

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM**

IN THE MATTER OF:

**J.F. o/b/o B.F.,
Petitioner**

v

**Monroe County ISD,
Respondent**

Docket No.: 18-018939

Case No.: 18-00073

Agency: Education

Case Type: ED Sp Ed Regular

Filing Type: Appeal

**Issued and entered
this 14th day of February 2019
by: Michael J. St. John
Administrative Law Judge**

DECISION AND ORDER

PROCEDURAL HISTORY

This matter concerns a due process hearing request/complaint under the Individuals with Disabilities Education Act (IDEA) 20 USC 1400 et seq. On or about October 1, 2018, Petitioner filed a due process request/complaint with the Michigan Department of Education (MDE). MDE forwarded the Due Process Hearing Request to the Michigan Administrative Hearing System for hearing. It was assigned to Administrative Law Judge (ALJ) Michael J. St. John.

A Telephone Prehearing Conference was held as scheduled on October 18, 2018. At that prehearing conference and in the Order Following Prehearing Conference issued on October 19, 2018, the two issues to be adjudicated at the hearing were identified and clarified pursuant to Rule 792.11808 as noted below.

On November 5, 2018, the Respondent filed a Motion for Summary Disposition. On November 13, 2018, the Petitioner filed both a Response to Respondent's Motion for Summary Disposition and a Motion to Amend Due Process Complaint. On November 19, 2018 the Respondent filed both a Reply to Petitioner's Response to Respondent's Motion for Summary Disposition and a Response to Petitioner's Motion for Summary Disposition. On November 26, 2018, oral arguments were heard on the two motions. On November 28, 2018, an Order was entered Granting Petitioner's Motion to Amend Complaint and Denying Respondent's Motion for Summary Judgment. Although the Due Process Complaint was amended, the two issues identified in the October 19, 2018 Order remained the only two issues to be addressed at the hearing.

The hearing was held as scheduled on December 5 and 6, 2018. Attorney at law Eric G. Chappell appeared for the Petitioner. Attorney at law Michelle R. Eaddy appeared on behalf of the Respondent.

Following the conclusion of the hearing the parties requested the opportunity to file briefs and replies, the timelines for which were memorialized in a December 12, 2018 Order Following Hearing and Setting Briefing Schedule. Both parties submitted timely briefs and replies and the record was closed upon receipt of the final timely reply brief on January 4, 2019.

ISSUES

As agreed to by the parties during the prehearing conference, the issues to be decided are as follows:

- A. What should be the proper placement for the Student (a.m. or p.m. program and at what location)?
- B. Should the Respondent rescind their September 18, 2018 restrictions on J.F.'s involvement in the Student's education?

EXHIBITS

The following exhibits were offered by Petitioner (numbers) and Respondent (letters) and admitted into evidence without objection unless otherwise noted:

1. October 24, 2016 Family Needs and Priorities
2. June 15, 2017 IEP Team Report
3. June 1, 2018 IEP Team Report
4. 2018-2019 School Year ECSE Student Files – CA60 Dispersion
5. August 27, 2018 email
6. August 2018 Welcome Letter
9. Correspondence Regarding AM/PM Placement Dispute
10. September 17, 2018 Letter
13. Correspondence Between Renee Retli and E.B.
14. Correspondence Between Renee Retli and E.B.
18. PPO Order and Application¹
19. Photographs (2) of B.F. Sleeping

¹ Exhibit 18 was admitted over the Respondent's relevance objection.

- A. June 1, 2018 IEP Team Report²
- B. Progress Report for 2017 IEP
- C. May 2017 IEP Amendment
- D. June 5, 2017 IEP Report³
- J. August 2018 Welcome Letter⁴
- O. September 1, 2018 emails (2)⁵
- U. Respondent Policy #2461
- X. Daily Progress Notes
- Y. 38th Circuit Court Friend of Court Recommendation

Exhibits 7, 8, 11, 12, 15, 16, 17, E, F, G, H, I, K, L, M, N, P, Q, R, S, T, V, and W were not offered.

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).

As the Michigan Supreme Court has stated, “[p]roof by a preponderance of the evidence requires that the fact finder believe that the evidence supporting the existence of the contested fact outweighs the evidence supporting its nonexistence.” *Blue Cross and Blue Shield of Michigan v Milliken*, 422 Mich 1; 367 NW2d 1 (1985). A “preponderance of evidence” is best described as that evidence having the greatest weight.

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

² Exhibit A and Exhibit 3 are the same document.

³ Exhibit D was offered jointly by the Petitioner and the Respondent.

