

BEFORE THE IOWA DEPARTMENT OF EDUCATION
(Cite as 29 D.o.E. App. Dec. 002)

<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>[REDACTED] COMMUNITY SCHOOL DISTRICT and [REDACTED] 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>Dept. Ed. Docket No. SE-489 DIA No. 19DOESE0010</p> <p style="text-align: center; font-weight: bold; margin-top: 20px;">DECISION</p>
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On or about November 13, 2018, Complainants [REDACTED] and [REDACTED] filed a due process complaint against Respondents [REDACTED] Community School District (“LEA” or “district”) and [REDACTED] Area Education Agency (“AEA”) pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400 et seq., as implemented by 281 Iowa Administrative Code chapter 41.

Hearing in this matter was held January 22 and 23, 2019 at the offices of the [REDACTED] Area Education Agency in [REDACTED], Iowa. Attorney Dustin Zeschke represented the district and the AEA. [REDACTED], superintendent, attended the hearing as representative of the district. [REDACTED], director of special education, attended the hearing as representative of the AEA. Complainant [REDACTED] appeared at the hearing and was self-represented.¹

The following witnesses testified at the hearing: [REDACTED], aunt of [REDACTED]; [REDACTED]; [REDACTED], family friend of Complainants; Nancy Millice, educational consultant at University of Iowa Healthcare; [REDACTED], superintendent; [REDACTED]; [REDACTED], special education teacher; [REDACTED], special education teacher; [REDACTED], AEA special education consultant; [REDACTED], AEA school social worker; and [REDACTED], AEA director of special education.

Complainants’ Exhibits A and B were admitted as evidence. Respondents’ Exhibits 1 through 51 were admitted as evidence. Complainants submitted a copy of the decision in *Andrew F. v. Douglas County School District RE-1*, 137 S.Ct. 988 (2017) in advance of the hearing. Respondents submitted Respondents’ Trial Brief in advance of the hearing. Both items are considered as part of the record in this case.

¹ Due to inclement weather and school closings on the dates of the hearing, Complainant [REDACTED] was unable to personally attend the hearing; he presented testimony by telephone.

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. At the conclusion of the hearing, Respondents made a motion to extend the 45 day timeline until February 20, 2019 to accommodate the drafting of a decision in the case. This motion was granted.

ISSUES PRESENTED

Pursuant to 34 C.F.R. 300.511(d) and 281 Iowa Administrative Code 41.511(4), the issues in this hearing are limited to those issues raised in the Complaint. By order dated January 9, 2019, the following issues were identified to be addressed at hearing:

Whether Respondents violated the IDEA and failed to provide [REDACTED] with a free, appropriate public education (FAPE) by the following actions:

- Failure to effectively manage behaviors, including failure to implement proper discipline procedures outlined in the Behavior Intervention Plan;
- Failure to provide consistent academic instruction;
- Excessive time in seclusion/time out room.

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 A

Special education teacher [REDACTED]: SE Teacher B

FINDINGS OF FACT

Student is a nine year old boy who was placed with Parents' family in August 2014 then subsequently adopted by Parents. Including Student, Parents have a total of nine children, six of whom are currently in the home. Student experienced a great deal of physical abuse and neglect with his biological family. Prior to his placement with Parents, Student struggled with behaviors in each foster home where he was placed and in various day care settings. (Mother, Father testimony; Exh. 1-3, 1-20).

Student enrolled in junior kindergarten in the district in August 2014. He is currently in third grade. (Mother, testimony; Exh. 1-3).

January 13, 2015 IEP: After a suspected disability form was completed in November 2014, Student's first IEP was drafted in January 2015. At that time, Parents had no academic concerns. Student had been struggling with following classroom rules and

expectations. Behaviors of concern had included not following directions, refusing to work, running and crawling around the room, hitting, pulling hair, calling adults names, and talking back. It was determined that, due to intensity and escalation of behaviors, Student required services and supports exceeding those available in the general education setting. The IEP team determined that Student needed an individual behavioral plan and additional adult assistance to succeed in the general education setting. (Exh. 1-2-3, 1-10-11; Mother testimony).

In the Educational Evaluation Report dated January 13, 2015, it was noted that Student had experienced behavioral difficulties since the first day of school. The school began daily behavior tracking sheets on August 28, 2014. Challenging behaviors were observed in various school settings; the most difficult times of day for Student were group instruction times in academic subjects (reading, math, and writing). The evaluation also noted that Student is a smart child, who is able to articulate his wants and needs and interact appropriately when having a good day. (Exh. 1-19).

Student's first IEP contained a behavior goal of 80% compliance in the school setting in three out of four weeks. Compliance included following teacher/staff directions, using appropriate language, working without disrupting others, and completing assigned tasks before moving to another activity. Additionally, Student's goal was to need no more than one time out/removal per day. This first IEP provided for 300 minutes per month of specially designed instruction in the special education setting and 8,000 minutes per month of paraprofessional services. (Exh. 1-4, 1-7).

January 13, 2015 BIP: Along with the IEP, a Behavior Intervention Plan (BIP) was implemented for Student. The BIP provided for, among other things, verbal or visual reminders of behavior expectations prior to activities, verbal or visual cues to prepare for changes in routine or activities, provision of special tasks around the classroom or building if Student was engaged in work, starting the day in the special education classroom talking to the special education teacher and picking up a behavior chart before going to the junior kindergarten classroom, and provision of scripts or stories in the special education classroom to encourage school day compliance. (Exh. 1-32-33).

The BIP provided for time outs until Student complied with expectations, then the requirement that Student complete missed work after the time out. Prior to time out, Student would receive a verbal reminder, a second reminder, a third reminder with a consequence, then a count down from three. If Student did not comply prior to the countdown ending, he would receive a time out and stay there until he was under instructional control and ready to go back to the classroom. The BIP also provided that staff trained in Nonviolent Physical Crisis Intervention would be used to ensure Student's safety and the de-escalation of Student's behaviors in emergency situations. The BIP notes that this will be used when "[Student] places himself or others in physical danger." (Exh. 1-33-34).

A new IEP was written effective August 25, 2015 to reflect Student's transition from the early childhood program to kindergarten at Lambert Elementary. There were no substantive changes in Student's goals. (Exh. 2-1-9, 2-33; ██████ testimony).

Initiation of Leveling Plan: In October 2015, the district began a leveling plan with Student in an attempt to more successfully address his challenging behaviors. Student was still struggling in the general education environment, even with the IEP supports already in place; the goal of the leveling plan was to provide additional supports in a more restrictive setting in order to determine the level of supports Student needed to be successful. The idea is to make the environment only as restrictive as necessary for the child to meet the expectations in place, then reintegrate into the regular education environment as soon as possible. Typically, a student works primarily with a special education teacher or paraprofessional to learn behaviors to become successful in the general education setting, then when the student shows success the student is transitioned back to the general education environment as a trial for some period of time (i.e. lunch or recess). A leveling plan is meant to be a short term way of offering additional supports in a more restrictive environment in order to help a student become more successful. (██████ testimony).

In Student's case, the leveling plan was used during October and all of November. It showed some initial success, then its effectiveness diminished. During October 2015, the district called in the AEA's behavior resource team (BRT) to further brainstorm ideas for Student. The BRT is a group of subject matter experts employed by the AEA who have been specially trained in behavioral techniques, management, and supports; it is a resource that the district can access when additional ideas are needed to address a student with behavioral challenges. (██████ testimony).

BRT Summary: The team conducted several assessments with Student designed generally to evaluate his preferences and to analyze the choices he made when presented with several options, then issued a summary of its findings on October 30, 2015. The summary identifies Student's challenging behaviors as physical aggression (hitting and kicking staff, trying to stab people with scissors, threatening others, throwing books and desks, spitting in the face of staff), abusive language, including profanity, making growling noises, eloping, laying on the floor, and general avoidance. (Exh. 49-1).

Based on a review of Student's file, assessment data, and interviews with Student, his paraprofessional, and an AEA consultant, the team hypothesized that Student demonstrated challenging behaviors in the classroom setting when presented with non-preferred tasks in order to escape the immediate task. (Exh. 49-1-4).

The BRT made the following recommendations:

- Adding more positive reinforcements, as well as chunking work and rewards into smaller segments;
- Using a "10-Card System" for a visual reward reminder, reinforcing positive behavior with ongoing competitive approval within the classroom, and scheduled escape opportunities;
- Starting the day with a brief check-in with a preferred adult, who will review with Student what he needs to do to earn his rewards; and

- Adding an adult check-in after each classroom activity (15-20 minutes) to discuss what activity Student is choosing for his five minute reward if he has not been removed from the classroom/activity.

(Exh. 49-4).

To address Student's escape function, the BRT recommended the following structure when Student engaged in work refusal:

1) When work refusal begins, Student will be told, "Let's go." A staff member will accompany Student to the Think Area. No one will discuss the reason for having to go or get pulled into verbal banter with Student. Ignore any of these attempts by Student. The staff member will monitor Student while he completes the assigned task from class in the Think Area and document the time he spends in the Think Area.

2) After Student has done the required work that he refused in the classroom, the staff member will accompany Student back to class, again taking care to not engage Student in conversation. No one will debrief or have conversations with Student about his behavior during this time. Behavior instruction will be provided before or after school, not while in class.

(Exh. 49-4-5).

