

On June 10, 2016, Petitioner contacted MAHS in relation to a request to submit documents outside of the 5 day timeline for the exchange of exhibits. The April 28, 2016 Order Following Prehearing Conference and Extending 45 Day Timeline states that the parties shall exchange exhibits by June 6, 2016. The undersigned was not in the office to make a decision at the time pertaining to Petitioner's request but stated that the request would be addressed at the hearing.

The hearing was convened on June 13, 2016 at the Northport Public School, located in Northport, Michigan. The Petitioner was present on his own behalf. Christopher Parker, Superintendent of Northport Public School was present on behalf of Respondent District. Respondent District was represented by attorneys Jeffrey Butler and Vickie Coe. The hearing continued on June 13, 14, 15, and 16, 2016. The hearing concluded on June 16, 2016.

At the hearing, Petitioner again requested that a document not produced to Respondent by the June 6, 2016 deadline be allowed for admission. Petitioner also requested that the issue of Student's eligibility category; whether Student was properly found to be eligible as a student with ASD, be added as an issue to be heard at the due process hearing. This is the same issue that Petitioner specifically requested be withdrawn from the hearing process at the April 22, 2016 prehearing conference. Respondent agreed to stipulate to the admission of the document provided by Petitioner outside the June 6, 2016 deadline only if the issue of Student's eligibility was reinstated as an issue for hearing. Petitioner agreed, as he requested that this issue be reinstated as an issue for the hearing. Therefore, the document in question submitted by Petitioner was admitted into evidence and the issue of Student's eligibility category was reinstated as an issue to be decided by the undersigned.

EXHIBITS AND WITNESSES

The following are exhibits that were offered by Petitioner and admitted into evidence, not offered into evidence by Petitioner, or offered into evidence and excluded based on objection:

1. Petitioner's Exhibit P1 was not offered into evidence as the same document was admitted into evidence as Respondent's Exhibit 77.
2. Petitioner's Exhibit P2 is a 2010 edition of a manual titled "Helping the Student with Diabetes Succeed".
3. Petitioner's Exhibit P3 was not offered into evidence as the same document was admitted into evidence as Respondent's Exhibit 40.

4. Petitioner's Exhibit P4 was not offered into evidence as the same documents were admitted into evidence as Respondent's Exhibits 38 and 39.
5. Petitioner's Exhibit P5 is a letter created by Lorie Minidis pertaining to Student and dated February 10, 2016.
6. Petitioner's Exhibit P6 is a letter from Dr. Stephanie Galdes pertaining to Student and dated February 8, 2016.
7. Petitioner's Exhibit P7 are observation/programming suggestions prepared by Judith Miller and dated November 25, 2015.
8. Petitioner's Exhibit P8 was not offered into evidence as the same document was admitted into evidence as Respondent's Exhibit 50.
9. Petitioner's Exhibit P9 was not offered into evidence as the same document was admitted into evidence as Respondent's Exhibit 46.
10. Petitioner's Exhibit P10 is a letter from Petitioner, dated March 10, 2016.
11. Petitioner's Exhibit P11 was not offered into evidence.
12. Petitioner's Exhibit P12 was not offered into evidence as the same document was admitted into evidence contained in Respondent's Exhibit 52.
13. Petitioner's Exhibit P13 was not offered into evidence as the same document was admitted into evidence contained in Respondent's Exhibit 52.
14. Petitioner's Exhibit P14 was not offered into evidence as the same document was admitted into evidence as Respondent's Exhibit 18.
15. Petitioner's Exhibit P15 was not offered into evidence as the same document was admitted into evidence as Respondent's Exhibit 17.
16. Petitioner's Exhibit P16 is an Individualized Education Program (IEP) for Student with an offer of a Free and Appropriate Public Education (FAPE) for December 16, 2014.
17. Petitioner's Exhibit P17 was not offered into evidence as the same documents were admitted into evidence as they are contained in Respondent's Exhibit 48.
18. Petitioner's Exhibit P18 was not offered into evidence.

19. Petitioner's Exhibit P19 was not offered into evidence.
20. Petitioner's Exhibit P20 was not offered into evidence.
21. Petitioner's Exhibit P21 was not offered into evidence.
22. Petitioner's Exhibit P22 was not offered into evidence.
23. Petitioner's Exhibit P23 is an evaluation of Student by Eric Harvey, Ph.D. of Northern Clinical and Diagnostic Associates, PLLC with an evaluation date of April 21, 2016.

The following are exhibits that were offered by Respondent and admitted into evidence or not offered by Respondent:

1. Respondent's Exhibit 1 is the resume of Christopher Parker.
2. Respondent's Exhibit 2 is the resume of Keri Carpenter.
3. Respondent's Exhibit 3 is the resume of Kurt Neveau.
4. Respondent's Exhibit 4 is the resume of Alexia Post.
5. Respondent's Exhibit 5 was not offered into evidence.
6. Respondent's Exhibit 6 is the resume of Judith Miller.
7. Respondent's Exhibit 7 was not offered into evidence.
8. Respondent's Exhibit 8 was not offered into evidence.
9. Respondent's Exhibit 9 is the resume of Michele Cadotte.
10. Respondent's Exhibit 10 is the resume of Jay Barclay.
11. Respondent's Exhibit 11 was not offered into evidence.
12. Respondent's Exhibit 12 is the resume of Laura Miller.
13. Respondent's Exhibit 13 was not offered into evidence.
14. Respondent's Exhibit 14 was not offered into evidence.

15. Respondent's Exhibit 15 was not offered into evidence.
16. Respondent's Exhibit 16 is the resume of Jessica Harrand.
17. Respondent's Exhibit 17 is an Individualized Education Program (IEP) for Student with an offer of a Free and Appropriate Public Education (FAPE) for December 3, 2015.
18. Respondent's Exhibit 18 is an IEP for Student with an offer of FAPE for March 23, 2016.
19. Respondent's Exhibit 19 was not offered into evidence.
20. Respondent's Exhibit 20 is a prior written notice pertaining to Student, signed by Chris Parker, and dated December 17, 2015.
21. Respondent's Exhibit 21 is a letter from Chris Parker to Petitioner dated January 28, 2016.
22. Respondent's Exhibit 22 is a letter from Chris Parker to Petitioner and a prior written notice, both dated March 11, 2016.
23. Respondent's Exhibit 23 is an audio recording of the March 10, 2016 staffing/IEP team meeting.²
24. Respondent's Exhibit 24 is an audio recording of the March 23, 2016 staffing/IEP team meeting.³
25. Respondent's Exhibit 25 is a MATRIX showing Student's daily schedule and dated October 14, 2015.
26. Respondent's Exhibit 26 is documentation of a team meeting pertaining to Student, dated November 5, 2015.
27. Respondent's Exhibit 27 is an updated MATRIX showing Student's daily schedule and dated December 11, 2015.

² At the hearing, Respondent offered Respondent's Exhibit 23 into evidence and Petitioner objected to the admission of this audio recording based on an alleged violation of Michigan's eavesdropping statute (MCL 750.539(e)). Petitioner's objection was taken under advisement and is hereby overruled.

³ At the hearing, Respondent offered Respondent's Exhibit 24 into evidence and Petitioner objected to the admission of this audio recording based on an alleged violation of Michigan's eavesdropping statute (MCL 750.539(e)). Petitioner's objection was taken under advisement and is hereby overruled.

28. Respondent's Exhibit 28 are notes from a data review meeting pertaining to Student and dated November 3, 2015.
29. Respondent's Exhibit 29 are notes from a team meeting for Student and dated November 19, 2015.
30. Respondent's Exhibit 30 are notes from an IEP team meeting dated December 3, 2015.
31. Respondent's Exhibit 31 are notes of concerns presented by Student's family at a December 11, 2015 meeting.
32. Respondent's Exhibit 32 is a Behavior Intervention Plan, Level Three for Student originally created on January 14, 2014 and updated on May 12, 2014; September 8, 2014; March 3, 2015; May 26, 2015; and September 1, 2015.
33. Respondent's Exhibit 33 is a Behavior Intervention Plan, Level Three for Student originally created on January 14, 2014 and updated on May 12, 2014; September 8, 2014; March 3, 2015; May 26, 2015; September 1, 2015; and October 14, 2015.
34. Respondent's Exhibit 34 is a Behavior Intervention Plan, Level Three for Student originally created on January 14, 2014 and updated on May 12, 2014; September 8, 2014; March 3, 2015; May 26, 2015; September 1, 2015; and November 19, 2015.
35. Respondent's Exhibit 35 is a Behavior Intervention Plan, Level Three for Student originally created on January 14, 2014 and updated on May 12, 2014; September 8, 2014; March 3, 2015; May 26, 2015; September 1, 2015; November 19, 2015; and December 11, 2015.
36. Respondent's Exhibit 36 contains daily behavior check sheets for Student from September 8, 2015 through April 6, 2016.
37. Respondent's Exhibit 37 is the Medical Care Plan for Student dated November 30, 2015.
38. Respondent's Exhibit 38 is a copy of Student's Medical Care Plan, dated December 16, 2015. (This exhibit contains the same documentation contained in Petitioner's Exhibit P4).