⁴ Exhibit J and Exhibit 6 are the same document.

⁵ The emails that comprise Exhibit O are contained in Exhibit 9.

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 defines "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). In *Andrew F. v. Douglas County Sch. Dist. RE-1*, 69 IDELR 174 (U.S. 2017), the US Supreme Court expanded its explanation of FAPE in *Rowley* and stated that in order to provide a FAPE, the IDEA requires an educational program "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Id.*

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).

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 the student's potential. *Rowley*, 458 US at 206-07; *Deal*, 392 F3d at 862.

The Code of Federal Regulations provides for determining educational placement as:

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.
34 CFR §300.116

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. The following timeline of events clarifies the relevant events of this case:

<u>Date</u>	<u>Event</u>
06/05/2017	2017-2018 IEP Meeting
2017-2018	Student in a.m. session of ECSE pre-K with Ms. Retli
06/01/2018	2018-2019 IEP Meeting
August 2018	Orientation Letter Mailed Out (only to mom, not to dad)
08/27/2018	J.F. sent email to Ms. Retli asking about open house
08/28 or 29/2018	Ms. Retli responded to J.F.'s email with Orientation Letter
08/30/2018	Open House
08/31/2018	Phone Call between Katie Bourbina and J.F.
09/04/2018	Student starts in p.m. session of ECSE pre-K with Ms. Retli
09/11/2018	Student transferred to and starts in Ms. Laskey's p.m. classroom
09/07/2018	First Meeting at ISD
09/17/2018	Second (non-)Meeting at ISD
09/17/2018	Letter Restricting J.F.'s access to school grounds

2. The Student, B.F., is a four year old child with Down Syndrome who suffers from deafness in her right ear. The Student is eligible for special education with a primary disability of other health impairment. The Student has difficulty acquiring speech and language. She is observant and attentive to her peers. She is engaging with and persistent in communicating with adults. For the 2017-2018 school year she was in the a.m. session of the ECSE classroom. For the 2018-2019 school year the Student has been in the p.m. session of the ECSE pre-kindergarten classroom.
3. The Student made progress during the 2017-2018 school year by comforting herself by seeking out a special person and/or adult(s), communicating with adults, beginning to accept redirection, attempting to open her own foods and feeding herself with a spoon and open cup, and communicating toileting needs. The Student has also shown improvement in activities of daily living, persistence, empathy, interacting with peers, taking turns, physical development, cognitive development, literacy, and mathematics. (Exhibits 3 and A).
4. The Student achieved 2 out of 3 of her social emotional objectives, 1 out of 3 of her speech and language objectives, her socio-emotional/behavioral goal, cognitive goal, and her communication goal. The Student also did not achieve several of her goals for the 2017-2018 school year (Exhibits 3 and A).
5. The Student's teachers and therapists have observed that the Student has

continued to make progress towards her 2018-2019 IEP goals in the p.m. session of the ECSE classroom.

6. The a.m. and p.m. sessions of the early childhood special education (ECSE) pre-kindergarten classrooms are very similar but are not identical. Both classrooms are staffed identically and have teachers, aides, and therapists working on students' individual goals. The primary differences between the a.m. and p.m. session is that the p.m. session students tend to be about a year older on average, having generally been in the a.m. session the year before, and there is therefore less of a focus on adjusting to school and more of a focus on getting students ready for kindergarten.
7. Students eligible for the ECSE pre-kindergarten program can be accommodated in either the a.m. or p.m. session, regardless of age or relative ability. The Respondent will accommodate parents' scheduling preferences, if possible. When parents disagree about the suitability of a.m. or p.m. placement, first year students are placed in the a.m. session and second year students are placed in the p.m. session.
8. The Student's teachers and therapists (Ms. Retli⁶, Ms. Todd⁷, Ms. Laskey⁸, and Ms. Spencer⁹) believe that the p.m. session is the more appropriate placement for the Student.
9. J.F. made audio recordings of both the June 2018 IEP and the August 2018 open house. He did not disclose that he was making those recordings until shortly before he was asked to leave the open house by Ms. Retli (because he had been and currently was recording her).
10. At the first (September 7, 2018) meeting, both the mother and the father behaved badly. J.F. made the statement that he hoped that his ex-wife "drops dead" before the Student turns 26.
11. The Respondent's superintendent and either J.F. or his attorney were yelling at each other at the second (September 17, 2018) meeting. It is unknown just what the two men were yelling about.

⁶ Facts #192-195.

⁷ Facts #207 and #225

⁸ Facts #156, #187, and #189.

⁹ Facts #222 and #234.