December 21, 2015 IEP and BIP Review: Student continued through the first part of his kindergarten year to struggle with behaviors such as work refusal, running from the learning environment, throwing objects, hitting, kicking, inappropriate language, and disrupting the learning of other students in the classroom. Student's IEP was reviewed by the IEP team and revised effective December 21, 2015. The IEP revisions were based upon input from the BRT and some requests from Mother. The behavior plan was updated to eliminate the use of social stories and contingent reinforcement; both of those changes were requested by Mother, and the elimination of contingent reinforcement was supported by the findings of the BRT regarding Student's preferences. Additionally, Student's morning check in procedure was moved to the general education setting instead of the special education setting. This was also at Mother's request, as Student's preferred adult was the general education teacher; the team agreed that it was preferable to have the morning check in occur with Student's preferred adult. Other implementation items were added in the BIP as well, such as allowing Student breaks when he appropriately requests them, avoiding an environment where Student felt closed in and confined, providing a safe, defined area in the classroom in which Student could escape while still being exposed to instruction, and providing Student with special tasks or jobs around the classroom or building if he is engaged in work and using appropriate behaviors. The team added Title 1 reading services for Student based on progress monitoring which showed he was struggling to keep up in the general education room. Student was to work with a reading instructor several times per week with progress monitored closely to determine whether more

intensive supports were needed. (Exh. 3-2-3, 3-18, Exh. 4-22, Exh. 17-2-3; [REDACTED] testimony).

At the time of the review, Student was missing an average of 600 minutes of integrated class participation time in a two week period due to inappropriate behaviors. Student's revised behavior goal was to reduce his missed integrated class participation time from an average of 600 minutes in two weeks to 120 minutes in two weeks. (Exh. 3-4).

This IEP provided for Student to receive 2,100 minutes per week of specially designed instruction, 2,040 of which would be in the general education setting and 60 of which would be in the special education setting. Student was to participate in direct social instruction in the areas of social/behavioral skills two times per week for 30 minutes. Student was also to receive 420 minutes per day of paraprofessional services; the paraeducator was to accompany Student during all of his time in the general education setting and during specials, lunch, recess, and assemblies. (Exh. 3-7).

Student's BIP update provided for staff to use CPI supported strategies if Student displayed physically threatening or aggressive behaviors:

1. If [Student] displays physically threatening or aggressive behavior, the CPI trained staff will use CPI supported strategies.
 - If [Student] is under control (as judged by below described control behaviors) and deemed no longer a physical threat to himself or others, he will be released from the CPI hold. This process will be repeated if behaviors warrant.
 - If [Student] is not able to display the below described control behaviors after a more prolonged period of time, he will be released and encouraged to go to a defined safe spot in his current environment. If he continues to physically engage staff, he will be put back in a CPI hold. If he does not physically engage staff, other deescalation techniques will be used. This process will be repeated if behaviors warrant.

The control behaviors referenced include calm tone, regular voice with appropriate language, still hands and feet, relaxed body, and ability to verbalize he is calm and ready to be released. (Exh. 7-29).

At the IEP team meeting, Mother expressed that she wanted CPI restraints to be used more often with Student. The meeting notes indicate that Mother stated that Student does not respond to verbal direction and that she "has taught him that discipline can be physical without being abusive."² Mother stated that she felt Student was being given too many redirects prior to removing him from the classroom and using a hold. Mother also expressed the opinion that behaviors were being tolerated in the school setting that should not be tolerated. The notes state, "Mom's goal is to use more CPI when he is physically assaulting us, the first time. No more warnings when he kicks us and hits.

² The meeting notes for this IEP are dated January 14, 2016. The reason for the discrepancy between the implementation date of the IEP and the date of the notes is that a subsequent meeting was held in January 2016 in order to finalize the IEP. ([REDACTED] testimony; Exh. 4-3).

Not asking for CPI when he is not physical.” (Exh. 3-18, Exh. 4-22, Exh. 17-1-2; [REDACTED] testimony).

The revised BIP also provided for Student to be allowed breaks if he requests them in a calm voice, with appropriate words and non-agitated body language. Staff are to use positive attention upon compliance with directives or assigned tasks and to have Student observe models of appropriate behavior and discuss as a learning opportunity. This BIP also provides for discussion to take place immediately when challenging behaviors occur, as revisiting at a later time had not proven effective. (Exh. 6-25).

CPI: CPI is a non-violent crisis prevention and intervention protocol that the district employs. All special educators, paraprofessionals, and administrators receive training in CPI each year. The goal of the CPI protocol is to de-escalate behaviors. Educators receive instruction in how to identify what level a student is at (i.e. agitation, refusal, etc.), how to appropriately respond, including verbal interaction strategies, how to recognize escalation before it occurs, and how to intervene prior to using restraints. As a student progresses up the continuum of aggression, the last resort is a CPI-approved restraint or hold. Prior to a hold, educators are instructed to block a child’s aggressive movements and move away from them. It is not the severity of the behavior that dictates when a hold will be used, but rather the severity of danger to the student or others in the school setting; if a severe behavior can be managed by using a technique that is short of a physical restraint or hold, that option will be chosen. ([REDACTED] testimony).

March 2, 2016 IEP Review: This amendment to Student’s IEP was made to permit a shortened school day, with Student leaving at 10:30 AM. Parents requested the shortened school day in order to allow Student to spend more time with his family and to adjust to his new home. Student was having difficulty tolerating a full day of structured educational demands in the school setting. This IEP also provided for Student to receive all of his services in the special education classroom, including core instruction in reading and math and specially designed instruction in reading, math, and social skills. A reading and a math goal were added to the IEP based on progress monitoring that showed Student’s reading and math skills were lower than those expected of grade level peers. (Exh. 4-2, 4-6-7; [REDACTED] testimony).

Regarding Student’s behavior goal, Student had had 69 Office Discipline Referrals (ODRs) during the 2015-16 school year. Of those ODRs, 48 involved CPI-approved holds. Over the two weeks preceding the IEP review, Student had been in nine CPI-approved holds with each hold lasting an average of 21 minutes. Between the IEP meeting on January 14, 2016 and the IEP meeting on March 2, 2016, Student had missed approximately 195 minutes per day of class time due to behaviors. Due to his escalated behaviors, Student began working from the behavior classroom as a strategy to help him be more successful in the school setting. (Exh. 4-4-5).

During a meeting on March 3, 2016, Mother first raised the idea of having a teacher provide instruction in the home for Student. Mother wanted instruction at school for no more than one hour per day, with Student riding the bus to school in the morning then coming home with a teacher for instruction that Parents could monitor. Superintendent

██████████ discussed this issue with Mother and explained the obligation to provide services to Student in the least restrictive environment. ██████████ explained that there are a variety of settings in which instruction can be provided, ranging from least restrictive to most restrictive. Least restrictive would be a general education setting with general education peers. ██████████ explained to Mother that homebound instruction with no access to peers would be the most restrictive setting for a student. ██████████ explained that in between these two ends of the continuum there are multiple options that range in restrictiveness. (Exh. 17-4-5).

In particular, the district had concerns about providing Student with instruction in the area of social skills in the home setting. For early elementary (K-2) students, the Iowa Core lists as an essential skill communicating and working appropriately with others to complete tasks, which includes demonstrating good listening skills, identifying behaviors that cause conflict, respecting and cooperating with others, being aware of others' feelings and opinions, and listening to others. Another essential skill for K-2 students is learning leadership skills and demonstrating integrity, ethical behavior, and social responsibility, which includes complimenting others' work, initiating positive interactions with classmates, accepting constructive suggestions in a positive way, and sharing tasks necessary to complete a group task. Developing and practicing these skills in the home setting would be difficult as no peers are present. (Exh. 47-25; ██████████ testimony).

During this time frame, the district convened multiple meetings to discuss strategies for Student to achieve success in the school setting. A team member developed a list of preferred activity ideas that was used both for instructional purposes and to develop breaks and incentives that would be attractive to Student. School personnel attempted to incorporate activities that Student enjoyed as much as possible. (Exh. 18; ██████████ testimony).

AEA special education consultant ██████████ shared with the team an example of a choice system for Student, as well as a lesson planning template with the goal of keeping each section of Student's schedule to 10 minutes and to always embed choice. She noted that the academics in her proposed template were not rigorous, but rather were designed to get Student reengaged in school and to provide fun ways to learn. Based on observational data, ██████████ suggested including physical activities to ease Student's transition into school and from room to room, building a "Wall of Fame" to place Student's work in a very visible location, saturating Student with praise for positive behaviors, implementing rewards that accord with Student's competitive approval preference, including making a positive call home or taking a video of him telling the principal what a good job he did, and providing alternatives to sitting at a desk. (Exh. 36).

April 8, 2016 IEP Review: At this review, the IEP team determined that Student would continue to have a slightly shortened school day, but would stay until 1:20 PM, rather than leaving at 10:30 AM, as the previous IEP had provided for. This change was made at Mother's request. Mother requested at the IEP team meeting that Student either receive a lengthened school day or full instruction at home. Under the revised plan, Student was to receive the majority of his services in the special education setting, with

times during the week where he could integrate into the general education classroom, as well as times when one to two general education students would come to work with Student in the special education setting. (Exh. 5-2; ██████ testimony).

During this meeting, the team discussed various strategies to engage Student in learning in the school setting. Student had previously responded well to competitive approval, such as having his successes pointed out to others, including Parents. The team, including Mother, decided that they would take pictures of him when he was doing well and send the picture to Mother. Mother would then text back with several sight words for Student to read with his teacher. This gave him a connection to Mother at school; he liked the reassurance that she was interacting with him during the school day. Additionally, ██████ suggested a check in procedure in the mornings that incorporated physical activity, including some of Student's preferred activities. (Exh. 17-6; ██████ testimony).

