

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF OREGON  
for the  
SUPERINTENDENT OF PUBLIC INSTRUCTION**

IN THE MATTER OF THE EDUCATION OF    ) **FINAL ORDER**  
  )  
Student and Forest Grove School District    ) Case No.: DP 11-131  
  )

**HISTORY OF THE CASE**

On December 6, 2011, Diane Wiscarson, Attorney at Law, on behalf of Parents and Student, filed a request for a due process hearing with the State Superintendent of Public Instruction. The parties did not hold a resolution session. The Oregon Department of Education referred the case to the Office of Administrative Hearings (OAH). The OAH assigned Administrative Law Judge (ALJ) A. Bernadette House, to conduct the due process hearing and issue a Final Order in this case. The resolution period ended on January 4, 2012.

On January 6, 2012, ALJ House held a pre-hearing conference with the parties. Ms. Wiscarson appeared, accompanied by Mother, on behalf of Parents and Student at the prehearing conference. No representative appeared within 15 minutes of the scheduled start of the teleconference for the District. At the prehearing conference, ALJ House granted Parents' request to extend the 45-day deadline for issuing the Final Order to a date certain, based on Ms. Wiscarson's pre-existing scheduling conflicts and to allow District counsel an opportunity to provide in-put on conflicts with the hearing dates selected. Parents informed ALJ House that the parties were not pursuing mediation. Because District was not present to confirm availability, two sets of dates were selected for hearing and relevant deadlines set according. By letter of January 9, 2012, ALJ House confirmed the matters addressed at the pre-hearing teleconference. On January 20, 2012, the District, through its attorney, Richard Cohn-Lee, confirmed the availability of District for the April 16 - 20, 2012 dates.

On April 10, 2012, the OAH reassigned the case to ALJ Jill Messecar. The hearing began on April 16, 2012. The Parents were represented by Ms. Wiscarson and the District was represented by its attorney, Ms. Nancy Hungerford. As agreed by the parties, the hearing was held at the District's office at 1728 Main Street in Forest Grove, Oregon. The District provided a court reporter for the hearing, Naegeli Reporting, which prepared written transcripts of the hearing sessions. At the Parent's request, the hearing was closed to the public. By agreement of the parties, the hearing continued on April 17-20, 2012, May 31, 2012, June 1, 2012, June 18, 2012, and June 25, 26, 28-29, 2012.

As agreed by the parties, the District presented its case first. The District presented testimony of:

Kimberly Shearer, Forest Grove High School special education coordinator

Judith Bartoo, special education teacher; taught Student's 9<sup>th</sup> grade first semester Tutorial class and 10<sup>th</sup> grade Basic English class

Chris Brady, special education teacher; taught Student 10<sup>th</sup> grade Functional Math class

Kathryn Taplin, special education teacher; Student's Forest Grove High School case manager

Mark Tasker, special education teacher; taught Student 9<sup>th</sup> grade Basic Math and Basic English classes

Janelle Mayo, Forest Grove School District Autism Specialist

Eric Larsen, general education teacher; taught Student's 9<sup>th</sup> grade second semester English 9 Composition class and 10<sup>th</sup> grade Writing Workshop teacher

Charlotte Denis, general education teacher; taught Student's 9<sup>th</sup> grade Physical Science class and 10<sup>th</sup> grade Biology class

Amanda Morris, Forest Grove High School, School Psychologist

Nancy Henry, Forest Grove High School Speech Language Pathologist; provided speech language services to Student during 2010-2011 and 2011-2012 school years

Brooke Harris, special education teacher and case manager for Student during 8<sup>th</sup> grade

Cori Goff, general education teacher; taught Student's 8<sup>th</sup> grade Physical Education/Health class and 10<sup>th</sup> grade Health class

Doria Saider, Forest Grove High School Transition Specialist

Erin Linhares, general education teacher; taught Student's 10<sup>th</sup> grade Culinary class

Bob Wismer, general education teacher; taught Student's 10<sup>th</sup> grade American Studies class

Melissa Howarth, Forest Grove School District Occupational Therapist

Jessica McRobert, instructional assistant in American Studies.

The Parents presented testimony of:

Mother of Student

Michael R. Fregia, neighbor and friend of Student and the Parents

Christine Moore, current director of special education teacher training/endorsement program at Lewis and Clark College. Testified as an expert witness in special education.

The District presented the rebuttal testimony of

Nancy Henry

Judith Bartoo

Kimberley Shearer

Brad Bafaro, Forest Grove School District Director of Special Education. Testified as an expert witness in the Forest Grove School District delivery of special education services, administration of special education, and inclusionary concepts in special education.

The Parents presented the rebuttal testimony of

Mother of Student.

The record was left open to allow for the receipt of the final hearing transcript and closing arguments. Naegeli Reporting released the hearing transcript on July 18, 2012. Given vacations of Ms. Wiscarson and Ms. Hungerford, the parties agreed that they would provide written closing arguments no later than August 22, 2012. Both parties provided closing arguments on that date. The deadline for issuance of the Final Order set for September 12, 2012 at the mutual request and agreement of the parties. This Final Order was issued by that date.

## ISSUES<sup>1</sup>

Parents have requested a hearing because Parents believe:

1. District denied Parents the opportunity to meaningfully participate in the Student's education during the 2009-2010, 2010-2011, and 2011-2012 academic years, in violation of the Individuals with Disabilities Educational Improvement Act (IDEA) and Oregon law;; and
2. District failed to identify Student as a student with a disability in all areas of disability during the 2009-2010, 2010-2011 and 2011-2012 academic years, in violation of IDEA and Oregon law ; and
3. District failed to evaluate Student in all areas of suspected disability during the 2009-2010, 2010-2011 and 2011-2012 academic years, in violation of IDEA and Oregon law; and
4. District failed to provide Student with a free and appropriate public education (FAPE) during the 2009-2010, 2010-2011 and 2011-2012 academic years, in violation of the IDEA and Oregon law; and
5. District failed to provide an appropriate placement for Student during the 2009-2010, 2010-2011 and 2011-2012 academic years, in violation of the IDEA and Oregon law.

## EVIDENTIARY RULINGS

The District offered Exhibits D1 through D55. The Parents did not object to any of the Exhibits and they were admitted.

At the start of the hearing, the District objected, generally, to evidence that the Parents might present that related to events occurring after the Parent filed the due process complaint on December 6, 2011. For that reason, the District objected to Exhibits S117 to S128; S130 to S138; S150 to S156; S159; S161 to S163; S167 to S169; S171 to S173; S175 to S179. In response, Ms. Wiscarson asserted, generally, that the Parents had pled issues regarding the November 2011 IEP, and various remedies, including compensatory education, and that all of the proposed Exhibits were relevant to the issues in the due process hearing request. The ALJ allowed the parties the opportunity to brief the issue and deferred ruling on the District's objections.

On May 5, 2012, the Parties presented arguments regarding the District's objections to documents relating to events that occurred after December 6, 2011. ALJ Messecar overruled the District's objections and admitted Exhibits S117 to S128; S130 to S138; S150 to S156; S159;

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<sup>1</sup> These issues were listed in the Notice of Hearing. Neither party contested notice on any of the issues at the hearing.

S161 to S163; S167 to S169; S171 to S173; S175 to S179. The Exhibits were deemed relevant to the issues pled, specifically the issues of remedies.<sup>2</sup>

Evidence of current (2011-2012) school year practices were admitted to allow the parties to provide information regarding any issues that have subsequently been addressed or remedied. However, the alleged violations at issue in this case are limited to those that occurred in the two years prior to December 6, 2011.

During the hearing, the Parents offered Exhibit S180, S181, and S182. The District did not object, and the Exhibits were admitted.

**List of common abbreviations used in this order.**

ADHD – Attention Deficit Hyperactivity Disorder  
AG – Annual Goal  
ASD – Autism Spectrum Disorder  
ESY – Extended Year Services  
FFA – Future Farmers of America  
FGHS – Forest Grove High School  
FGSD – Forest Grove School District  
OAKS – Oregon Assessment of Knowledge and Skills  
PLEP – Present Levels of Educational Performance  
PWN – Prior Written Notice  
SDI – Specially Designed Instruction  
SLP – Speech Language Pathologist  
STO – Short Term Objective

**FINDINGS OF FACT**

(1) In April 2005, while living in Maine, Student’s speech and language skills were evaluated as part of his/her three year reevaluation for special education services. Ms. Wisutskie, the evaluator, noted the continued presence of deficits in receptive language, expressive language, and pragmatic communication. (S1 at 4-5.) Ms. Wisutskie also made numerous specific suggestions to help Student improve his/her speech and language skills. (S1 at 5-6.)

(2) In the summer of 2005 Student and his/her family moved from Maine to Forest Grove, Oregon. (Testimony of Mother at 3083-84.) While in Maine, Student had been receiving special education services under the designation of “multi handicapped.” (Ex. S3 at 1.)

(3) In September 2005, FGSD Occupational Therapist Ms. Ireland completed an occupational therapy evaluation of Student. (Ex. S2.) During the same time period, FGSD School Psychologist Ms. Hulse completed a psychological evaluation of Student. Ms. Hulse

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<sup>2</sup> At the hearing, ALJ Messecar referred to implementation in a discussion of potential remedies. However, the Parents did not allege a violation based on a failure to implement Student’s IEP. Any reference to implementation is confined to the issue of remedies and is not intended to expand the issues to include implementation beyond December 6, 2011.

noted low range cognitive scores in Student's overall abilities with low-average processing speed skill. Ms. Hulse determined that Student's main deficits were in comprehension and reasoning and his/her main strength was in rote learning and verbal memory when information was repeated. (Ex. S3 at 3.) Ms. Hulse, Ms. Irelan, and Ms. Wycoff, a learning facilitator made specific learning and classroom suggestions for Student. The suggestions included:

[A] learning environment that was structured, predictable, and routine; an educational setting that shaped his/her ability to figure things out while providing him/her with frequent explanations of facts and concepts; prioritizing rote learning to acquire new information; frequent repetition of small segments of information at a time; multiple prompts to take time to refine his/her work; directed instruction to increase his/her organizational skills and ability to attend; when teaching new material use strategic coaching or cueing in new situations to link new experiences to previously learned concepts and skills; specific instruction to increase social skills to develop more meaningful and functional relationships.

(Ex. S3 at 5.)

(4) In October 2005, FGSD Speech Language Pathologist Ms. Hanrahan, reviewed Student's files which included the 2005 SLP report from Maine which noted that Student displayed symptoms of anxiety. Ms. Hanrahan made 10 recommendations including:

[U]se real life examples, hands-on materials, and manipulatives to support new information; tie new information concretely to old information; check for focus prior to giving instruction; to aid organization use mini-schedules or scripts for each class or activity so he/she will know the expectations; provide routine and structure; written directions and visual supports; pre-teaching of vocabulary concepts using the same techniques and materials that will be used in the class instruction; remind Student during instruction that it is not time for stories when he/she wanders off topic; prepare Student for transitions; clarify questions, paraphrasing, and frequently check for comprehension.

(Ex. S4.)

(5) On March 4, 2008, Student's primary care physician completed and signed a medical statement to assist in determining Student's eligibility for special education. The statement indicated that Student's developmental delays were physical factors that contributed to his/her speech and language and educational performance. (Ex. S6.)

(6) On March 5, 2008, FGSD administered a Woodcock Johnson III (WJIII) achievement test to Student. The results indicated that Student's performance in written language and expression was average, his/her performance in reading and math calculation was low-average, and his/her performance in reading comprehension and math reasoning was low. (Ex. S9 at 2.)

(7) On April 29, 2008, FGSD Speech Language Pathologist Ms. Pagano, completed a functional communication report to help a multi-disciplinary team determine whether Student

was eligible for special education under the disabling category of ASD. Ms. Pagano's report stated that Student demonstrated difficulties with both receptive and expressive language skills, that Student was often distracted and needed redirection. (Ex. S10 at 4.)

(8) On May 6, 2008, Ms. Morehouse with the NW Regional Education Service District completed an ASD Evaluation Report. In the report, Ms. Morehouse stated, "Most recent evaluations (10/11/2005) indicated that [Student] did not qualify for services in the area of Mental Retardation, Communication Disorder, or Occupational Therapy." (Ex. S11 at 1.) Ms. Morehouse listed Student's current developmental profile and noted deficits in communication, social interaction, sensory response, and patterns of behavior. Ms. Morehouse noted, among other things, that Student was easily distracted, performed better one to one or in small groups, struggled with peer relationships, and comprehended better when pictures and written cues were used. Ms. Morehouse noted that staff and teachers had reported that Student frequently thought or felt that he/she had done something wrong. (Ex. S11 3-5.)

(9) On May 14, 2008 Jun Ao, a practicum student for FGSD, completed a psychological report of Student. As part of the evaluation, Ms. Ao asked several of Student's teachers and Student's parents to complete a form rating Student with regard to several psychological components. Ms. Ao's report stated that Student had clinically significant levels of concern by at least two of the three raters in the areas of anxiety, attention problems, learning problems, atypicality, functional communication, cognitive problems, hyperactivity, and the Conners ADHD index. (Ex. S12 at 3-4.) The report also suggested a behavior plan be developed to reward Student for asking help from the teacher, using visual cues to help Student stay on task, and a positive behavior plan be implemented with incentives for on-task behavior to help Student improve [his/her] hyperactivity and attention problems at school and at home. (Ex. S12 at 4.)

(10) On May 14, 2008, Student's IEP team determined that Student was eligible for special education under the categories of Autism Spectrum Disorder and Other Health Impaired but not under Communication Disorder. (Ex. S15; S17.)

(11) From May 1, 2009 through February 22, 2010, the Parents paid a private therapist, Dr. Mlnarik, N.D., to provide Student with cranial sacral therapy and emotions and feelings talk therapy. (Testimony of Mother at 3137; Ex. S165.)

(12) Student's IEP team met on May 28, 2009 to develop an IEP for Student. The team discussed Student's focus in class and his/her need for constant reassurance. The team also talked about Student's inability to recall what he/she read in a chapter when that chapter was read in class. The team discussed the need for Student's 8<sup>th</sup> grade teachers to take time to clearly explain assignments and Student's need for two days of speech services and study hall. Per the Parents request, the team agreed to meet during the first week of school for Mother to provide information about Student to his/her new teachers. (Ex. S16.)

(13) On May 28, 2009 the District sent the Parents a PWN stating that a meeting would be held during the first week of school for Mother to provide information about Student to his/her new teachers. (Ex. S18.) No meeting was held until December 10, 2009. (Testimony of Mother at 3125.)

(14) The May 28, 2009 IEP<sup>3</sup> provided for the following specially designed instruction (SDI):

- 20 minutes per day of Language Arts in a General ed classroom;
- 45 minutes per day of math in a classroom;
- 10 minutes per day of self –management in a classroom;
- 8 hours per week of writing in a summer school class.

In addition, the IEP provided for the related services of speech/language therapy of 30 minutes per week. (Ex. D3 at 2.)

(15) As Supplementary Aid/Services; Modifications; Accommodations the IEP provided for:

- verbal responses for testing when appropriate
- front row seating or close proximity to teacher for academic instruction/daily,
- up to three days extended time to complete projects and reports, shortened written assignments for all writing assignments over 1 page,
- home/school notebook to and from school/daily, monitor/support self-care at least three times per day in school settings,
- visual supports to assist with comprehension when presenting new vocabulary, make up tests consist of answering questions [he/she] got wrong. (Ex. D3 at 2-3.)

In addition, the IEP stated that the supports for school personnel would include an autism consult of one hour per year. The IEP also stated that Student would receive ESY services. (Ex. D3 at 2.)

(16) The IEP form listed six factors to consider as part of the IEP development. All of the six factors were marked “no,” indicating student did not need assistive technology or services, that student had no communication needs, and exhibited no behavior that impeded his/her learning or the learning of others, did not have limited English proficiency, was not blind or visually impaired, and was not deaf or hard of hearing. (Ex. D3 at 5.) The IEP contained needs/PLEP statements that said:

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<sup>3</sup> Unless otherwise indicated, quotations from the IEPs, as included in this order, are set forth verbatim, including all apparent spelling and punctuation errors.

Strengths of the Student: [Student] has good long term memory for events. [Student] gets along well with peers. [He/She] is a good student who works on [his/her] school work. [Student] has grown up a lot this year. [He/She] is more independent in dealing with everyday school “stuff”.

The concerns of the Parents for enhancing the education of their child: [Student’s] family is concerned for [his/her] ongoing social and academic development and wants to be sure [he/she] has access to the mainstream curriculum to address [his/her] achievement level (as indicated by standardized assessments). [Student’s] mom wants to be sure [Student] is exposed to the mainstream curriculum so that [he/she] develops the skills to understand how to process new information. [His/her] mom did state that [he/she] is not as concerned with [Student’s] ability to retain all of the information, but that [he/she] develop the skill of how to process it and have the exposure to grade-level concepts.

Present Level of Academic Performance, Including the Student’s Most Recent Performance on State Assessments: Reading: [Student] is enrolled in all general education classes and does not receive specialized instruction in reading except for what [he/she] gets in study hall as it relates to grade level text. Often chooses reading books that [he/she] has read before. In language arts they have studied *The Pearl* and *The Outsiders* as a class. Students only read during SSR. In class the students followed along while the book was listened to on CD. The class then talked about characters, plot, settings, theme. [Student] does much better when responding to concrete questions versus abstract and inferential. Receives cues from IA through questions, modeling, defining unknown words and working from samples. Can pick out characters, action but when gets to reading comprehension [he/she] has hard time picking out main idea when reading is multiple paragraphs versus single paragraph.

Writing: [Student] has shown improvement that when [he/she] reads a statement that [he/she] wrote [he/she] can see that there are errors with minimal prompts [Student] demonstrates the ability to write in complete sentences. Sometimes wants to change the whole paragraph when only a word needs to be changed. Writing is more legible. Can write complete sentences. Hard time writing complete paragraphs. Any kind of organizing one’s writing [Student] has a hard time including the use of graphic organizers, discussions and sequencing events. [He/She] gets “stuck” at certain places in [his/her] wiring. [Student] can write complete sentences from unrelated events but when it comes time to write a paragraph an connect ideas [Student] had a hard time. [He/She] can add details related to the topic within a story, but struggles with sequencing and sorting the important information from those that are less important. [His/Her] stories can tend to be more a list of facts or ideas or they may not contain a lot the most important information.

Math: During the year [Student] has participated in the Introduction Math 2 class. During the year [he/she] has studied: order of operations, fractions, basic computation of addition, subtraction, division and multiplication, introducing geometry, perimeter and area, names for angles, triangles and labeling and



identifying different types of triangles. The type of assistance that [Student] requires to complete the math problems centers around modeling, rescuing, revisiting the formulas and test retakes. [Student] does not require to be pulled out from the classroom except during testing and only when [he/she] is a bit distracted. [Student] does use [his/her] notes on quizzes (as are all the students). [Student] is not able to copy notes from the board in the time given, so [he/she] often copies from the teacher notes at a later time (study hall). [He/She] knows multiplication facts.

[Student] participated in the grade level state assessments this year with accommodations for a quieter environment and directions read to [him/her] when allowable as per test directions. [He/She] obtained a score of 205 on the math assessment and 216 on the Reading/Literature assessment. Neither score meets the 6<sup>th</sup> grade benchmark. Given [his/her] performance on these assessments, it is recommended that [he/she] continue to participate in grade-level assessments with allowable accommodations; given there are no other reasonable options.

