graded. The district was aware that ability to independently access the technology and learning platforms that were provided as a resource was an issue even for Student's same-age peers without disabilities due to their age.

Beginning the day after the general education teacher first communicated with Parents to suggest resources, which was prior to the end of the district's spring break, SE Teacher was in communication with Complainants to offer detailed suggestions for how Student could utilize those resources most effectively, given his unique needs. SE Teacher offered information about which resources would be more useful for Student (for example, resources that did not require Student to complete timed activities, which did not allow him adequate time for processing) and suggested specific levels that would

³⁷ See Complainants' Post-Trial Brief at p. 30. DE guidance distinguished between educational services and educational opportunities. If a district provided educational opportunities to all students, the guidance indicated that the district was required to ensure that students with disabilities had equal access to the same opportunities as general education peers. If the district provided educational services, the districts were to ensure that each student with a disability would be provided the special education and related services identified in the student's IEP. (RESP-467).

be appropriate for Student's abilities. During the course of the spring, SE Teacher also provided Mother general guidance regarding math activities that Student could engage in, as well as providing math resources that she had developed specifically with Student's goals in mind. During her very first communication with Mother, SE Teacher offered to design lesson plans for Student if Mother believed that would be useful. Complainants did not communicate to SE Teacher that they wished for her to develop lesson plans.

SE Teacher was in contact with Mother on a regular basis from the beginning of the spring closure forward. SE Teacher obtained access as a co-teacher to one of the electronic platforms that the general education teacher was using and posted live activities and accommodations for Student as appropriate. Mother and SE Teacher had several conversations, both over Zoom and over telephone, about how SE Teacher could support Student's instruction during the closure. SE Teacher offered to conduct Zoom conferences with Student to discuss areas of interest to him; Complainants declined the offer. Complainants likewise were not interested in Student attending his weekly class Zoom sessions, despite SE Teacher offering suggestions about how Student could engage with that opportunity, through his communication device or otherwise.

Complainants' primary concern during this time period was speech services. Under Student's IEP in place at this time, communication was a goal area and the speech services he received were part of his specially designed instruction.³⁸ As soon as DE guidance allowed the AEA to begin providing individual speech services again, in the beginning of May, ██████ began conducting twice-weekly teletherapy sessions with Student. SE Teacher attended one of the therapy sessions each week and was available after the session for consultation with Mother, if desired.

One of the accommodations in Student's IEP related to his unique needs in communication was his communication device, which was available to him at home during the closure. Father testified that the family did not prefer for Student to use the communication device, but it was nevertheless available to him for use in the voluntary educational opportunities that the school was offering and SE Teacher provided specific suggestions for its use in the activities suggested by the general education teacher.

The extended school closure in spring 2020 related to the COVID-19 pandemic was unprecedented and created a host of unique challenges for schools and parents. There is no question that the educational landscape during that time was bleak for all students, including those with disabilities. The evidence here does not reflect, however, that Respondents failed to ensure that Student had equal access to the voluntary educational opportunities offered to his same-age peers.

Competent Private Instruction with Dual Enrollment for Special Education

While Complainants have asserted violations of FAPE during the COVID-19 school closure and prior to that, the crux of the disagreement between the parties in this case relates to how a school district provides special education services to a student whose

³⁸ See 34 C.F.R. § 300.39(a)(2)(i).

parents elect competent private instruction with dual enrollment for special education. In a nutshell, Complainants argue that Respondents are required to provide special education services only for the portion of the day that Complainants elect to have Student present in a school setting. Complainants want to provide homeschool instruction for Student in core academic areas without specially designed instruction provided by Respondents and wish to retain the ability to access special education services in the areas that they elect – here, speech services and a paraeducator for Student’s part-time attendance at [REDACTED]. Respondents argue that Complainants may not on their own pick and choose the special education services that are provided to Student; rather, the IEP team must determine what services are necessary to provide FAPE.

Under Iowa law, a parent or guardian must ensure that a child is educated in one of four ways during the school year: 1) through attendance at a public school; 2) through attendance at an accredited nonpublic school; 3) through CPI pursuant to Iowa Code chapter 299A; or 4) through independent private instruction pursuant to Iowa Code chapter 299A.³⁹ CPI is private instruction provided on a daily basis for at least 148 days during a school year by or under the supervision of a licensed practitioner, which results in the student making adequate progress.⁴⁰ Complainants elected CPI at the beginning of the 2020-21 school year. Although Student was attending a portion of the school day (lunch, recess, and music class) at [REDACTED], he was not enrolled at [REDACTED] for the purposes of Iowa’s compulsory attendance requirement.