39. Respondent's Exhibit 39 is a plan of care for school for Student created by DeVos Children's Hospital, dated November 13, 2015. (This exhibit contains the same documentation contained in Petitioner's Exhibit P4).
40. Respondent's Exhibit 40 are copies of Student's blood sugar logs created by staff while Student was at school. (This exhibit is also the same exhibit proposed as Petitioner's Exhibit P3).
41. Respondent's Exhibit 41 is a copy of Actions for School Personnel created for school personnel pertaining to Student's medical care.
42. Respondent's Exhibit 42 is a Powerschool Discipline Alert Report showing explanations of office discipline referrals for Student from April 23, 2015 through March 18, 2016.
43. Respondent's Exhibit 43 are office discipline referral forms pertaining to Student ranging from September 10, 2015 through April 6, 2016.
44. Respondent's Exhibit 44 is a letter from Kurt Neveau to Petitioner dated September 25, 2015.
45. Respondent's Exhibit 45 is a letter from Chris Parker to Petitioner dated February 18, 2016.
46. Respondent's Exhibit 46 is an invitation to attend a meeting form returned to Respondent by Petitioner with notes written by Petitioner, signed by Petitioner, and dated February 13, 2016. (This exhibit is the same exhibit proposed as Petitioner's Exhibit P9).
47. Respondent's Exhibit 47 was not offered into evidence as the same document was admitted as Petitioner's Exhibit P10.
48. Respondent's Exhibit 48 are communication log entries between the school and Student's home. (These documents contain the documents contained in Petitioner's proposed exhibit P17).
49. Respondent's Exhibit 49 was not offered into evidence.
50. Respondent's Exhibit 50 is a letter from Chris Parker to Petitioner, dated March 14, 2016. (This Exhibit is also the same exhibit proposed as Petitioner's Exhibit P8).

51. Respondent's Exhibit 51 is a letter from Chris Parker to Petitioner, dated March 17, 2016.
52. Respondent's Exhibit 52 contains a letter from Chris Parker to Petitioner dated March 21, 2016, a handwritten note from Petitioner dated March 20, 2016, and a handwritten note from Petitioner dated March 22, 2016. (This exhibit also contains what was proposed as Petitioner's Exhibits P12 and P13).
53. Respondent's Exhibit 53 is a letter from Chris Parker to Petitioner, dated March 23, 2016 and including enclosures.
54. Respondent's Exhibit 54 is a letter from Chris Parker to Petitioner, dated March 24, 2016.
55. Respondent's Exhibit 55 is an email chain between Alexia Post, Laura Miller, and Michele Cadotte.
56. Respondent's Exhibit 56 is an email chain between Kurt Neveau, Monique Mansfield, Alexia Post, Kaitlyn Lampen, Laura Miller, and Michele Cadotte.
57. Respondent's Exhibit 57 was not offered into evidence.
58. Respondent's Exhibit 58 was not offered into evidence.
59. Respondent's Exhibit 59 is email correspondence between Kurt Neveau, Laura Miller, and Michele Cadotte.
60. Respondent's Exhibit 60 was not offered into evidence.
61. Respondent's Exhibit 61 contains email correspondence between Michele Cadotte, Kurt Neveau, Alexia Post, and Laura Miller and corresponding attachments.
62. Respondent's Exhibit 62 is an email from Laura Miller to Michele Cadotte.
63. Respondent's Exhibit 63 is an email chain between Laura Miller, Michele Cadotte, Monique Mansfield, Kaitlyn Lampen, Chris Parker, Kurt Neveau, and Alexia Post.
64. Respondent's Exhibit 64 is an email from Michele Cadotte to Kurt Neveau and corresponding attachments.

65. Respondent's Exhibit 65 is an email from Laura Miller to Kim Urbanski, Monique Mansfield, Kaitlyn Lampen, Kurt Neveau, Alexia Post, Chris Parker, Judi Miller, Michele Cadotte, and Kendelle Myers, dated December 11, 2015.
66. Respondent's Exhibit 66 is an email from Judi Miller to Chris Parker, Alexia Post, Kurt Neveau, and Laura Miller, dated January 14, 2016.
67. Respondent's Exhibit 67 is an email chain between Chris Parker, Judi Miller, Laura Miller, Michele Cadotte, and Kim Urbanski.
68. Respondent's Exhibit 68 was not offered into evidence.
69. Respondent's Exhibit 69 is an email from Chris Parker to Jessica Harrand and Kim Urbanski, dated April 1, 2016.
70. Respondent's Exhibit 70 was not offered into evidence.
71. Respondent's Exhibit 71 was not offered into evidence.
72. Respondent's Exhibit 72 was not offered into evidence.
73. Respondent's Exhibit 73 are service logs from Laura Miller regarding Student from September 8, 2015 through March 18, 2016.
74. Respondent's Exhibit 74 are service logs from Judi Miller pertaining to Student.
75. Respondent's Exhibit 75 was not offered into evidence.
76. Respondent's Exhibit 76 are service logs from Michele Cadotte pertaining to Student.
77. Respondent's Exhibit 77 contains Student's report cards for the 2015-2016 school year. (This exhibit is also the same exhibit proposed as Petitioner's Exhibit 1).
78. Respondent's Exhibit 78 contains progress reports for Student for the 2015-2016 school year.
79. Respondent's Exhibit 79 was not offered into evidence.
80. Respondent's Exhibit 80 is email correspondence pertaining to Willbarger Protocol.

81. Respondent's Exhibit 81 was not offered into evidence.
82. Respondent's Exhibit 82 is a Review of Existing Evaluation Data (REED), dated November 19, 2015.
83. Respondent's Exhibit 83 is a REED, dated April 8, 2016.
84. Respondent's Exhibit 84 are graphs of behavioral data regarding Student.
85. Respondent's Exhibit 85 is a school-home communication log.
86. Respondent's Exhibit 86 contains email communication between Alexia Post and Lorie Minidis.
87. Respondent's Exhibit 87 is an email from Laura Miller to Jurt Neveau, Alexia Post, Judi Miller, Michele Cadotte, and Rachel Walmer.
88. Respondent's Exhibit 88 is an email chain between Laura Miller, Kim Urbanski, Michele Cadotte, Judi Miller, Chris Parker, Kurt Neveau, Jessica Harrand, and Alexia Post.
89. Respondent's Exhibit 89 are School Psychology Tools Notes from Michele Cadotte.
90. Respondent's Exhibit 90 are notes of Chris Parker, Superintendent.
91. Respondent's Exhibit 91 are notes created by Kurt Neveau.
92. Respondent's Exhibit 92 contains information related to New Campus.
93. Respondent's Exhibit 93 is an email chain between Michele Cadotte, Deb Nelson, and Scott Schuh.
94. Respondent's Exhibit 94 contains information related to trainings for staff at Respondent District.

The following individuals testified in this matter:

1. Petitioner: Student's father
2. [REDACTED]: Student's grandmother
3. [REDACTED] Student's grandfather

4. Christopher Parker: Superintendent, Northport Public School
5. Alexia Post: General Education Teacher, Northport Public School
6. Kurt Neveau: Special Education Teacher, Northport Public School
7. Judith Miller: Behavioral Specialist, Traverse Bay Area Intermediate School District (TBAISD)
8. Michele Cadotte: Autism Spectrum Disorder Teacher Consultant, TBAISD
9. Jay Barclay: Registered Nurse, TBAISD
10. Randy Hoeneise: Student's Great-Uncle
11. Jessica Harrand: Principal, New Campus, TBAISD
12. Laura Miller: School Social Worker, TBAISD
13. Lorie Minidis: Student's Behavioral Health Therapist

At the conclusion of the hearing, Ms. Eaddy made a request to permit the filing of post-hearing briefs. The request was denied due to the fact that Petitioner appeared *in proper*. The record was closed at the conclusion of the hearing.

ISSUES

1. Is Student eligible for special education and related services under the wrong eligibility category for the 2015-2016 school year, and if so, does the category of eligibility operate to deny Student a Free and Appropriate Public Education (FAPE)?
2. Did the Respondent District properly implement Student's medical care plan?
3. Did the Respondent District properly implement Student's behavior plans for the 2015-2016 school year and did the alleged failure to implement those plans result in Student being denied a FAPE?
4. Was Petitioner denied the opportunity to meaningfully participate in the IEP process and was the input he provided appropriately considered by the Respondent District?

5. Is the placement for Student called for in the March 23, 2016 IEP appropriate in that does that placement operate to provide Student a FAPE in the least restrictive environment?