Present Level of Developmental and Functional Performance (including the results of initial or Most Recent evaluation):

Speech/Language: [Student] was reevaluated in 2008 using standardized tests to determine [his/her] eligibility for Communication Disorder. [He/She] did not qualify at this time, but [he/she] does indicate some strong weaknesses in [his/her] language skills. [He/She] was tested using the following tests: CASL: Antonyms SS 76, Synonyms SS 71, Sentence Completion SS 57, Syntax Construction SS 61, Grammatical Morphemes SS 76, Grammaticality Judgment SS 51, Non-Literal language SS 78, Meaning from Context SS 80, Inference SS 74, and Pragmatic Judgment SS 73. Core Composite 69. OWLS: Listening Comprehension SS 64, Oral Expression SS 63, Core Language 61. PPVT-III: SS 81. [Student] passed a 20 dB hearing screening. A language sample was also collected to assess [Student's] ability to sequence information and use correct syntax. [Student] demonstrated the ability to speak about one topic, but often [he/she] would have one thought run into another making [his/her] information difficult to understand. [He/She] would also begin speaking in the middle of an idea which would cause additional confusion for the listener. [Student] demonstrated the ability to answer and ask questions related to the topic, but [he/she] would also move back to a previous topic without any notice to [his/her] listener.

Emphasis of communication therapy has been placed on linguistic organizational skills, especially as they pertain to understanding and explaining curricular information. [Student] has been learning to use a set of graphic organizers to help [him/her] visualize language and organizational patterns as well as to relate information from personal experiences and class assignments. [He/She] continues to struggle to relate information clearly and concisely. [He/She] is very tangential in [his/her] expressive language. [He/She] needs frequent re-direction to the topic of conversation.

Self- Management: In class [Student] will take the "easy road" if [he/she] can. In math [he/she] will use a multiplication chart. [Student] raises [his/her] hand in

class when [he/she] needs help. [He/She] does though when an IA is sitting right by [him/her]. [He/She] also will get up and go to the teacher, which is not a bad thing but [he/she] is not on task, monopolizing the teachers attention about an off task topic. [Student's] notebook is well organized.

General Classroom Impressions: Overall, [Student] benefits from sitting in the front to minimize distractions. Requires IA assistance and reassurance and always very appreciative. Requires a lot of assistance when dealing with abstract information's; rescues from IA. When students are pointed to Independent work [he/she] gets confused, asks for clarification from IA and then goes to teacher for clarification. [He/She] is delightful needing constant reassurance. Mainstreamed classes have been very good for [Student]. [He/She] is comfortable with [his/her] peers, seems more confident in [himself/herself].

Ability testing has been relatively consistent over time

WISC III (2003)	Toni (2003)	WISC IV (2003)	WISC IV (2005)
Verbal 76	72	Verbal 75	Verbal 67
Performance 60		Working Memory 56	Working Memory 68
Full Scale 66		Full Scale 60	Full Scale 59
Perceptual Organization 56			Perceptual Reasoning 55

[Student] has demonstrated greater achievement on standardized testing than would be suggested by [his/her] obtained cognitive scores.

WIAT (2003)	WIAT (2005)	WJIII (2008)
Reading Composite 80	Reading Comp 80	Reading Comp 76
Mat Composite 75	Math Comp 75	Broad Reading 84
Writing Composite 90	Written Lang Comp 69	Broad Written Lang 92
	Listening Comp 61	Broad Math 74
	Oral Expression 91	Math Calculation 80
	Oral Lang Comp 73	
	Total Test Comp 72	Total 76

While there has been a concern regarding [his/her] level of cognitive functioning since [he/she] entered school, issues regarding attention and short-term memory have affected [his/her] performance on ability testing. [His/Her] previous motor difficulties also affected [his/her] performance scores on standardized tests of ability.

How the Student's disability affects involvement and progress in the general education curriculum: [Student] benefits from support during the school day for organization, socialization, academic instruction beyond the mainstream curriculum (including modifications to the mainstream curriculum and additional basic-skills instruction) and attention.

(Ex. D3 at 6-7.)

(17) The May 2009 IEP included a printed statement that Student was going to participate in statewide assessments of reading/literature, mathematics, writing, and science

during the IEP period. The word “exempt” was handwritten on the page and underlined several times. (Ex. D3 at 8.) The handwriting appears similar to Mother’s handwriting and not Mr. Plapinger’s. (Exs S16; S34 at 2.)

(18) The May 2009 IEP included annual goals and short-term objectives for language arts, mathematics, self-management, and speech/language. (Ex. D3 at 4; 9-12.)

(19) The May 2009 IEP stated the following under the categories of measurable annual goals and related short term objectives:

(1) Measurable Annual Goal: Skill Area: Language Arts: [Student] will do given language arts assignment in reading and writing.

Criteria

4 out of 5 opportunities

Evaluation Procedures

running record or informal reading inventory, work samples.

Measurable Short-Term Objectives: [Student] will understand and draw upon a variety of comprehension strategies as needed – re-reading, self correcting, summarizing, class and group discussions, generating and responding to essential questions, and making predictions Determine the meaning of unknown words or words with unusual meaning in informational and narrative text by using work, sentence and paragraph clues. Locate information in titles, tables of contents, chapter headings, illustrations, captions, glosaried, indexes, graphs, charts, diagrams, and tables to aid understaindgin text. Use a variety of strateies to prepare for writing, such as brainstorming, making lists, mapping, outlining, grouping elated ideas, using graphic organizers, using brain frames, and taking notes. Edit and proofread one’s own writing. [Student] will use transition words between sentences to unify ideas [Student] will use transition words between sentences to unify paragraphs. [Student] will edit [his/her] story for conventions and spelling using a dictionary with 90% accuracy. relate personal events in writing with sequences and details to converh [his/her] thought/ideas with at least 80% accuracy.

(Ex. D3 at 4 and 9.)

(2) Measurable Annual Goal: Skill Area: Mathematics: [Student] will solve one step story problems with 90% accuracy including problems involving time and money.

Criteria

9 out of 10

Evaluation Procedures

data collection, teacher made probes.

Measurable Short-Term Objectives: [Student] identify the needed operation (whether to add, subtract, multiply, or divide) with 90% accuracy. [Student] will solve story problems involving elapsed time with 90% accuracy. [Student] will solve story problems involving money with 90% accuracy. (Ex. D3 at 10.)

(3) Measurable Annual Goal: Skill Area: Self-Management: Given a task, [Student] will stay on-task for 30 minutes, complete task in given time, and ask for assistance appropriately when needed:

Criteria

90% of the time

Evaluation Procedures

data collection.

Measurable Short-Term Objectives: When given directions, [Student] will verbally restate directions to teacher when asked. Given a task, [Student] will ask for assistance appropriately when needed (e.g. raise hand, and wait quietly). Given a task, [Student] will stay on-task for 30 minutes. Maintain an organized system for individual class assignments to meet the teacher-made criteria with at least 80% accuracy in 4 out of 5 opportunities.

(Ex. D3 at 14.)

(4) Measurable Annual Goal: Skill Area: Speech/Language: [Student] will maintain topic during four minute discussions of a variety of topics (personal experience, current event, curricular subject)

Criteria

three out of four trials

Evaluation Procedures

SLP data, observations, informal/formal testing, and teacher/staff input

Measurable Short-Term Objectives: By May 2010 [Student] will: 1. Identify the main idea of discussion, event or experiences with 90% accuracy; 2. Identify supporting details/events from discussions, events, experiences etc with 90% accuracy; 3. determine degree of importance of details/events from discussions, events, experiences etc. with 90% accuracy; 4. place events including details and/or subtopics on to a graphic organizer with moderate assistance.

(Ex. D3 at 12.)

(20) The IEP team selected a placement in a general education classroom with shared instructional assistant support and study hall. The options of placement in a general education classroom without assistant support, a general education classroom with instructional assistant support with pull-out for small group instruction for academics, and modified classes with support and mainstream electives were rejected. (Ex. D3 at 13.)

(21) Student's three IQ scores of 56 to 66 listed in the 2009 IEP indicate that it would be very difficult for Student to access the general education academic curriculum without a lot of help. (Testimony of Dr. Morris at 1928.)

(22) Student has difficulty retaining information that he/she is taught at school. Ms. Henry believes that Student's difficulty retaining information is likely due to cognitive issues. (Testimony of Ms. Henry at 4041.)

(23) Ms. Mayo observed Student exhibit a lot of anxiety and fear over being wrong. (Testimony of Ms. Mayo at 1388.) Some students with intellectual disabilities in high school do not receive speech services because they are already performing to the best of their abilities. (Testimony of Ms. Mayo at 1414-15.)

(24) On December 10, 2009, Student's IEP team met to discuss the Parents concerns regarding Student's fear of making mistakes and anxiety related to testing. The team discussed how to address Student's test anxiety and agreed that Student should try a calming routine prior to taking a test; should be given a test summary several days prior to the test; and should be provided a script from the special education team to encourage Student to try something once before asking for help. The team suggested Student try taking each test without notes the first time he/she took the test. If a second attempt was necessary, Student should be allowed to make corrections using notes. The team also discussed and agreed to several strategies to increase Student's independence. (Ex. S19.)

(25) In March 2010, the District prepared progress notes. (Ex. D8.) The progress note for speech/language indicate that Student is identifying the main idea with 80% accuracy (the progress note does not explain what Student was supposed to be identifying), identifying supporting details with 80% accuracy, and determining the degree of importance with 60% accuracy. The final STO for speech/language contained detailed information stating that Student was meeting the STO. The language arts progress notes contained no detailed information to determine if Student was meeting the STOs. (Ex. D8 at 1.) The mathematics and self-management progress notes contained no detailed information to determine if Student was meeting the STOs. (Ex. D8 at 2.) The District did not provide these progress notes to the Parents. (Testimony of Mother at 3160.)

(26) On March 29, 2010 the District sent the Parents a PWN proposing to reevaluate Student using the Woodcock Johnson III achievement test in order to update information about Student's current levels of academic performance on a standardized sale. (Ex. S21.)

(27) On March 30, 2010, FGSD administered a Woodcock Johnson III achievement test to Student. (Ex. S21.) Prior to administering the test, Ms. Harris spoke to the Parents and received verbal permission to administer the test. (Testimony of Ms. Harris at 2361.) The results indicated that Student's performance in academic knowledge, basic reading, and brief

reading was low-average, his/her performance in oral expression, broad reading, and math calculation was low, and his/her performance in reading comprehension, broad math, brief math, written expression, math reasoning, fluency with academic tasks, and ability to apply academic skills was very low. (Ex. S21 at 1.)

(28) On April 2, 2010, Student's IEP team met to develop an IEP for Student. Student was moving from 8<sup>th</sup> grade to high school during the next school year. Student's high school case manager, Ms. Taplin, attended the April 2010 meeting. The team discussed Student's requests for help in the classroom every three to five minutes and decided that Student needed to be encouraged to try to complete an assignment without assistance at first. The team believed that Student had difficulty following a multi-step process in school assignments. Student also had difficulty understanding vocabulary. The team also discussed Student taking the OAKS assessment with accommodations and most likely working towards a modified diploma. The Parents asked that Student be allowed to attend summer school at the high school. (Ex. S22.)

(29) The April 2, 2010 IEP provided for the following specially designed instruction (SDI):

- 180 minutes per week of reading at FGHS;
- 180 minutes per week of writing at FGHS;
- 30 minutes per day of self-management in a classroom;
- 180 minutes per week of mathematics at FGHS.

In addition, the IEP provided for the related services of speech/language therapy of 30 minutes per week. (Ex. D12 at 3.)

(30) As Supplementary Aid/Services; Modifications; Accommodations the IEP provided for:

- verbal responses for testing when appropriate
- 2<sup>nd</sup> row seating or close proximity to teacher for academic instruction/daily
- up to three days extended time to complete tests and assignments
- visual supports to assist with comprehension when given new concept or assignment
- for home-school work assignments a daily planner with assignments
- access to copies of lecture notes upon request of teacher or student
- alternate location for completing tests at FGHS
- shared instructional assistant support in academic, general education classes at FGHS

- model/example multi-step math problems when given multi-step math problems at FGHS.

(Ex. D12 at 3-5.)

The April 2010 IEP stated that supports for school personnel will include: an autism consult of one hour per year and confidential profile per change in schedule/teacher across classes would be provided. The IEP also stated that student would receive ESY services. (Ex. D12 at 3.)

(31) The IEP form listed six factors to consider as part of the IEP development. The second question, “Does the student have communication needs?” was marked “yes”. The remaining five questions were marked “no”. (Ex. D12 at 6.) The IEP contained needs/PLEP statements that said:

Strengths of the Student: [Student] is an 8<sup>th</sup> grade student at Neil Armstrong Middle School. [He/She] receives special education services under the category of Autism Spectrum Disorder. [Student] takes general education classes with shared instructional assistant support, and has a study hall in the special education program. (Ex. D12 at 6.) [Student] is a conscientious student who puts forth great effort in all [his/her] classes. [He/She] is kind and caring toward [his/her] peers and teachers.

The concerns of the Parents for enhancing the education of their child: Parents are concerned that [Student] gets high grades on report cards without passing a test. Parents want [Student] to earn what grades [he/she] gets and wants [Student] to improve [his/her] test scores. Parents are primarily concerned with comprehension and want to ensure that [Student] will receive speech and language services next school year.

Present Level of Academic Performance, Including the Student’s Most Recent Performance on State Assessments: [Student’s] academic achievement levels were updated by administering the Woodcock Johnson III Tests of Academic Achievement on March 30, 2010. [Student’s] oral language skills were found to be low when compared to others at [his/her] age level. [His/Her] oral expression skills are also low. [Student’s] level of academic knowledge is within the low average range (which was a relative strength for [him/her]). [His/Her] fluency on academic tasks and [his/her] ability to apply academic skills are both within the very low range. [Student’s] standard scores are low average in basic reading and brief reading skills. [His/Her] broad reading and math calculation skills are in the low range. [His/Her] standards scores are very low in reading comprehension, broad mathematics, math reasoning, brief mathematics, and written expression. On the 8<sup>th</sup> grade statewide assessment, [Student] received a score of 223 in math (231 meets), which did not meet, but was a significant improvement from the 6<sup>th</sup> grade assessment. In reading, [Student] received a score of 214 (231 meets), which is two points lower than [his/her] 6<sup>th</sup> grade score. On these assessments as well, scripts are used for directions and administrators are not allowed to explain parts of the test or questions.

Reading and Writing: With prompting, [Student] is using graphic organizers in class to plan [his/her] writing assignments, but struggles to stay on topic without staff support/intervention. We are working to improve independence in this class by highlighting items for [Student] to work independently, and providing assistance on complex pieces of the assignment. [Student] uses a dictionary independently to check [his/her] spelling, and will use transition words when prompted. With a spellchecker [Student] can independently check for conventions and spelling. [Student] accessing the text in class through the variety of modes presented to the entire class (read aloud by teacher, silent read, repeated reading). [He/She] is interested in the topics covered, and the concepts presented. Vocabulary has been difficult, [Student] tends to skip over words [he/she] does not understand, rather than try a strategy.

Math: [Student] is currently taking a general education math class with instructional assistant support and reteaching during a special education study hall. Depending on the topic, [Student] is able to demonstrate understanding of a concept on an assessment. Probability was a difficult one for [him/her] to accurately perform on an assessment, but [he/she] was able to explain [his/her] work with prompting on assignments. Proportions are more concrete and [he/she] did much better demonstrating [his/her] knowledge on the assessment. [Student] is encouraged to try problems on [his/her] own first prior to asking for help, in process of moving toward increased independence. The type of assistance that [Student] requires to complete the math problems centers around modeling, reminders for the next step, revisiting the formulas, and test retakes.

Self- Management: When given directions, [Student] will verbally restate directions to the teacher when asked on 7/10 opportunities. Given a task, [Student] will ask for assistance appropriately when needed (e.g. raise hand, and wait quietly) on 3/10 opportunities. [He/She] tends to call out to the teacher while raising [his/her] hand. [Student] will also persevere on a problem and repeatedly ask the same questions of [his/her] teachers. During a class, [Student] will ask for help on average 12 times per class (especially when given an assignment to complete independently), many of [his/her] requests are for confirmation before taking a step. Given highlighted questions to answer independently, [Student] will attempt the question on [his/her] own. Given a task, [Student] will stay on-task for 30 minutes for certain classes. In math, [Student] demonstrates being on task for the entire class period, focused on her math work. [Student] also does well staying on task in science, but can be thrown by an unusual event. In history, it depends on the complexity of the assignment how long [he/she] is able to stay on task (the more difficult, the more [he/she] tends to wander). In study hall, while working on assignments, [he/she] needs redirection approximately every five minutes. In Language Arts, [Student] is attentive during lecture and class activities, but less so when given an assignment. [Student] maintains a binder with [his/her] work very attentively. However, [he/she] really likes to keep items that are outdated and no longer useful. [He/She] has a “old stuff” binder kept in the facilitator’s office, but has to be convinced to use it for old items. [Student] does an exceptional job updating her agenda with homework



assignments and upcoming tests.

Communication/Language: [Student's] most recent Functional Communication evaluation was complete on 4/29/08 results are as follows: Comprehensive Assessment of Spoken Language, Core Composite: 69, areas of weakness included Lexical/Semantic, Supralinguistic and Syntactic areas of language. On the Pragmatic Judgment subtest, [Student] displayed difficulty when given social situations that involved introductions, requesting information and providing appropriate statements in a situation. The Oral and Written Language Scales, Listening Comprehension: 64, Oral Composite: 61. The Peabody Picture Vocabulary Test – 3, Standard Score: 81. A Language Sample indicated that [Student] was able to speak about one topic, but often [he/she] would have on thought run into another thought making [his/her] information difficult to understand. The communication Observation Checklist, [his/her] teacher rated [him/her] with a “never on 14/20 items, indicating that [Student] did not display those communication skills within the classroom setting. Current data, observations and teacher input indicate that [Student] continues to struggle in the area of language, specifically organizing [his/her] language thought process, summarizing information and pragmatic language is highly impacted. [Student's] parents report that [he/she] has no friends.

How the student's disability affects involvement and progress in the general education curriculum: [Student's] disability affects how [he/she] processes language and new information, and significant levels of assistance and instruction are needed to provide access to the curriculum.

(Ex. D12 at 7-8.)

(32) The April 2010 IEP contained no transition page or information even though Student's 16<sup>th</sup> birthday was in January of 2011. (Ex. D12.)

(33) The April 2010 IEP included a statement that Student was going to participate in OAKS assessments of reading/literature, mathematics, writing, and science during the IEP period. (Ex. D12 at 9.)

(34) The April 2010 IEP included annual goals and short-term objectives for language, reading, writing, and mathematics. (Ex. D12 at 10-13.)

(35) The April 2010 IEP stated the following under the categories of measurable annual goals and related short term objectives:

(1) Measurable Annual Goal: Skill Area: Language Arts: Given specially designed instruction in the area of language Student will demonstrate knowledge in the following objectives in order to support, EL.07.SL.02 Organize information, arrange details, reasons, descriptions and examples, effectively and persuasively in relation to the audience.