Children who have been identified as requiring special education under Iowa Code chapter 256B are eligible for placement under CPI only with prior approval of the placement by the director of special education of the AEA of the child’s district of residence.⁴¹ If parents of a child currently requiring special education decline consent to continued special education services or refuse consent for periodic reevaluation, the child is not eligible for CPI.⁴² When presented with a request for CPI for a child who requires special education, the AEA special education director is required to issue a written decision approving provision of CPI, conditioning approval on modification of the proposed program, or denying approval based upon the appropriateness of the proposed CPI program for the child requiring special education and considering the child’s individual disability.⁴³ Importantly for this case, the DE’s regulations expressly state that a program of CPI provided to a student requiring special education is *not* a program of special education for purposes of federal and state law.⁴⁴

In their argument, Complainants rely heavily on the portion of the Home Schooling for Students in Special Education Parent Notification and Acknowledgment stating that for dual enrollment purposes an IEP will be developed for the portion of the day that the child attends school and noting that the supports will be different than if the child

³⁹ Iowa Code § 299.1(1).

⁴⁰ Iowa Code § 299A.1(2)(a).

⁴¹ Iowa Code § 299A.9(1).

⁴² 281 IAC 31.10.

⁴³ *Id.*

⁴⁴ *Id.*

attended school full-time. This sentence, however, cannot be read in isolation from the form as a whole. The form is clear in notifying families that it is the IEP team, not parents alone, who will determine the necessary special education services to provide FAPE. Additionally, the form makes it clear that families choosing CPI with dual enrollment for special education must make the child available for instruction at the time and location provided by the school district and that attendance laws apply for the dual enrolled portion of the day. DE guidance solicited by Respondents affirmed that children are entitled to all services required to provide FAPE and that Parents cannot unilaterally demand removal of a service from the special education program. The IEP team is the vehicle to discuss necessary services for the provision of FAPE.⁴⁵ Additionally, even in Student's case, lack of attendance for a full day would change some of his supports (for example, fewer paraeducator hours of support would be needed), even if the less than full day attendance did not impact the SDI being provided by the IEP. The form's recognition of that reality does not confer upon Parents the unilateral right to elect which services that the IEP team determines are needed will be provided.

In August 2020, Respondents proposed an IEP that offered specially designed instruction to Student in the domain areas of reading, writing, math, behavior, and speech, along with related supports. A review of the evidence shows that Student was not meeting grade level standards in those areas; Parents agreed that Student was significantly behind his peers in the core areas of reading, writing, and math. In addition, Student has a severe mixed expressive and receptive language disorder and severe phonological impairment that impacts his academic goals. Prior to Complainants electing CPI as an enrollment option, Student's IEPs from April 2019 through the end of the 2019-20 school year had included specially designed instruction in the academic goal areas of reading, writing, and math, as well as in the area of behavior. As a compromise position, the team agreed to temporarily suspend Student's academic goals for nine weeks at the start of fall 2020, with Mother providing CPI homeschool instruction and Student receiving special education services in speech only, with a paraeducator to assist him while attending specials at [REDACTED]. While progress monitoring data from November 2020 showed Student making some progress in reading and writing during the relevant time period, Student continued to have need in all of the academic domain areas and in the area of behavior.

Under the IDEA's implementing regulations, special education is defined as specially designed instruction to meet the unique needs of a child with a disability. Specially designed instruction means adapting, as appropriate to the needs of an eligible child, the content, methodology, or delivery of instruction to address the unique needs of the child that result from the child's disability.⁴⁶ Under Iowa's regulations implementing CPI discussed above, a program of CPI provided to a student requiring special education is by definition *not* a program of special education for purposes of federal and state law. Consequently, Respondents cannot meet their obligation to provide FAPE to Student, which includes specially designed instruction to meet Student's unique needs, through Mother's homeschool instruction of Student. For an eligible child under IDEA, the IEP team must develop an IEP that includes academic and functional goals designed to meet

⁴⁵ See 34 C.F.R. § 300.320(4).