APPLICABLE LAW

The petitioner-parent, as the party challenging the District's determination or implementation of special education and related services, has the burden of proof by a preponderance of the evidence for all claims raised in this matter. *Schaffer v Weast*, 546 US 49; 126 S Ct 528; 163 L Ed 2d 387 (2005); *Doe v Defendant I*, 898 F2d 1186 (CA 6, 1990).

The Code of Federal Regulations, 34 CFR 300.39 defines "special education" as follows:

Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including— (i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and (ii) Instruction in physical education. 34 CFR 300.39(a)(1).

Michigan Administrative Rule for Special Education, R 340.1701c(c) defines "special education" as follows:

"Special education" means specially designed instruction, at no cost to the parents, to meet the unique educational needs of the student with a disability and to develop the student's maximum potential. Special education includes instructional services defined in R 340.1701b (a) and related services.

The Federal Regulations define "specially designed instruction" as follows:

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

- (i) To address the unique needs of the child that result from the child's disability; and
- (ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of

the public agency that apply to all children. 34 CFR 300.39(b)(3).

Students protected by the provisions of IDEA are entitled to be appropriately identified, evaluated, placed, and provided a free appropriate public education (FAPE) that includes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 20 USC 1400(d); 34 CFR 300.1.

Under 20 USC 1415(f)(3)(E), it may be found that FAPE has been denied to a disabled student based on either substantive or procedural violations of the Individuals with Disabilities Education Act (IDEA or Act). To find a denial of FAPE based on procedural violations of the Act, it must also be found that the procedural violation impeded the student's right to FAPE, significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of FAPE to their child, or caused a deprivation of educational benefits.

In *Board of Education of Hendrick Hudson Central School District v Rowley*, 458 US 176, 102 S Ct 3034, 73 L Ed 2d 690 (1982), the U.S. Supreme Court articulated the two bases for assessing the provision of FAPE. The first was whether the school district had complied with the procedural requirements of the Act, and the second was whether the student's Individualized Educational Program (IEP) was "reasonably calculated" to enable the student to receive educational benefits. *Id.*, at 206-07.

In assessing whether a student's IEP was reasonably calculated to enable the student to receive educational benefits under *Rowley's* second basis above, our Sixth Circuit Court of Appeals noted that nothing in *Rowley* precludes the setting of a higher standard than the provision of "some" or "any" educational benefit, and held that the IDEA requires an IEP to confer a "meaningful educational benefit gauged in relation to the potential of the child at issue." *Deal v Hamilton County Bd of Ed*, 392 F3d 840, 862 (CA 6, 2004).

Nevertheless, the IDEA requirement that school districts provide disabled children with a free appropriate public education does not require that a school either maximize a student's potential or provide the best possible education at public expense. *Doe v Tullahoma City Schools*, 9 F3d 455 (CA 6, 1993); *Fort Zumwalt Sch Dist v Clynes*, 119 F3d 607, 612 (CA 8, 1997), *cert den*, 523 US 1137 (1998).

The primary responsibility for formulating the education to be accorded a disabled child, and for choosing the educational method most suitable to the child's needs, was left by IDEA to state and local educational agencies in cooperation with the parents or guardians of the child. Reviewing courts may not substitute their own notions of sound

educational policy for those of the school authorities which they review. *McLaughlin v. Holt Pub Schs*, 320 F3d 663 (CA 6, 2003).

The Michigan Administrative Rule for Special Education (MARSE), Rule 340.1715 shows the criteria used to assess a student's eligibility for special education under the Autism Spectrum Disorder. Rule 340.1715 states as follows:

R 340.1715 Autism spectrum disorder defined; determination.

Rule 15.

- (1) Autism spectrum disorder is considered a lifelong developmental disability that adversely affects a student's educational performance in 1 or more of the following performance areas:
 - (a) Academic.
 - (b) Behavioral.
 - (c) Social.

Autism spectrum disorder is typically manifested before 36 months of age. A child who first manifests the characteristics after age 3 may also meet criteria. Autism spectrum disorder is characterized by qualitative impairments in reciprocal social interactions, qualitative impairments in communication, and restricted range of interests/repetitive behavior.

- (2) Determination for eligibility shall include all of the following:
 - (a) Qualitative impairments in reciprocal social interactions including at least 2 of the following areas:
 - (i) Marked impairment in the use of multiple nonverbal behaviors such as eye-to-eye gaze, facial expression, body postures, and gestures to regulate social interaction.
 - (ii) Failure to develop peer relationships appropriate to developmental level.

- (iii) Marked impairment in spontaneous seeking to share enjoyment, interests, or achievements with other people, for example, by a lack of showing, bringing, or pointing out objects of interest.
 - (iv) Marked impairment in the areas of social or emotional reciprocity.
 - (b) Qualitative impairments in communication including at least 1 of the following:
 - (i) Delay in, or total lack of, the development of spoken language not accompanied by an attempt to compensate through alternative modes of communication such as gesture or mime.
 - (ii) Marked impairment in pragmatics or in the ability to initiate, sustain, or engage in reciprocal conversation with others.
 - (iii) Stereotyped and repetitive use of language or idiosyncratic language.
 - (iv) Lack of varied, spontaneous make believe play or social imitative play appropriate to developmental level.
 - (c) Restricted, repetitive, and stereotyped behaviors including at least 1 of the following:
 - (i) Encompassing preoccupation with 1 or more stereotyped and restricted patterns of interest that is abnormal either in intensity or focus.
 - (ii) Apparently inflexible adherence to specific, nonfunctional routines or rituals.
 - (iii) Stereotyped and repetitive motor mannerisms, for example, hand or finger flapping or twisting, or complex whole body movements.
 - (iv) Persistent preoccupation with parts of objects.
- (3) Determination may include unusual or inconsistent response to sensory stimuli, in combination with subdivisions (a), (b), and (c) of sub rule 2 of this rule.

- (4) While autism spectrum disorder may exist concurrently with other diagnoses or areas of disability, to be eligible under this rule, there shall not be a primary diagnosis of schizophrenia or emotional impairment.
- (5) A determination of impairment shall be based upon a full and individual evaluation by a multidisciplinary evaluation team including, at a minimum, a psychologist or psychiatrist, an authorized provider of speech and language under R 340.1745(d), and a school social worker.

Additionally, the Federal Regulations state:

§ 300.8 Child with a disability.

- (c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:
 - (1) (i) Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.
 - (ii) Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in paragraph (c)(4) of this section.
 - (iii) A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in paragraph (c)(1)(i) of this section are satisfied.

Additionally, IDEA provides guidance as to the factors to be considered when drafting an IEP. In relation to behavioral issues, 20 USC 1414(d)(3)(B)(i) states as follows:

(B) CONSIDERATION OF SPECIAL FACTORS

The IEP Team shall—

- (i) in the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior;

Although IDEA lists no formal requirement that a behavioral plan be drafted and/or implemented for a student with a disability, it has been held that a failure to do such may result in a substantive denial of FAPE for a student if the student's behavior interferes with his or her ability to benefit from their education. *R.K. v. New York City Department of Education*, 56 IDELR 212 (E.D.N.Y., 2011).

A school district is required to ensure that a disabled student is educated in the least restrictive environment (LRE); to the maximum extent appropriate with children who are non-disabled. Removal of a disabled student from the general education environment is to occur only if the nature or severity of the student's disability is such that education in the general education classroom with the use of supplementary aids and services cannot be achieved satisfactorily. 20 USC 1412(a)(5)(A); 34 CFR 300.114.

20 USC 1412(a)(5)(A) presumes that the first placement option considered for each child with a disability is the regular classroom in the school the child would attend if not disabled, with appropriate supplementary aids and services to facilitate such placement. Thus, before a child with a disability can be placed outside the regular educational environment, the full range of supplementary aids and services that could be provided to facilitate the child's placement must be considered. Following that consideration, if a determination is made that a particular child with a disability cannot be educated satisfactorily in the regular educational environment, even with the provision of the appropriate supplementary aids and services, that child could be placed in a setting other than the regular classroom. Federal Register, Vol. 71, No. 156, at p. 46588.

The Sixth Circuit has found that the Act's requirement that mainstreaming be provided to the maximum extent appropriate indicates a very strong congressional preference for the placement of disabled students in the general education environment. *Roncker v. Walter*, 700 F2d 1058, 1063 (CA 6, 1983). The court also held, however, that the Act does not require mainstreaming in every case, and cited three situations in which education in a segregated special education setting may be necessary: (1) when a

disabled student would not benefit from mainstreaming, (2) when any marginal benefits derived from mainstreaming are outweighed by benefits gained from services which cannot feasibly be provided in the general education environment, or (3) when the student is too disruptive to the education of the other general education students. *Id.*

It is a substantive denial of FAPE for an IEP to provide for education of a student in a more restrictive environment than that in which it could otherwise be achieved satisfactorily with any needed supplementary aids and services. In saying this, though, it must also be emphasized that the Act expressly acknowledges that the nature or severity of a student's disability may be such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily, and Congress has thus recognized that despite the LRE preference, general education classrooms simply are not a suitable setting for the education of many disabled students. *Rowley*, 458 US at 181, n 4.