Criteria

As measured by individual objectives

#### Evaluation Procedures

SLP data, observations, informal/formal testing, and teacher/staff input.

Measurable Short-Term Objectives: 1) In order to summarize information Student will: a) identify the main idea of discussion, event or experience b) identify the supporting details/events from discussions, events, experiences, etc c) determine degree of importance of details/events from discussions, events, experiences, etc with 90% accuracy 2) Will demonstrate understanding of how relationships develop and area maintained by: a) Will identify and engage in appropriate nonverbal social interaction skills b) Will identify appropriate strategies to gain attention c) Will demonstrate turn taking during conversation, d) Will maintain a topic when engaged in conversation with a variety of people in various environments in 3 out of 5 opportunities 3) [Student] will demonstrate the use of at least two strategies in order to organize and sequence [his/her] language for clarity, these may include graphic brain frames, thinking in pictures, etc. (Ex. D12 at 10.)

(2) Measurable Annual Goal: Skill Area: Reading: [Student] will improve her reading fluency and comprehension to 120 correct words per minute in a 6<sup>th</sup> grade level passage and answer literal comprehension questions at that level with 90% accuracy. [Student] will answer inferential questions from a fourth grade level passage with 90% accuracy.

#### Criteria

90% accuracy

#### Evaluation Procedures

running records, curriculum-based assessments, work samples.

Measurable Short-Term Objectives: [Student] will improve her reading fluency and comprehension to 120 correct words per minute in a 5<sup>th</sup> grade level passage and answer literal comprehension questions at that level with 90% accuracy. [Student] will improve her reading fluency and comprehension to 120 correct words per minute in a 5.5 grade level passage and answer literal comprehension questions at that level with 90% accuracy. [Student] will answer inferential questions from a 3.5 grade level passage with 90% accuracy. (Ex. D12 at 11.)

(3) Measurable Annual Goal: Skill Area: Writing: [Student] will complete a variety of writing assignment responding to the assignment and staying on topic, that includes a clear topic, organization, and conclusion given clear planning and drafting strategies and prompts to follow the writing process on 2/3 opportunities.

Criteria

2/3 opportunities

Evaluation Procedures

work samples

Measurable Short-Term Objectives: Given a prompt [Student] will identify the writing assignment by using the circle and underline strategy on 2/3 opportunities independently. Given samples and specialized instruction, [Student] will select and create a brainframe with which to plan [his/her] paper on 2/3 opportunities independently. Given specialized instruction and a template, [Student] will transfer information from [his/her] brainframe (plan) to a multi-paragraph template on 2/3 opportunities independently. (Ex. D12 at 12.)

(4) Measurable Annual Goal: Skill Area: Mathematics: By April 2010, [Student] will demonstrate improvement of [his/her] conceptual knowledge of mathematics by mastering the following objectives:

Criteria

90% accuracy

Evaluation Procedures

work samples; curriculum-based assessments.

Measurable Short-Term Objectives stated that [Student] will evaluate a formula with values given, with up to three values. Given models, [Student] will select the appropriate formula to solve a word problem. (Ex. D12 at 13.)

(5) Measurable Annual Goal: Skill Area: Self-Management: [Student] will increase [his/her] independence and confidence in classroom routines by meeting the following objectives:

Criteria

3/4 opportunities

Evaluation Procedures

data collection; observations.

Measurable Short-Term Objectives stated that [Student] will seek assistance appropriately in class by raising [his/her] hand and waiting for instructor response, quietly approaching the teacher's desk, and waiting until the teacher has finished the directive before asking a question.

[Student] will increase her independence on work completion by working independently on items identified by the instructor as ones [he/she] should be able to do independently, and jointly identifying problems with which to ask for assistance. [Student] will use an organizational system consistently to organize [his/her] class work and to maintain a planner. (Ex. D12 at 14.)

(36) The IEP team selected a placement in a combination of special education and general education classes with pull out for tutorial and speech and language services were selected. (Ex. D12 at 17.) The IEP team rejected placements of “General education classes with pull out for tutorial and speech and language services.” The IEP team also rejected placement in “Special education classes for English and Math and pull out for tutorial and speech and language services. Electives and content classes in general education.” (Ex. D12 at 15.)

(37) On April 2, 2010, the District sent the Parent a PWN proposing to implement the IEP reviewed on April 2, 2010. (Ex. D14.)

(38) In June 2010 the District prepared a report of Student’s progress towards meeting his/her special education goals. (Ex. S30.) The notes for Language indicated that he/she is able to identify the main idea with 80% accuracy where 90 % accuracy is the goal, the progress note does not explain what main idea Student was supposed to be identifying. The remaining language AGs and STOs were either not measured by the required criteria or were unclear as to what exactly was being measured. (Ex. S30 at 1.)

(39) The progress notes for Reading indicated that Student was reading a mid fifth grade level text with 100% accuracy, answering comprehension question with 70% accuracy when given the text to refer to, and not answering inferential questions accurately unless they were direct and explained. (Ex. S30 at 2.) The notes for Writing indicate that his/her AGs and STOs were not measured by the required criteria. (Ex. S30 at 3.) The notes for Mathematics indicate that his/her AGs and STOs were not measured by the required criteria. (Ex. S30 at 4.) The notes for Self-Management indicate that he/she was accessing assistance appropriately on one third of the opportunities and was waiting until directives were finished before asking question on one quarter of the opportunities. The remaining STOs were not measured by the required criteria. (Ex. S30 at 5.) The Parents did not receive any progress notes for the 2009-2010 school year until the summer of 2011. (Testimony of Mother at 3160, 3172.)

(40) During the 2010-2011 school year, all of the special education teachers who taught Student worked on the Self-Management AGs/STOs with Student. (Testimony of Mr. Tasker at 1549.)

(41) During an e-mail exchange between Mother and Ms. Taplin on October 1, 2010, Ms. Taplin stated that Student’s science test was modified to include less content and contained a reduced number of answers he/she could chose from. Ms. Taplin also stated that the world studies history test was modified by cutting the content almost in half. (Ex. S24a.) The Parents were unaware that Student could not graduate with a regular diploma if his/her classes were modified through grades based upon modified tests. (Testimony of Mother 3157-58.)

(42) On December 14, 2010, an autism team at the Child Development and Rehabilitation Center (CDRC) at Oregon Health Sciences University evaluated Student. The team was comprised of Dr. Robin McCoy, Developmental and Behavioral Pediatrician, Kameron Beaulier, Speech Language Pathologist, Dr. Darryn Sikora Licensed Supervising Psychologist, Erika Doty M.A., Psychology Practicum Student, and Kersti Pettit-Kekel, Occupational Therapist. The team determined that Student did not meet the criteria for the medical diagnosis of ASD. The team diagnosed Student with mild intellectual disability, anxiety disorder, ADHD, and macrocephaly. (Exs. S25; S26; S27; S28; S29.)

(43) The CDRC reports disclosed the team's failure to observe many of the common characteristics of ASD in Student. (Ex. S25 at 4.) The psychology report stated that Student's behaviors of worrying, struggles to interact with peers, and his/her fearful nature appeared to be due to anxiety and not due to ASD. (Ex. S27.) The report also stated that Student's greatest difficulty in a learning environment would likely be his/her difficulty in solving novel tasks. (Ex. S27 at 4.) The speech language report found that Student's difficulty with understanding inferences, complex sentences, high level vocabulary, and appropriate reasons suggested a receptive-expressive language disorder. The report also stated that Student demonstrated social interaction and communication skills that were consistent with typically developing peers. (Ex. S26.) The occupational therapy report stated that Student scored below average on three visual and motor coordination tests. The report also contained a sensory profile that stated Student showed a definite difference from peers which included jumping from task to task (a sensation seeking behavior) and difficulty sustaining his/her attention during auditory filtering. (Ex. S28 at 3.) The reports also made numerous recommendations including ongoing psychiatric evaluation and interventions to address Student's anxiety. (Ex. S29 at 3.)

(44) In January 2011 the District prepared reports of Student's progress towards meeting his/her special education goals. (Ex. S30.) The notes for Language indicate that he/she was able to identify the main ideas of discussion, event or experience and determine the degree of importance of details/events from discussions, events, experiences, etc with 85% accuracy where 90 % accuracy was the goal. The remaining STOs were not measured by the required criteria. (Ex. S30 at 1.)

(45) The notes for Reading indicate that he/she was reading a sixth grade level text and could answer basic concrete questions with 70-75 % accuracy. The remaining AGs and STOs were not measured by the required criteria. (Ex. S30 at 2.) The notes for Writing indicate that his/her AGs and STOs were not measured by the required criteria. (Ex. S30 at 3.) The notes for Mathematics indicate that his/her AGs and STOs were not measured by the required criteria. (Ex. S30 at 4.) The notes for Self-Management indicate that his/her STOs were not measured by the required criteria. (Ex. S30 at 5.)

(46) On February 9, 2011, Dr. Buckendorf, a private Speech Language Pathologist that the Parents hired to work with Student, completed an evaluation report. The report stated that based upon formal and informal observations, medical records review, parental reports, and a clinical assessment, Student exhibited a mixed receptive and expressive language disorder and a pragmatic language disorder. The report also listed eight specific recommendations to assist Student in area of conversational language and using pragmatic language. The report did not mention ASD. (Ex. S33.) Ms. Henry believed that Dr. Buckendorf is a well-respected speech language pathologist in the community. (Testimony of Ms. Henry at 2438.)

(47) Based upon Mother's request and prior to the reevaluation meeting, Ms. Henry, called Dr. Buckendorf and discussed his recommendations, findings, and goals for Student. Ms. Henry used the information from this discussion to write up the speech/language Student needs/PLEP statement and to create Student's AGs/STOs for the March 29, 2011 IEP. (Testimony of Ms. Henry at 2168-69.)

(48) On March 7, 2011, the District sent the Parent a PWN proposing to reevaluate Student. On March 14, 2011, the Parents provided written consent for the District to reevaluate Student as part of a three year reevaluation for eligibility in special education services. (Ex. S34.)

(49) Prior to the March 3, 2011 IEP meeting, Ms. Taplin interviewed Student about her future goals in order to prepare Student's transition plan. Student stated that he/she wanted to go to college part-time and wanted to be able to work. Ms. Taplin decided that Student would not benefit from four years of work experience at the high school but would benefit from some work experience before he/she left high school. (Testimony of Ms. Taplin at 815.)

(50) During the 2010-2011 and 2011-2012 school years, several teachers observed Student become so anxious over a test or learning new materials that he/she cried in the teacher's presence. (Testimony of Mr. Tasker at 1543-44; Testimony of Mr. Brady at 573; Ex. S29 a.)

(51) On March 28, 2011, Dr. Morris, FGSD School Psychologist, completed a psychological report as part of Student's three year reevaluation. (Ex. S37.) Based upon measurements completed by two of Student's teachers, Student displayed clinically significant levels of anxiety, hyperactivity, and impulsivity. One or both of the teachers also reported clinically significant levels of inattention and learning problems/executive functioning, peer relationships, and at risk levels of depression, withdrawal, adaptability, social skills, leadership, and functional communication. (Ex. S37 at 3.)

(52) On March 29, 2011, an IEP team meeting was held to determine Student's eligibility, to develop an IEP, and to consider transition needs and services. (Ex. D23.) The team found Student eligible for special education under the disabling conditions of Intellectual Disability (mental retardation), other health impaired, and ASD. (Exs. S40; S41; S42.) The statement of eligibility referred to the evaluative data provided in the December 14, 2010 CDRC report to find Student eligible in the area of Intellectual Disability. (Ex. S40.) The statement of eligibility referred to the Dr. Buckendorf's February 2011 report to find Student eligible in the area of ASD. (Ex. S42.)

(53) The team did not find the CDRC determination that Student did not have ASD to be persuasive evidence that Student was not eligible for special education services under ASD. (Testimony of Janelle Mayo at 1387.) The IEP team did not review the CDRC report or Dr. Buckendorf's report during the evaluation meeting. (Testimony of Mother at 3193-94.) The IEP team discussed Dr. Morris' report during the reevaluation meeting. (Testimony of Ms. Taplin at 1782-83.)

(54) At the meeting, Mother stated that she did not care what category Student qualified under as long as he/she got the services needed. (Ex. S43 at 1.) Ms. Mayo explained that

Student exhibited autistic tendencies, especially in the area of communication. The team discussed Student's constant worry that he/she would get into trouble even though Student never got into trouble. (Ex. S43 at 2.) Mother asked if anyone had observed Student being depressed. Dr. Morris explained that some teachers see Student as frustrated but nothing that was clinical. No one asked or recommended that Student's mental health be evaluated. Ms. Henry agreed to work on problem solving with Student. (Ex. S43 at 3.)

(55) The March 29, 2011 IEP provided for the following specially designed instruction (SDI):

- 180 minutes per week of transition reading at FGHS;
- 180 minutes per week of transition writing at FGHS;
- 180 minutes per week of transition math at FGHS.

In addition, the IEP provided for the related services of speech/language therapy of 30 minutes per week. (Ex. D24 at 2.)

(56) As Supplementary Aid/Services; Modifications; Accommodations the IEP provided for visual supports for:

- homework/classwork assignments
- modified tests and assignments in all general education classes
- alternate location for completing tests and assignments upon Student request
- copies of notes upon student request
- up to one week extended time to complete tests and assignments
- use of a voice recorder to record academic lectures
- 2<sup>nd</sup> row seating in all FGHS classes where possible. (Ex. D24 at 2-3.)

The March 2011 IEP stated that ESY services would not be provided. (Ex. D24 at 2.) The IEP form listed six factors to consider as part of the IEP development. The second question, "Does the student have communication needs?" was marked "yes". The remaining five questions were marked "no". (Ex. D24 at 4.) The IEP contained PLEP statements that said:

Strengths of the Student: [Student] is a freshman at Forest Grove High School. [He/She] has transitioned well to the high school environment, and has several friendly acquaintances at school through [his/her] various classes, as well as the agricultural program in which [he/she] actively participates. (Ex. D24 at 4.) [Student] is a very outgoing young [person] and has been working on better advocating for [himself/herself] in some of [his/her] classes. [He/She] also strives to do [his/her] best in all classes.

Parent Concerns: [Student's] Mother shared that she is concerned with the "big picture". She wants to make sure that supports are in place for [Student] down the road. She also shared that she would like [Student] to work on building relationships with [his/her] teachers, rather than becoming dependent upon instructional assistant support in classroom settings. [Student] tends to ask first and try later, which is another skill which mom would like to see [him/her] work on, which is to try it first, then ask. [Student's] mom also asked staff if they have noticed whether or not [Student] seems depressed at times.

Present Level of Academic Performance, Including the Student's Most Recent Performance on State Assessments: [Student] has participated in the Standard Administration of the State Assessment since the 5<sup>th</sup> grade. [His/her] most recent score report in math were from the winter of 2010, on which [he/she] scored a 223 (does not meet). [His/her] most recent score in reading was a 220 (does not meet) in the fall of 2010, and a 222 (does not meet) in the winter of 2011. [His/her] most recent score in science was a 212 (does not meet) in the spring of 2010. [Student] will continue to participate in the Standard Administration of the State Assessment per [his/her] goal of working toward a Modified Diploma.



[Student] was assessed using the Woodcock Johnson Tests of Achievement, 3<sup>rd</sup> Edition on March 30, 2010, [his/her] 8<sup>th</sup> grade year. The results in the standard scores were as follows:

Oral Language: 70  
Oral Expression: 72  
Broad Reading: 78  
Broad Math: 65  
Brief Reading: 81  
Brief Reading Skills: 82  
Reading Comprehension: 64  
Brief Math: 62  
Math Calculation Skills: 70  
Math Reasoning: 69  
Written Expression: 61  
Academic Fluency: 64  
Academic Applications: 65  
Academic Knowledge: 81

Reading: [Student's] teacher reported that he recently did an Informal Reading Inventory on [him/her] and [he/she] read a 6<sup>th</sup> grade reading passage at 129 words per minute with 96% accuracy and 45% accuracy on [his/her] comprehension. [He/She] was only able to answer 20% after reading the passage and retell. [He/She] was allowed to reread to [himself/herself] and look for answers the second time through. Following [his/her] reading the second time through, [he/she] was able to answer 45%. [His/Her] problem was with clarity in questions, as [he/she] would often give me an answer that related to the question and even sometimes was the answer to another question, yet [he/she] was unaware of this as [he/she] answered. You would have to clarify the questions at this level in order for [him/her] to answer with 70% or more.

Writing: We are currently working on multiple paragraphs/essays. We are being very methodical with this as we go. (Ex. D24 at 5.) I am trying to have [Student] do as much [he/she] can...[he/she] often wants to have me take [him/her] step by step. I am allowing [him/her] to seek classmates to help [him/her] in the process while monitoring from "a distance". [He/She] is very much "immediate feedback" type of personality which is fine, but often this does not allow [him/her] to take chances in [his/her] writing. Each writing piece we work together, model, use simple outlines/graphic organizers, and then allow kids free write time to work on their writing...with peer guidance as much as possible. In the end, I want [him/her] to "see the whole process of writing" on [his/her] own so that it will have more meaning for [him/her] as [he/she] starts to grasp it.

Math: [Student] struggles the first time through with material (even if it is review)...working on guess and check technique with [his/her] word problems. Doing a good/better job of trying on [his/her] own without assistance. [He/She] is solving 1-2 step problems with this technique. The algebra side of math is a little more challenging to [him/her] at this time and [he/she] struggles with confidence. [Student] needs to be retaught in this area for clarification constantly. [His/Her]

other areas are coming along fine in math as far as basic facts.

Present Level of Development and Functional Performance (including the results of the most recent evaluation): [Student] is able to access all areas of the high school independently: going from class to class, locating restrooms, and utilizing the cafeteria. [Student] struggles with peer relationships and knowing how to start a friendship. [He/She] is very outgoing, but seems unsure as how to best enter conversations with peers.

Communication/Language: 2011 [Student's] most recent Functional Communication evaluation was complete on 2/9/11 results are as follows: Oral and Written Language Scales (OWLS) was administered. The OWLS Listening Comprehension: 50, Oral Composite: 54. These scores indicate that [his/her] language skills are much delayed from [his/her] expected age levels. In [his/her] pragmatic language skills, [he/she] also exhibits a significant delay. Choice of topics, pragmatic skills and ability to sustain a conversation are difficult as reported by the evaluator. A Language Sample indicated that [Student] was able to speak about one topic, but often [he/she] would have a thought run into another thought making [his/her] information difficult to understand and follow. [Student] shows difficulty in the areas of conversational language, turn taking. Teacher report indicates that [he/she] interacts with students and peers. [He/She] benefits from clear and concise instructions. [He/She] is able to ask for help when [he/she] needs it. [He/She] does tend to stay on one topic for prolonged periods, but will also change topics without transition.

Current data, observations and teacher input indicate that [Student] continues to struggle in the area of language, specifically organizing her language thought process, summarizing information and pragmatic language is highly impacted.

How the student's disability affects involvement and progress in the general education curriculum: Due to [Student's] need for specially designed instruction in reading, writing, and math, as well as support to complete work and study for other classes, [Student] is enrolled in the special education classes: Basic English; Basic Math 2; Reading Language Lab and Tutorial.

Due to challenges that [Student] has processing auditory information; it is very helpful for information presented in all classes be as visual as possible. Breaking down large assignments into smaller steps with due dates for each step written on a calendar is also helpful.