⁴⁶ 34 C.F.R. § 300.39(a), (b)(3).

the needs that result from a child's disability to enable the child to be involved and make progress in the general education curriculum.⁴⁷ Respondents do not argue that the general education instruction that Mother is providing to Student is deficient; rather, they argue that in order to meet Student's needs as a student eligible for special education, the IEP must provide Student with specially designed instruction in his areas of need. Under the relevant Iowa regulations, that specially designed instruction cannot be the homeschool program that Student is receiving through CPI.

While the parties are not in agreement about what precisely the November progress monitoring data shows or how much weight that data should be given, no one is arguing that the data shows Student no longer has needs in core academic areas. Complainants' argument is that they should be able to meet that need through CPI homeschool instruction and be able to opt out of the specially designed instruction that the IDEA requires under the FAPE standard. Mother's perception that Student is making progress in the homeschool setting and the data that shows he has made some progress is certainly good news, but it does not allow Respondents to abdicate their responsibility to provide FAPE to Student, who at the time was dual enrolled for special education.

The IEP that Respondents offered to Student in December 2020 acknowledged his status as a homeschool student dual enrolled for special education. The December 2020 IEP provided that Student would spend 1,600 minutes per month in specially designed instruction, including instruction in literacy, math, behavior, writing, and speech. Student would be expected to spend approximately one hour and 15 minutes per day receiving specially designed instruction, which accounts for approximately 19% of the time in a typical school day. (RESP-413-17). The various schedules that Respondents proposed for Student to receive this instruction took into account and worked around Student's time at [REDACTED]; additionally, Respondents offered to transport Student from [REDACTED] to [REDACTED] for his specially designed instruction. Mother told the team that she typically provided instruction in the general education curriculum in the morning; the schedule offered by Respondents would have still allowed time for homeschool instruction on that schedule.

Complainants also argue that the IEP team's decision that FAPE requires Student to receive specially designed instruction in the school setting by a licensed special education teacher runs afoul of the IDEA's least restrictive alternative (LRE) provisions. Under the IDEA, children with disabilities must be educated, to the maximum extent appropriate, with children who are nondisabled and removal of children with disabilities from the regular educational environment must occur only if the nature or severity of the disability is such that education in regular classes cannot be adequately achieved.⁴⁸ The Supreme Court has characterized the LRE mandate as embodying a preference for "mainstreaming" students with disabilities in "the regular classrooms of a public school system."⁴⁹

⁴⁷ 34 C.F.R. § 300.320(a)(2).

⁴⁸ 20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.114(a).

⁴⁹ *C.D. v. Natick Public School Dist.*, 924 F.3d 621, 625 (1st Cir. 2019) (quoting *Rowley*, 458 U.S. 176 at 202-03).

Parents' argument that Student's homeschool setting is the general education environment for purposes of LRE and that requiring Student to be educated outside of this setting violates LRE principles misses the mark for two reasons. First, the CPI enrollment choice by Parents is not a placement decision of the IEP team. Parents make the decision to enroll in CPI unilaterally and homeschool instruction can be provided in whatever setting they choose. The fact that Student's homeschool instruction is provided at his home at Parents' election does not make home Student's educational placement for IDEA purposes.

Second, although Complainants have repeatedly asserted they do not agree with the provision of specially designed instruction by a special education teacher to Student in any location, to the extent that they were to argue that such special education services should be provided to Student in the home that argument is untenable. Providing Student's SDI in a home environment is one of the more restrictive placements along the continuum of alternative placements that the IDEA requires the public agencies to offer.⁵⁰ The IDEA favors reintegration of children in the school setting where they can socially interact with other children.⁵¹ Parent preference for home instruction without evidence that such instruction is required for Student's health or education is not a basis for providing special education services outlined in the IEP in a home setting.

The IEP team's offer to reevaluate Student in light of Mother's expressed concern about whether his goals were appropriate did not constitute a denial of FAPE for Student, even taking into account his status as a Student enrolled in CPI with dual enrollment for special education. In their complaint, Complainants challenge Respondents' offer to reevaluate Student made at the December 2020 IEP team meeting as "tak[ing] up to eight (8) weeks away from home instruction." The schedule that Respondents initially proposed for Student to come in and be reevaluated involved Student coming to [REDACTED] [REDACTED] two hours per day five days per week for approximately two months. This time frame would have allowed for specially designed instruction to be provided in order to assess effectiveness of various instructional strategies. Respondents were not proposing that Student would come in two hours per day for reevaluation, plus additional time for the specially designed instruction contained in the IEP. This schedule would certainly not have had the effect of removing Student entirely from home instruction through CPI.