In determining whether the District provided a free appropriate public education in the least restrictive environment for the student in this case, it must first be asked whether the District has complied with the procedures set forth in the IDEA in developing the IEP, and second, whether the IEP developed through those procedures was reasonably calculated to enable the student to receive a meaningful educational benefit gauged in relation to his potential. *Rowley*, 458 US at 206-07; *Deal*, 392 F3d at 862.

FINDINGS OF FACT

Based on the entire record in this matter, including the testimony and admitted exhibits, the following findings of fact are established:

1. Student was born on [REDACTED] and is currently 7 years old. (Resp. Exhibit 17).
2. Student was in the first grade at Northport Public School during the 2015-2016 school year.
3. Student is eligible for special education and related services as a student with Autism Spectrum Disorder (ASD). (Pet. Exhibit P16).
4. Student was withdrawn from school at Respondent District in April of 2016.
5. Alexia Post teaches first grade at Northport Public School. She has taught at Northport for 5 years and has taught first grade for 2 years. Ms. Post is currently certified to teach grades K-5 through the State of Michigan. Ms. Post has a BA in general education, a MA with an emphasis in urban education/multicultural

studies, and has an endorsement in Autism Spectrum Disorder (ASD). (Resp. Exhibit 4, Tr. Vol. II, pages 171-182).

6. Ms. Post received training in nonviolent crisis intervention through the Crisis Prevention Institute (CPI) in the fall of 2015 and in January of 2016. Ms. Post also attended diabetes training at Munson Medical Center in August of 2015. (Resp. Exhibit 94, Tr. Vol. II, pages 184-188).
7. Ms. Post taught first grade in a general education classroom during the 2015-2016 school year. Student was in Ms. Post's first grade classroom during the 2015-2016 school year. (Tr. Vol. II, pages 174-177).
8. During the 2015-2016 school year, Ms. Post communicated on a consistent basis through a daily journal, blood sugar logs, daily check sheets, and office discipline referrals. (Resp. Exhibit 17).
9. Chris Parker is the Superintendent of Northport Public School and has been employed as such since 2014. He additionally serves as the K-12 principal and the transportation director. Mr. Parker has a BS in psychology, an MSW in social work, and a M.Ed. in school leadership. From 2003 through 2006, Mr. Parker worked as a school social worker for Traverse Bay Intermediate School District (TBAISD); from 2006 through 2009, he worked as a behavior consultant for TBAISD; from 2009 through 2014, he worked as the principal for Cherry Knoll Elementary School. (Resp. Exhibit 1).
10. Kari Carpenter was assigned to Student as his one on one aide during the 2015-2016 school year. Ms. Carpenter is a certified teacher and has BS in elementary education and a MS in mathematics, K-6. During the 2015-2016 school year, Ms. Carpenter worked for Respondent as a paraprofessional assigned to Student. (Tr. Vol. II, pages 213-215, Resp. Exhibit 2).
11. Kurt Neveau is a special education teacher at Northport Public School and has been employed as such since November 2014. Mr. Neveau has a BA in secondary education and a MA in special education. Mr. Neveau has been working with Student since November of 2014. For the 2015-2016 school year, Mr. Neveau worked with Student as his case manager and his special education teacher. Mr. Neveau has been trained through the Crisis Prevention Institute (CPI). He also attended intensive ASD training through the Traverse Bay Intermediate School District (TBAISD) during the 2015-2016 school year (Tr. Vol. II, pages 322-329, 360, Resp. Exhibits 3, 94).

12. Judith Miller is a behavior specialist consultant employed by the TBAISD, she has worked in that capacity since 2000. Ms. Miller was contacted by Respondent in November of 2015 to provide assistance and consultation services for Student. From November of 2015 through March of 2016, Ms. Miller worked with Respondent and Student to assist in addressing Student's behavioral difficulties. (Resp. Exhibits 6, 74, and 29, Tr. Vol. III, pages 447-459).
13. On November 25, 2015, Ms. Miller prepared observations/programming suggestions relating to Student. She stated that she observed the following intensive supports in place to support Student in the general education environment: visual supports, routines, procedures, breaks, frequent blood/sugar checks, sensory supports, alternative activities employed, cognitive shift techniques, continual staff support, and environmental support. (Pet. Exhibit P7).
14. Lorie Minidis is a behavioral health therapist who has been working with Student since May 5, 2015. Ms. Minidis is a licensed professional counselor and has a MA in clinical mental health. (Tr. Vol. IV, pages 709-710, Pet. Exhibit P5).
15. Ms. Minidis testified that Student has ASD. (Tr. Vol. IV, page 731).
16. Ms. Minidis testified that she had several phone conversations and multiple email correspondence with individuals from Respondent District, including Alexia Post and Kurt Neveau. (Tr. Vol. IV, pages 727-730).
17. Ms. Minidis also testified that when she spoke with Ms. Post, that Ms. Post seemed genuinely interested in the information she had to share in relation to Student and that Ms. Post was receptive to receiving that information. (Tr. Vol. IV, pages 740-742).
18. On February 10, 2016, Ms. Minidis drafted a letter wherein she expressed her concerns over the distance Student would have to travel if a decision was made to send Student to New Campus. She stated in this letter that she felt that the distance of travel could increase behaviors arising from Student's social and separation anxieties. (Pet. Exhibit P5).
19. On April 21, 2016, Eric R. Harvey, Ph.D. conducted an evaluation of Student as part of the process to determine Student's eligibility for services from Northern Lakes Community Mental Health as an individual with ASD. Dr. Harvey stated in his summary and recommendations that Student is an individual who presents with some mild symptoms associated with Autism. He further stated that under the previous diagnostic manual he probably would have given Student a pervasive developmental disorder diagnosis. He further stated that Student's family indicates he has previously been diagnosed with Asperger's disorder but

that they were not really reporting enough symptoms to support that diagnosis at this time. (Pet Exhibit P23).

20. The document created by Dr. Harvey was not shared with anyone from Respondent District prior to the commencement of the hearing.
21. On February 8, 2016, Dr. Stephanie Galdes submitted a letter pertaining to the possibility of Student attending New Campus. She stated that she was concerned about the duration of the bus ride in relation to Student's diabetes; specifically his hypoglycemia. (Pet. Exhibit P6).
22. Student has juvenile type 1 diabetes. Student requires insulin shots as part of the management of his diabetes. (Tr. Vol. I, pages 51-53).
23. An individualized plan of care for Student's diabetes while at school was created by the DeVos Children's Hospital. The plan calls for Student to have a targeted blood sugar range of 90 to 180 before meals. The plan also requires that trained personnel perform blood sugar and ketone tests and to treat as told if blood sugars are below 70 and between 70 and 80 with symptoms. Ketones are to be tested if blood sugar is over 240 mg/dl or if Student is not feeling well. Parent is to be called if ketones are present. Student is to have his blood sugar tested before lunch, as needed for signs/symptoms of low or high blood sugar, or at other times as instructed by Student's parent or guardian. In relation to diet, the plan states that Student is on a carbohydrate counting diet and that Student needs assistance with the prescribed meal plan, Student is not to be given insulin for carbohydrates that are to be taken to treat a low blood sugar or for an exercise snack, and that Student is to be given an exercise snack before physical education as told by the parent or guardian. The plan additionally states that insulin is to be given to Student immediately before lunch via injection by a trained adult. The plan contains a sliding scale for the amount of insulin to be given dependent upon Student's blood sugar readings. The plan additionally states that 1.0 mg of glucagon is to be given to Student via subcutaneous injection if Student has severely low blood sugar. The plan was signed on November 13, 2015. (Resp. Exhibit 39).
24. A Medical Care Plan was created for Student by Respondent on November 30, 2015. The plan was created after being provided the individualized plan of care for Student's diabetes while at school was created by the DeVos Children's Hospital. The Medical Care Plan states that Student is to receive an insulin administration before lunch, he is on a carb counting diet, he is to have low blood sugar checks when Student states he is feeling "shaky" or if symptoms relating to low blood sugar are observed by staff, Student is to receive low blood sugar corrections (15 carbs/15 minutes), fluid intake is to be monitored,

and staff is to check for ketones during high blood sugar events. The plan lists as symptoms of high blood sugar: thirsty/dry mouth, more urination, tired, and blurred vision. The plan lists as symptoms of low blood sugar: shaking or shaky feeling, sweating, weakness, and defiant/moody. The plan lists Student's target blood sugar as 90 to 180 mg/dl before meal (lunch time check). The plan also lists action numbers for Student's blood sugar. If Student's blood sugar is above 181, the plan states the sliding scale is to be used to determine the correct dose of insulin (the sliding scale is additionally listed). The plan also states that if Student's blood sugar is below 70 mg/dl, between 70-80 mg/dl, or if Student says he feels "shaky" and has blood sugar below 80 mg/dl, Student's blood sugar is to be corrected with 15 grams of fast acting carbohydrate (such as ½ cup of juice, 3 to 4 glucose tabs, or 3-4 life saver candies. Staff is then to wait 15 minutes and retest. The plan also lists Student's breakfast and lunch schedule and states that Student brings his own snacks from home which are appropriate for his consumption. The plan also states that just before lunch Student's blood sugar will be checked and an injection of insulin will be given, the amount of which will be determined by the number of carbs in Student's lunch and that adjustments to the amount of insulin will be made in accordance with the sliding scale if Student's blood sugar is above 180 mg/dl. The plan additionally gives detailed instructions for how to check Student's blood sugar and how to administer Student's insulin. Furthermore, the plan gives instructions for how to administer the glucagon emergency kit should Student's blood sugar be severely low and if Student is unconscious. (Resp. Exhibit 37).