To help [Student] better understand reading materials in all classes, it is best to check for understanding often through a sequence of simple comprehension questions. Waiting until the end of a section of reading to check for understanding is too long.

Student's Preferences, Interest, and Needs: [Student] enjoys [his/her] time spent in the barn in the high school. [He/She] is also involved in agricultural program, and has just recently chosen a female sheep to raise. [Student] has also recently taken up the hobby of making jewelry with glass beads.

(Ex. D24 at 4-7.)

(57) The March 2011 IEP included a Transition page which stated:

Appropriate, measurable post-secondary goals based upon age-appropriate transition assessments related to training, education, employment, and where appropriate, independent living skill: Within one year of completing school district services; [Student] will attend community college part time; will live with [his/her] parents; and will access [his/her] community by driving [himself/herself].

Course of Study (designed to assist the student in reaching the post-secondary goals): [Student] is a freshman working toward a Modified Diploma. [Student] receives special education services under the eligibility of Autism Spectrum Disorder, Other Health Impairment and Mental Retardation, and has IEP goals in the areas of speech and language, transition reading, transition math, and transition writing. [Student] will take courses required to earn a Modified Diploma and will participate in the State Assessment. [He/She] will take functional reading and math classes that related to [his/her] post-secondary goal. [He/She] will also continue to participate in speech and language in order to support skills needed for working in the community. [Student] will also take all required courses needed to obtain [his/her] Modified Diploma, which includes 3 credits in Language Arts, 2 credits in math, 2 credits in Social Studies, 2 credits in science, 1 credit in PE, 12 credits in Electives (to include .5 credit for Senior Project), 1 credit in Career Tech/Arts/Second Language, and 1 credit in Health. [Student] will participate in the work experience program during [his/her] senior year, in order to obtain basic work skills, and will also participate in the community living program in order to aid [him/her] in learning daily living skills, such as how to access public transportation and use a bank account.

During [his/her] senior year, [Student] will decide whether or not [he/she] would like to continue with district services through the transition programs available. [He/She] will let [his/her] case manager know prior to leaving high school

Graduation: Anticipated graduation date: 6/01/14 Modified Diploma with alternate document.

(Ex. D24 at 8.)

(58) The March 2011 IEP included a statement that Student was going to participate in statewide assessments of reading/literature, mathematics, writing, and science during the IEP period. (Ex. D24 at 9.)

(59) The March 2011 IEP included AGs and STOs for language, transition reading, transition writing, and transition math. (Ex. D24 at 10-13.)

(60) The March 2011 IEP stated the following under the categories of measurable AGs and STOs:

(1) Measurable Annual Goal: Skill Area: Language Arts: Given specially designed instruction in the area of language [Student] will demonstrate knowledge in the following objectives in order to support, EL.07.SL.02 Organize information, arrange details, reasons, descriptions and examples, effectively and persuasively in relation to the audience and to communicate effectively with peers and adults.

#### Criteria

80% of opportunity or criteria listed below

#### Evaluation Procedures

Data collection teacher observation.

Measurable Short-Term Objectives: By March 2012, [Student] will 1) Summarize information to: a. identify the main idea of discussion, event or experience b. identify supporting details/events from discussions, events, experiences, etc c. determine degree of importance of details/events from discussions, events, experiences, etc with 90% accuracy 2) demonstrate understanding of how relationships develop and are maintained by: a. identifying and engaging in appropriate nonverbal social interaction skills: gestures, posture b. identifying and using appropriate strategies to gain attention: verbal, nonverbal c. demonstrating turn taking during conversation, d. maintaining a topic when engaged in conversation e. understand and explain qualities of friendship with a variety of people in various environments in 3 out of 5 opportunities 3) demonstrate the use of at least two strategies in order to organize and sequence [his/her] language for clarity, these may include graphic organizers, thinking in pictures, etc. 4) demonstrate understanding of language concepts: a. idioms/figurative language, b. inference, c. synonyms/antonyms, d. curriculum vocabulary. (Ex. D24 at 10.)

(2) Measurable Annual Goal: Skill Area: Transition Reading: [Student] will read a 5th grade text composed of at least one paragraph, and answer concrete comprehension questions with at least 70% accuracy.

#### Criteria

see each objective below

#### Evaluation Procedure

graded work samples

Measurable Short-Term Objectives: Given specially designed instruction; teacher modeling; opportunity to practice; and the tools needed to complete the task; [Student] will; 1) Read a text written at 3rd grade level, composed of at least 2 paragraphs and answer 10 open-ended concrete comprehension questions with at least 80% accuracy on 3 consecutive trials. 2) Read a text written at 4th grade level, composed of at least 2 paragraphs and answer 10 open-ended concrete comprehension questions

with at least 80% accuracy on 3 consecutive trials. 3) Read a text written at 4th grade level; and either through written or verbal answers identify the main idea, main characters, and setting on 5 consecutive trials. (Ex. D24 at 11.)

(3) Measurable Annual Goal: Skill Area: Transition Writing: [Student] will write a 3 paragraph essay containing an introduction; body; and closing with correct capitalization; punctuation; and spelling.

#### Criteria

see each objective below

#### Evaluation Procedures

graded work samples

Measurable Short-Term Objectives: Given specially designed instruction; teacher modeling; opportunity to practice; and the tools needed to complete the task; [Student] will; 1) Independently write an introductory paragraph on a topic [he/she] chooses, composed of at least four sentences with correct capitalization; punctuation and spelling. 2) Independently create a body paragraph with at least 3 descriptive sentences following the first sentence with correct capitalization, punctuation, and spelling. 3) Independently create a closing paragraph with at least 4 sentences, with correct capitalization' punctuation; and spelling. (Ex. D24 at 12.)

(4) Measurable Annual Goal: Skill Area: Transition Math: [Student] will improve her functional math skills in by completing the Short-Term Objectives listed below.

#### Criteria

see each objective below

#### Evaluation Procedures

graded work samples

Measurable Short-Term Objectives Given specially designed instruction; teacher modeling; opportunity to practice; and the tools needed to complete the task; [Student] will; 1) Use strategies to solve 1-2 step word problems in math 2) Solve basic algebraic equations involving positive and negative numbers 3) Demonstrate an understanding of the concepts of time (how much has passed between various listed times). (Ex. D24 at 13.)

(61) The IEP team selected a placement in a combination of special education and general education classes with pull out for tutorial and speech and language services. The team

rejected placement of “General education classes with pull out for tutorial and speech and language services.” (Ex. D24 at 14.)

(62) On April 4, 2011, the District sent the Parents a PWN proposing to initiate and change Student’s special education, identification, placement, and services. The PWN also stated that IEP team met on March 29, 2011 to review and update Student’s IEP and areas of eligibility. (Ex. D26.)

(63) Dr. Morris and Ms. Taplin believe that the March 2011 IEP adequately addressed Student’s anxiety issues through the modifications and accommodations listed in the IEP. (Ex. D 24 at 2-3; Testimony of Ms. Taplin at 1784-85; Testimony of Dr. Morris at 1747-48.)

(64) Ms. Taplin addressed Student’s anxiety by finding her eligible for special education services under ASD and OHI. (Testimony of Ms. Taplin at 1784.)

(65) Ms. Moore believes that if two teachers see clinically significant levels of anxiety in children with disabilities, and there is no contradictory evidence from others, a student’s anxiety should be addressed in his/her IEP. Student’s anxiety could be addressed through modified curriculum, counseling services, social skills instruction, and/or small group instruction. (Testimony of Ms. Moore at 3944-45.)

(66) In June 2011, the District prepared a report of Student’s progress towards meeting his/her special education goals in the areas of Language and Transition Reading. The notes for Language state that for the first STO “We have been working on skills to summarize and determine the main idea of discussions and events and give supporting details. This can be difficult for [Student] as [he/she] gets distracted easily. We use visuals to promote easier flow of ideas. 66%” For the second STO the notes state “In working on social communication skills we have addressed friendship qualities, non verbal skills, gaining attention, maintaining topic. [He/She] is able to identify verbally with support the qualities, but has difficulty generalizing this information at this time. 60%” The remaining STOs stated that Student was working on the goal but were not measured by the required criteria. (Ex. S50 at 2.)

(67) The progress notes for Transition Reading indicated that his/her AGs and STOs were not measured by the required criteria. (Ex. S50 at 2.) There were no progress notes for Transition Writing or Transition Math in the June 2011 note. (Ex. S50 at 2.) A copy of the June 2011 progress note dated January 10, 2012 included transition math and transition writing notes. (Ex. D27.) The Parents did not receive the June 2011 progress note listing the Language and Transition Reading progress until after September 2011. (Testimony of Mother at 3161-62.)

(68) During the first few days of July 2011, Student began to act differently by stating that he/she had hurt himself/herself, pacing, acting frightened, and appearing disconnected from his/her environment. Student’s Parents became very concerned and on July 4, 2011 took Student to the emergency room. Dr. Nguyen evaluated Student and suggested that he/she be placed in a psychiatric ward. The Parents believed this would increase Student’s anxiety and declined instead watching Student very closely at home. (Ex. S160; Testimony of Mother at 3237-40.)

(69) Over the next several days and weeks, the Parents took Student to Dr. Kenneth Ensroth a child psychiatrist for an evaluation and treatment. Dr. Ensroth observed that Student

was clearly agitated, made frequent delusional statements about having harmed himself/herself, and was disconnected from his/her environment. Dr. Ensroth diagnosed Student with:

“Psychotic Disorder NOS; rule out emerging Schizophreniform Disorder vs. Other cause of first break psychosis, such as possible bipolar psychosis; probably history of Anxiety Disorder; rule out Learning Disorder NOS; history of mild mental retardation; chronic enuresis, apparently resolved past one year, and history of spina bifida occulta and tethered cord release; Otherwise medically stable; moderate chronic stress from academic and social challenges.”

(Ex. S161.)

Dr. Ensroth placed Student on psychiatric medication and 24-hour supervision. (Ex. S161.)

(70) In August 2011, Mother met with Mr. Bafaro in his office to discuss scheduling an IEP meeting. (Testimony of Mother at 3240.) During the meeting, Mother became upset and informed Mr. Bafaro about Student’s mental breakdown. Student was continuing to experience mental health issues. Mother was not sure if Student would improve enough to attend school in the fall. (Testimony of Mother at 3241-42.) Mr. Bafaro told Ms. Shearer about Student’s breakdown over the summer. (Testimony of Mr. Bafaro at 4346.)

(71) Once a District staff member was aware that a child was having mental health issues at home, the District expected that the staff member would convene an IEP meeting to determine if the issue had an educational impact. (Testimony of Mr. Bafaro at 4350.)

(72) During the summer between the 2010-2011 school year and the beginning of the 2011-2012 school year Mother sent e-mails to Ms. Shearer regarding budget cuts at FGHS. Mother expressed her concerns about the effects that possible cuts to the FFA program would have on Student. (Exs. S52; S63.)

(73) On August 22, 2011, Dr. Buckendorf completed a Pediatric Rehabilitation Update. The update contained many of the previous recommendations he had made to assist Student in the areas of conversational language and using social pragmatic language. The report also contained a recommendation that Student be given several hours of individual and group treatment at school every week because of the limited amount of time Student had to acquire the skills before he/she left school. (Ex. S55.)

(74) On September 6, 2011, the District held an IEP review meeting after mother requested a meeting to discuss Student’s schedule for the new school year. Mother, Ms. Shearer, Ms. Henry, Mr. Larson, and Ms. Taplin attended the meeting. (Ex. D29 at 1.)

(75) At the meeting, Mother expressed her concern that the District had stopped offering general education classes in animal sciences that qualified students for participation in FFA which she believed was very important to Student. The team discussed Mother’s concerns and how to schedule classes in a manner to allow Student to continue his/her participation in FFA. (Ex. D29.) At the meeting, Mother stated that she did not want Student to take the OAKS assessment. The District stated that Student would not be able to get a regular or modified diploma if [he/she] did not take the assessment. (Ex. D29 at 2.) The team spent several hours

discussing Student's schedule for the new school year. During the meeting, Mother stated that Student had an incident over the summer. Mother did not elaborate and no other team member asked her for any details. (Testimony of Ms. Shearer at 145.) Mother was noticeably upset about the incident over the summer. (Testimony of Ms. Hemry at 2461.)

(76) During the meeting, Mother requested that Student be provided with two hours of speech therapy per day and for the district to pay for outside services. Mother was concerned about Student's comprehension level if he/she did not increase his/her vocabulary skills. (Ex. D29 at 5.) Mother later clarified that she was specifically requesting that Student be given two hours of speech therapy at school each week and outside services three times per week. (Ex. D29 at 7.) Ms. Hemry stated that Student was making progress while receiving 30 minutes of speech. (Ex. D29 at 7.) Ms. Shearer stated that they needed information on Student's present levels to support an increase in services and that the District would not increase services. Nothing more was said at the meeting about speech services. (Ex. D29 at 8.)

(77) Mother again told Ms. Taplin and Ms. Shearer that she did not want to have Student take the OAKS assessment. Mother was told that it was District policy that Student must take the assessment. (Testimony of Mother at 3202-03.) The OAKS assessment was not administered to Student during the 2011-2012 school year. (Testimony of Mother at 3204.) A new IEP was not developed or discussed at the meeting. No PWN was sent to the Parents. (Testimony of Ms. Taplin at 1781-1782; Testimony of Ms. Shearer at 512-513.)

(78) A short time after the meeting, Ms. Shearer met with Ms. Hemry privately. They discussed increasing the amount of speech language time Ms. Hemry spent with Student. Student was making minimal progress with 30 minutes of services so Ms. Hemry believed that it would not benefit Student to have two hours of speech services but agreed to increase the amount of time from 30 minutes to one hour. They did not discuss increasing the time to the amount requested by Mother. Ms. Hemry called Mother and told her that they were going to increase the amount speech language services from 30 minutes to one hour to gather data. (Testimony of Ms. Hemry at 2455-57.) No PWN was sent to the Parents. (Testimony of Ms. Taplin at 1781-1782; Testimony of Ms. Shearer at 512-513.)

(79) On September 12, 2011, the District sent Parents a PWN. The PWN stated that the District was denying the Parents' request to hold another IEP meeting because one had been held on September 6, 2011. The notice also stated that unless the Parent had new concerns or information a new meeting would not be held. (Ex. D30.)

(80) In American Studies class, Student became anxious at test times which caused him/her to lose focus on the task being completed. Student's anxiety also caused him/her to be challenging to work for the Instructional Assistants to work with. (Testimony of Ms. McRobert at 3047.)

(81) FGHS did not modify any tests or assignments for Student in Culinary Arts class, a general education class. (Testimony of Ms. Linhares at 2778.) In American Studies, Student was given the same assignments as the other students in the class. (Testimony of Ms. McRobert at 3060-3064.)



(82) On September 19, 2011, Mother requested via e-mail that FGSD fully reevaluate Student. (Ex. D68 at 4.) The District set up a meeting to consider reading and language data, the OAKS assessment, and the Parents' evaluation request. During the e-mail chain, Mother stated that she was sending FGSD the updated recommendations from Dr. Buckendorf. (Ex. D68.) The meeting was held on October 3, 2011. (Ex. S79.)

(83) On September 22, 2011, via e-mail, the Parents asked that an occupational therapist attend the reevaluation meeting. (Ex. S72 at 1.) On the same date, the Parents also asked that Student's math class be changed because it was below Student's ability level. (Ex. S73 at 2.)

(84) On October 3, 2011, the District held an evaluation planning meeting to address Mother's request. Ms. Mayo, Ms. Hemry, Dr. Amanda Morris, Ms. Taplin, Ms. Shearer, and Mother participated in the evaluation meeting. (Ex. D32 at 1.) Mother explained that she requested more evaluations in order to determine Student's present levels in all areas which she felt the District did not have sufficient information. The team discussed what evaluations had been done and what they showed. Mother asked why Student had not been deemed eligible under a communication disability. (Ex. D32) Ms. Mayo explained that generally the communication disorder is under the autism spectrum disorder eligibility. (Ex D32 at 2.) The team discussed the recommendations provided by Dr. Buckendorf. Mother stated that she wanted Student to get more communication services and was interested in an evaluation if that was what was necessary to get those services. (Ex. D32 at 3.) Ms. Hemry stated that a new evaluation would not result in increased services. (Ex. D32 at 4.) Mother also asked about Student's fine motor skills. The team discussed the 2010 occupational evaluation and Ms. Shearer stated that she would contact Ms. Howarth who had conducted the evaluation to determine if another one was necessary. (D32 at 5.) The team decided that no further evaluations were necessary. Mother disagreed. The team did not discuss Dr. Buckendorf's report or Student's mental health. (Ex. D32.)

(85) At the end of the meeting, Ms. Taplin denied the Parents' earlier request to change Student's math class because the District believed that it was addressing Student's needs and goals in Mr. Brady's class. (Ex. S79 at 6.)

(86) Ms. Shearer talked privately to Ms. Howarth and they decided an occupational therapy evaluation was necessary. (Testimony of Ms. Howarth at 2971.)

(87) On October 3, 2011, the District sent Parents a PWN. The PWN stated that the District had decided that no further evaluations were necessary. The notice did not mention the District's decision to perform an occupational therapy evaluation. (Ex. D33.)

(88) On October 3, 2011, Dr. Ensroth reevaluated Student. Dr. Ensroth diagnosed Student with:

Psychotic Disorder NOS; rule out brief psychotic episode vs. atypical presentation of bipolar disorder versus disorientation, confusion and even brief psychotic symptoms secondary to anxiety on top of mild mental retardation; mild mental retardation plus learning disabilities; rule out anxiety disorder nos with possible panic attacks. (Ex. S161 at 5.)

(89) On October 5, 2011 the Parents sent a written request to Ms. Taplin that Student be exempted from the OAKS assessment. (Ex. S84 at 4.) The District requested additional information but a few days later agreed that Student would be exempted from the assessment. (Ex. S84.)

(90) During the week of October 10, 2011, Ms. Hemry was absent. Student received no speech services that week. (Testimony of Ms. Hemry at 2444.)

(91) On October 28, 2011, Dr. Ensroth prepared a one page letter which included a brief statement that he had been treating Student for a recent psychotic episode. He recommended that Student receive frequent counseling sessions to help manage his/her stress and anxiety. He explained that he believed that his/her disabilities in language and communication, and struggles with social skills likely worsen his/her anxiety and interfere with his/her learning and intellectual and emotional growth. He recommended individual sessions to teach coping strategies for stress management, anti-anxiety and relaxation techniques appropriate for his/her age and cognitive and language abilities; participation in groups that promote positive peer interactions; occupational therapy for improving his/her fine motor skills and practical life skills; and occupational assessments to aid in planning for his/her future. (Ex. S92.)