Additionally, the public agencies are responsible for ensuring that reevaluation occurs if they determine that the child's educational or related services needs warrant a reevaluation.⁵² Even where there is no specific concern or trigger, reevaluations are required to be conducted for each student with a disability at least every three years.⁵³ In conducting a reevaluation, the district is required to use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information,

⁵⁰ *Gwinnett County School Dist.*, 114 LRP 43625 (SEA GA 9/10/14) (citing 34 C.F.R. § 300.115).

⁵¹ *See, e.g., A.K. v. Gwinnett County School Dist.*, 52 IDELR 253 (11th Cir. 2014) (upholding district court determination that student's parents did not present evidence justifying in-home schooling where district could meet student's medical needs at school).

⁵² 34 C.F.R. § 300.303(a).

⁵³ 20 U.S.C. § 1414(a)(2)(B)(iii).

including information provided by the parent. The district is not permitted to use any single measure or assessment as the sole criterion for determining an appropriate educational program for the child. The district is also required to use “technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.”⁵⁴ The district must also ensure that the assessments and other evaluation materials are used for purposes for which the assessments or measures are valid and reliable and are administered by trained and knowledgeable personnel.⁵⁵

While all of the Ankeny CSD personnel who know Mother from her previous career with the district think highly of her as a general education teacher, Mother is not a licensed special education teacher and has not conducted nor is she licensed or qualified to conduct evaluations of children eligible for special education in the context of her prior work. An evaluation that only included interviews and observations of Student with Mother and during speech services and during specials at [REDACTED], as proposed by Complainants, would not meet the IDEA requirements listed above. There is widespread agreement in this case that a deeper dive into how Student learns would be useful as his progress has been inconsistent in some areas; for example, the counting manipulatives goal in math. As the outside math evaluator that Complainants engaged in 2020 noted, Student’s severe speech disorders can make assessment of his cognitive abilities difficult. A reevaluation using technically sound instruments that are valid and reliable and that is conducted by trained and knowledgeable personnel is certainly warranted in this scenario. Student was due for such a reevaluation within five months of the date of the December 2020 IEP team meeting. The team’s proposal to begin that reevaluation process sooner rather than later was appropriate under the circumstances.

The bottom line with regard to the core disagreement between the parties is that Iowa law governing CPI does not allow for parents or guardians to unilaterally select the IEP services that a child requiring special education will utilize. A child who is eligible for special education and whose parents select the CPI enrollment option and elect to dual enroll for special education services must receive FAPE from the LEA and AEA. What FAPE consists of for a particular student is a decision of the IEP team. The regulations are clear, however, that the CPI instruction a student receives under these circumstances does not constitute a program of special education for purposes of the IDEA. The LEA and AEA remain responsible to provide FAPE, including specially designed instruction, for a student who is dual enrolled for special education, independent of the CPI instruction that student is receiving. Respondents’ actions in this case were consistent with the framework the state has established for CPI with dual enrollment for special education. Respondents did not deny Student FAPE during the 2020-21 academic year.

⁵⁴ 20 U.S.C. § 1414(b)(2)(A)-(C).

⁵⁵ 20 U.S.C. § 1414(b)(3)(A)(iii), (iv).

II. Predetermination

In addition to their allegations that Respondents denied Student a FAPE, Complainants also allege that Respondents violated the procedural safeguards contained in the IDEA. Under the IDEA, parents of a child with a disability are mandatory members of the IEP team and the public agencies must take steps to ensure that parents are present at each meeting or are afforded the opportunity to participate.⁵⁶ Procedural violations of the IDEA only result in a denial of FAPE if the procedural inadequacies impeded the child's right to a FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or caused a deprivation of educational benefit.⁵⁷

Predetermination occurs when the state makes educational decisions too early in the planning process and in so doing deprives the parents of a meaningful opportunity to fully participate as equal members of the IEP team.⁵⁸ The prohibition on predetermination arises out of an IDEA implementing regulation, which requires that a child's placement must be "based on the child's IEP."⁵⁹ The state cannot come into an IEP meeting with "closed minds," having already decided material aspects of the child's educational program without parental input. The state is not prevented from having pre-formed opinions about what is appropriate for the child's education, but any pre-formed opinion must not obstruct the parents' participation in the planning process. "To avoid a finding of predetermination, there must be evidence the state has an open mind and might possibly be swayed by the parents' opinions and support for the IEP provisions they believe are necessary for their child." The inquiry is fact-intensive.⁶⁰