██████ Program: At the beginning of the 2016-17 school year, the district initiated the ██████ program at the ██████ for students in kindergarten through sixth grade with behavioral challenges and significant needs that could not be met in a less restrictive environment. The program operates in a separate building on the school campus and provides intensive behavioral supports in a small group setting. The district's elementary school is across the street from the ██████ building and students at ██████ have the opportunity to use the gym at the elementary school, have grade level recess with general education peers at the elementary school, use the elementary school library, and attend assemblies at the elementary school. (██████ SE Teacher B testimony).

The ██████ classroom setting is highly individualized, with stations where teachers and paraprofessionals work with students at their individual academic level. The stations have a great deal of separation from one another and there is a divider in the main classroom that can be closed to create two separate classrooms. In addition to the main classroom, there is a sensory room with sensory objects, a reading room, the ██████ ██████, where students can go if they want a break, and the ██████ room where students can go if they want to talk or process with a teacher or paraprofessional. Students at ██████ eat breakfast and lunch together, which provides for social skills instruction. A licensed mental health social worker from Families, Inc., a nonprofit mental health agency, provides five hours per week of support to the ██████ program through a contract with the district; each student can access this service and time depends on a particular student's needs in a particular week. (██████ testimony; Exh. 51-2).

At the time of the hearing, the ██████ program had two experienced special education teachers, three paraprofessionals, and nine students. Both of the special education teachers have taught at the ██████ program since its inception. Of the nine students, two are completely integrated into the general education setting except for a math class that they receive at ██████. The two students who participate in the general education setting are at ██████ for breakfast and math in the morning; by 8:45 AM they are taken to the middle school and spend the rest of the day there. During most of Student's time

at ██████ the student to staff ratio has been closer to 1:1. (SE Teacher A, SE Teacher B testimony).

The ██████ program has monthly meetings that include the two teachers, AEA school social worker ██████, who is a member of the BRT, Heather Kaufman, the Families, Inc. counselor, ██████ and sometimes ██████. They discuss every student, focusing on specific concerns that have arisen and how to address those concerns. (██████ ██████ testimony).

August 11, 2016 IEP Review: The IEP team decided that Student would attend the ██████ program beginning at the start of the 2016-17 school year, the first year that the program was operational. Student was to receive all of his instruction during the school day at the ██████ program, with direct instruction in the areas of social and behavioral skills on a daily basis. In addition to direct instruction in skills like resolving conflicts with adults and peers and following classroom rules and expectations, behavioral supports were to be provided throughout the school day regardless of environment. This IEP provided for Student to receive 420 minutes per day of specially designed instruction in the special education setting, along with 420 minutes per day of paraprofessional services. Student's IEP also noted that he would have access to Families, Inc. staff. (Exh. 6-2, 6-17-18).

There is an emphasis in the ██████ program on providing opportunities for and supporting Students in identifying and articulating their feelings. As an example, there is a target board on the classroom wall where students move a nametag to correlate with three colors that reflect their feelings about the day. Green means they are ready to work; yellow means they are struggling but still OK; and red indicates that they need some help. Each station table also has a thermometer on it and teachers or paraprofessionals check in with each student at the beginning of the station so that the student can indicate where they are on the thermometer. Some of the ██████ students, including Student, struggle to verbalize feelings. The target board and the thermometer provide ways for Students to communicate their feelings to school staff in order for staff to help with de-escalation. Additionally, during morning meeting the students select feelings cards and are given the option to share them with the group if they wish to do so. (SE Teacher A, SE Teacher B testimony; Exh. 46-3, 46-27).

For each student, the staff at ██████ creates an intervention plan that is used to ensure consistency; paraprofessionals are trained using the intervention plan for each student. The plan is located in the associate binder and the substitute binder. Student's most recent plan was revised in March 2018. It is two pages long and addresses what to do when Student engages in work refusal or refuses to take direction and other situations. With regard to work refusal and refusing directions, the focus is on using only essential directions. In general, staff are to ignore non-essential issues (such as shoes on wrong feet, not tied, etc.) so as not to get into an unnecessary power struggle. Student is to be ignored when engaging in minor infractions and when name calling. If Student refuses direction, staff are to ask, "Is there anything I can do to help you be ready?" If Student becomes aggressive, they are to block hits, leave the room, and say nothing. If Student becomes a distraction to teaching or learning, the rest of the group is to leave the room, saying nothing to Student. If Student enters the hall, room doors are to be locked to

minimize property destruction and distraction to others' learning. Student is to be ignored in the hall; a staff member should go into the hall for periodic checks only. In the hall, staff are instructed to ignore Student and block hits and kicks. The two special education teachers review Student's document every two to three months to make sure it is updated with the most recent information about what is working and not working for him. (Exh. 23-1; SE Teacher B testimony).

Staff in the [REDACTED] program also created an Individualized Trauma Informed Plan for Student during his first year there. It was based upon answers provided by Student to the Adverse Childhood Events questionnaire. Regarding escalations, the plan provided that: only one adult should talk to Student when he begins to cycle and exhibit refusal behaviors; only one adult should give directions/redirections and prompts; Student should be reminded he can take a break and return to work when ready; Student should be asked if there is something he needs/wants (i.e. to work in another location, to do another assignment first); Student should be reminded of potential consequences; and Student should be removed from the room if he becomes a distraction to others. (Exh. 30-2-3; SE Teacher A testimony).

On September 23, 2016, after Student had been in the [REDACTED] program for several weeks, the IEP team, including Mother, met to discuss Student's behaviors. Mother was concerned that Student's behaviors were getting in the way of his learning and that the school was not managing his behaviors effectively. Mother noted that Student did not exhibit the same behaviors at home as he did at school. Mother requested that school personnel engage in CPI restraints or holds at any time when Student was engaging in threatening behavior to staff, regardless of whether a lesser intervention would be effective. Mother noted that at home she wraps Student up in a big bear hug, tightening her pressure if Student continues to struggle. Mother encouraged district personnel to think outside the box and stated that she was not worried about Student getting hurt and understood that accidents happen. (Exh. 19-1; [REDACTED] testimony).

Mother also provided additional suggestions to school personnel regarding how to deal with Student's aggression and attempts to escape learning: 1) back him into a corner and do not let him move so that he is not free to run the halls; 2) put hands on Student's shoulders, exerting slight pressure; and 3) be direct about expectations. These suggestions were ones that school personnel agreed to try. Mother also suggested that staff chant to Student if he remained noncompliant: "I'm the boss. I am in control. You will not do this." At the September 23 meeting, Mother again proposed teaching Student at home with a tutor so that she could manage his behaviors. (Exh. 19-1-2; [REDACTED] testimony).

The school is limited in its ability to use some of the suggestions Mother made to control Student's behavior, such as bear hugs with tightening pressure and holding Student's body until he relaxes. AEA special education director [REDACTED] testified that Iowa law prohibits the use of physical restraint as a form of punishment and requires that force be reasonable and necessary. School personnel have to use an approved protocol any time they make physical contact with a child as a disciplinary measure. ([REDACTED] testimony).

December 13, 2016 IEP Review: The December 13, 2016 IEP document states that Mother is pleased with how Student's behaviors have improved and feels that more time can now be spent on academics. At hearing, Mother disputed this characterization of her feelings in December 2016. (Exh. 7-2; Mother testimony).

Student's behavior goal was modified in this IEP. Previously, the behavior goal referenced compliance. Student's teachers in the [REDACTED] program and the IEP team as a whole felt that compliance was too broad of a concept to effectively measure changes in Student's behaviors. They broke the behavior goal into two separate parts: 1) refusal time; and 2) following staff directions with no more than two prompts. The development of a refusal time goal allowed staff to track Student's behaviors more precisely; previously, compliance was measured for a specific chunk of time and not minute by minute. For example, previously Student would get a plus or a minus for a particular task; if he got a plus, the whole time was counted as compliant, but if he got a minus the whole time was counted as noncompliant. Measuring refusal minute by minute allowed a more accurate tracking of actual refusal behavior. (Exh. 7-4-5; [REDACTED] testimony).

This IEP describes Student's refusal behavior and failure to follow staff directives as follows:

[Student] often responds to staff directives with 'no' or he will run from the room or hide under table. Oftentimes, he doesn't even give staff a chance to give the directive before he refuses it. If staff attempts to state the directive, [Student] will at times shout over staff or even plug his ears and shout, "blah, blah, blah . . . I can't hear you." During such episodes [Student] becomes disruptive to peers, attempts to run in the halls and into other rooms or outside, becomes aggressive towards staff and attempts to destroy property. Through processing after such incidents, [Student] will often say that he just wanted a break, wanted to work in another room, wanted to use a different pen or some other small and readily available request. However, [Student] has not demonstrated an ability to ask for these things before saying 'no' and beginning his refusal cycle. When staff attempts to remind [Student] that he can ask for what he needs at the beginning of his refusal cycle he will not listen to staff as he is, at this point, screaming over staff and attempting to run away.

(Exh. 7-4-5; [REDACTED] testimony).

The IEP team noted during this review that Student had shown considerable progress with regard to following staff directives and completing tasks since attending the [REDACTED] program, reducing his refusal time from an average of 23% of his day at the beginning of the school year to an average of 13% of the day in December 2016. One of Student's behavior goals in this IEP was to reduce his refusal time from 13% of the day to 5% of the day by December 2017. (Exh. 7-4, 7-27).

Student's BIP was also updated at this time, in part to comport with the supports available at [REDACTED] and in part to reflect what strategies were being used with Student.