25. The November 30, 2015 Medical Care Plan also confirms that the following individuals attended training through the diabetes educator at Munson Medical Center: Chris Parker, Alexia Post, Keri Carpenter, Kurt Neveau, Dan Stowe, and Peter Morio. (Resp. Exhibit 37).
26. On December 16, 2015, an additional Medical Care Plan was created for Student by Respondent District. This plan contains the same information as the November 30, 2015 plan, except that the insulin ratios contained in the sliding scale have been adjusted. (Resp. Exhibit 38).
27. Daily log sheets pertaining to Student's blood sugar, insulin administrations, carb grams, and food doses administered to Student in the course of managing his diabetes were created by Respondent. Alexia Post and Keri Carpenter created said logs. (Resp. Exhibit 40, Tr. Vol. II, pages 189-191).
28. Alexia Post and Keri Carpenter were generally responsible for testing Student's blood sugar and the management of his diabetes. Testing and management were done in a room in the school office. (Tr. Vol. II, pages 196-200).

29. Ms. Post testified that Student's blood sugar would be checked before lunch, and that it would additionally be checked throughout the day if Student said he was shaky, if he wasn't feeling well, or if his behavior indicated that his blood sugar may be off. She testified that if Student's blood sugar was high, they would test for ketones. She testified that if Student's blood sugar was low, he would be administered 15 carbs for 15 minutes and would be subsequently rechecked. (Tr. Vol. II, pages 191-200).
30. Ms. Post testified that she made a mistake one day in relation to Student's blood sugar on January 11, 2016. She testified that prior to lunch she checked Student's blood sugar and did not double check to see if the reading was low. The reading was not low but she thought it was, therefore she administered the 15 carbs/15 minutes to Student and realized her mistake. Ms. Post testified that she then contacted Student's grandfather and explained the situation and requested direction. (Tr. Vol. II, pages 192-195, Resp. Exhibit 40, page 13).
31. An IEP was created for Student on December 16, 2014. In the present level of academic achievement and functional performance (PLAAFP), it is stated that Student had 19 office discipline referrals from September through December of 2014. Dan Stowe (principal at the time) stated that many disciplinary incidents appear to be related to blood sugar levels and occurred with more frequency in the mornings. He also stated the referrals were more frequent during the first two weeks of schools and had decreased significantly as Student became acclimated to his school setting. The PLAAFP also states that Student initially needed 100% aide support at the beginning of the year, but that need had reduced to 80% at the time the document was created. The PLAAFP states that Student has juvenile diabetes and that there is a medical care plan in place. It states that Student continues to need support to transition, complete non-preferred tasks and handle peer conflict in a safe and consistent manner. It further states that due to Student's behaviors which concern safety; running from staff, physical and verbal aggression towards staff and peers, that Student has a behavior plan and aide support. The PLAAFP also states that Student's behavior and manifestations of ASD seriously affect his classroom functioning and that his negative behavior causes him to miss classroom instructional time while he is in the office and that his social interaction deficits as a result of his ASD have an adverse effect on his develop and build peer relationships, handle disappointment in a safe manner and sustain attention to less preferred tasks. (Pet. Exhibit P16).
32. The December 16, 2014 IEP has a goal for CES-Personal Management Elementary-Respect for Self and Others. The annual goal states that "By December 2015, (Student) will demonstrate positive social skills in the school setting as demonstrated be decreased verbal and physical aggression as

measured by earning 90% on behavior check sheet each marking period and a decrease in Office Discipline Referrals (ODRS) for serious aggression.” The first short term objective states that “(Student) will use safe hands, feet while in the school community; 90% of the time on daily checksheet for less intense instances and 0 serious aggression as measured in Office Discipline Referrals.” The second short term objective states that “(Student) will use kind words with peers, with the support of visual prompts and modeling.” (Pet. Exhibit P16).

33. The December 16, 2014 IEP states that Student will be inside the general education classroom 80% or more of the school day. The following supplementary aides and services are set to be in place from December 16, 2014 through December 15, 2015: visual supports throughout the day; classroom instructional aide per matrix to support behavioral needs; trained medical staff; ASD consultant; sensory and movement strategies; positive behavior plan; medical care plan; and occupational therapy on a consultative basis, 9-15 sessions per school year for 15-30 minutes per session. The IEP also calls for Student to receive the following special education programs and services from December 16, 2014 through December 15, 2015: Social work services for 25-30 minutes, 3-4 sessions per month; speech and language services for 25-30 minutes, 3-4 sessions per month; and elementary level resource room program for 5-60 minutes, 5 sessions per week. (Pet. Exhibit P16).
34. The December 16, 2014 IEP also states that Student requires support during his bus transportation in that he requires a bus aide trained in monitoring his diabetes symptoms per the medical care plan. The IEP further states that at the time, an arrangement has been made with Student’s parents to transport Student with compensation being provided for mileage. (Pet. Exhibit P16).
35. An IEP was created for Student on December 3, 2015. In attendance at the IEP meeting were Petitioner; [REDACTED] (Student’s grandparents); Chris Parker, Superintendent; Kurt Neveau, Special Education Teacher; Alexia Post, General Education Teacher; Laura Miller; Monique Mansfield; Kaitlyn Lampen; Kim Urbanski; and Michelle Cadotte. In the PLAAFP, it states that Student has struggled to follow classroom routines and demonstrate safety with consistency. It further states that Student has a one-on-one aide with him to support behavior and medical needs. Based on the behavior tracking sheets from September 8, 2015 through October 30, 2015 the following instances of behavior were noted: 135 incidents of hitting/unsafe hands and feet, 160 incidents of inappropriate/unkind words in the classroom setting, and 607 incidents of not following directions within the classroom setting. The PLAAFP also states that Student had 34 low blood sugar occurrences from September 8, 2015 through December 2, 2015 and 31 occurrences of high blood

sugar during the same period. From September to December 2, 2015 Student had 38 discipline referrals for hitting, kicking, threats to peers and staff, running from staff, throwing materials, and climbing on furniture. The PLAAFP also states that Student's current social emotional skills are affecting his peer relationships and use of social language. It also states that Student's behavior and manifestations of ASD seriously affect his classroom functioning and that his resulting behavior causes him to miss classroom instructional time. (Resp. Exhibit 17).

36. The December 3, 2015 IEP has three (3) annual goals for the instructional area of "Common Core: ELA-Speaking and Listening Standards K-5 Grade 1-Comprehension and Collaboration". The first annual goal states "By December 2016, (Student) will demonstrate positive social skills in the school setting as demonstrated by decreased verbal and physical aggression as measured by a decrease in Office Discipline Referrals (ODRS) for serious aggression." There are two short term objectives associated with this annual goal which state as follows: 1. "(Student) will use safe hands, feet and materials while in the school community by achieving 0 serious aggression as measured in Office Discipline Referrals and 90% on a daily check sheet for less serious aggression."; 2. "(Student) will use kind words with peers, with the support of visual prompts and modeling." The second annual goal states "By December 2016, (Student) will improve his ability to identify emotional states in himself/others and he will learn to explain why he/other person is feeling a certain way with 80% accuracy using fading visual and verbal support." There are two short-term objectives associated with this annual goal which state as follows: 1. "(Student) will increase emotional vocabulary as demonstrated by labeling emotions, for red, green, blue, and yellow zone on self and others with 80% accuracy with visual support and scaffolding"; 2. "(Student will improve his ability to explain why someone is feeling a certain way by increasing his understanding of body language as demonstrated by identifying facial expressions in pictures and model on self with 80% accuracy with faded visual and verbal support." The third annual goal states "By December 2016, (Student) will learn school appropriate responses to different emotional states and how his behavior impacts people who are near him in at least 3/5 opportunities using fading verbal and visual prompts." There are two short term objectives associated with this annual goal which state as follows: 1. "(Student) will learn and participate in school appropriate responses to different emotional states as demonstrated by choosing an option from zone break cards in 3/5 opportunities with visual and verbal support."; 2. "(Student) will begin to understand how his behavior impacts people near him by reflecting how his behavior in a given circumstance impacted the thoughts and feelings of those near him in 3/5 occasions over three consecutive sessions with visual prompt support and scaffolding." (Resp. Exhibit 17).