May 2020 IEP: Complainants argue that they were denied the opportunity to meaningfully participate in the development of Student's May 2020 IEP because the IEP was substantially unchanged from the draft IEP developed in March 2020 despite Complainants having presented a letter outlining concerns regarding Student's academic progress immediately prior to the meeting and having articulated their plan to homeschool student for the 2020-21 academic year.

With regard to the substantive similarity between the March 2020 draft IEP and the May 2020 final IEP, two points are important. First, the record demonstrates that SE Teacher consulted extensively with Parents and allowed them significant input into the March 2020 draft IEP, which contained significant changes from the November 2019 IEP. SE Teacher and Mother had conversations about Student's goals and changes to those goals based on his performance as determined by the progress monitoring that took place between November 2019 and March 2020. New reading and math goals were added in the May 2020 IEP, reflecting in part Mother's desire for more functional goals

⁵⁶ 20 U.S.C. § 1414(d)(1)(B)(i); 34 C.F.R. § 300.322(a).

⁵⁷ 34 C.F.R. § 300.513(a)(2)(i)-(iii).

⁵⁸ *O.L. v. Miami-Dade County School Bd.*, 63 IDELR 182 (11th Cir. 2014) (citing *Deal v. Hamilton County Bd. of Educ.*, 392 F.3d 840, 857-59 (6th Cir. 2004)).

⁵⁹ *Id.* (citing 34 C.F.R. § 300.116(b)).

⁶⁰ *Id.*

for Student. Additionally, the IEP reflected a new instructional tool for Student's writing goal, which Mother had expressed excitement about when she and SE Teacher discussed the draft. Additionally, Student's speech minutes were increased by 20 minutes each month in response to parent input regarding the desire for increased speech services. The fact that the March draft and the May final IEP were substantively similar does not indicate a lack of parent involvement in the development of the IEP.

Second, Parents had decided by the time of the May 2020 meeting that they wanted to eliminate the academic goals from Student's IEP and provide academic instruction to Student through homeschooling exclusively. Father candidly acknowledged in his testimony at hearing that he felt the May 2020 meeting was a waste of time as any IEP created would be useless the following year; he and Mother did not want to participate in the meeting and did not care what went into the IEP. SE Teacher acknowledged in her testimony that discussion of the IEP document itself and Student's goals was difficult under these conditions. Parents' post-hoc complaints about not being allowed to meaningfully participate in the development of this IEP ring hollow in light of their admission that their lack of participation in the meeting was due to their own disinterest.

Complainants also argue that the fact that no information was included in the May 2020 IEP to reflect Student's status as a homeschool student for the upcoming school year constituted predetermination by Respondents. This argument is similarly unpersuasive. At the time of the meeting, Complainants had not completed the required paperwork to elect for Student to receive CPI the following school year. Respondents' responsibility at the May 2020 IEP team meeting was to develop an IEP that would meet Student's needs as a public school student the following year, which was his current enrollment status at the time of the meeting. At the meeting, Respondents directed Parents to the relevant paperwork to elect CPI, which Parents submitted in July 2020. At that point, despite the fact that Complainants had not yet formally elected for Student to receive dual enrollment for special education, Respondents reached out to schedule an IEP meeting at which the provision of special education services to Student under the enrollment option of CPI with dual enrollment for special education was on the agenda. Respondents' actions in waiting until Parents had formally elected the CPI option to convene an IEP team meeting and draft an IEP specific to Student's status as a homeschool student do not reflect predetermination and did not deny Parents the opportunity to meaningfully participate in the drafting of Student's IEP.

December 2020 IEP: Complainants also argue that Respondents denied them the opportunity to meaningfully participate in the December 2020 IEP team meeting because they: 1) declined Complainants' request for a consultative relationship with a special education teacher without consideration; and 2) offered no alternative to reinstating the August 2020 IEP or beginning an immediate reevaluation which would take time away from home instruction.