(92) On November 3, 2011, the IEP team met to develop a new IEP because the District had new data. The Parents, Ms. Taplin, Ms. Saidler, Ms. Hemry, Ms. Denis, Ms. Erion (FGHS Assistant Principal), Mr. Larsen, Ms. Howarth, Ms. Shearer, Mr. Cohn-Lee (Attorney for the District), and Ms. Glancy attended the meeting. The Parents made an auditory recording of the meeting. The Parents expressed concerns about a variety of issues and requested numerous things from the District. Parents expressed concern that anxiety was Student's big issue and asked that the team address Student's social skills and anxiety because if that issue was resolved they explained that Student would do much better in school. The team discussed social skills extensively but failed to mention or discuss any issues about anxiety. The Parents asked for regression-recoupment data since 2006. The District agreed to gather data over the winter break but did not respond to the request for past data. The Parents asked for occupational therapy and speech language therapy reports and working files. Ms. Shearer stated that the information was usually in the progress notes and IEP pages and not in reports. The Parents expressed disagreement with the reading and math assessments of Student's present levels. Mother cited examples of Student performing at higher levels prior to entering FGHS then [he/she] could currently perform as a sophomore as evidence that the assessments and the Districts perception of Student's present levels were incorrect. Ms. Shearer stated that reading levels for the previous year were not broken down into fluency and comprehension. Ms. Shearer also stated that based on the data from the math teacher, Student was being challenged. Mother continued to disagree about that issue. (Exs. S157; D36.)

(93) Mr. Larsen and Ms. Denis presented information regarding how Student was doing in their general education classes. Mr. Larsen provided a detailed explanation that he was teaching Student to write in a manner that addressed his/her specific disabilities and expressed that it was working well. Mr. Larsen stated that Student learned better when there was constant repetition of small pieces of information which was followed by an immediate analysis and application. Mr. Larsen's teaching method was not added to Student's IEP nor did any of the teachers indicate they would adopt it. (Exs. S157; D36.)

(94) Ms. Howarth presented the information she had gathered to evaluate Student's occupational therapy needs. (Ex. 157.) Ms. Howarth did not review Ms. Mayo's file on Student (which stated that Student had difficulty with fine motor tasks) as part of her evaluation. (Testimony of Ms. Howarth at 2996.) Ms. Howarth determined that while Student had some fine motor deficits they did not affect her schooling and recommended no occupational therapy be provided. Ms. Howarth acknowledged that Student tended to rush through tests and assignments and recommended that he/she be encouraged to slow down. Ms. Taplin then read the PLEPS for reading and math from the draft IEP. Ms. Henry discussed what she and Student worked on during speech and language services. The only changes the District agreed to make were to the modifications and accommodations. The meeting adjourned after an hour because Ms. Taplin was unable to stay longer and the Parents did not want to continue without her. (Ex. 157.)

(95) On or about November 3, 2011, the District issued a PWN proposing to initiate and change Student's IEP. The PWN stated that Student's goals in reading, writing, and math needed to be changed to reflect Student's present levels of performance. The notice also stated that speech services had been increased from 30 minutes to one hour per week. (Ex. D38.)

(96) On or about November 9, 2011, the Parents e-mailed a copy of Dr. Ensroth's October 28, 2011 recommendations and Dr. Buckendorf's August 22, 2011 updated recommendations to Ms. Shearer and Ms. Taplin. (Ex. S105.) Ms. Taplin forwarded the e-mail to the other team members and took no other action. (Testimony of Ms. Taplin at 1006.) Ms. Shearer did not read the report. She filed the report away and took no action. (Testimony of Ms. Shearer at 176.)

(97) Ms. Moore believes that when a district staff member receives a report with recommendations from outside service providers, the district has a responsibility to consider the information and follow up on the information. (Testimony of Ms. Moore at 3969-70.)

(98) The District held a second IEP meeting on November 14, 2011. The Parents raised the same issues it had raised during the previous IEP meeting. Ms. Henry talked about the IEP speech goals and stated that she had not changed them because they were very comprehensive and made in consultation with Dr. Buckendorf. Mother agreed that they did not need to change. Mother stated that she had been working with Student everyday and could not agree with the math placement because she had already worked on geometry and algebra. Mr. Brady, who attended only the second meeting, stated that he could not talk about what algebra Student had learned. Ms. Shearer recommended to Mr. Brady that he do an informal assessment to determine what Student recalls from his/her elementary school and expose Student to algebraic concepts. No one mentioned the Algebra she had been learning in Mr. Tasker's class that was referenced in the March 2011 IEP. Mother asked the District to tutor Student in math. Mom also stated that she had received an e-mail from Ms. Taplin that Student was already meeting the math STO #1. No one responded to Mother's statement. (Ex. 157.)

(99) When the Parents raised the issue of Student's past and current reading levels, the team attempted to determine if the STOs had already been met. Ms. Taplin had never given the type of assessment that Ms. Bartoo used and did not know if Student was already meeting the STOs. Nevertheless, Ms. Taplin elected to keep all of the STOs unchanged. When Mother continued to complain, Ms. Shearer asked Mother for a concrete suggestion that the District could use. Mother stated that she had no confidence in the assessments. Mr. Larsen asked if the

assessments tested fiction or non-fiction reading because it would have a big impact on Student's score due to her disabilities. No one at the meeting verbally indicated what the assessment tested. The reading STOs were not changed. The Parents expressed appreciation for the increased speech and language services and asked for additional services explaining that Student had not received the services he/she needed. The District did not respond verbally to Parents request. (Ex. 157.)

(100) The team discussed the OAKS assessment. Mother stated that the District had told her that Student could not get a modified diploma if he/she did not take the assessment. Ms. Shearer stated that Oregon state law required that Student take the OAKS assessment and to pass it with a modified score in order to receive a modified diploma. In lieu of a passing modified OAKS score, Ms. Shearer explained that a student could also submit work samples. The team then discussed the modifications and accommodations on the IEP. The team agreed to the accommodations and modifications of:

- visual supports
- modified tests and assignments
- alternate locations for completing tests and assignments based upon adult prompts
- copies of lecture notes per adult prompts
- voice recorders in science class
- up to one week extended time to complete tests and assignments
- test questions read aloud
- the length of essay questions to be modified to three sentences on all proficiency questions.

The team also agreed that if an hour per week of speech services was beneficial, then they should be increased to one hour. Ms. Henry reported that an hour was beneficial and that Student was working well and making progress. No one mentioned Dr. Ensroth's report. (Ex. 157.)

(101) Student did not demonstrate significantly greater progress with an hour of speech and language services. Ms. Henry agreed to provide one hour of speech language services to attempt to appease mother even though she did not believe Student benefited from the increased services and she knew that Mother did not consider an hour sufficient. (Testimony of Ms. Henry at 2473-74.)

(102) The written November 3, 2011 IEP (finalized on November 14, 2011) provided for the following specially designed instruction (SDI):

- 180 minutes per week of transition reading at FGHS;
- 180 minutes per week of transition writing at FGHS;
- 180 minutes per week of transition math at FGHS.

In addition, the IEP provided for the related services of speech/language therapy of one hour per week. (Ex. D36 at 2.)

(103) As Supplementary Aid/Services; Modifications; Accommodations the IEP provided for:

- visual supports for homework/classwork assignments
- modified tests and assignments in all general education classes
- alternate location for completing tests and assignments
- copies of notes upon request, up to one week extended time to complete tests and assignments
- request copies of notes
- up to one week of extended time to complete test and assignments
- use of a voice recorder in science class
- 2<sup>nd</sup> row seating where possible
- modification of essay questions on proficiency tests in all classes
- test questions read aloud on all proficiency test in general education classes.

(Ex. D36 at 2-4.)

The November 3, 2011 IEP states that ESY services would be considered when the IEP team met on February 15, 2012. (Ex. D36 at 2.)

(104) The IEP form listed six factors to consider as part of the IEP development. The second question, “Does the student have communication needs?” was marked “yes.” The remaining five questions including questions about using assistive technology and exhibiting behavior that impedes learning were marked “no.” (Ex. D36 at 5.) The IEP contained PLEP statements that said:

Strengths of the Student: [Student] is a sophomore at Forest Grove High School. [He/She] has several friendly acquaintances at school through [his/her] various classes. [Student] is a very outgoing young [person] and has been working on better advocating for [himself/herself] in some of [his/her] classes. [He/She] also strives to do [his/her] best in all classes.

Parent Concerns: [Student’s] Mother shared that she is concerned that [Student] is not getting enough speech services. She also, does not agree with the math goals that are currently written, and feels that [Student] is in the wrong math class and fears that [Student] will lose skills by remaining in [his/her] current math class. [Student’s] Mother also expressed concern that [Student’s] reading level is going down, and feels that she can’t trust the assessments that are being used to assess [Student’s] reading level. [Student’s] Mother also requested that test questions be read to [Student] as an accommodation. [His/her] Mother would also like to see [Student] receive ESY services, and does not agree that [Student] does not qualify for Occupational Therapy Services. Lastly, [his/her] Mother expressed that she would like more work sent home from [his/her] special education classes, so that

she is better able to stay on top of the skills that are being taught in these academic classes.

Present Level of Academic Performance, Including the Student's Most Recent Performance on State Assessments: [Student] has participated in the Standard Administration of the State Assessment since the 5<sup>th</sup> grade. [His/her] most recent score report in math were from the winter of 2010, on which [he/she] scored a 223 (does not meet). [His/her] most recent score in reading was a 220 (does not meet) in the fall of 2010, and a 222 (does not meet) in the winter of 2011. [His/her] most recent score in science was a 212 (does not meet) in the spring of 2010.

Parent has requested that [Student] not participate in any State Assessments and will submit this in writing each school year.

[Student] was assessed using the Woodcock Johnson Tests of Achievement, 3<sup>rd</sup> Edition on March 30, 2010, her 8<sup>th</sup> grade year. The results in the standard scores were as follows:

Oral Language: 70

Oral Expression: 72

Broad Reading: 78

Broad Math: 65

Brief Reading: 81

Basic Reading Skills: 82

Reading Comprehension: 64

Brief Math: 62

Math Calculation Skills: 70

Math Reasoning: 69

Written Expression: 61

Academic Fluency: 64

Academic Applications: 65

Academic Knowledge: 81

Reading: Reading Assessments: San Diego Quick Assessment of Reading Ability (reading word lists) Independent Reading level – 5<sup>th</sup> Grade (This does not measure comprehension) Informal Reading Inventory (Ex. D36 at 6.) Level 4- 100% accuracy 146 words per minute and 60% comprehension. Level 3- 99% accuracy 133 words per minute and 35% comprehension \*Level 3 had some uncommon words which [he/she] probably never heard before which may have affected [his/her] comprehension. Level 2- 100% accuracy, 127 words per minute and 95% comprehension.

Currently we are reading Tom Sawyer and doing basic comprehension questions in class. [Student] follows along as we read but is struggling to follow the storyline of the book. [Student] was recently given a story map quiz of the book and earned a 2/6 which is a 33%. [He/She] was able to name the characters but unable to retell what happened for the rest of the chapter. [Student] works hard in class and improving with trying a task before asking for help. [He/She] still does this about 25% of the time and when reminded, [he/she] does try it independently

and is successful about 50% of the time.

Writing: We complete grammar assignments in class and [he/she] can do about 50-60% of the assignment on [his/her] own. [He/She] understands punctuation and capitalization quite well. [He/She] struggles with quotation marks and commas.

Math: [Student] is very conscientious about turning in [his/her] assignments and tests. On class quizzes where [Student] adds coins up to \$1.50 [he/she] is 70% accurate. When reading 2-3 sentences story problem and having to figure out what function to perform (addition, subtraction) the student was 40% accurate. When solving 1-step story problems related to banking (depositing meaning adding to balance, and withdrawal meaning to subtract from balance) the student was 65% accurate. When having to regroup when adding 3 digits problems the student was 90% accurate. When having to borrow while solving a 3-digit subtraction problem the student was 40% accurate. [Student] often hurries through [his/her] classroom work, and is always the first student to complete the assignment. It seems this haste affects the quality of [his/her] work.

Tutorial: [Student] takes advantage of the time during tutorial. [Student] works on completing assignments, studying for tests, or organizing work. [Student] likes to work with the instructional assistant. [He/She] has a short attention span when completing assignments and should be guided to redirect [his/her] to task at hand. [Student] is also pulled out for speech/language services during this time.

Present Level of Development and Functional Performance (including the results of the most recent evaluation): [Student] is able to access all areas of the high school independently: going from class to class, locating restrooms, and utilizing the cafeteria. [Student] struggles with peer relationships and knowing how to start a friendship. [He/She] is very outgoing, but seems unsure as how to best enter conversations with peers.

Communication/Language: 2011 [Student's] most recent Functional Communication evaluation was complete on 2/9/11 results are as follows: Oral and Written Language Scales (OWLS) was administered. The OWLS Listening Comprehension: 50, Oral Composite: 54. These scores indicate that [his/her] language skills are much delayed from [his/her] expected age levels. In [his/her] pragmatic language skills, [he/she] also exhibits a significant delay. Choice of topics, pragmatic skills and ability to sustain a conversation are difficult as reported by the evaluator. A Language Sample indicated that [Student] was able to speak about one topic, but often [he/she] would have a thought run into another thought making [his/her] information difficult to understand and follow. [Student] shows difficulty in the areas of conversational language, turn taking. Teacher report indicates that [he/she] interacts with students and peers. [He/She] benefits from clear and concise instructions. [He/She] is able to ask for help when [he/she] needs it. [He/She] does tend to stay on one topic for prolonged periods, but will also change topics without transition. Current data, observations and teacher input indicate that [Student] continues to struggle in the area of

language, specifically organizing [his/her] language thought process, summarizing information and pragmatic language is highly impacted.

In the communication setting, [Student] has worked on language concepts, specifically, curriculum vocabulary development, support for [his/her] English and composition classes. Data was taken on vocabulary skills, initial data showed 0% understanding of vocabulary skills. These are new vocabulary words. With practice in class and communication intervention, data shows current increase to 41%. [Student] has difficulty staying on task when working on language concepts. Summarizing information is also difficult without cues. [Student] is able to use a graphic organizer to help [him/her] with this skill, but does not do this independently at this time. We are continuing to practice with a web type and sequential type graphic organizer to support [Student's] strategies for organizing information related to communication content. [Student] has also been working on social communication skills in the individual setting. [He/She] is currently able to identify and describe social communication skills at 94%. [He/She] is able to describe and identify these skills within the therapy session, but these skills have not yet generalized outside of the speech setting. These skills are practiced in the speech setting and then reinforced within the classroom during pushin intervention services.

[Student] works hard during the communication intervention. [He/She] is very distracted and wants to do things that are self directed, especially when asked to work on curriculum based items.

How the students disability affects involvement and progress in the general education curriculum: Due to [Student's] need for specially designed instruction in reading, writing, and math, as well as support to complete work and study for other classes, [Student] is enrolled in the special education classes: Basic English; Functional Math 2; and Tutorial.

Due to challenges that [Student] has processing auditory information; it is very helpful for information presented in all classes be as visual as possible. Breaking down large assignments into smaller steps with due dates for each step written on a calendar is also helpful.

To help [Student] better understand reading materials in all classes, it is best to check for understanding often through a sequence of simple comprehension questions. Waiting until the end of a section of reading to check for understanding is too long.

Student's Preferences, Interest, and Needs: [Student] is involved in FFA, and is currently raising a sheep. [He/She] is also involved in Puppy Pals through 4H, and is learning to train [his/her] dog, and will compete this coming summer at the Washington County Fair. [Student] shared that [he/she] enjoys doing homework, hanging out with friends at school, and learns best when [he/she] takes notes.

[Student] also shared that [he/she] would like work at either Hollister or American Eagle after high school, live with family in Arizona, and get [his/her] driver's license.



(Ex. D36 at 6-8.)

(105) The November 2011 IEP included a Transition page which stated:

Appropriate, measurable post-secondary goals based upon age-appropriate transition assessments related to training, education, employment, and where appropriate, independent living skill: Within one year of completing school district services; [Student] will attend community college part time; will live with [his/her] parents; and will access [his/her] community by driving [himself/herself].

Course of Study (designed to assist the student in reaching the post-secondary goals): [Student] is a sophomore working toward a Modified Diploma. [Student] receives special education services under the eligibility of Autism Spectrum Disorder, Other Health Impairment and Intellectual Disability, and has IEP goals in the areas of speech and language, transition reading, transition math, and transition writing. [Student] will take courses required to earn a Modified Diploma. [He/She] will take special education reading and math classes that related to [his/her] post-secondary goal. [He/She] will also continue to participate in speech and language in order to support skills needed for working in the community. [Student] will also take all required courses needed to obtain [his/her] Modified Diploma, which includes 3 credits in Language Arts, 2 credits in math, 2 credits in Social Studies, 2 credits in science, 1 credit in PE, 12 credits in Electives (to include .5 credit for Senior Project), 1 credit in Career Tech/Arts/Second Language, and 1 credit in Health.

[Student] is currently completing a program of study working with sheep which FFA has approved.

During [his/her] senior year, [Student] will decide whether or not [he/she] would like to continue with district services through the transition programs available. [He/She] will let [his/her] case manager know prior to leaving high school.

Graduation: Anticipated graduation date: 6/01/14 with a Modified Diploma.

(Ex. D36 at 9.)

(106) The November 2011 IEP included a statement that Student was not going to participate in any statewide assessments during the IEP period. (Ex. D36 at 10.)

(107) The November 2011 IEP included annual goals and short-term objectives for language, transition reading, transition writing, and transition math. (Ex. D36 at 12-14.)

(108) The November 2011 IEP stated the following under the categories of measurable AGs and related STOs:

(1) Measurable Annual Goal: Skill Area: Language Arts: Given specially designed instruction in the area of language [Student] will demonstrate knowledge in the following objectives in order to support, EL.07.SL02 Organize information,

arrange details, reasons, descriptions and examples, effectively and persuasively in relation to the audience and to communicate effectively with peers and adults.

#### Criteria

80% of opportunity or criteria listed below

#### Evaluation Procedures

data collection. teacher observation.

Measurable Short-Term Objectives: By November 2012, [Student] will 1) Summarize information to: a. identify the main idea of discussion, event or experience b. identify the supporting details/events from discussions, events, experiences, etc c. determine degree of importance of details/events from discussions, events, experiences, etc with 90% accuracy 2) demonstrate understanding of how relationships develop and are maintained by: a. identifying and engaging in appropriate nonverbal social interaction skills: gestures, posture b. identifying and using appropriate strategies to gain attention: verbal, nonverbal c. demonstrating turn taking during conversation, d. maintaining a topic when engaged in conversation e. understand and explain qualities of friendship with a variety of people in various environments in 3 out of 5 opportunities 3) demonstrate the use of at least 2 strategies in order to organize and sequence [his/her] language for clarity, these may include graphic organizers, thinking in pictures, etc. 4) demonstrate understanding of language concepts: a. idioms/figurative language b. inference c. synonyms/antonyms d. curriculum vocabulary. (Ex. D36 at 11.)

(2) Measurable Annual Goal: Skill Area: Transition Reading: [Student] will read a 3<sup>rd</sup> grade text composed of at least two paragraphs, and answer a combination of concrete and inferential comprehension questions with at least 80% accuracy on 3 consecutive trials.

#### Criteria

see each objective below

#### Evaluation Procedures

graded work samples

Measurable Short-Term Objectives Given specially designed instruction; teacher modeling; opportunity to practice; and the tools needed to complete the task; [Student] will; 1) Read a text written at 2<sup>nd</sup> grade level, composed of at least 2 paragraphs and answer 10 open-ended concrete comprehension questions with at least 80% accuracy on 3 consecutive trials. 2) Read a text written at 3<sup>rd</sup> grade level, composed of at least 2 paragraphs and answer 10 open-ended concrete comprehension questions with at least 80% accuracy on 3 consecutive trials. 3) Read a text written at 3<sup>rd</sup> grade level, composed of at least 2 paragraphs and answer 10 concrete and inferential comprehension questions with at least 60% accuracy on 3 consecutive trials. (Ex. D36 at 12.)