The revised BIP provided for choice to be embedded throughout Student's entire school day, provided for daily direct instruction in social skills, provided for a morning class meeting that would involve identifying current emotional levels, and end of day class meetings for students to assess themselves and their peers and discuss issues that arose during the day in order to problem solve and plan for next time. Additional updates included the use of "I-charts" to remind Student of appropriate behaviors and expectations, reminders to Student of the option of taking a break any time his cycle of behaviors begins, and the completion of processing sheets after episodes in which staff would assist Student in discovering alternate and appropriate behaviors. (Exh. 7-28-29; ██████ testimony).

The response strategies identified in Student's BIP were also updated to include the following:

- Counting to three or five if Student is not complying when a direction is first given, along with identifying the consequence for not following the direction by the time the count ends.
- Encouraging Student to take a break at the Take 5 table, the ██████ room, or the ██████ if Student disrupts others' learning. If he does not comply, staff are to use physical proximity to deter Student from further disrupting peer learning. If Student runs from the classroom, the doors will be closed to prevent Student from further disrupting peer learning.
- Original demands will not be reduced if Student engages in work refusal, so as not to reinforce Student's avoidance behavior with escape from work demands. Student can be permitted to complete the assignments utilizing a work/break system, but amount of work will not be reduced.
- Reminding Student that any work he does not complete will be sent home and completed at home.

(Exh. 7-29).

2017-18 School Year: In September 2017, school personnel offered to meet with Parents outside of IEP meetings to informally discuss any concerns Parents had and to discuss Student's progress at school. Father took the district up on this offer and had a couple meetings with school personnel. After a time it became difficult for Father to attend these meetings due to his work schedule. (Father, SE Teacher A testimony; Exh. 37, 38).

At around this time, SE Teacher A had a discussion with Father about how Student's fight or flight reaction in response to academic demands combined with his extremely low tolerance for frustration resulted in Student reacting as if in danger when teachers provided any type of feedback on his work. Father explained to SE Teacher A that they did not see that sort of reaction at home; she indicated this would typically only occur when Student was being asked to do something very challenging for him. Father was concerned about gaps in Student's learning; SE Teacher A explained that Student had made progress, but the gaps that Father was concerned about remained because Student was uncomfortable being even a little frustrated, which impedes learning. SE Teacher A informed Father that what was needed was long term consistency with interventions at

school so that Student can trust the system and not react to simple requests and corrections as if he is in danger. (Exh. 37-1).

November 20, 2017 IEP Reevaluation: During the reevaluation process, Parents expressed that they would like to see Student's academics progress to the point where he is eventually doing grade level work in reading, writing, and math. Father expressed to the team that Mother is concerned Student has dyslexia. (Exh. 9-2).

School personnel were beginning to notice around this time period that Student was not climbing under the table and running out of the room in response to academic demands, as he had previously. He would sit and work. With reading, he was beginning to self-correct if he read a word incorrectly instead of throwing the book across the room. The team felt that Student's ability to attend to instruction more would allow them to work with him more effectively. (██████ testimony).

In preparation for the reevaluation, additional assessment was needed in overall development, as well as specific skills in the areas of reading, writing, and math. In October 2017, overall development assessments were administered to Student at both the kindergarten and first grade levels. Student scored an 89/100 on the kindergarten screen, indicating that he had mastered the majority of kindergarten skills. Student scored a 65.5/100 on the first grade screen, indicating that he was continuing to master the skills needed to be successful with the first grade curriculum. In the area of reading, Student scored 69% on a kindergarten sight word assessment and 29% on a first grade sight word assessment. On the FAST reading test at the second grade level he scored three correct words per minute; grade level peers are expected to score 59. On a first grade computation assessment, Student attempted 84% of the problems and got 72% of the total problems attempted correct. On a second grade concepts and applications assessment, Student attempted 78% of the problems and got 28% of the problems attempted correct. On a separate second grade math probe, Student's score was 184; students at Student's grade level are considered high risk with a score below 192. (Exh. 9-3-4).

The IEP notes that Student continues to engage in work refusal; within one week, he will have days where his refusals comprise 0 to 5% of the time and other days where his refusals make up around 70% of the day. Student is particularly engaging in attention seeking behavior during whole group lessons. Student's level of aggression had increased at this point. The IEP notes that "[e]ven if staff are attempting to allow him to take a break and aren't redirecting him to a task, he will approach staff to hit, kick and pinch staff." (Exh. 9-5).

This IEP also documents that Student has made "considerable growth" in writing and is no longer resistant to trying to write words or sentences on his own. Student had also shown progress in reading comprehension, including beginning to successfully read sight word based books with some degree of independence. Student "improved tremendously" in math skills during the past year and when he was willing to do math, he did very well. He was using math manipulatives, touch points, a number grid, and pictures to help him to complete math problems. (Exh. 9-6-7).

Additionally, data gathered during the reevaluation process indicated that Student required additional writing supports and a writing goal was added to the IEP. (Exh. 9-33, 9-49; ██████ testimony).

After the November 2017 reevaluation, Mother expressed a desire for a more standardized assessment of Student's abilities. Mother and ██████ agreed upon an independent educational evaluation (IEE) to take place at the University of Iowa and to be paid for by the district. It was determined that the childhood psychiatric clinic could effectively address the areas of behavior and academics for Student and consider the impact of his history of trauma on his educational needs. (██████ testimony).

Mother contacted the school board in order to request a meeting regarding Student's progress and placement in January 2018. She had made a similar request of the school board in August 2017. After the August 2017 request, ██████ reached out to Mother to discuss the IEP process and to encourage her to meet with the IEP team. After that point, Mother did not make any further contact with ██████ and did not request an IEP team meeting. All contact began to come through Father, who attended the IEP meeting on November 20, 2017. ██████ advised the school board after Mother's request for a meeting in January that a board meeting would not leverage the expertise of the teachers and AEA and that in order to address Mother's concerns the IEP team, with the assistance of the AEA core team and the BRT, should be meeting together to work toward improvement. ██████ noted that data reflected that Student was making both behavioral and academic progress, but acknowledged that the progress was slow. (Exh. 20-1; ██████ testimony).

January 24, 2018 IEP Team Meeting: After Mother requested a meeting with the school board, the IEP team sent notice of an IEP team meeting to be held January 24, 2018 to review Student's needs, progress, and possible changes or additions to the current educational program. During this meeting, Parents expressed concerns that they were beginning to see more physically aggressive and avoidant behaviors by Student in the home setting. Mother attributed these behaviors to Student not having consistent consequences in the school setting and being able to push boundaries at school. Mother reported that when Student starts to fight at home she "locks him down" until his body completely relaxes. Mother indicated at the meeting that she did not believe that the school could replicate what is successful for her at home since it is so physically hands on. School personnel offered to come to the home to see what was successful for Parents in an attempt to determine whether it could be replicated at school. Mother declined this request. Additionally, Father suggested that he could come to school on Wednesdays in order to help redirect Student. School personnel were receptive to this offer and Father came to the school on a couple Wednesdays until it became difficult for him to work it into his work schedule. Father reported that Student behaved well while Father was at school, but would start acting up and refusing to work almost immediately after Father left. (Exh. 10, Exh. 22-1-2; ██████ Father testimony).

Mother expressed at this meeting her belief that if Student is with her there are no behavioral issues; she wanted to have Student instructed at home where behavioral issues would be reduced. Father was opposed to this idea at the meeting. (Exh. 22-2).

██████████ suggested the idea of sending work home for Student to practice with parents in that environment. Mother stated that they are not home enough and she believed this would spike Student's behaviors at school. (Exh. 22-3).

University of Iowa Independent Education Evaluation: Student was evaluated at the University of Iowa (UI) on March 30, 2018. The evaluation was conducted by educational consultant Nancy Millice and Dr. Patricia Espe Pfeifer. The report from the evaluation was provided to the school district on approximately April 13, 2018. (Exh. 33).

Student's reading, mathematical, and written expression skills were assessed using selected subtests of the Wechsler Individual Achievement Test (WIAT-III). WIAT-III scores that range from 85 to 115 are described as being in the average range. Student scored below 85 on all of the subtests administered, with scores ranging from 58 to 74. In all of the subtests, his scores were in the fourth percentile or below for his grade level. (Exh. 33-6).

Based on the evaluation results, along with information provided by Student's family and teachers, the UI team concluded that Student met the criteria for the following diagnoses: 1) ADHD, combined type; 2) specific learning disorder, with impairment in reading, severe (dyslexia/inaccurate word recognition, decoding, and spelling abilities); 3) specific learning disorder, with impairment in written expression, moderate (spelling accuracy); 4) disruptive behavior disorder; 5) history of abuse and neglect prior to adoption; and 6) borderline intellectual functioning. (Exh. 33-7).

Under the discussion section, the evaluation provides, in part:

Perfect Storm that impacts ability to learn: [Student] has a lot of diagnoses that combine to make it very difficult for him to learn and to regulate his behaviors. He was well mannered and compliant in our one to one setting and has some skill in the area of verbal comprehension but overall his cognitive abilities are below average and fall in the borderline range of intellectual functioning. Therefore, his skills will mostly fall to the lower level of his abilities for any sort of mastery or functional/instructional level. We gave [Student] the diagnoses of Specific learning disorders in addition to his borderline IQ because of the higher verbal comprehension and the pattern of difficulties he experiences in reading and written expression. Due to his profile of strengths and weaknesses [Student] may benefit from being placed in a more functional type of academic program with expectations that he can achieve. In the debate of skill vs will, there are a lot of behaviors that appear to be will driven but because of the issues with skill, the picture is a bit mirky [sic]. Mostly likely his lack of skill is exacerbating his behaviors. Due to his higher verbal ability adults around [Student] may expect more from him than he can accomplish. We also know that early trauma creates changes in the brain that also affect learning, emotion regulation, and prolong fight or flight response to interactions with others.