37. The December 3, 2015 IEP states that Student will be inside the general education classroom 80% or more during the school day. The following supplementary aides and services are set to be in place from December 10, 2015 through December 2, 2016: visual supports throughout the day; classroom instructional aide per matrix to support behavioral needs; trained medical staff; positive behavior plan; medical care plan; matrix for two sessions per school year to determine Student's level of independence; schedule/work plan written out and broken into small parts; behavioral specialist consultation services for 10-20 sessions preschool year for 20-30 minutes per session; and occupational therapy on a consultative basis, 9-15 sessions per school year for 15-30 minutes per session. The IEP also calls for the following special education programs and services from December 10, 2015 through December 2, 2016: Social work services for 3-4 sessions per month for 25-30 minutes per session; Speech and language services for 25-30 minutes per session for 3-4 sessions per month; and elementary level resource room program for 90-180 minutes per session for 4-5 session per week. (Resp. Exhibit 17).
38. The December 3, 2015 IEP also states that Student requires support during his bus transportation in that he requires a bus aide trained in monitoring his diabetes symptoms per the medical care plan. The IEP further states that at the time, an arrangement has been made with Student's parents to transport Student with compensation being provided for mileage. (Resp. Exhibit 17).
39. On December 17, 2015, Respondent provided written notice to Petitioner that a staffing meeting would be taking place to explore the expertise offered by New Campus staff pertaining to Student's medical and behavioral issues. (Resp. Exhibit 20).
40. The staffing was started on January 14, 2016 but was delayed due to Petitioner refusing to participate due to Mr. Parker's participation. On January 28, 2016, a letter was sent to Petitioner informing him that the staffing meeting would be continued on February 11, 2016. The notice sent to Petitioner also states that an IEP team meeting will follow the February 11, 2016 staffing meeting. (Resp. Exhibit 21).
41. An invitation to attend a meeting on February 18, 2016 was provided to Petitioner. Petitioner returned the invitation stating that he was not able to attend and providing dates of March 10, 2016 and March 24, 2016 as dates which he would be able to attend. (Resp. Exhibit 46).
42. The staffing and IEP team meeting was held on March 10, 2016. (Resp. Exhibit 23).

43. Petitioner and Student's grandparents came to the March 10, 2016 meeting but did not stay for the duration of the meeting and stated that they wished the meeting to be canceled. (Pet. Exhibit P10).
44. On March 11, 2016, Chris Parker sent a letter to Petitioner offering two dates for a continuance of the March 10, 2016 IEP team meeting; March 16, 2016 and March 23, 2016. Mr. Parker requested a response as to which date Petitioner would prefer by March 15, 2016. Mr. Parker also included with this letter notes from the March 10, 2016 staffing and IEP team meeting which Petitioner did not stay for the completion of. (Resp. Exhibit 22, Tr. Vol. IV, page 808).
45. Petitioner responded to Mr. Parker's letter stating that he was refusing to participate in any additional meetings until there had been a mediation held. Mr. Parker reiterated that Respondent planned to go forward with the IEP team meeting on March 23, 2016 and again requested Petitioner's presence. (Resp. Exhibit 51).
46. On March 23, 2016, an IEP team meeting was held pertaining to Student. In attendance at that meeting were, Petitioner; Chris Parker, Superintendent; Kurt Neveau, Special Education Teacher; Alexia Post, General Education Teacher; Laura Miller; Kim Urbansji; Monique Mansfield; Judi Miller; Kaitlyn Lampen; Jay Barclay; Marcie Del Pilar Galnares; Theresa Thybault-Knechl; and Michele Cadotte. (Resp. Exhibits 17 and 53).
47. The PLAAFP section of the March 23, 2016 IEP states that from December 10, 2015 through March 4, 2016, Student has had 75 Office Discipline Referrals (ODRs). This section also states that from January 14, 2016 through March 4, 2016, Student had 39 ODRs. Those ODRs include the following behaviors and number of instances associated therewith: running from staff through the building (15), staying outdoors (2), hitting/kicking staff and peers (12), unsafe behaviors such as climbing on desks and running in classrooms (7), disrupting the classroom environment by yelling and refusing to do work (13), throwing items (7), and threatening words (4). The PLAAFP also states that Student's behavior and manifestations of ASD seriously affect his classroom functioning and that his behaviors has caused him to miss significant classroom instructional time (an average of 16% of his school day). It also states that Student's behaviors appear to be affecting his social peer relationships and his use of social language. Resp. Exhibit 18).
48. The March 23, 2016 IEP contains two annual goals for Student in the areas of: 1. common core: ELA-speaking and listening standards K-5 Grade 1-comprehension and collaboration and 2. common core: ELA-speaking and listening standards K-5 Grade 1presentation of knowledge and ideas. For the

first annual goal, the IEP states "By March 2017, (Student) will demonstrate safety in the school setting as demonstrated by decreased verbal and physical aggression and running away as measured by a decrease in Office Discipline Referrals (ODRS) for serious aggression and running away, and check sheet data of 75%." The first short term objective for this annual goal states "(Student) will use safe hands, feet and materials while in the school community by achieving 0 serious aggression as measured in Office Discipline Referrals and 75% on daily check sheet for serious aggression." The second short term objective states "(Student) will use kind words with peers, with the support of visual prompts and modeling." The third short term objective states "(Student) will stay in the designated locations of the building." The second annual goal states "By March 2017, (Student) will identify safe emotional responses, improve empathy and his ability to reflect on how behavior impacts relationships in 3/5 opportunities as measured with documented observation." The first short term objective for this annual goal states "By March 2017, when presented with scenarios and/or pictures of different emotional states, (Student) will identify safe coping strategies for each emotional state in 3/5 opportunities." The second short term objective states "By March 2017, when presented with scenarios and/or pictures, (Student) will demonstrate ability to accurately explain the feelings of others by noting body language and facial expression in 4/5 opportunities." The third short term objective states "By March 2017, (Student) will identify the impact of positive and negative behavior on relationships in 3/5 occasions over 3 consecutive sessions." (Resp. Exhibit 18).

49. The March 23, 2016 IEP states that the following supplemental aides and services will be provided for Student from April 6, 2016 through March 21, 2017: visual supports, classroom instructional aide, trained medical staff, positive behavior plan, medical care plan, matrix of two sessions per school year, schedule/work plan written out and broken into small parts, transportation plan which includes a diabetic care plan for the bus or other transportation and staff training to monitor hypoglycemia, transition plan to new setting, occupational therapy for 9-15 sessions per school year of 15-30 minutes per session, personal care services, and behavioral services. (Resp. Exhibit 18).

50. The March 23, 2016 IEP calls for Student to attend New Campus which is a school located within the TBAISD wherein all the students who attend have IEPs. The IEP states that Student will receive the following special education programs and services: nursing services to monitor daily blood glucose and insulin administration and provide training for hypo/hyperglycemia and glucagon administration; social work services for 4-6 sessions per month for 15-25 minutes per session; speech and language services for 3-4 session per month for 25-30 minutes per session; and programs for emotional impairment for 390 minutes per session with 1 session per day. (Resp. Exhibit 18).