While Complainants allege predetermination with regard to the December 2020 IEP, it is important to note that the December 2020 IEP meeting was a continuation of a conversation that the team had begun in August 2020 when Complainants completed enrollment of Student in a program of CPI with dual enrollment for special education.

At that time, Parents expressed a desire for Mother to provide all instruction for Student in core academic areas, with Student receiving only speech services and a paraeducator for specials he attended at [REDACTED]. The team's decision in August was to discontinue all other IEP special education and services and temporarily suspend Student's goals in academic areas and behavior for nine weeks. The members of the team all viewed this as a compromise position; Parents wished to see Student's academic goals eliminated altogether and Respondents felt that Student required specially designed instruction in the domain areas where deficiencies and need had been identified. Respondents candidly acknowledged in the PWN after the August 2020 IEP team meeting and at hearing that this compromise position was offered because they wished to keep Student connected with the school district as they believed that offered him the best opportunity to make progress.

Respondents' personnel did not discuss their opinions regarding the baseline and progress monitoring data that was collected for Student during fall 2020 prior to the IEP team meeting. After receiving an update regarding that data, superintendent Adams offered his opinion that he did not believe the data supported permanently eliminating Student's goals in domain areas where he continued to have need, including reading, writing, math, and behavior. While the data showed progress in some areas and while the team generally had a very positive opinion of Mother as a general education teacher providing CPI to Student, Adams offered his opinion that he did not believe that the district would be fulfilling its obligation to provide FAPE to Student if it ceased providing services in all areas other than speech and paraeducator support for specials. Multiple team members, including Adams, expressed the opinion that pairing specially designed instruction from a licensed special education teacher with Mother's general education curriculum would offer Student the best opportunity to progress. The team did not accept Mother's suggestion for her to pair informally in a consultative fashion with a special education teacher where that teacher would not have any direct contact nor provide any direct instruction to Student. Mother and her attorney were clear in the meeting that they did not wish for Student to spend any additional time in a school setting for progress monitoring or instruction.

Some of the concerns that Mother identified with Student returning to instruction in the school setting, such as how to manage transitions and travel time, could have been addressed by the team in determining how to provide specially designed instruction to Student, but Parents unequivocally stated at the meeting that they were unwilling to consider any academic instruction for Student outside of speech services and a paraeducator at [REDACTED]. Parents' attorney specifically asked whether the team would consider where and when to deliver SDI if Parents consented to the resumption of Student's academic goals. Respondents confirmed this was the case. Parents' attorney then categorically stated that Parents were not interested in any additional services apart from speech and the paraeducator at [REDACTED]. With Parents unwilling to consider the provision of any specially designed instruction from Respondents, the discussion on that point did stall.

While Parents proposed delaying the proposed reevaluation until after the end of the school year or the summer, Respondents did not believe they were free to do so. Student was due to have a three year reevaluation completed by May 23, 2021; the three

year reevaluation is a requirement under the IDEA.⁶¹ In addition to the mandatory nature of the three-year reevaluation, a public agency has the responsibility to ensure that a reevaluation is conducted if it determines that the educational or related services needs of a child warrant a reevaluation.⁶² In this case, Mother, who had been the only person providing academic instruction in the core academic areas during fall 2020, offered her opinion at the IEP team meeting that she believed Student's goals were inappropriate given his unique needs.⁶³

While general IDEA predetermination cases are useful as a starting point here, the larger backdrop of the discussion between Complainants and Respondents that continued from August 2020 through the December 2020 IEP meeting is Iowa state law governing dual enrollment for special education in the CPI context and what the resident district's responsibility is to provide FAPE to a student enrolled in that fashion.⁶⁴ Iowa law permits students who have been identified as requiring special education to dual enroll in order to receive special education services. Under the Iowa regulations implementing CPI with dual enrollment for special education, a program of CPI provided to a student requiring special education is explicitly not a program of special education for purposes of federal and state law.⁶⁵ As a public school student enrolled for special education, Respondents are required to provide Student with FAPE. The clear import of that regulation is that a district responsible for providing a student with FAPE cannot meet that obligation through a program of CPI. In this context, the proposal that Parents were making – that Mother's CPI program of instruction constitute Student's only instruction in academic domain areas and behavior, where he had been identified to have needs – was defined by regulation as not constituting a program of special education. That backdrop is important, as it was integral to the district's opinion that FAPE could not be provided through CPI, as Parents were requesting.