Different curriculum: We recommend that [Student] be given curriculum that is at his level so that he can experience some success. If the decision is to maintain him in the [REDACTED] program then he will need to have that one to one teaching in a separate space to decrease distractions and negative behaviors available to imitate. He should have a system where he works for a short time as he does now and then can have a short break to be active by doing errands in the school or helping the teacher or getting exercise in his classroom or another space to help increase his capacity to learn.

(Exh. 33-7-8).

Regarding behavior, the evaluation recommends that in light of significant academic deficits across all subject areas Student will benefit from continuing with his IEP goals and participation in the [REDACTED] program, “taking good care to ensure that curricular expectations are matched to his current levels of functioning, in order to minimize frustration.”

As we look at the whole picture [Student] has experienced many adverse childhood experiences compared to others his age. We know from extensive research that these impact the developing brain and make learning very difficult along the way as the child tries to navigate and make sense of this very stressful environment. He will truly continue to need an accepting environment in which to learn some coping strategies in order to calm his anxiety enough to learn basic skills and how to regulate his own behavior. Within this [REDACTED] program he needs to have consistent and clear expectations so that there is no worry about a return to a chaotic unsafe environment.

(Exh. 33-8).

The evaluation also recommended that Student continue to have help expressing his feelings by picking word or picture cards from a few selections with praise each time he chooses a card. Additionally, the evaluation recommended that teachers keep work tasks relatively short so that Student can experience success and earn breaks and that expectations for behavior (such as completing four tasks before break) be communicated clearly via, for example, a picture checklist. It was recommended that teachers keep expectations low while shaping in order for Student to achieve some success before increasing expectations. It was suggested that when Student’s behaviors ramp up or he has a meltdown, teachers use very little language and allow Student to lay on the floor or throw pillows or hug a stuffed animal in order to bring his level of distress down before any intervention or discussion. (Exh. 33-8-9).

The evaluation also recommended that Student continue a structured and multisensory approach based upon Orton-Gillingham to teach reading. It was also recommended that Student be provided with opportunities to help others and participate in small group social skill building activities. (Exh. 33-9).

May 4, 2018 Meeting with UI Team and Implementation of Evaluation

Recommendations: After the evaluation was completed, Millice and Dr. Espe Pfeifer met by telephone with Mother and school personnel, including both special education teachers, [REDACTED], [REDACTED], and [REDACTED] on May 4, 2018. Millice stressed during this meeting that she wanted to be sure that the school gave themselves permission to have Student's goals be at his functioning level so as not to frustrate him; she did not want the school to feel like they had to stick to grade level curriculum, which would have been third grade, for Student. (Millice testimony).

Typically, instruction is provided at a student's zone of proximal development; that is, just beyond their current aptitude, but not far enough ahead to cause frustration. This had been the district's approach with Student up to this point. However, based on the recommendations in the evaluation, the district reduced curricular expectations for Student at this time, to the kindergarten and first grade level. The reason for doing this was to allow Student to experience success and eliminate his worry about whether he was going to be successful. From there, the hope was that Student would be more willing to engage in learning and some of the gaps in his learning could be addressed. Parents were in agreement with the school providing instruction to Student at a lower grade level. ([REDACTED] SE Teacher A testimony; Exh. 24-1).

Additionally, school staff took steps to separate Student's work space even further to minimize distractions and observation of negative behaviors by others based on the evaluation's recommendations. Even prior to the IEE, Student was receiving all of his instruction on a one to one basis. Instruction took place with only Student and either a teacher or paraprofessional present. Student still moved from station to station, but he was the only student present at each station. After the IEE, the team looked at the station schedule for the [REDACTED] program and adjusted it so that Student was always in a room by himself. At that time, the program had seven stations and five children; the teachers were able to rearrange the schedule so that when Student was at a particular station, there were no other students in the room where he was working. ([REDACTED] SE Teacher A testimony).

The UI team suggested during the meeting, in accordance with the evaluation, that more physical activity be incorporated into Student's school day. This was something that was already being done, with the opportunity for sensory breaks throughout the day. This continued to be a focus for Student going forward. ([REDACTED] [REDACTED] testimony; Exh. 24, 41).

The UI team also recommended that Student's reading instruction be based on the Orton-Gillingham method. This was implemented by the school following receipt of the report. (Exh. 25, 33-9; SE Teacher A testimony).

The IEE also recommended that Student be provided with opportunities to help others and to participate in small group social skill building activities. Accordingly, school staff continued to incorporate Student into the small group social skill building activities that took place at [REDACTED] after the IEE. A number of other items were also recommended by the UI team that the school had been using prior to the IEE, such as giving Student a stuffed animal to calm during a tantrum, providing for structured and unstructured

break time for Student during and between academic activities, providing opportunities for instruction and practice in identifying feelings and emotions, and allowing Student to complete jobs throughout the school day, such as cleaning the white boards and cleaning up after lunch. These items were continued as part of Student's program. Millice testified at hearing that the school was receptive to the recommendations made in the evaluation and engaged in productive discussion regarding ideas that could be implemented for Student. (Exh. 33-9; SE Teacher A, ██████████ Millice testimony).

2018-2019 School Year: During this school year, the rigor of Student's curriculum had been reduced to approximately a first grade level based on recommendations from the May 2018 meeting with the UI team. Student was attending recess with general education peers at the elementary school. (Exh. 29-1; SE Teacher B testimony).

In October 2018, ██████████ met with Student's teachers and associates to discuss classroom behaviors. School personnel had observed escalating behaviors from Student that coincided with a time period during this month that Mother was gone from the home due to family needs. The district attempted to brainstorm ways for Student to be successful while Mother was gone; for example, video calls between Mother and Student during school, a visual calendar to cross off days until Mother came home, and comfort items, such as a stuffed animal or blanket. (Exh. 26; ██████████ testimony).

At Mother's request, another meeting to discuss home instruction for Student took place on October 18, 2018. At the meeting, Mother requested that Student receive one to two hours per day of instruction at home for at least 90 calendar days, then work toward reintegrating him into the school setting. Since Student's behavior was spiking in the fall from where it had been in the spring, one option that was offered to Mother was to call in the BRT again to evaluate Student and provide recommendations regarding behavior. Since children's behavior changes over time, the team thought it would be useful to have an updated report. Mother did not want to engage the BRT; she stated that they did not know Student or his history. (Exh. 27; ██████████ testimony).

The district issued a PWN to parents on approximately October 30, 2018 refusing Parents' request to provide home instruction to Student. The PWN states, in part:

The team refuses the action of sending a certified staff member to [Student's] home daily to deliver both core curriculum and specially designed instruction. The team refuses this action due to the home environment not being the IEP agreed upon least restrictive environment to meet [Student's] needs. The team also refused this action as the homebound instruction would not be a temporary placement that is both an appropriate educational setting and a placement used to assist in the completion of the evaluation process.

(Exhibit to Complaint).

November 14, 2018 meeting: On November 14, 2018, school personnel and Mother met again by video conference with Millice and Dr. Espe Pfeifer. There were still issues with Student's progress and behaviors, including aggression. The school wanted some

support in figuring out what might work. Millice discussed the idea of a shorter day for Student at [REDACTED]. Additionally, the school liked the idea of Student having a sensory area and not having to do all of the stations that were set up around the classroom. The discussion centered around tailoring Student's program to his particular needs. One of Millice's specific recommendations was for Student to have his own office area where teachers would move to him for instruction. (Millice testimony).

While the March 2018 IEE had recommended small group and social skill building activities, the information provided by the school team during the November 2018 meeting suggested to Millice that social settings were triggering Student more than they had in the past. (Millice testimony).

During this meeting, Mother expressed her goal that Student receive two hours instruction at home per day and then be phased back into school slowly, stating that Student does not show aggression or name calling at home. Mother indicated that she and Father feel desperate and are afraid that Student will end up in jail if something does not change. (Exh. 29-2).

During the meeting, the UI team recommended that Student be in a room by himself and that the teachers and paraprofessionals bring his instruction to him in the room. School staff reported that they had been doing that each day that Student has makeup work to do if he spent the previous day in refusal. If Student had not spent the previous day in refusal, he had the choice of whether to work in a separate area where he did not rotate or at his station in the group setting.³ In response to a question by the UI team, school staff explained that Student had previously chosen the option of teachers and paraprofessionals bringing instruction to him, but had stopped making that choice. After the meeting, school staff acted on the UI recommendation of having Student's instruction brought to him in an office area they created. Teachers and paraprofessionals began moving to Student for instruction in order to minimize the number of transitions he had to undergo during the day. (Exh. 29-2; [REDACTED] SE Teacher A testimony).

Millice and Dr. Espe-Pfeifer indicated in this meeting that they felt the school was being flexible and attempting to meet Student where he was at in terms of needing an office environment and changing things quickly. This was an appropriate plan to reduce Student's triggers. (Millice testimony; Exh. 28-4).

With the progress Student had made from November 2017 through November 2018, school staff did not believe homebound instruction, which Mother was requesting, was appropriate. The district had great concerns about instruction at home based on the fact that Student would have no access to peers and would not have any opportunity to work on social/employability skills outside of the home and family setting. The district believes that it can provide a setting with one on one instruction and very little peer interaction at [REDACTED] but still be ready to provide fewer restrictions when appropriate.