51. The March 23, 2016 IEP states that Student requires support during bus transportation on the LEA-special education bus and that he requires a bus aide trained in monitoring diabetes symptoms per the medical care plan. The IEP states that the trained individual will not be required to do injections, just to monitor low blood sugar and that on field trips a trained individual will be included on the trip. The IEP also states a stipend has been offered to Student's parents to transport Student to and from New Campus. (Resp. Exhibit 18).
52. New Campus is a school located in Traverse City, MI and is within the TBAISD. The students who attend New Campus all have IEPs. New Campus is designed to assist students with behavioral issues and to help bring those behaviors under control such that the students will eventually be able to return to their local schools. The goal of New Campus is to return the students who attend to their home districts. New Campus follows the Michigan Merit Curriculum. There are two psychologists and two social workers on staff, with at least one of each present throughout the day. All the teachers at the elementary level have general education teaching certificates and are highly qualified under the emotional impairment eligibility. There are two staff members per classroom with a maximum of 10 students per class. There is a school nurse who works with New Campus, has an office in the building as well as a health room, coordinates health plans and medicine administration for all the students and trains staff as necessary depending on the different needs of the individual students. Theresa Knecht is a school social worker at New Campus. Maria Pilar Galnares is a teacher at New Campus and would be Student's teacher should he attend. (Tr. Vol. III, pages 578-590).
53. Student had a behavior intervention plan while attending Northport Public School. The plan was created on January 14, 2014 and was updated May 12, 2014, September 8, 2014, March 3, 2015, May 26, 2015, September 1, 2015, November 19, 2015, and December 1, 2015. (Resp. Exhibit 35).
54. A functional behavior assessment (FBA) was conducted for Student on May 19, 2015. The FBA was updated on November 19, 2015 and again on December 11, 2015. (Resp. Exhibits 33, 34, and 35).
55. The behavior plan calls for Student to receive preteaching regarding expectations or changes, a visual schedule, to have student work for a card, a daily review of behavior expectations, use of the white board/written plan for Student's day in 10-20 minute segments, for Student to be seated at a table near the door, and for Student to be told in a quiet voice "I believe in you". The plan also calls for the use of planned ignoring but not to use it for unsafe behavior. The plan also calls for Student to be asked to take a note to the office or run an errand as a shift to avoid behaviors when it appears Student is escalating. Student is to be given a

choice of perimeters, simple language is to be used, and tasks are to be broken down. Student is to be asked to breathe and sit down when escalating and to be gently asked for eye contact. (Resp. Exhibit 35).

56. The behavior plan calls for Student to have breaks with his aide to either walk around the building or run an errand when he begins to escalate. The plan also calls for the aide to have a script to use for calming strategies and his aide is to ask Student questions so as to check his physical state as it relates to his diabetes. (Resp. Exhibit 35).
57. The plan also calls for Student to have a daily check sheet to monitor his behaviors throughout the day. (Resp. Exhibit 35).
58. Student is to work for cards throughout the day so that he can be rewarded for good behavior. (Resp. Exhibit 35).
59. The plan states that Student is to be provided behavior “zones” which correspond to the level of behavior Student is experiencing. Student is also to have a quiet corner in the classroom for which he can cool down (also referred to as Australia). Once Student is calm, he will be asked to rejoin the group and gently praised for using a safe strategy. Student is also to be redirected and asked to breathe if it appears he is proceeding towards physical aggression. The plan additionally states that if Student has been required to leave the classroom due to a behavioral incident and he has a second incident, he will be escorted to the after school room and will do work in that room till the next natural break. (Resp. Exhibit 35).
60. The plan also calls for the use of mats and removal of other students from the classroom if Student’s behavior escalates. If Student is presenting a danger to himself or other students, the use of non-violent physical crisis intervention is permitted. (Resp. Exhibit 35).
61. The plan indicates (by signatures) that it was created by Robin Still, Petitioner, [REDACTED], Kaitlyn Lampen, Kandell Myers, Laura Miller, Judith Miller, and Kurt Neveau. (Resp. Exhibit 35).
62. Alexia Post testified that throughout the 2015-2016 school year, that Student’s behavior interfered with his learning and the learning of the other student in his class. She also testified that there were times during the school year when she had to remove the 13 other students from her classroom due to Student’s behavior and that this happened with relative frequency. (Tr. Vol. II, pages 236-238).

DISCUSSION

In the instant matter, like in most due process hearings, a number of witnesses testified and there were numerous exhibits offered and admitted into evidence. Post-hearing briefs were not permitted. I have reviewed and considered the exhibits and the transcripts of the hearing in making a determination in this matter.

As there are several issues presented for hearing, I will address each issue individually below.

Is Student eligible for special education and related services under the wrong eligibility category for the 2015-2016 school year, and if so, does the category of eligibility operate to deny Student a Free and Appropriate Public Education (FAPE)?

Petitioner has asserted that Student is receiving special education and related services under the incorrect category of eligibility. In reliance on this assertion, Petitioner points to the evaluation of Student by Eric Harvey, Ph.D. of Northern Clinical and Diagnostic Associates, PLLC with an evaluation date of April 21, 2016. In his conclusion, Dr. Harvey states that "(Student) is an individual who presents with some mild symptoms associated with Autism...Under the previous diagnostic manual I probably would have given (Student) a pervasive developmental disorder diagnosis. While the family indicates he has previously been diagnosed with Asperger's disorder they're not really reporting enough symptoms to support that diagnosis at this time." (see Pet. Exhibit P23). However, Dr. Harvey provided no testimony at the hearing so it is impossible to determine how he arrived at this conclusion; i.e. how many times he observed Student or what tests were performed.

Aside from the letter contained in Petitioner's Exhibit P23, the rest of the evidence submitted at hearing supports the contention that Student is an individual with ASD. Student's therapist, Lorie Minidis, stated during her testimony that Student did have ASD and that the diagnosis of such was apparent to her based on repetitive gestures he would engage in (see Tr. Vol. IV, pages 720-732). Additionally, there was no testimony from Ms. Post (who has an endorsement in ASD), Ms. Judith Miller, Ms. Cadotte, or Mr. Parker regarding any question as to if Student has ASD.

Furthermore, a clinical diagnosis of ASD is not necessary for a finding of eligibility under the category of ASD for the purposes of a student receiving special education and related services. The criteria for determining a student's eligibility for under this category is stated above.

I do not find that Petitioner has shown, by a preponderance of the evidence that Student should not be eligible for special education and related services as a student with ASD. The only evidence offered by Petitioner which even alludes to the notion that Student

does not have clinical diagnosis of ASD was the letter authored by Dr. Harvey, which is given little weight due to the unavailability of Dr. Harvey to explain his conclusions. Therefore, I do not find that Student is eligible for special education under the improper category and that Student has been denied a FAPE as a result of such.

Did the Respondent District properly implement Student's medical care plan?

Petitioner also asserts that Respondent has not been properly following Student's medical care plan. Petitioner referred to the January 11, 2016 incident to show that Respondent has not been properly following Student's medical care plan. However, this appears to be an isolated incident where Ms. Post credibly testified that she made a mistake in relation to Student's diabetes management. She testified that when she realized she made the error, she immediately contacted Student's grandparents and requested assistance in how to rectify the situation. I do not find this isolated incident to be indicative of Petitioner's allegation that Respondent failed to follow Student's medical care plan.

Petitioner also asserts that Respondent failed to follow Student's medical care plan by not making the school a candy free zone. Neither medical care plan created by Respondent nor the medical care plan created by DeVos Children's hospital call for the school to be a candy free zone. In fact, Student's medical care plan actually calls for Student to be given candy in the event that his blood sugar is low, therefore the school would not be able to comply with the medical care plan if it were to become a candy free zone. Regardless, there is nothing listed in any of the plans submitted that suggests that the school should be candy free.

Petitioner additionally claims that Respondent failed to follow the medical care plan by allowing Student to be around candy. Again, there is nothing in any of the medical care plans which states that Student is not to be around candy. The medical care plans do state that Student will bring his own snacks from home which are appropriate for his consumption, there was no evidence presented that this practice was not followed. Petitioner asserts that this practice was not followed because there had been two instances of Student being exposed to candy at school or candy being sent home with him. However, there was no evidence presented that Student was allowed to consume any snacks that were not provided from home.

Petitioner additionally contends that the medical care plan was not being followed due to the location of the testing room. Petitioner has argued that because there was food and other substances present in the testing room that this was an improper venue to conduct the testing of Student's blood. However, there is nothing in the medical care plan which establishes where testing should be done or what is an appropriate environment for testing.

I do not find that Petitioner has shown, by a preponderance of the evidence that Respondent failed to follow Student's medical care plan. Respondent sent Chris Parker, Alexia Post, Keri Carpenter, Kurt Neveau, Dan Stowe, and Peter Morio to training for diabetes management at Munson Medical Center. Ms. Post and Ms. Carpenter kept meticulous records pertaining to Student's blood sugar and the management thereof, and when a mistake was made pertaining to Student's blood sugar, Ms. Post contacted Student's grandfather immediately and requested assistance. I do not find that the evidence supports the assertion that Respondent failed to follow Student's medical care plan.

Was Petitioner denied the opportunity to meaningfully participate in the IEP process and was the input he provided appropriately considered by the Respondent District?

There was no evidence presented to support Petitioner's contention that he was denied the opportunity to meaningfully participate in the Student's IEP process. To the contrary, Respondent made every effort to make sure that Petitioner or Petitioner's parents were able to attend any IEP meetings, often rescheduling those meetings to accommodate Petitioner's schedule. Petitioner was asked to give dates for which he would be available before the March 2016 IEP was held, and the IEP meeting was scheduled for a date that Petitioner stated that he would be available to attend.

Petitioner stated that he felt that his input was not given adequate consideration by Respondent. Petitioner testified that he felt that his input was not considered because he suggested that the school work with Student's counselor but that the school did not do so. This claim is clearly contradicted by the evidence. Ms. Post testified that she had extensive communication with Ms. Minidis (Student's counselor) and Ms. Minidis further testified that she engaged in extensive communication with Ms. Post. In fact, Ms. Minidis testified that Ms. Post reached out to her via email requesting suggestions for different approaches to take with Student. (see Tr. Vol. IV, pages 715-716, 728-734, 740-742).