(3) Measurable Annual Goal: Skill Area: Transition Writing: [Student] will write a 3 paragraph essay containing a introduction; body; and closing with correct capitalization; punctuation; and spelling.

#### Criteria

see each objective below

#### Evaluation Procedures

graded work samples

Measurable Short-Term Objectives: Given specially designed instruction; teacher modeling; opportunity to practice; and the tools needed to complete the task; [Student] will; 1) Independently write an introductory paragraph on a topic [he/she] chooses, composed of at least four sentences with correct capitalization; punctuation and spelling. 2) Independently create a body paragraph with at least 3 descriptive sentences following the first sentence with correct capitalization, punctuation, and spelling. 3) Independently create a closing paragraph with at least 4 sentences, with correct capitalization, punctuation, and spelling. (Ex. D36 at 13.)

(4) Measurable Annual Goal: Skill Area: Transition Math: [Student] will improve [his/her] functional math skills by completing the short-term objectives listed below.

#### Criteria

see short-term objectives below

#### Evaluation Procedures

graded work samples, teacher observations.

Measurable Short-Term Objectives: Given specially designed instruction; teacher modeling; opportunity to practice; and the tools needed to complete the task; [Student] will; 1) Will answer open ended story problems that deal with money and determine what calculation to use (addition and/or subtraction) in a variety of situations which might include: can I afford it?; which is cheaper?; next dollar up strategy?; and/or counting out exact change with 70% accuracy on 3 consecutive trials. 2) Will understand basic math terms such as deposit, withdrawal, and be able to perform the correct math calculation to balance an account with 75% accuracy. (Ex. D36 at 14.)

(109) The IEP team selected a placement in a combination of special education and general education classes with pull out for tutorial and speech and language services. The team rejected placement of “General education classes with pull out for tutorial and speech and language services.” (Ex. D36 at 15.)

(110) The District issued no prior written notices after the November 14, 2011 meeting. (Testimony of Ms. Taplin at 1781-1782; Testimony of Ms. Shearer at 512-513.)

(111) On December 2, 2011, Ms. Shearer, Ms. Saidler, Ms. Glancy and Mother met to discuss transition services. (Testimony of Mother at 2528.) During the meeting they discussed socializing options and possible work assignments for Student. (Testimony of Ms. Saidler at 2727-28.)

(112) In response to questions about their teaching methods, Mr. Brady, Ms. Bartoo, and Mr. Tasker described their teaching methods employed to teach Student in his/her special education classes. None of their methods included breaking each concept or task down into small amounts of information, repeating that small amount of information, and then applying that information through a practical application. (Testimony of Mr. Brady 569-580; Testimony of Ms. Bartoo 216-294, 402-442; Mr. Tasker 1185-1245, 1531-61.)

(113) During the fall of 2011 Mother expressed frustration and confusion regarding some of Student's teacher's failure to provide requested information about Student's homework and assignments in special education classes to the District. (Testimony of Mother at 3212-13.)

(114) Ms. Denis was Student's general education physical science teacher during the 2010-2011 and 2011-2012 school years. Ms. Denis had been trained by Ms. Taplin how to modify tests and assignments. (Testimony of Ms. Denis at 1592-93.) Ms. Denis modified all of tests in the same manner for all special education students. She did not modify most assignments or practice tests for Student. (Testimony of Ms. Denis at 1633-34.)

(115) On December 6, 2011, Ms. Wiscarson on behalf of Parents filed a request for due process hearing with the Superintendent of Public Instruction. (Request for Due Process Hearing.)

## **CONCLUSIONS OF LAW**

1. District denied Parents the opportunity to meaningfully participate in the Student's education during the 2009-2010, 2010-2011, and 2011-2012 academic years, in violation of IDEA and its implementing Oregon Revised Statutes (ORS) and Oregon Administrative Rules (OARs); and
2. District failed to identify Student as a student with a disability in all areas of disability during the 2009-2010, 2010-2011 and 2011-2012 academic years, in violation of IDEA and its implementing Oregon Revised Statutes (ORS) and Oregon Administrative Rules (OARs); and
3. District failed to evaluate Student in all areas of suspected disability during the 2009-2010, 2010-2011 and 2011-2012 academic years, in violation of IDEA and its implementing Oregon Revised Statutes (ORS) and Oregon Administrative Rules (OARs); and
4. District failed to provide Student with a free and appropriate public education (FAPE) during the 2009-2010, 2010-2011 and 2011-2012 academic years, in violation of the IDEA and its implementing Oregon Revised Statutes (ORS) and Oregon Administrative Rules (OARs); and

5. District provided an appropriate placement for Student during the 2009-2010, 2010-2011 and 2011-2012 academic years.

## ANALYSIS

### Burden of Proof

The burden of proof in an administrative hearing challenging an IEP is properly placed upon the party seeking relief. *Schaffer v. Weast*, 126 S Ct 528 (2005). In this case Parent sought relief and bore the burden of persuasion. The standard of proof applicable to an administrative hearing is preponderance of the evidence. *Cook v. Employment Div.* 47 Or App 437 (1980) (in the absence of legislation specifying a different standard, the standard of proof in an administrative hearing is preponderance of the evidence). Proof by a preponderance of the evidence means that the fact finder is persuaded that the facts asserted are more likely true than not true. *Riley Hill General Contractors v. Tandy Corp.*, 303 Or 390 (1989).

### Public Education requirements under the IDEA

The IDEA provides for the public education of children with disabilities. The purpose of the IDEA is to ensure that all children with disabilities are provided a free appropriate public education, emphasizing special education and related services designed to meet the unique needs of the child, and to ensure the rights of children with disabilities, and parents of those children, are protected. 20 USC §1400(d)(1). The US Supreme Court, when considering requirements for education of special education students in *Board of Educ. Of Hendrick Hudson School District v. Rowley*, 458 U.S. 176 (1982), set out a two-part test for evaluating complaints about the content of an IEP:

First, has the State complied with the procedures set forth in the Act? And second, is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits?  
(*Rowley*, 458 U.S. at 206-07.)

Student qualifies for and has been provided special education services by District under the IDEA. Student attended the District's Public Schools from 2006 through 2012.

Oregon law contains a specific timeline for filing a due process complaint. ORS 343.165(3) provides:

(a) Except as provided in paragraph (b) of this subsection, a [due process] hearing described in subsection (1) of this section must be requested within two years after the date of the act or omission that gives rise to the right to request a hearing under subsection (1) of this section.

(b) The timeline described in paragraph (a) of this subsection does not apply to a parent if the parent was prevented from requesting the hearing due to:

(A) Specific misrepresentations by the school district that it had resolved the problem forming the basis of the complaint; or

(B) The school district withholding from the parent information that the district was required to provide under this chapter.

The Parents' due process hearing request was filed on December 6, 2011. Therefore, events that occurred within the two years prior to that date are subject to adjudication in this case. The PLEPs and AGs/STOs from the May 2009 IEP remained in effect up until April 2010 when new PLEPs and AGs/STOs were established. Although the date when the PLEPs and AGs/STOs in the May 2009 IEP were established are outside the statute of limitations, they continued to be effective through April 2010 when the next IEP was written. Therefore, to the extent that the May 2009 IEP resulted in a failure to provide FAPE during the relevant two year period, such violations would not be barred by ORS 343.165(3).

## **ALLEGATIONS**

Student is a child who does much better with rote learning of concrete factual information than with complex or inferential material. Student has difficulty retaining material that is not presented repetitively in small sections or pieces. Student exhibits anxiety at school in many ways including needing constant reassurance that he/she is doing the task or assignment correctly, by rushing through tasks and assignments to be done first, and getting visibly upset at not performing tests and tasks well. Student is eligible for IDEA services under several categories. Student has consistently been found eligible under the disabling category of OHI as a child with ADHD. In 2008, in addition to OHI, Student was determined to be eligible under the category of ASD, for the first time, but not under the category of Communication Disorder. In March 2011, Student was determined to be eligible under the categories of OHI, ASD, and Intellectual Impairment.

### **Issue 1 – Parent Participation**

The IDEA contemplates that parents be equal participants in developing, reviewing and revising their child's IEP. According to the Federal Department of Education, being an equal participant means:

- Participating in the discussion of the child's need for special education and related services.
- Joining with the other members of the IEP team to decide what services the district must deliver to provide FAPE.

*Notice of Interpretation, Appendix A to 34 CFR Part 300, Question 5 (1999 regulations).*

CFR 300.501 provides:

- (a) Opportunity to examine records. The parents of a child with a disability must be afforded, in accordance with the procedures of §§ 300.613 through 300.621, an opportunity to inspect and review all education records with respect to—
  - (1) The identification, evaluation, and educational placement of the child; and
  - (2) The provision of FAPE to the child.
- (b) Parent participation in meetings. (1) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to—
  - (i) The identification, evaluation, and educational placement of the child; and
  - (ii) The provision of FAPE to the child.

(2) Each public agency must provide notice consistent with § 300.322(a)(1) and (b)(1) to ensure that parents of children with disabilities have the opportunity to participate in meetings described in paragraph (b)(1) of this section.

(3) A meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

(c) Parent involvement in placement decisions. (1) Each public agency must ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of the parent's child.

(2) In implementing the requirements of paragraph (c)(1) of this section, the public agency must use procedures consistent with the procedures described in § 300.322(a) through (b)(1).

(3) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the public agency must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.

(4) A placement decision may be made by a group without the involvement of a parent, if the public agency is unable to obtain the parent's participation in the decision. In this case, the public agency must have a record of its attempt to ensure their involvement.<sup>4</sup>

The Ninth Circuit has observed that "those procedures which provide for meaningful parent participation are particularly important." *Amanda J. ex rel. Annette J. v. Clark Cnty. Sch. Dist.*, 267 F.3d 877, 891 (9th Cir. 2001). Procedural violations of the IDEA amount to a denial of FAPE: only if the procedural inadequacies -- (I) impeded the child's right to a free appropriate public education; (II) significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of a free appropriate public education to the parents' child; or (III) caused a deprivation of educational benefits. *See, W.G. v. Bd. of Trustees of Target Range Sch. Dist. No. 23*, 960 F.2d 1479, 1484 (9th Cir. 1992); *accord R.B. v. Napa Valley Unified Sch. Dist.*, 496 F.3d 932, 938 (9th Cir. 2007).

The Parents assert that they were denied meaningful participation in four different ways. Specifically by:

- the District disregarding the Parents' request to exempt Student from the OAKS assessment every year since 2009;
- the District failing to provide prior written notices documenting its refusal to provide services;
- the District ignoring the Parents' private evaluations; and
- the District refusing to evaluate Student upon the Parents request.

Rather than addressing these issues chronologically, they will be addressed topically below.

### **OAKS Assessment**

Mother testified extensively about the OAKS assessment at hearing. Her testimony about the issue in the years prior to the 2011-2012 school year was frequently punctuated by qualifiers

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<sup>4</sup> OAR 581-015-219 to 2195 mirrors the federal parent participation requirements.



like, “I think” “I believe”, and “Most likely.” The evidence at hearing was not sufficient to establish by a preponderance that the Parents requested that Student be exempted from the OAKS assessment prior to the September 6, 2011 meeting.

Mother’s testimony and evidence of an e-mail exchange between District personnel in October 2011, clearly establishes that the Parents requested that Student be exempted from the assessment from the 2011-2012 forward. When the Parents requested that Student be exempt from taking the OAKS assessment at the September 6, 2011 meeting, the District denied the Parents’ request. Approximately a month later, Mother again requested that Student be exempted in a series of e-mails. Because the District exempted Student from the OAKS assessment shortly after the Parents made that request, the Parents have not established that they were denied the ability to meaningfully participate regarding this issue.

## **PWN**

CFR 300.503 provides, in relevant part:

- (a) Notice. Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency—
- (1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or
  - (2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

The Parents assert that they received no notice of the March 10, 2010 academic evaluation that the District performed. However, the evidence establishes that the PWN proposing the evaluation was sent the day before the test was completed. In addition, Ms. Harris spoke to the Parents and received their verbal consent to perform the evaluation before it was administered. Based on this record, the District’s failure to notify Parents in writing of the evaluation before it was administered is at most a *de minimis* procedural violation because it did not prejudice Student nor result in any loss of educational opportunity.

The Parents also assert that they did not receive a PWN each time they requested additional services for Student and those services were denied. The evidence establishes that the Parents requested that speech services be increased to two hours of speech therapy at school each week and outside services three times per week on September 6, 2011. The District denied that request verbally at the meeting but, nevertheless, increased speech services from 30 minutes per week to one hour per week on a trial basis after the meeting. No PWN was sent to the Parents about either the refusal or the change in services. On October 3, 2011, the IEP team met to discuss the Parents’ written request to reevaluate Student. At the meeting, the team determined that no evaluations were necessary and the District sent a PWN stating that no further evaluations were necessary. However, Ms. Shearer privately met with the District’s Occupational Therapist and told her to perform an evaluation pursuant to the Parents request. No PWN was sent explaining the proposal to evaluate. These failures to send PWN to the Parents severely diminished the value of their participation in the meetings. The repeated failure to send accurate PWN informing the Parents of the status of their requests and the status of the District’s

actions prejudiced Student and resulted in a loss of the Parents' ability to meaningfully participate in the District's decisions thus resulting in a denial of FAPE.

### **Private Evaluations and Parents Request to Evaluate**

The Parents assert that the failure of the District to convene meetings to address the information the Parents provided from their private evaluations and the District's failure to explain the right to an independent evaluation at public expense denied them the meaningful opportunity to participate in the IEP process. There was no evidence presented at hearing concerning independent evaluations, whether they were ever discussed, and/or what information the District provided about them to the Parents. Based upon the lack of evidence on the issue, the Parents have not met their burden to establish that the District failed to explain the right to an independent evaluation.

There was substantially more information provided at hearing about the Parents providing their private evaluations with the District and the District's response. The Parents provided CDRC's and Dr. Buckendorf's private evaluations to the District prior to the March 2011 reevaluation. The District extensively used Dr. Buckendorf's information in the formation of the speech and language goals in March 2011 IEP. The evidence demonstrated that while the District did not agree with CDRC's assessments and diagnoses, the report was considered by the District IEP team members before the March 2011 IEP meeting.

Before the final IEP meeting in November 2011, the Parents e-mailed a copy of Dr. Ensroth's October 28, 2011 recommendations and Dr. Buckendorf's August 22, 2011 updated recommendations to Ms. Shearer and Ms. Taplin. The District did not address any of the information in those evaluations at the November 14, 2011 meeting. Parent participation at IEP meetings must be more than a mere formality and must, at a minimum, include an ability for the parents to provide input in the IEP that is actually produced. From the recording of the IEP meetings in November 2011, it is evident that the only areas in which the Parents were allowed to have any input in the November 2011 IEP was in the area of modifications and accommodations. The recording of the November 2011 IEP meetings are clear evidence that the Parents were denied a meaningful opportunity to participate in the IEP process when the District ignored the private evaluation the Parents provided.

### **Issues 2 and 3- Identification and Evaluation**

In the fall of 2005, the District evaluated Student for eligibility for special education services. After being found eligible under OHI with ADHD, Student became eligible for the procedural safeguards and rights under the IDEA. Student was entitled to have all of his/her needs for special education addressed, regardless of whether they were caused by any number of different specific disability categories under which he/she became eligible. *See, e.g., OAR 581-015-2110(4)(c).*

A claim regarding the District's initial identification of Student is not encompassed by Student's due process complaint herein, which covers the period from December 6, 2009 to December 6, 2011. Here, Student was continuously eligible for special education services through the District from December 2009 through December 2011. Once a child is eligible for special education services, regardless of the child's specific category of eligibility, a district is

required to offer FAPE through the provision of education services that meet a child's unique needs, regardless of the specific disability category. *See, Heather S. v. State of Wisconsin*, 26 IDELR 870 (7th Cir 1997.) The Parents' contention that the District failed to identify Student in all areas of disability during the 2009-2010, 2010-2011, and 2011-2012 school years is more properly categorized as a failure to reevaluate. The District did, in fact, identify Student as a child who needed special education services. Any alleged failure to properly categorize her disabilities did not amount to a failure of the District's "child find" obligations.

The Ninth Circuit Court of Appeals has endorsed the "snapshot" rule, explaining that the actions of the district cannot "be judged exclusively in hindsight" but instead, "an IEP must take into account what was, and what was not, objectively reasonable ... at the time the IEP was drafted." *Adams v. State of Oregon* 195 F.3d 1141, 1149 (9th Cir. 1999). "An IEP is a snapshot, not a retrospective." (*Id.* at p. 1149, citing *Fuhrmann v. East Hanover Bd. of Education*, 993 F.2d 1031, 1041 (3rd Cir. 1993).

The IDEA's implementing regulations require that reevaluations be done under three circumstances: 1) the school district concludes that a reevaluation is necessary; 2) the parent or student's teacher requests a reevaluation; or, 3) three years have passed since the last evaluation (unless the parent and the school district decide that a reevaluation is unnecessary). 34 CFR 300.303<sup>5</sup>

A reevaluation under § 300.303(a) must comply with the rules governing evaluations, §§ 300.304 through 300.11, but is limited as set out under subsection (b). Any evaluation conducted subsequent to an initial evaluation of a child to determine if the child is a child with a disability under the Act, and to determine the nature and extent of the services required, constitutes a reevaluation. *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Regulations*, 71 Fed. Reg. 46640 (August 14, 2006.) In response to comments suggesting changes to § 300.304(c)(4), such as including "behavior" in the list of areas to be evaluated, or a recommendation that a functional behavior assessment be part of the child's evaluation whenever any member of the team requests it or raises concerns about the child's behavior, the Secretary of the U.S. Department of Education (Department) declined to change the rule as proposed. The Department explained that "[the section] requires the public agency to ensure that the child is assessed in all areas related to the suspected disability. \* \* \* Decisions regarding the areas to be assessed are determined by the suspected needs of the child. If a child's behavior or physical status is of concern, evaluations addressing these areas must be conducted. 71 Fed.Reg. at 46643.

## **2009-2010**

Parents argued that the District's failure to reevaluate Student in the areas of IQ, anxiety, communication skills, social skills, motor skills, sensory needs, assistive technology needs, and transition needs denied Student FAPE for the 2009-2010 school year.

For the period of December 6, 2009 through end of the school year 2010, the evidence does not establish that Student demonstrated a need for reevaluation in the areas of IQ, communication skills, social skills, motor skills, sensory needs, assistive technology needs.

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<sup>5</sup> OAR 581-015-2105(4) mirrors the language of 34 CFR § 300.303.

Student received assistive technology through the use of visual supports. Student also received communication and social skills services as part of his/her IEP. There was no evidence presented that Student stood out from other students in motor skills or sensory needs. Nor was there evidence of any other information or event that otherwise should have cued the District into the need to reevaluate. Furthermore, the Parents offered no evidence that, if Student had been assessed in these areas, he/she would have received different services and supports than he/she did receive. A school district need not evaluate a child in every conceivable area in order to comply with the IDEA. *See, e.g., M.M. ex rel. Matthews v. Gov't of D.C.*, 607 F. Supp. 2d 168, 173 (D.D.C. 2009) (finding that a school district did not violate the IDEA by choosing not to perform a psychiatric evaluation when a psycho-educational evaluation indicated that a psychiatric evaluation was not immediately necessary).