³ Student's stations were still in a separate area than other students pursuant to the system that had been implemented after the May 2018 meeting. The choice Student had was to rotate through stations or to have all instruction brought to him in one place.

The district wants Student to be able to continue the relationships he has made with the [REDACTED] teachers over the two years he has been there. The environment at [REDACTED] can be highly structured and provide for very little peer interaction. ([REDACTED] testimony).

Additionally, the district does not believe that the behaviors that Student engages in when presented with academic instruction and demands at school would necessarily be absent in the home setting. Student has not been provided with any consistent academic instruction at home to this point; it has been observed and documented that academic demands are the typical trigger for Student's aggression and refusal. He has historically felt very threatened by academic demands. The district has concerns as well about how to manage Student's behaviors if academic instruction were to be provided in the home setting. Student is now physically large enough that if he becomes aggressive and requires a hold it must be a two-person hold. ([REDACTED] testimony).

Academic and Behavioral Progress Monitoring:

- November 2017 Reevaluation

Regarding his overall progress, Student's November 2017 reevaluation provides:

Over the past three years [Student] has had variable growth, both in the area of behavior and in academics. Before [Student] began attending [REDACTED] at the [REDACTED], the focus of his IEP was behavior only. It was difficult for [Student] to be within instructional control and he missed much of the core academic instruction his kindergarten year due to challenging behaviors. Since he has attended [REDACTED] the focus of his programming is an immersion in behavioral supports which has helped [Student] to remain in instructional control for a greater part of his day, thus accessing core instruction in language arts, math, social studies, and science. As a result, we are now seeing positive growth in his academics. [Student] still has difficulty following adult directions, and also still has moments in his day where he refuses to do work. However, we are seeing when he does participate in class, he is more engaged in instruction, is working hard, putting forth effort, enjoying his successes, and is starting to be more willing to take risks and fail. The last, taking risks and pushing through failure, is a hard concept for [Student] and has been impacting him academically. Now he is starting to focus more on his successes and less on his mistakes and it is really starting to show now in his reading and math. [Student's] progress monitoring graphs do not show the progress that we are seeing in his daily work as he often refuses to do the assessments used for ongoing progress. For this reason, other ways of showing growth are being looked at to get a more accurate picture of academic growth.

(Exh. 9-28).

- Writing Goal

In the November 2017 IEP, Student's writing goal was to, when orally provided with three to five word sentences with kindergarten and first grade sight words/high frequency words, write sentences scoring 80% in correct letter sequence (CLS) in two of three sentences for four consecutive data points. In November 2017, Student had scored an average of 57% CLS across three separate probes of three sentences each. (Exh. 9-7).

The progress monitoring data reflects that Student was making progress on this goal. From November 2017 to May 2018, he was consistently above the aim line, which is the rate of progress Students must make to meet the goal. He was still above the aim line at the beginning of the 2018-19 school year. Student's progress in this area was such that the goal was increased in November 2018 to require Student to include correct use of plurals and possessives and to score down for improper capitalization in the middle of a word. (Exh. 13-23; SE Teacher A, SE Teacher B testimony).

- Reading Goal

In November 2017, Student scored 17 out of 40 on a list of kindergarten sight words. By November 2018, Student's goal was to score 100% on the sight word list for three out of four data points. The IEP indicates that the words will be chunked, with Student getting 10 sight words at least every two weeks, for a total of 40 sight words. When Student has demonstrated 100% mastery on each chunk of 10 for three out of four data points, a new word list will be given. If Student reaches the goal, assessment and instructional materials will be increased to using first grade words. (Exh. 9-10).

Progress monitoring data shows that Student met this goal prior to the target date of November 2018. All of the data points on the progress graph, with the exception of a few after the summer 2018 break, are above the aim line. Student mastered all 40 of the kindergarten sight words and is currently developing mastery of first grade sight words. (Exh. 13-25; SE Teacher A, SE Teacher B, ██████ testimony).

As of the date of hearing, Student was consistently scoring above 7 out of 10 with first grade sight words and has completed the whole set of first grade sight words. Teachers are in the process of reviewing these words with Student, who has gotten 80 of the 90 total first grade sight words correct. (SE Teacher A testimony).

As of the date of the November 2018 IEP, Student was reading 17 words correct per minute on a grade level fluency probe. By November 2019, Student's goal is to read 47 words correct per minute. As of the date of the hearing, Student had read 23 words at a third grade level on a recent probe. (Exh. 12-8, SE Teacher B testimony).

With regard to engagement with books, SE Teacher A reported that during Student's first year at ██████ he would hold books upside down. He is now reading first grade books completely on his own with a high level of accuracy. He uses pictures for cues if he experiences difficulty with a particular word. Student expresses pride in his newly developed ability to read and being asked to read is no longer an immediate trigger for refusal and aggression. (Exh. 12-4; SE Teacher A testimony).

- Math Goal

In November 2017, Student scored six out of 14 (43%) on a first grade mixed math probe focusing on addition and subtraction using manipulatives, dots, or pictures. Student's goal was to score 80% or higher on a first grade mixed math probe for three of four data points by November 2018. (Exh. 9-13).

Progress monitoring data shows that Student met this goal in approximately April 2018. As Student progressed, SE Teacher B would make the material more difficult, for example by only doing subtraction problems, rather than addition and subtraction. Student continued to make progress during these instructional changes. (Exh. 13-26).

Student's November 2018 IEP indicates that Student's basic math skills have improved tremendously over the past year. Student can count by 5s and 10s and is working on counting by 2s. He can identify odd and even numbers and correctly identifies numbers that are greater than, less than, and equal to. He is working at a first grade level in math. Using manipulatives or dots is useful to assist him in checking his answers. Previously, teachers would assist Student in using dots for math problems; at this time, Student had begun using the dots on his own or skipping the dots altogether. (Exh. 12-4; ██████ testimony).

In November 2018, Student scored 54% on an untimed second grade math concepts and application probe. Student's current goal is to score 75% correct on an untimed second grade level concepts and application probe by November 2019. (Exh. 12-9).

- Behavior Goal #1

Student's first behavioral goal in the November 2017 IEP was to reduce refusal time, which had been at 29%, to 10% of the day across all settings. (Exh. 9-9).

The progress monitoring data reflects that Student was making some progress on this goal, though not as quickly as school personnel would have liked. Student had a number of data points below the aim line, which is what is desirable for a behavior that the team is trying to reduce, and several spikes in behavior. The highest spikes in refusal behavior after November 2017 occurred during the time period when Mother was absent from the home for a time in October 2018. (Exh. 13-24; ██████ SE Teacher A testimony).

During the October 2018 behavior spike, school personnel attempted to put in place temporary measures to ensure that Student felt more connected to Mother while she was not at home. Additionally, school personnel arranged for Student to talk to the Families, Inc. counselor. (SE Teacher A, SE Teacher B testimony).

- Behavior Goal #2

Student's second behavioral goal in the November 2017 IEP was to reduce his episodes of physically aggressive behavior from 20 per week to eight or fewer in a one week period. (Exh. 9-14).

The progress monitoring data reflects that Student was making progress on this goal between November 2017 and November 2018. The data points were mainly below the aim line, which is desirable in the case of behavior reduction, from November 2017 through the end of the school year. There was a spike in April, but the data points went below the aim line when Student's plan was changed in May as a result of the IEE and UI meeting. At the beginning of the 2018-19 school year, there were five data points in a row below the aim line, then a spike in behaviors around the end of September into October. (Exh. 13-27; SE Teacher A, SE Teacher B, ██████ testimony).

- Observations/Conclusions by AEA and School Personnel

In kindergarten, Student struggled to academically engage at all. His behaviors were such that he was not receptive to receiving any instruction or providing any measurement of what he was learning (i.e. verbally, in writing, or through play or other modalities). Based on his skills assessments, Students could not rote count to 10 and could not identify numbers or letters. During his time at Lambert Elementary, before coming to ██████ Student frequently ran from instruction; he viewed any academic instruction as physically threatening. He would respond as if being hurt, throwing things and running to the other side of the room. At times, ██████ joined Student's classroom teacher and engaged in play in order to lure Student out of hiding. (██████ ██████ testimony).

Student's teachers at ██████ have observed academic and behavioral progress. When Student began at ██████ in August 2016, he would refuse to do math, stating that he did not like it and was not going to do it. Staff had a hard time getting him to count to 20. He can now count to 60 without any problem and occasionally 100. He writes numbers and can identify place value. Where he hid under the table the first time that fractions were presented, he can now work with fractions. He enjoys SE Teacher B coming to him and asks her what they are doing each day in math. When Student started at ██████ in 2016, he had a counting goal. Now he is working on concepts and applications at a second grade level where he has to problem solve. (SE Teacher B testimony).

With regard to writing, when Student began at ██████ during his first grade year, staff had to provide hand over hand assistance for any writing tasks; Student wrote only squiggly lines and his own name. When SE Teacher A works with Student on writing now, she often divides up the work with him; she will write one answer and he will write one answer. Sometimes she assists Student by writing an answer on a white board that he can copy. On the most recent occasion that SE Teacher A worked with Student on writing prior to the hearing, he independently wrote an answer on a worksheet comparing and contrasting life today to life long ago. The response was correct all but for a misspelling of one word. SE Teacher A provided feedback to Student about how to find the correct spelling of that word and he later incorporated it into his work. Previously, any feedback or correction would have been a huge trigger for Student. SE Teacher A testified that this represented great progress for Student. (SE Teacher A testimony).