As another example of how Petitioner asserts that his input was not given adequate consideration, Petitioner points to a vibrating stuffed animal that he suggested be used by Respondent to assist in calming Student. Petitioner asserts that this suggestion was not considered because when he went to parent teacher conferences, the stuffed animal was on a shelf and not immediately accessible. However the animal clearly was taken into the classroom as it was present when Petitioner observed it. Aside from Petitioner's observation there was no evidence presented that the stuffed animal was never used or that Petitioner's input was not considered.

Petitioner stated that he felt that his input was glossed over and was not given serious consideration. The evidence simply does not support this assertion. Additionally, Respondent is not required to acquiesce to Petitioner's suggestions, rather they simply

must be considered. In *Blackmon v. Springfield R-XII Sch. Dist.*, [31 IDELR 132](#) (8th Cir. 1999), the court stated that the requirement for parental input to be considered “does not require school districts to simply accede to parent’s demands without considering any suitable alternatives.” Therefore, just because a parent’s suggestions are not adopted by a school district, that does not mean that those suggestions were not appropriately considered.

I do not find that Petitioner has shown, by a preponderance of the evidence that he was denied meaningful participation in the IEP process or that his input was not properly considered by Respondent.

Did the Respondent District properly implement Student’s behavior plans for the 2015-2016 school year and did the alleged failure to implement those plans result in Student being denied a FAPE?

I do not find that Petitioner has shown, by a preponderance of the evidence that Respondent failed to properly implement Student’s behavior plan during the 2015-2016 school year.

Petitioner asserts that the behavior plan was not properly implemented in that Student spent more time in the timeout room, or the after school room than was permitted under the IEP and behavior plans. Petitioner asserts that his knowledge of the time Student spent in the after school room comes from his observations of seeing Student in the room at one time during the day and then seeing him in the same room again at a later time during the day. There was no evidence presented to show that the time Student spent in the after school room was continuous, rather than Student being sent to the room during multiple times throughout the day. Even if one were to assume that Student was in the room for the time suggested by Petitioner, this is clearly called for in the behavior plan. The plan states that if Student goes to the timeout room and then has another incident of behavior, he is to be taken to the after school room until the next natural break. Petitioner was involved in the creation of Student’s behavior plan and should therefore have been aware that this was a strategy to be implemented in the event of multiple behaviors.

Petitioner additionally asserts that Respondent failed to properly implement that behavior plan by using mats on Student in an inappropriate way. Again, the behavior plan created for Student does call for the use of mats should Student’s behavior rise to the level that he is posing a danger to himself or others. Petitioner relies on the testimony of his father, [REDACTED], who testified that he saw Student wrapped up in a mat such that he could not move by Kurt Neveau. Mr. Neveau testified that he did not wrap up Student in the mat and that the mat was being used to control Student’s movement and location, but that Student was not wrapped up in the mat. I do not find Mr. [REDACTED] testimony to be particularly credible in that I find that Mr. [REDACTED] attempted to

seriously downplay an incident at the school which resulted in the police being called. Therefore, I do not find that Petitioner has presented any evidence to show that there has been improper use of mats as a behavior strategy on Student.

Petitioner further asserts that Student's aide was ignoring him during an incident in the gym where Student wanted to be on another team rather than the one he was assigned. There was testimony that Student was on the floor yelling that he wanted to be on a new team and that his aide (Ms. Carpenter) was ignoring him. However, Student's behavior plan calls for the use of planned ignoring as long as Student is in a situation that does not pose a risk of harm to himself or others. I do not find that the evidence shows that this particular incident was posing a risk of harm to Student or others.

I do not find that Petitioner has provided evidence to show that Respondent District was not properly implementing Student's behavior plan or that Student was denied a FAPE as a result of the use of his behavior plan.

Is the placement for Student called for in the March 23, 2016 appropriate in that does that placement operate to provide Student a FAPE in the least restrictive environment?

The next issue that must be addressed is the decision of the IEP team to place Student at New Campus in the March 23, 2016 IEP. New Campus is a self-contained building for students with significant behavioral issues. Every Student at New Campus has an IEP. The placement at New Campus is a more restrictive placement for Student than his placement at Northport Public School according to the continuum of placement (see 34 CFR 300.115 and 34 CFR 300.38). However, it has been held that placement of a student in the LRE is not always appropriate depending on the circumstances of the particular case. In *Clyde K. v. Puyallup School District*, 21 IDELR 664 (9th Cir. 1994) the court held that placement of a student in a regular education classroom (or the LRE) is not required where a student poses a threat to the safety of either themselves or other students. Additionally, in *Renollett v. Independent School District No. 11, Anoka-Hennepin*, 45 IDELR 117 (8th Cir. 2006) the court held that placement in a regular education classroom is not appropriate where the student engages in significantly disruptive behavior that interferes with the education of the student's classmates.

It is clear that Student presents with significant behavioral issues that interfere with his learning and the learning of other students. Ms. Post credibly testified that Student's behaviors interfered with his ability to access the curriculum and with the ability of other students to access the curriculum throughout the 2015-2016 school year. Additionally, several of Student's behaviors cited throughout the hearing pose a risk to the safety of Student and others. The evidence shows that Student engaged in violent behaviors toward staff and his peers and that Student would run from staff and refuse to come in from outside in the middle of winter. These behaviors clearly show a risk of harm to Student as well.

The evidence shows that Respondent was diligent in attempting to address Student's behaviors. Respondent prepared and implemented behavior plans with the assistance of Petitioner and Student's grandparents, Respondent called in a behavior consultant and an autism consultant to help address the behaviors that Student was engaging in, and Ms. Post (Student's teacher) communicated regularly with Student's therapist in an attempt to obtain new methods for managing Student's behavior. However, even with all the above-mentioned strategies employed, Student's behavior continued to escalate and continued to cause disruption to his learning and to the learning of the other students in his class.

There was no assertion made, nor evidence presented, that Student struggles academically. Petitioner stated that one of his concerns about Student attending New Campus is the curriculum taught there. However, the evidence shows that New Campus does teach the Michigan Merit Curriculum and the goal would be to return Student to his local school once his behaviors are brought under control.

Petitioner also expressed concerns about the commute to New Campus for Student and the impact it may have on his separation anxiety and diabetes. The evidence shows that Respondent has taken steps to ensure that trained staff would be provided to accompany Student on the bus, or in the alternative, that Petitioner would be provided a stipend to transport Student to New Campus should Petitioner choose to do so.

I find that Respondent has been diligent in its attempts to manage Student's behavior and that it has employed several strategies to do such. The fact remains that Student's behavior caused a serious disruption to his ability to learn as well as the ability to learn of the other students not only in his class but in the school in general. Therefore, I do not find that the placement of Student at New Campus violates the preference against placing Student outside the least restrictive environment and does not operate to deny Student a FAPE.

CONCLUSIONS OF LAW

1. Petitioner did not establish, by a preponderance of the evidence that Student is eligible for special education under the improper category. Petitioner additionally did not establish that Student was denied a FAPE due to the category of eligibility for which Student receives special education.
2. Petitioner did not establish, by a preponderance of the evidence that his input was not properly considered in the drafting of Student's IEPs for the 2015-2016 school year.
3. Petitioner did not establish, by a preponderance of the evidence that Respondent failed to properly implement Student's medical care plan.

4. Petitioner did not establish, by a preponderance of the evidence that Respondent failed to properly implement Student's behavior plan and that Student was denied a FAPE as a result.
5. Petitioner did not establish, by a preponderance of the evidence that the placement of Student at New Campus (as contemplated by the March 23, 2016 IEP) is improper and operates to deny Student a FAPE.

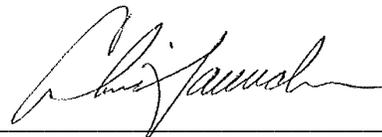
ORDER

NOW, THEREFORE, IT IS ORDERED:

Petitioner's complaint is denied.

IT IS FURTHER ORDERED that any claims or defenses not specifically addressed herein are dismissed with prejudice.

A party aggrieved by this decision may seek judicial review by filing an action in a court of competent jurisdiction within 90 days of the date of this order.



Christopher S. Saunders
Administrative Law Judge

PROOF OF SERVICE

I hereby state, to the best of my knowledge, information and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by Inter-Departmental mail to those parties employed by the State of Michigan and by UPS/Next Day Air, facsimile, and/or by mailing same to them via first class mail and/or certified mail, return receipt requested, at their respective addresses as disclosed below this 20th day of July, 2016.

Verna Curtis
Michigan Administrative Hearing System



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