However, the record demonstrates that at the very least, the District failed to assess Student's anxious behaviors and transitional needs during the time period at issue. An IEP team must know that the child is doing something that interferes with his or her learning, what behavior is interfering, and why the child is engaging in that behavior in order to develop an effective plan. The District had evidence from the triennial reviews and PLEPs that Student had demonstrated clinically significant levels of anxiety, and that the team had enough concerns to have an IEP team meeting on December 10, 2009 to address Student's anxiety. At that meeting, the team discussed Student's fear of making mistakes and anxiety related to testing. This was sufficient information to trigger the District's obligation to offer to evaluate Student in the area of anxiety. *See N.B. ex rel. C.B. v. Hellgate Elementary Sch. Dist.*, 541 F.3d 1202, 1208 (9th Cir. 2008). In this case, the District's failure to evaluate Student corresponded to a failure to develop an adequate an IEP.

The Parents have also established by a preponderance of the evidence that the District should have evaluated Student's transition needs. The issue surrounding the lack of transition assessment and plan is addressed more fully in the FAPE analysis later in this order. It is enough to note here, however, that Student turned 16 in January 2011. The District did not conduct any transitional evaluation of Student prior to developing the April 2010 IEP which was expected to last through April 2011. Nor did the April 2010 IEP contain a transition plan.

### **2010-2011**

The District continued to fail to assess or evaluate Student's anxious behaviors, and failed to consider the educational impact of those behaviors, through the 2010-2011 school year. Each new IEP plan and the IEP meeting notes mention Student's anxious behaviors like his/her need for constant reassurance, need for test materials ahead of time to reduce anxiety, need for a calming routine, and fear of doing a task wrong. No evaluations were done to determine how Student's behavior was interfering and why Student's was behaving in a manner that interfered with his/her education or the education of others. After getting their own ASD evaluation in December 2010, the Parents provided the District with the CDRC report which diagnosed Student with an anxiety disorder and clearly stated that some of the behaviors that the teachers observed were anxious behaviors. The report also recommended that Student be evaluated and treated for anxiety. In March 2011, a school psychologist completed a psychological report as part of Student's three year reevaluation. That report stated that Student exhibited clinically significant levels of anxiety. However, the IEP plan completed in March 2011 does not address anxiety and in fact indicates that Student has no behavior that impedes his/her learning or the

learning of others. Looking from purely the District's perspective during the 2010-2011 school year, the District had sufficient information to know that Student required an evaluation for anxiety and the necessary services to address that behavior. The accommodations and modifications in the IEPs simply do not address Student's anxious behavior.

Parents also argued that the December 2010 report from CDRC should have given the District enough information that it was required to reevaluate Student. Parents argued that the District's failure to reevaluate Student in the areas of ASD, communication skills, social skills, motor skills, sensory needs, language disorders, achievement scores lower than recent IQ scores, and anxiety based upon the independent report denied Student FAPE for the 2010-2011 school year. I agree with the Parents.

At hearing, the testimony of the District personnel who were aware of the CDRC report severely downplayed the conclusions and observations of the team that developed the report. It appeared that once the District received a copy of the CDRC report, District personnel did not want to take the necessary steps to determine if what the CDRC team observed in a non-school setting was critical information that could help the team develop an appropriate IEP for Student. The case manager's direction to the ASD evaluator to merely perform a file review, and not a new ASD evaluation is particularly troublesome. While the evidence does not establish that Student's educational eligibility for ASD was incorrect, once the District received a very detailed report from a teaching hospital and autism center stating that Student did not have ASD, it was necessary for the District to perform its own evaluation, and not to simply an ASD file review, in order for the District to have sufficient information to appropriately determine Student's unique needs in March 2011.

The speech language portion of the CDRC report contained information about Student's language skills, social skills, and communication skills which appear to contradict some of the information in the IEP. The occupational therapy report also contained information about Student's coordination in learning tasks and his/her sensory profile contained critical educational information. The specific and detailed information in the CDRC report provided sufficient information, that it was not possible for the IEP team to develop a plan of services reasonably calculated to provide Student with a meaningful educational benefit unless it performed its own evaluations. Under the "snapshot rule" promulgated in *Adams*, the District's failure to use the information in the CDRC report or to perform its own new evaluations with that information denied Student an educational opportunity and thus FAPE.

#### **2011-2012**

During July 2011, Student suffered a severe mental health episode. Student's mental health episode was so severe that it was recommended that he/she be hospitalized. When Student returned to school in September 2011, the District continued to use Student's March 2011 IEP. The District did not request to evaluate Student for mental health issues. Per the District's own expert witness, once a District staff member was aware that a child was having mental health issues at home, the District policy was that the staff member would convene an IEP meeting to determine if the issue had an educational impact. In August 2011, Mother disclosed Student's severe mental health issues to the District's Special Education Director, who disclosed the information to the FGHS Special Education Facilitator, neither of which convened an IEP meeting nor requested to perform any evaluations of their own. An IEP evaluation planning meeting was held in October 2011 but mental health and anxiety issues and/or

evaluation of those issues were not discussed. In November 2011 and before the final IEP meeting, Mother disclosed the mental health report to Student's case manager and the FGHS Special Education Facilitator who filed them away without reading them. The District still did not request to perform any evaluations. The IEP that was developed did not address any of Student's mental health issues or anxiety. Given the District's knowledge of Student's mental health issues, the District was required to perform its own evaluations. Through this failure the District was unable to appropriately identify Student's unique needs in developing an IEP and its failure to do so denied Student FAPE.

#### **Issue 4- FAPE**

A central feature of the Special Education laws, and the primary mechanism by which they work to ensure a FAPE, is the IEP. *Rowley*, 458 U.S. at 181.

Schools are required to create IEPs for students with disabilities, using IEP teams that include parents, special education and general curriculum teachers, administrators and, where appropriate, the child. 20 USC § 1414(d); ORS 353.151; and OAR 581-015-0066.

20 USC 1414(d)(1)(A) IEPs sets forth the required content of an IEP:

- (i) In general The term “individualized education program” or “IEP” means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with this section and that includes—
  - (I) a statement of the child's present levels of academic achievement and functional performance, including—
    - (aa) how the child's disability affects the child's involvement and progress in the general education curriculum;
    - (bb) for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities; and
    - (cc) for children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;
  - (II) a statement of measurable annual goals, including academic and functional goals, designed to—
    - (aa) meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and
    - (bb) meet each of the child's other educational needs that result from the child's disability;
  - (III) a description of how the child's progress toward meeting the annual goals described in subclause (II) will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;
  - (IV) a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program

modifications or supports for school personnel that will be provided for the child—

(aa) to advance appropriately toward attaining the annual goals;

(bb) to be involved in and make progress in the general education curriculum in accordance with subclause (I) and to participate in extracurricular and other nonacademic activities; and

(cc) to be educated and participate with other children with disabilities and nondisabled children in the activities described in this subparagraph;

(V) an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in subclause (IV)(cc);

(VI)

(aa) a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 1412(a)(16)(A) of this title; and

(bb) if the IEP Team determines that the child shall take an alternate assessment on a particular State or districtwide assessment of student achievement, a statement of why—

(AA) the child cannot participate in the regular assessment; and

(BB) the particular alternate assessment selected is appropriate for the child;

(VII) the projected date for the beginning of the services and modifications described in subclause (IV), and the anticipated frequency, location, and duration of those services and modifications; and

(VIII) beginning not later than the first IEP to be in effect when the child is 16, and updated annually thereafter—

(aa) appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills;

(bb) the transition services (including courses of study) needed to assist the child in reaching those goals; and

(cc) beginning not later than 1 year before the child reaches the age of majority under State law, a statement that the child has been informed of the child's rights under this chapter, if any, that will transfer to the child on reaching the age of majority under section 1415(m) of this title.

(ii) Rule of construction Nothing in this section shall be construed to require—

(I) that additional information be included in a child's IEP beyond what is explicitly required in this section; and

(II) the IEP Team to include information under 1 component of a child's IEP that is already contained under another component of such IEP.<sup>6</sup>

Violations of the IDEA may arise in two situations. First, a school district, in creating and implementing the IEP, can run afoul of the Act's procedural requirements. *Rowley* 458 U.S. at 176. Second, a school district can be liable for a substantive violation by drafting an IEP that is not reasonably calculated to enable the child to receive educational benefits. *Id.* Through a FAPE, "the door of public education must be opened for a disabled child in a 'meaningful' way."

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<sup>6</sup> OAR 581-015-2200 contains parallel requirements for the IEP.

*Id. at 192.* Districts must provide Student a FAPE that is "appropriately designed and implemented so as to convey" Student with a "meaningful" benefit. *Adam*, 195 F.3d at 1149.

### **May 2009 IEP**

Parents alleged that the District failed to provide FAPE by failing to include many elements in the 2009 IEP including: an adequate description of Student's needs and PLEPs; detailed information for the AGs/STOs; or any measurable AGs/STOs in math, language arts, and self managements. The Parents alleged the IEP also failed to address Students various physical and emotional difficulties and failed to address Students need for various SDI in a variety of social skills and communication skills.

The May 2009 IEP did not contain many of the required procedural elements under IDEA. Specifically the description of Student's needs/PLEPs and the AGs/STOs were flawed. The May 2009 IEP does contain statements addressing Students strengths, Parents concerns, and Student's present academic performance. However, the statements contain insufficient information regarding how Students social, language, reading, writing, math, cognitive, and behavioral deficits, as reported in the 2005 and 2008 evaluations, affected his/her involvement and progress in the general education curriculum as required by the IDEA. The District had the information in their own evaluations about how Student's disabilities and deficits affected his/her ability to make progress at school. Instead of including it, the statements in the IEP merely recite what Student is learning and do not include information adequate for a team member to determine how Student's disabilities and deficits affect his/her ability to progress at school. This information is critical for team members to determine if an AG or STO is appropriate and for future assessment of Student's progress or lack of progress on his/her AGs and STOs.

The AGs and STOs in the 2009 IEP contain little to no information that state what the child's needs in order to be meaningfully involved in, and make progress in, the general education curriculum. It is clear from the assessments that Student's disabilities greatly affected his/her abilities to make educational progress. However, the IEP shrouds the ways in which his/her needs due to his/her disability prevent him/her from being involved in, and make progress in, the general education curriculum. The AGs and STOs in this IEP could apply to any student at the school and don't appear to be tailored to Student's disability and his/her needs. The 2009 IEP contains AGs and STOs but it is unclear why those goals were chosen and not others.

The evidence in this case establishes that these procedural flaws prevented the Parents and others IEP team members from knowing if Student's needs were being addressed by the District's program. The flaws also make it impossible to find that Student made progress toward his/her goals in his/her areas of need because it is unclear that those AGs/STOs addressed Student's unique needs. This is not a case where Student successfully passed unmodified general education classes or the statewide assessments. Therefore, Parents have established that the above procedural deficiencies in the May 2009 IEP denied Student FAPE for the period of at issue.

The Parents also alleged that there were multiple substantive flaws in the 2009 IEP when the IEP failed to address Student's physical and emotional needs, and where it failed to address Student's need for SDI using various techniques directed to Student's specific learning needs.



There are many behaviors that will impede a child's learning or that of others. Less serious behaviors require the IEP team to consider and, if necessary, develop positive behavioral interventions, strategies and supports. 20 U.S.C. § 1414(d)(3)(B); 34 C.F.R. § 300.324(a)(2)(i) Based upon the District's own reports and evaluations, it is clear that the District was aware that Student exhibited troubling anxious behavior at school since 2005. Student's anxiety manifested itself at school when Student became physically ill from the stress he/she experienced at home and school, rushed through assignments and tests to be done first, and sought attention from teachers and instructional assistants to the extent that it almost monopolized their time. These behaviors impeded Student's learning and the learning of others at school and should have been considered by the IEP team in developing interventions, strategies, and supports.

An IEP that does not appropriately address behavior that impedes a child's learning denies a student a FAPE. *See Park v. Anaheim Union High School Dist.* 444 F.3d 1149 (9th Cir. 2006); *Neosho R-V School Dist. v. Clark* 315 F.3d 1022, 1028, (8th Cir. 2003). On the special factor page of the May 2009 IEP the "No" box is marked indicating that Student exhibited no behavior that impeded his/her learning or the learning of others. None of the aids, modifications, or accommodations included in the IEP addressed Student's anxieties. One of the Self-Management STOs addresses Student's monopolization of teacher and support staff time by stating that Student would be expected to ask for assistance appropriately. While the presence of one STO is not sufficient to appropriately address the various anxieties that Student exhibited, the team met on December 10, 2009 to discuss some of Student's anxieties. The team clearly discussed and came up with numerous strategies to try to help Student address the behavior. Without an evaluation, it is unclear how those new strategies would appropriately address the issue. However, there was also no evidence presented at hearing from which to determine whether the District did or did not employ the new strategies for the rest of the school year.

SDI involves adapting the content of material taught to a child, and the delivery of instruction, to the unique needs of a child with a disability to ensure access to the general education curriculum so the child can meet educational standards. In the May 2009 IEP, only the Self-Management STOs refers to any of the numerous suggestion/recommendations of techniques directed to Student's specific learning needs listed in the District's 2005 and 2008 evaluation reports. At hearing there was no testimony presented regarding what type of instruction Student actually received and whether any of the recommendations were used from December 6, 2009 through April 2010 when the new IEP was developed.

It may be the case that Student's needs were not properly met during the 2009-2010 school year time period at issue. But there was simply insufficient evidence presented about what services and teaching methods the District employed for Student to make a determination that a substantive violation occurred. Despite the lack of evidence of a substantive violation, the IEP procedural flaws alone amount to a denial of FAPE.

### **April 2010 IEP**

Parents alleged that the April 2010 IEP failed to provide FAPE by failing to include many elements in the IEP including: an adequate description of Student's needs and PLEPs; baseline data for the AGs/STOs; measurable AGs/STOs in math, language arts, reading, and self management; adequate transition data, goals or services; adequate and timely progress notes. The Parents alleged the IEP also failed to address Students various physical and emotional

difficulties and address Students need for various SDI in a variety of social skills and communication skills

The basic flaw in the District's IEPs is that Student is treated generically. The PLEP statement contains little to no mention of how his/her disability affected his/her ability to access general education. It contains little or no information that would allow a team member to adequately determine how Student's disabilities and deficits affected his/her ability to progress at school and whether the AGs/STOs were appropriate. The detailed information that is present in the 2010 IEP is not linked to AGs or STOs is not placed in context to know why Student achieved those scores or got that result. Instead, the information in the PLEP statement appears to be a long summary of what Student is learning not why or how the child was learning those things. Nor did it contain any information specific to Student's disabilities. The Self-Management PLEP appears to contain data that was linked to the AG/STOs however, it was written in a manner that made it appear that Student would prospectively work towards acquiring the skills but did not presently have them. The AG/STOs contain a different level of achievement for Student so it is possible that the data in the Self-Management PLEP was intended to be an indication of how Student was doing at the time the PLEP was written; however, that intent is unclear. The 2010 IEP also fails to state that Student receives services under OHI as a child with ADHD. The 2010 IEP's statements of Student's needs/PLEPs are fundamentally flawed for the same reasons that they were flawed in the 2009 IEP.

The 2010 IEP contains AGs and STOs but it again was unclear why those goals were chosen and not others. The language AG/STOs are confusing because two of the three STOs are identical to the 2009 IEP and the one new STO is a social skill STO and does not correspond to the other STOs which address writing skills. Other writing skills are addressed in the Writing AG/STO. The remaining AGs/STOs were a mix of new ones and ones that were similar or identical to the 2009 IEP. Again it is unclear from the document whether they are tailored to Student's disability and his/her needs. As above, the 2010 AGs/STO are fundamentally flawed because they do not meet the statutory requirements.

Student turned 16 in January 2011 and the District was required under IDEA to include a transition plan. The 2010 IEP did not contain any transition information due to District oversight. The failure to properly formulate a transition plan may be a procedural violation of the IDEA that warrants relief upon a showing of a loss of educational opportunity or the denial of FAPE. *Board of Education v. Ross*, 486 F.3d 267, 276 (7th Cir. 2007). Due to Student's need for repetition of information in order to grasp the concepts being taught, the failure to develop a timely transition plan was is fundamental and denied Student educational opportunities in transition services, a denial of FAPE.

The Parents also alleged that the District failed to provide adequate and timely progress notes. As set forth in the findings of fact, the District's progress notes for the time period at issue are inadequate. The law requires that an IEP describe how a child's progress towards meeting the AGs/STOs will be measured and when that progress will be reported. The 2010 IEP states that Student's progress will be reported in progress reports at each regular grading period. The District did generate progress reports but did not send them to the Parents.

In addition, the information in those reports was insufficient to meet the requirements of the IDEA. Frequently, Student's progress in one STO would be measured by the established

criteria, while the remaining STOs would contain information that simply did not measure the amount of progress Student made in any fashion. While not every failure to record a student's progress will amount to a denial of FAPE, the evidence in this case shows that Mother, the more actively involved parent, clearly did not have sufficient information about the Student's progress because she misunderstood what Student was learning or how much Student had progressed despite her frequent requests for information from the District. Providing adequate and regular reports would have given the Parents information on how Student was actually progressing on his/her AGs/STOs. The failure to do so amounts to a denial of FAPE in this case.

The Parents alleged that there were multiple substantive flaws in the 2010 IEP because it failed to address Student's physical and emotional needs, and because it failed to address Student's need for SDI using various techniques directed to Student's specific learning needs.

As discussed above, from the District's own reports and evaluations, it is clear that the District was aware that Student exhibited troubling anxious behavior at school since 2005. Student's anxiety manifested itself at school and should have been considered by the IEP team in developing interventions, strategies, and supports. On the special factor page of the April 2010 IEP the "No" box is marked indicating that Student exhibited no behavior that impeded his/her learning or the learning of others. None of the aids, modifications, or accommodations addressed Student's anxieties. One of the Self-Management STOs addressed Student's monopolization of teacher and support staff time in an almost identical manner to the 2009 IEP. The presence of this one STO is not sufficient to appropriately address the breadth of anxieties that Student exhibited. In addition, none of the strategies addressing Student's anxiety from the December 10, 2009 meeting were included on the 2010 IEP. The evidence also establishes that none of the teachers at FGHS employed the strategies developed to help Student address his/her anxiety. Finally, reports from several FGHS teachers show that Student continued to exhibit the same anxious behaviors at school that impeded his/her learning and the learning of others.

SDI involves adapting the content of material taught, and the delivery of instruction, to the unique needs of a child with a disability to ensure access to the general education curriculum so the child can meet educational standards. In the 2010 IEP, only the Self-Management STO's refer to any of the numerous suggestion/recommendations of techniques directed to Student's specific learning needs listed in the District's 2005 and 2008 evaluation reports.