The Families, Inc. counselor who has worked with Student since he began at ██████ believes that the stable, predictable routine at ██████ has been helpful to Student, along

with setting clear limits and behavioral expectations. She noted that she has observed staff “picking battles wisely” with Student and providing him choices, which has been helpful. She observed that Student is “making great growth on his impulsivity, power and control, understanding social boundaries, learning positive healthy coping strategies, and better learning to manage his mental health symptoms.” (Exh. 45).

While Student’s progress may not appear dramatic in assessment data, school personnel have observed large differences in Student’s willingness to engage in academic material since he has begun at the ██████ program. While he still engages in refusal behavior, his willingness to engage at times is resulting in academic gains. Additionally, Student is now able to provide output that allows for more accurate assessment of what he knows. (SE Teacher B testimony).

Dual Enrollment: Parents filed a due process complaint on November 13, 2018. At the November 14, 2018 meeting, the district provided Mother information on the dual enrollment process, which allows parents to provide competent private instruction and simultaneously register the child in a public school.⁴ Dual enrollment was not the recommendation of the IEP team. At hearing, Mother testified that Parents did not begin dual enrollment in order to provide Student any instruction in the home environment, but rather to get him out of what they believed to be a traumatic environment at ██████ until the due process hearing could occur. (Mother testimony; Exh. 28-4, Exh. 29-2).

Under the dual enrollment option, Student is attending ██████ for core English/language arts, math, and science, as well as specially designed instruction in the areas of reading, writing, math, and behavior. The district offered full-time instruction, but Parents have chosen to access the following: 375 of the 500 minutes offered for English/language arts instruction; 150 of the 275 minutes offered for direct social skill/behavior instruction; 275 of the 275 minutes offered for math instruction; and 50 of the 50 minutes offered for science instruction. Student continues to have paraprofessional support available throughout his school day. (Exh. 12-3-4, 29-2; ██████ testimony).

CONCLUSIONS OF LAW

IDEA Overview: One of the principal purposes of the Individuals with Disabilities Education Act (IDEA) is “to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.”⁵ 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 21.⁶

⁴ See Iowa Code § 299A.8.

⁵ 20 U.S.C. § 1400(d)(1)(A).

⁶ 20 U.S.C. § 1412(a)(1)(A).

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.⁷

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.⁸ Under the IDEA framework, special education and related services are provided in conformity with the student's individualized education program, or IEP.⁹ "The IEP is the means by which special education and related services are 'tailored to the unique needs' of a particular child."¹⁰ 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.¹¹

Under the IDEA, a parent or public agency may file a due process complaint relating to the identification, evaluation, or educational placement of a child with a disability, or the provision of a free appropriate public education (FAPE) to the child.¹² The burden of proof in an administrative hearing challenging an IEP is on the party seeking relief.¹³ Complainants, therefore, bear the burden of proof in this proceeding.

Complaint: In their due process complaint, Complainants argue that the district has denied a free, appropriate, public education to Student by: 1) failing to provide Student with consistent, daily educational instruction in reading, writing, math, and science; 2) failing to consistently implement behavioral supports as outlined in the Behavior Intervention Plan; and 3) limiting Student's instructional time and negatively impacting

⁷ 20 U.S.C. § 1401(9).

⁸ 20 U.S.C. § 1401(28).

⁹ 20 U.S.C. § 1401(9)(D).

¹⁰ *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)).

¹¹ 20 U.S.C. § 1414(d)(1)(B).

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

¹³ *Sneitzer v. Iowa Dep't of Educ.*, 796 F.3d 942, 948 (2015) (citing *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 61-62, 126 S.Ct. 528, 163 L.Ed.2d 387 (2005)).

academic performance and positive peer interactions through implementation of seclusion or time out rooms.

Complainants assert that they have attempted to work with school and AEA personnel since Student has been enrolled in the district and have shared information about Student, but that this information has not changed Student's IEP, his behavior plan, or his educational progress. As a solution, Complainants propose that Respondents provide a tutor in their home for one to two hours per day to provide Student with one to one instruction to meet his educational needs for a period of 90 days. Complainants believe that Student will not display the same physically and verbally aggressive behaviors at home as he does in the school setting. After the 90 days, if improved academic progress is documented, Complainants propose a slow reintroduction into the school environment with input from the home tutor. Complainants assert that a continuation of the educational program that was in place at the time the due process complaint was filed would be detrimental to Student's educational and emotional growth.

Denial of FAPE: 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*,¹⁴ 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.’”¹⁵ Amy Rowley was a student who was receiving instruction in the general classroom and was 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.¹⁶

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

¹⁴ 102 S.Ct. 3034 (1982).

¹⁵ *Endrew F.*, 137 S.Ct. at 994 (citing *Rowley*, 458 U.S. at 207).

¹⁶ *Id.* at 996 (citing *Rowley*, 458 U.S. at 202-204).

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.”¹⁷

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.¹⁸ 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 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.¹⁹

There is no dispute here that Student is in the second cohort; he is in a separate program located outside of the district’s elementary school where he receives all of his specially designed instruction in an environment designed to provide constant behavioral supports. The question here, then, is whether Student’s educational program was appropriately ambitious in light of his circumstances and whether he was offered the opportunity to meet challenging objectives. Under the circumstances presented, the answer is yes to both questions.

¹⁷ *Id.* at 999 (citations omitted) (emphasis in original).

¹⁸ *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.”)

¹⁹ *Id.* at 1000-01.

Complainants' due process complaint arose from their concerns that Student's behaviors are preventing him from being able to fully access instruction at school and are resulting in a lack of academic progress. Complainants are also concerned that Student is exhibiting more concerning behaviors at home and they believe that this is occurring because school personnel are not responding immediately to physically threatening behaviors with a physical restraint in the school setting. Prior to filing the due process complaint, Complainants requested that the district provide Student with solely home instruction for a period of time with a reintegration into the school setting if academic progress is made at home. Complainants believe that the structure they provide at home will allow Student to make academic progress free of distractions present in the school environment.

Complainants argued at hearing that Student's situation is very similar to that of Andrew. Andrew was a student who had been diagnosed with autism at age two and had attended school in the district against which the due process complaint was filed from preschool through fourth grade. By fourth grade, Andrew's parents had become dissatisfied with his academic progress. Andrew exhibited a number of challenging behaviors that impeded his ability to access learning in the classroom. Andrew's parents asserted that his academic and functional progress had stalled and that his IEPs largely carried over the same basic goals and objectives from one year to the next. Andrew's parents believed that a thorough overhaul of the district's approach to Andrew's behavioral issues was needed to achieve progress.²⁰ Against this backdrop, Andrew's parents filed a due process complaint. The Supreme Court's decision in the *Andrew F.* case articulated a new standard for students who are not fully integrated into the grade level classroom, but it did not decide whether the district had failed to provide FAPE; rather, the Court remanded the case in order for the lower courts to apply the new standard.²¹

On remand, the district court determined that the district had not been successful in developing an IEP that was appropriately ambitious in light of Andrew's circumstances and that gave him a chance to meet challenging objectives. Under the new standard, the district had denied FAPE to Andrew. The court noted that since Andrew's second grade IEP only small advances or alterations had been made to his objectives and that Andrew was making "at the least, minimal progress." The court noted that the changes in the IEP objectives were "very limited."²² In highlighting Andrew's minimal progress, however, the district court specifically noted that the lack of progress was, at least in part, a result of the district's inability to develop a formal plan or properly address Andrew's disruptive behaviors. The school district in *Andrew F.* conceded that it had no formal plan addressing Andrew's behavioral issues at the time his fifth grade IEP was proposed and had not completed any functional behavioral assessment or put in place any formal BIP during Andrew's time in the district, despite his long history of challenging behaviors.²³

²⁰ *Id.* at 996.

²¹ *Id.* at 1002.

²² *Andrew F. v. Douglas County School District RE 1*, 290 F.Supp.3d 1175, 1183-84 (D. Colo. 2018).

²³ *Id.* at 1184.

While it is accurate to say that Student's academic progress during his first three and one-half years in the district has not been linear or rapid, the most important distinction between Student's situation and that of Endrew is that the district here has taken appropriate and timely steps to address the impact of Student's behaviors on his ability to access learning. Student enrolled in junior kindergarten in the district in August 2014 and exhibited challenging behaviors beginning the first day of school. The school began monitoring Student's behavior on daily behavior tracking sheets on August 28, 2014, within the first month of school. By January 2015, an evaluation had been completed and an IEP and BIP had been put in place for Student.

When teachers and staff observed Student continuing to struggle with behavior during the fall of his kindergarten year, the district initiated a leveling plan in order to provide additional behavioral supports, the goal of which was to get Student reintegrated into the regular education environment. The leveling plan showed some success, but then its utility diminished. At that point, the school sought assistance from the AEA's BRT for additional ideas to address Student's challenging behaviors.

The BRT's recommendations were incorporated into the revised IEP and BIP put into place in December 2015, which increased the amount of specially designed instruction Student was receiving and included direct instruction in the areas of social and behavioral skills. Student continued to struggle with challenging behaviors and an April 2016 IEP review provided for Student to begin receiving the majority of his specially designed instruction in the special education setting.

At the start of the 2016-17 school year, Student's first grade year, the district initiated the [REDACTED] program to serve elementary age students with significant challenges whose needs could not be met in the less restrictive environment of the elementary school. Student was selected for this program and began attending school at [REDACTED] where the student/teacher ratio has been approximately 1:1 for the majority of his time there. Instruction is highly individualized and behavioral supports are provided throughout the entire school day. Students are provided opportunities for peer interaction in a structured way. The [REDACTED] program convenes monthly meetings that include the special education teachers, members of the AEA BRT, and the mental health counselor who contracts with the program. Each student is discussed during these meetings and concerns that have arisen since the last meeting are addressed. Student's BIP was significantly overhauled upon his entrance into the [REDACTED] program; additionally, the team considered how best to serve Student given his extensive history of trauma. Student's behavior goal was also changed upon entrance to [REDACTED] in order to more effectively measure behavioral changes.