The evidence also reflects that Respondents' personnel came to the meeting with open minds regarding Student's goals and what appropriate instruction might look like for Student given his unique needs. Respondents' initial response to Mother's concern that Student's goals were not appropriate was to propose an immediate functional reevaluation, including an instructional component, in order to identify both Student's capabilities and the instructional strategies that would be most effective for him. The stated goal behind this functional reevaluation was to adjust Student's IEP so that the instruction provided to him would be based on the best and most current data. At that point, Respondents had not been providing any specially designed instruction to Student since March 2020 owing to the COVID-19 closure and Parents' decision to

⁶¹ 34 C.F.R. § 300.303(b)(2).

⁶² 34 C.F.R. § 300.303(a)(1).

⁶³ In fact, Mother had testified that she had not been providing instruction in the coin and bill match and identification math goal contained in the IEP because she did not believe Student was ready for that goal; she had been working on more foundational skills with him.

⁶⁴ See *Hooks v. Clark County School Dist.*, 228 F.3d 1036, 1039-40 (9th Cir. 2000) (federal court declined to decide whether a student who was enrolled in home instruction under Nevada law could be considered a "private school child" under the IDEA, holding that how student is classified under state's instructional scheme is a matter of state law).

⁶⁵ 281 IAC 31.10.

provide homeschool instruction to Student in core academic areas beginning in fall 2020. While this proposal was not one that was appealing to Parents, it demonstrates that Respondents did not come to the meeting with a closed mind about what an appropriate IEP would look like for Student. Respondents responded to Mother's concern about goals with a proposal to take steps to collect data designed to illuminate more appropriate goals.

Under these circumstances, Complainants have not shown that Respondents engaged in predetermination at the December 2020 IEP team meeting such that Parents were unable to meaningfully participate in the planning process.

III.

Lack of Speech Services beginning April 8, 2021

In their briefing, Complainants argue for an award of compensatory education for speech services that were not provided following the AEA's termination of Student's eligibility for CPI and dual enrollment for special education. This complaint was filed on April 5, 2021. The AEA director terminated CPI eligibility with dual enrollment on April 8, 2021. ██████████ provided speech services in accordance with Student's IEP through April 8, 2021. Any allegation of denial of FAPE on the basis of actions taken after April 5, 2021 when this due process complaint was filed is not properly before the undersigned. Accordingly, it will not be considered.

IV.

Prevailing Party

Complainants and Respondents have each requested a declaration that they are the prevailing party in this action. Under the IDEA, federal district courts have jurisdiction over awards of attorneys' fees.⁶⁶ A court may award reasonable attorneys' fees as part of the costs to a prevailing party under three scenarios:

(I) to a prevailing party who is the parent of a child with a disability; or

(II) to a prevailing party who is a State educational agency or local education agency against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

(III) to a prevailing State educational agency or local educational agency against the attorney of a parent, or against the parent, if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.⁶⁷

⁶⁶ 20 U.S.C. § 1415(i)(3)(A).

⁶⁷ 20 U.S.C. § 1415(i)(3)(B)(i).

Based upon the above Conclusions of Law, Respondents are the prevailing party in this action. Complainants have failed to establish that Respondents denied Student FAPE or that Respondents' actions meaningfully impeded their participation in the development of an IEP for Student. This decision makes no findings nor conclusions regarding whether the other criteria for awarding attorneys' fees to a prevailing local educational agency have been met. Neither Complainants nor Respondents have made any argument on this point.

ORDER

Complainants have not proven that Respondents denied Student a free appropriate public education as alleged in the due process complaint. Complainants' requested relief is therefore denied and the due process complaint is dismissed.

cc: Wendy Johnson, Attorney for Complainants (via electronic mail)
wholeheartedwdm@gmail.com

Katherine Beenken and Elizabeth Heffernan, Attorneys for Respondents (via electronic mail)
kbeenken@ahlerslaw.com
ehffernan@ahlerslaw.com

Cheryl Smith, IDOE (via electronic mail)
cheryl.smith@iowa.gov

Case Title: IN RE: O.J., A MINOR, BRIAN AND JENNIFER JACOB V.
WOODWARD-GRANGER CSD, ANKENY CSD AND
HEARTLAND AEA

Case Number: 21DOESE2003

Type: Final Decision

IT IS SO ORDERED.



Laura Lockard, Administrative Law Judge