At hearing, it became clear that only Mr. Larsen and Ms. Henry were adapting the delivery of instruction by employing at least some of the learning techniques described in the 2005 and 2008 evaluations (i.e. providing frequent explanations of facts/concepts, teaching new material using strategic coaching or cueing in new situations to link new experiences to previously learned concepts and skills, and frequent repetition of small segments of information at a time). Mr. Larsen is a general education teacher and does not provide SDI to Student. The special education teachers taught Student but did not employ the known strategies of instruction to enable Student to learn in his/her special education classes. SDI is fundamental to Student's ability to make progress. The District cannot meet its legal obligation to Student by ignoring known teaching techniques that would allow Student the ability to make progress during his/her freshman year at school.

It is clear that that Student's behavior and learning needs were not properly met during the 2010-2011 school year except in speech class and in Mr. Larsen's writing class. Failing to

teach Student using known strategies of instruction through SDI in a majority of his/her special education classes is sufficient to prove that a substantive violation occurred and FAPE was denied.

### **March 2011 IEP**

Parents alleged that the March 2011 IEP failed to provide FAPE by failing to include many elements in the IEP including: an adequate description of Student's needs and PLEPs; detailed information for the AGs/STOs; measurable AGs/STOs in math, language arts, reading, and self management; adequate transition data, goals or services; adequate and timely progress notes. The Parents alleged the IEP also failed to address Students various physical and emotional difficulties and address Students need for various SDI in a variety of social skills and communication skills.

As discussed in the April 2010 analysis, the basic flaw in the District's IEP is that Student is treated generically. The March 2011 PLEP statement also contains little to no mention of how his/her disabilities affected his/her ability to access general education or information adequate for a team member to determine how Student's disabilities and deficits affected his/her ability to progress at school. It is unnecessary to repeat the same analysis of Student's needs/PLEP statement and the AGs/STOs, which is substantially similar to the April 2010 IEP. The March 2011 IEP is somewhat more detailed than those in the prior IEPs and contains a few more references to the Student's deficits. However, the Student's needs/PLEP statement and the AGs/STOs continue to be mainly a recitation of what Student learned and are not linked to the prior AGs/STOs or written in a way to allow the team members including the Parents to understand Student's current level of functioning and what AGs/STOs might be appropriate.

The March 2011 IEP contained a Transition plan. The IDEA requires that Student be given appropriate transition assessments to develop appropriate goals. Appropriate assessments should look at a student's needs, strengths, and interests in order to determine whether a goal is appropriate. Prior to the IEP meeting in March 2011, Ms. Taplin interviewed Student about his/her interests and goals. That simple interests interview alone is insufficient to determine appropriate goals for a student with multiple deficits and needs like Student. However, even if the transition goal in the March 2011 is somewhat vague, a properly drafted proposed course of study could provide sufficient details to make the transition plan appropriate. The type and amount of related services and assistive technology necessary to help a student make progress on his/her IEP goals, including transition goals, must be stated in the IEP. In this case, the transition goal lacks details such as what Student would learn in order to know why Student would attend community college, or to know if he/she would develop the skills necessary to do so. The course of study also does not provide any details about how the goals will be implemented or why those goals are appropriate. Student is currently reading at a 2<sup>nd</sup> to 4<sup>th</sup> grade level. The transition plan states that Student will access transition services during his/her senior year. That statement is inappropriate in this case where Student learns slowly, needs to be given small amounts of information at a time, and needs frequent repetition to retain information. The deficits in the March 2011 IEP transition plan significantly impeded Student's ability to receive educational opportunities in transition services, a denial of FAPE.

The Parents again alleged that the District failed to provide adequate and timely progress notes after this IEP. The IDEA requires that an IEP describe how a child's progress towards meeting the AGs/STOs will be measured and when that progress will be reported. The March 2011 IEP states that Student's progress will be reported in progress reports at each regular grading period. The District provided the progress reports to parents in September 2011 instead of June 2011 as indicated on the IEP. The spaces for information regarding the writing, and math progress reports were left blank and were insufficient to meet the requirements of the IDEA<sup>7</sup>. The first two of the four STOs for language actually addressed how well Student was meeting the listed goal. The remaining language progress note merely stated that Student was working on the second two STOs without quantifying how well Student was meeting the STO, if at all.

The transition reading progress note merely lists Student's reading level but does not connect any of the information in the progress note to Student's AGs/STOs. In this case, it was clear from a review of the IEP meeting notes and Mother's testimony, that Mother did not have sufficient information to understand Student's progress because she misunderstood what Student was learning or how much Student had progressed. The failure to provide regular reports that gave the Parents information on how Student was actually progressing on his/her AGs/STOs amounts to a denial of FAPE in this case for the same reasons listed in the earlier analysis.

The Parents also alleged that there were multiple substantive flaws in the March 2011 IEP when the IEP failed to address Student's physical and emotional needs, and where it failed to address Student's need for SDI using various techniques directed to Student's specific learning needs among other things.

As discussed above, from the District's own reports and evaluations, it is clear that the District was aware that Student exhibited troubling anxious behavior at school since 2005. Student's anxiety manifested itself at school and should have been considered by the IEP team in developing interventions, strategies, and supports.

Based upon the testimony of Student's teachers and case manager, Student's needs and behaviors were addressed in the same manner from when he/she entered high school in September 2010. It is unnecessary to address the same errors and omissions that were addressed above. For the same reasons above, the District failed to appropriately address or meet Student's behavior and learning needs from March 2011 to November 2011 except in speech class and in writing class.

### **November 2011 IEP**

Parents alleged that the November 2011 IEP failed to provide FAPE by failing to include many elements in the IEP including: an adequate description of Student's needs and PLEPs; detailed information for the AGs/STOs; measurable AGs/STOs in math, language arts, reading, and self management; adequate transition data, goals or services; adequate and timely progress notes. The Parents alleged the IEP also failed to address Students various physical and

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<sup>7</sup> At hearing, the District provided a copy of the June 2011 progress note dated January 10, 2012 that included information in the transition writing and transition math spaces but there was no credible testimony that it had been provided to Parents during the time period in issue.

emotional difficulties and address Students need for various SDI in a variety of social skills and communication skills.

There was much more evidence about the November 2011 IEP meetings because they were recorded. The recordings demonstrated the way the IEP team members interacted and what was actually discussed and agreed to by the team members.

Despite the acknowledgement from the District in the PWN dated November 3, 2011 that the present levels were inappropriate, the November 2011 IEP still failed to adequately describe Student's needs/PLEPs. Specifically the Student's needs/PLEPs statements were inadequate for many of the same reasons as discussed above. The information in the needs/PLEP statement does not describe how Student's disability affects his/her involvement and progress in the general education curriculum. The needs/PLEPs statement contains test scores and some data that appears to address the prior IEPs AGs/STOs. However, upon close examination, the data provided does not correspond. As an example, the reading PLEP in the November 2011 IEP states that Student can read at level four, 146 words per minute with 60% comprehension. The March 2011 IEP PLEP for reading, written eight months earlier, states that Student is able to read a 6<sup>th</sup> grade passage at 129 words per minute with 96% accuracy and 45% accuracy on his/her comprehension. Despite that stated ability, the March 2011 IEP contained a reading AG that required Student to read a 5<sup>th</sup> grade text composed of at least one paragraph and answer concrete comprehension questions with at least 70% accuracy.

Because the information does not correspond closely enough to compare, the information that is provided is not sufficient to allow the IEP team to generate a proper IEP. This was clearly shown during the November 14, 2011 when the Parents stated that it appeared from the PLEP statements that Student had already met STO #1. Ms. Taplin at first agreed that it had been met but then stated that she did not know whether the assessment Ms. Bartoo used was at least two paragraphs that asked 10 open-ended concrete comprehension questions. That failure to provide information sufficient to determine what Student knows, why he/she is having problems and whether he/she is meeting the AGs/STOs is one of the major failings throughout all of the IEPs developed by the District.

The same failings are present in all of the AGs/STOs except for those dealing with speech and language. The District has shown that it knows what is necessary in the Student needs/PLEP statements and the AGs/STOs because the November 2011 IEP contains detailed information that corresponds to the AGs/STOs which lets the team members know how Student is doing and contains information regarding Student's disabilities and deficits. During the IEP meetings in November, Ms. Henry also provided additional information on Student's deficits and how those were being addressed. The remaining AGs/STOs lacked this corresponding information and the description of deficits and were inadequate. For the above, reasons the November 2011 IEP was fundamentally flawed and prevented Student from receiving educational opportunities, a denial of FAPE.

The November 2011 IEP also contains a transition plan. The only new information on the November transition plan was the statement that Student was completing an FFA approved program working with sheep. Because it is almost identical to the March 2011 IEP transition plan, this plan is defective for the same reasons.

The Parents also alleged that the District failed to provide adequate and timely progress notes. No progress notes were expected or issued between the time the November 2011 IEP was completed and the Due Process Complaint was filed so any progress notes after December 6, 2011 are not at issue in this case.

The evidence regarding substantive violations alleged during the period served by the November 2011 IEP is more problematic by the time limitation addressed above. Evidence of current (2011-2012 school year) practices was admitted to allow parties to provide information regarding any issues that have subsequently been addressed or remedied. However, admission of such evidence does not extend the time period covered by the Due Process Hearing Request. Based upon the evidence, the District continued to fail to address Student's physical and emotional needs, and failed to address Student's need for SDI using various techniques directed to Student's specific learning needs through December 6, 2011.

As discussed above, from the District's own reports and evaluations, it is clear that the District was aware that Student exhibited troubling anxious behavior at school since 2005. Student's anxiety manifested itself at school and should have been considered by the IEP team in developing interventions, strategies, and supports. The Parents provided ample evidence that they provided information to the District regarding additional mental health issues that Student was experiencing at home during the summer and fall of 2011. The District did nothing with the information, treating it as an issue solely related to Student's home life.

Based upon the testimony of Student's teachers and case manager, Student's needs and behaviors were addressed in the same manner from when he/she entered high school in September 2010. It is unnecessary to address the same errors and omissions that were addressed above. For the same reasons above, the District failed to appropriately address or meet Student's behavior and learning needs from November 2011 to December 6, 2011 except in speech class and in Mr. Larsen's writing class.

## **Issue 5 - Placement**

34 CFR 300.116 provides:

In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that—

(a) The placement decision—

(1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and

(2) Is made in conformity with the LRE provisions of this subpart, including §§ 300.114 through 300.118;

(b) The child's placement—

(1) Is determined at least annually;

(2) Is based on the child's IEP; and

(3) Is as close as possible to the child's home;

(c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled;

- (d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and
- (e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

Under the IDEA, a child receives a FAPE "if the program (1) addresses the child's unique needs, (2) provides adequate support services so the child can take advantage of the educational opportunities, and (3) is in accord with the [IEP]." *Capistrano Unified Sch. Dist. v. Wartenberg ex rel. Wartenberg*, 59 F.3d 884, 893 (9th Cir. 1995) (citing *Bd. of Educ. v. Rowley*, 458 U.S. 176, 188-89 (1982)).

The Parents assert that Student's placement is inappropriate because Student's unique needs cannot be met as seen by his/her lack of progress in all areas, regression in reading and math, and the failure of his/her classes to address his/her AGs/STOs. The Parents seem to be mixing an argument that the IEPs are inadequate with an argument that Student's placement is inappropriate. Using a *Capistrano* analysis, if the placement can address Student's needs and can provide the services in accord with the IEP then the placement is appropriate. In this case, the evidence shows that the FGHS special education teachers were not providing SDI specific to Student's unique needs. That failure to provide SDI does not mean that the placement of a mix of general education classes and special education classes was inappropriate.

As discussed above, the IEPs for 2010-2011 and 2011-2012 school years were inadequate. Regardless of their inadequacy, the placement decision in those IEPs was not inappropriate. Here, Student's IEPs placement plans were broadly worded enough to allow for implementation of SDI to meet Student's unique needs if the District had provided SDI specific to Student's unique needs. While the evidence shows that the District did not provide SDI to meet Student's unique needs, the evidence also shows that there is simply nothing about the placement mix of general education classes and special education classes that would have prevented the District from doing so. The Parents have not met their burden to show the placement for any year at issue was improper.

## **REMEDY**

School districts may be ordered to provide compensatory education or additional services to a pupil who has been denied a free appropriate public education. *Student W. v. Puyallup School District*, 31 F.3d 1489, 1496 (9th Cir. 1994.) The conduct of both parties must be reviewed and considered to determine whether relief is appropriate. *Id.* These are equitable remedies that courts may employ to craft "appropriate relief" for a party. An award of compensatory education need not provide a "day-for-day compensation." (*Id.* at p. 1497.) An award to compensate for past violations must rely on an individualized assessment, just as an IEP focuses on the individual student's needs. *Reid ex rel. Reid v. District of Columbia* 401 F.3d 516, 524 (D.D.C. Cir. 2005.) The award must be "reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." (*Id.*)

Counsel for the Parents requested in her closing brief the following remedies:



- Student requires a comprehensive evaluation to determine Student's present levels and needs.

Given the District's IDEA violations by failing to identify and evaluate Student's behavioral needs and failure of the District to clearly establish what Student's levels in reading, writing, and math were at the November 2011 IEP meetings, this remedy is reasonable and appropriate.

- An IEP meeting to be held once the comprehensive evaluation is completed.

Given the District's IDEA violation by failing to provide adequate IEPs, this remedy is reasonable with regard to providing detailed information. The District must provide a detailed snapshot of Student's academic achievement and functional performance which includes a description of how her/his disabilities affect Student's involvement and progress in the general curriculum. The PLEPs/needs statements must provide sufficient detailed information so that the IEP team as a whole can determine if the AGs/STOs are appropriate.

- Compensatory education to make up for the services that Student did not receive.

Given the District's failure to provide SDI for the years of 2010-December 2012 in the areas of reading, writing, and mathematics, this remedy is reasonable and appropriate. The failure to identify and evaluate Student's behavior needs adds to the reasonableness of this remedy. Because of Student's demonstrated anxiety, an anxiety evaluation and corresponding mental health counseling is also appropriate.

Despite a request for a briefing on the issue of calculating compensatory education, the District did not provide any analysis regarding how such an award should be calculated. The Parents asked for 11.5 hours of compensatory services a week provided by appropriately licensed or certified professionals. The Parents specifically asked for one hour each of speech services, social skills instruction, personal management instruction, life skills instruction, functional reading instruction, functional writing instruction, and functional math instruction, plus 90 minutes of counseling and three hours of transition services. The compensatory time will be calculated on a two week basis because the evidence at hearing shows the District uses 90 minute periods every other day class periods for the transition reading, writing, and math classes.

The evidence does not support an award of additional speech or social skills instruction. Student made progress on those goals and the IEPs were not defective in those areas. Student received 90 minutes of transitional reading and writing instruction every other day during the years of 2010-December 2012. Student's reading program during that period was not appropriate because of the lack of SDI. During that same period, Student's writing skills increased due to Mr. Larsen's instruction. It would not be equitable to order the District to compensate a student for a 90 minute class that taught both reading and writing. In this case, Student is an acknowledged slow learner who appears to only retain concepts and skills when information is constantly repeated, applied, and analyzed. Therefore, the District is ordered to compensate Student by providing two hours of direct transitional reading instruction for every week of instruction Student should have received between September 2010 and December 6, 2012. Student's math program during that period was also not appropriate. Again due to Student's deficits in learning, the District is ordered to compensate Student by providing two

hours of direct transitional math instruction for every week of instruction Student should have received between September 2010 and December 6, 2012.

The evidence regarding the amount of time necessary for behavioral counseling was more sparse. The District is ordered to compensate its failure to address Student's anxious behaviors by providing a minimum of weekly 60 minute counseling sessions provided by an appropriately qualified professional counselor to address Student's at school behaviors. The District is not prohibited from providing additional services. The counseling shall continue until Student turns 21 or the parties mutually determine that counseling to address Student's anxious behaviors is no longer needed, which ever comes first.

The District is also ordered to provide transition services to Student. There was no evidence presented at hearing that the District had started providing these services. Student will be 18 years old soon and, due to his/her learning deficits, needs to catch up on the earlier missed transitional educational opportunities. The district is ordered to compensate Student by providing driver's education training in order to meet the goal, stated in the transition plan, that Student be able to drive. The District is also ordered to provide Student life skills training to enable him/her to attend community college as reflected in the transition plan.

Additionally, given the District's failure to deliver SDI by employing the learning techniques described in the 2005 and 2008 evaluations (i.e. providing frequent explanations of facts/concepts, teaching new material using strategic coaching or cueing in new situations to link new experiences to previously learned concepts and skills, and frequent repetition of small segments of information at a time), the District is ordered to deliver SDI using the learning techniques that are effective for Student. Unless the District determines that other learning techniques will be more beneficial for Student, those described in the 2005 and 2008 evaluations and described by Mr. Larsen in the November 2011 IEP meetings should be considered and implemented where appropriate.

- Training for District staff.

Given the District's failure to develop adequate IEPs for Student, and its failure to conduct appropriate evaluations, training for District staff is necessary. As the Ninth Circuit has held, compensatory education can include mandatory training for a student's teachers. In upholding a hearing officer's order that the school train Student's special education teacher on developing IEPs, the court stated: "The award was designed to compensate [the child] for the District's violations by better training his teachers to meet [the child's] particular needs. *Park*, 464 F.3d at 1034.

## ORDER

The Parents has shown by a preponderance of the evidence that the District did not provide Student with a FAPE as required under IDEA. **Accordingly, it is also ordered that:**

(1) Within one week of the date of this Order, the District will meet with the Parents to set up a comprehensive independent evaluation. The evaluation must take place within 30 days of the meeting.

(2) Within two weeks of evaluation report being completed, the District will convene an IEP team meeting to develop an IEP for Student that complies fully with the IDEA, and in particular, contains a detailed statement of the present levels of Student's academic and functional performance as well as a summary of how Student's disability affects her/his performance. Prior to the meeting, the District is required to provide copies of Student's 2005 evaluations, 2008 evaluations, the current evaluation, and the reports from Dr. Buckendorf and Dr. Ensroth to all of the IEP team members.

(3) Within three weeks of the date of this Order, the District will begin providing to Student the above described reading and mathematics compensatory education. Within those three weeks, the District will also meet with the Parents to arrange for appropriate mental health counseling. The counseling shall begin no later than 60 days after the issuance of the order.

(4) Prior to the above ordered IEP meeting being held, the District will have a qualified professional trainer, provide four hours of instruction on the development of IEPs to any District personnel who will participate in the development of Student's IEPs during the 2012-2013 school year.

(5) Prior to the above ordered IEP meeting being held, the District will also have will have a qualified professional trainer, provide two hours of instruction on IDEA evaluations and identification of disabilities to any District personnel who will serve as Student's special education teacher(s), special education case manager(s), and the FGHS special education facilitator(s) during the 2012-2013 school year.

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Jill Marie Messecar  
Administrative Law Judge  
Office of Administrative Hearings

## APPEAL PROCEDURE

**NOTICE TO ALL PARTIES:** If you are dissatisfied with this Order you may, within 90 days after the mailing date on this Order, commence a nonjury civil action in any state court of competent jurisdiction, ORS 343.175, or in the United States District Court, 20 U.S.C. § 1415(i)(2). Failure to request review within the time allowed will result in **LOSS OF YOUR RIGHT TO APPEAL FROM THIS ORDER.**

**ENTERED** at Salem, Oregon this 12th day of September, 2012 with copies mailed to:

Jan Burgoyne, Oregon Department of Education, Public Services Building, 255 Capitol Street  
NE, Salem, OR 97310-0203.