School personnel noted that they began to see progress in Student's ability to follow staff directives and complete tasks after some time in the [REDACTED] program. During the November 2017 reevaluation, school personnel noted that they had seen considerable growth in some areas. Parents remained concerned about Student's inability to complete grade level work in reading, writing, and math. The district conducted additional assessments to measure Student's development. The assessments reflected work at approximately the kindergarten and first grade level.

When Parents expressed a desire for additional assessment of Student's abilities, the district agreed to an IEE to be conducted at the University of Iowa. The district met with the UI team to review the results of the IEE. Many of the suggestions that the UI team made were already being implemented by the district, but those that were novel were implemented for Student. The most significant of these was changing the station schedule so that Student could do his academic work in a room by himself, which the UI team recommended. The district was already providing all of Student's education on a one to one basis, without other Students at his station, but this change allowed Student to be free of distractions in the room where his academic instruction was taking place. The district's consideration of the IEE results is entirely consistent with the IDEA's implementing regulations, which require consideration of such results in any decision made with respect to provision of FAPE to a student.²⁴

Student continued to experience behavioral struggles at the beginning of the 2018-19 school year, including when his mother was absent from the home for a period of time in October. The IEP team looked at ways of dealing with Mother's absence that would reassure Student and de-escalate his behaviors. Mother declined the district's offer to involve the BRT formally again to evaluate Student's current behaviors. The district set up another meeting with the UI team to solicit input regarding how to address Student's behaviors. Throughout this time, Student's teachers, the BRT, and other school and AEA personnel were involved in continual monitoring of Student's behaviors and made both small and large changes in response to their observations. The district moved Student incrementally from a general education setting to a mixed general education/special education setting, to an all special education setting, to a separate program for children with behavioral challenges. The district was not sitting idly by and allowing Student's behaviors to impact his learning; it was taking active steps informed by the expertise of district and AEA personnel and the UI team to respond to Student's behaviors and adapt his environment so that it would be more conducive for him to learn.

Complainants have specifically alleged that their efforts to work with district and AEA personnel, including multiple meetings over the period of time Student has been enrolled in school, have "proven ineffective in impacting [Student's] IEP, behavior plan and educational progress." This assertion is not borne out by the evidence. The evidence demonstrates that the district was very responsive both to Parents' suggestions, as well as to suggestions of outside experts. During Student's kindergarten year, Parents requested that Student have a shortened school day, leaving at 10:30 AM, in order to allow Student time to adjust to his new home and spend more time with his family. The school accommodated that request, changing his IEP in March 2016. In April 2016, Mother requested that the school day be lengthened or for Student to have all of his instruction at home. The school accommodated that request, lengthening Student's school day. A number of other smaller changes that were made at Parents' requests are also reflected in the evidence in this case. Father testified at hearing that the school has always been willing to meet with Parents to discuss Student's needs and has tried everything they can do short of providing home instruction to Student.

²⁴ 34 C.F.R. § 300.502(c)(1).

The only significant requests from Parents that the school did not incorporate were: 1) Mother's request that the school use a physical restraint any time that Student was physically aggressive; and 2) Parents' request for home instruction only for Student. With regard to the issue of increased physical restraints, Respondents provided evidence that their crisis intervention protocol provides for physical restraint of a student only as a last resort. Additionally, the record makes clear that Student is being physically restrained at school during incidents of physical aggression when it is necessary to protect Student, peers, or school personnel. Mother testified that she believes the implementation of restraints is inconsistent, effectively reinforcing the behavior for Student. Evidence provided by Respondents, however, reflects that school personnel are implementing Student's BIP as written and are providing consistent responses to Student's aggression. While withdrawal from Student or isolation of Student is typically the first response to Student's aggression or threats of aggression, sustained physical aggression by Student does typically result in a physical hold. Parents have expressed concern that Student has been excessively placed in time out or seclusion, but the evidence reflects that the district's actions in this regard have been reasonable given Student's needs.²⁵ Additionally, there is insufficient evidence in the record to conclude that any increased aggressive behaviors at home by Student are being caused by behavior techniques used at school, as Parents assert.

While Mother testified that she believes that the restraint techniques she uses at home would be effective in the school setting, Mother did not allow school personnel to come to the home to observe her techniques in order for them to consider them for use at school. Additionally, apart from Mother's own belief, there is no evidence in the record that any behavioral health professional or other expert has recommended increased physical restraints for Student at school as a manner of more effectively controlling his aggression. It is important to note as well that Student's BIP contains many more strategies for prevention of aggression and handling Student's cycles of work refusal and avoidance than simply physical holds. Student's teachers presented credible evidence that the BIPs have been fully and consistently implemented during Student's time at the ██████ program.

Additionally, the school must operate within the bounds of Iowa law, which prohibits the use of corporal punishment by school employees on students. Corporal punishment is defined as the intentional physical punishment of a student. An employee's physical contact with a student shall not be considered corporal punishment if it is "reasonable and necessary under the circumstances and is not designed or intended to cause pain or if the employee uses reasonable force . . . for the protection of the employee, the student, or other students; to obtain the possession of a weapon or other dangerous object within a student's control; or for the protection of property."²⁶ The Department of Education's

²⁵ It should be noted that a seclusion room was not used for Student at Parents' request; it is believed that Parents' reference to seclusion in the complaint refers to the practice of school personnel withdrawing from Student during times of aggression and allowing him to be in the hallway or other areas of the building by himself.

²⁶ Iowa Code § 280.21.

regulations provide that physical restraint may be used “only after other disciplinary techniques have been attempted, if reasonable under the circumstances.”²⁷

The second request that the district did not incorporate into Student’s IEP was home instruction with complete removal from the school setting. Starting from before the time that Student was enrolled at the ██████████ program, Mother expressed a desire for him to be instructed at home. The IDEA’s implementing regulations, however, require that the school district ensure that children with disabilities are educated, to the maximum extent appropriate, with children who are nondisabled. Separate schooling and other removal of children with disabilities from the regular educational environment can occur only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.²⁸

It is important to note as an initial matter that Complainants’ request for home instruction is premised on the idea that if Student is in the home setting, he will not have the same behavior issues that are observed in the school setting. This premise is untested and unsupported by the evidence in the case. There is ample evidence that Student’s behaviors at school are largely triggered by demands to engage in academic instruction. While Mother has testified that Student does not exhibit the same type of physical aggression and verbal name-calling at home that he does at school, up to this point Student has not been presented with significant academic demands in the home setting. The school professionals who have experience with Student believe that academic demands at home will similarly trigger refusal and avoidance behavior.

Also important to consider in assessing the assertion that denying home instruction equates to a denial of FAPE is the fact that Student has demonstrated academic progress with the more intensive supports put in place in the ██████████ program. His academic progress, of course, must be evaluated in the context of his unique circumstances. The IEE conducted by the UI team clarified that Student has a constellation of diagnoses that make it very difficult for him to learn and regulate his behaviors. The IEE clarified that Student’s higher verbal ability is discrepant with his ability to perform academic tasks and may lead adults to expect more of him than he can accomplish. Armed with that information, and with Parents’ approval, the IEP team lowered the rigor of Student’s curriculum to a kindergarten/first grade level after the May 2018 meeting with the UI team. Student has made progress in his academic goals based on progress monitoring between November 2017 and November 2018. Additionally, school personnel have observed that he is more engaged with academic work and has, in fact, experienced the success and greater engagement that were the goals of lowering the rigor of the curriculum.

A consideration of all of the evidence demonstrates that Student’s educational program is appropriately ambitious in light of his circumstances and that he has been offered the opportunity to meet challenging objectives. From even before Student entered kindergarten, the district has been continually adjusting the behavioral supports

²⁷ 281 Iowa Administrative Code (IAC) 103.7(1).

²⁸ 34 C.F.R. § 300.114(a)(2).

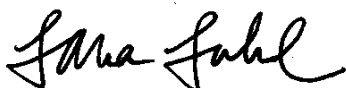
provided to Student to meet his needs. He receives 100% individualized instruction which is provided largely in an environment free of peer distractions, as recommended by the UI evaluation. Under no reasonable interpretation can the district here be characterized as sitting idly by while allowing Student to stagnate academically. Student's program, particularly in regard to behavioral supports, has been continually tweaked by the district throughout his elementary years. Student receives one to one instruction that is tailored specifically to his educational level and behavioral supports that are tailored to his specific needs.

The conclusion that Respondents have not failed to provide FAPE to Student is not meant to minimize Parents' legitimate concerns about Student's behaviors and how they will continue to impact his education going forward. A review of the documentation regarding Student's incidents of aggression and disruption demonstrates that they are significant. The combination of Student's diagnoses, as indicated by the UI team, will continue to make learning more difficult for him than for his same age peers. Under Student's unique circumstances, however, the district has designed an educational program that is appropriately ambitious and that addresses these behavioral challenges and allows Student the opportunity to access instruction and make academic progress.

DECISION

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.

Dated this 20th day of February, 2019.



Laura E. Lockard
Administrative Law Judge

cc: [REDACTED] (via electronic mail and regular mail)
Dustin Zeschke, Attorney for Respondents (via electronic mail)
Cheryl Smith, IDOE (via electronic mail)