The testimony of the witnesses who testified is summarized here – any opinions noted constitute that witness' opinion.

E.B., Student's Mother

12. E.B. is the Student's mother. She has been divorced from the Student's father, J.F., since December of 2016 and they have been separated since the Student was approximately 5 months old.
13. E.B. and J.F. share custody of the Student during the summer equally. During the school year the custody split is approximately 60% for the father and 40% for the mother. E.B. has three other children ages 6 to 17; she has custody of one child full time and custody of the other two 50% of the parenting time.
14. E.B. has been employed by Monroe County Public Schools as a middle school teacher since 1999. E.B., as part of her duties at the middle school, does not regularly interact with individuals at the ISD.
15. The Student is currently four years old, has Down Syndrome, and is deaf in her right ear. She has had open heart corrective surgery when she was younger, but that issue has resolved.
16. The Student has been receiving services from the ISD since the Student was six weeks old. The Student first attended an early childhood play group in February of 2016 and has been in a classroom setting since the 2017-2018 school year (in the a.m. program).
17. E.B. noted on October 24, 2016 that the Student "is very happy early in the morning" and that the most difficult times are when the Student is "very tired". (Exhibit 1).
18. Speech and language development are concerns for the Student.
19. E.B. was involved in the development of the Student's IEP. J.F. was also present at the IEP team meetings.
20. E.B. was concerned about the Student pulling the hair of her peers and difficulties responding to verbal prompting. E.B. and J.F. both agreed that the Student needed to work on speech and language skills.
21. During the October 24, 2016 testing, the Student's language skills were in the 9-11 month range with sporadic skills in the 12-15 month range. The Student was 25 months at the time of that evaluation.
22. In June of 2017, when the IEP was performed, the Student was noted to have severe deficits in both receptive language skills and expressive language. The Student had about 6 signs/gestures (play, all done, thank you, more, ball, book, and milk) and a few words ('dar' (sister), hi, bye, and an approximation for uh-oh) but only used 2-3 consonant sounds. Typical peers (33 months) can use about 200 words, name 6 objects by use and answer simple questions.

23. The Student was placed in the a.m. session for the 2017-2018 school year where the focus is on preparing for the p.m. session.
24. E.B. does not believe that the Student will attend Kindergarten for the 2018-2019 school year.
25. The Student did not meet the objectives set for the Student in the June 5, 2017 IEP.
26. The a.m. session starts at about 8:45 a.m. and ends about noon, Monday through Thursday. There is no school on Fridays unless there was a cancellation of a school day Monday through Thursday.
27. E.B. starts work at 7:40 a.m. and ends work at 3:00 p.m. E.B.'s parents dropped off and picked up the Student during the 2017-2018 school year.
28. The p.m. session starts at noon and ends at 3:15 p.m.
29. E.B.'s parents drop off the Student and E.B. picks up the Student during the 2018-2019 school year.
30. The Student received speech therapy at the ISD and privately (arranged by the father) during the 2017-2018 school year.
31. E.B. did not express any concerns or problems with the ISD's provision of education and services to the Student for the 2017-2018 school year.
32. E.B. participated in the June 1, 2018 IEP for the Student. The father also participated in the IEP meeting.
33. During the June 1, 2018 IEP, the Student was still reacting to strong feelings by screaming, grabbing and pulling on her peers. The Student needed adult assistance for several tasks. E.B. agreed with these assessments.
34. In June of 2018, the Student had achieved two out of three of her social-emotional objectives and one out of three speech and language objectives. The Student had not yet achieved 50 words and was not approximating speech sounds and symbols.
35. In June of 2018, the Student was not yet using two signs in conjunction with each other. The IEP noted that the Student's inability to communicate using two signs, words, or gestures to communicate impacted her ability to interact with peers and adults in the classroom. E.B. did not disagree with this assessment.
36. The June 2018 IEP does not specifically note which session (a.m. or p.m.) the Student would be placed in. E.B. does not remember whether the p.m. placement was discussed during the IEP team meeting.
37. E.B. had not discussed the p.m. session with anyone at the ISD until she emailed Ms. Bourbina about the differences between the a.m. and the p.m. placement.

38. E.B. spoke with Ms. Retli about the p.m. placement but there were no discussions with her or Dr. McNew about keeping the Student in the p.m. placement.
39. E.B. is friends with Dr. McNew and has been for the last approximately seven years. E.B. has socialized with Dr. McNew and taught one of his children in one of her classes. Dr. McNew's wife babysat one of her children for two years.
40. E.B. agrees that the Student's development is more important than the Student's age in determining the most appropriate placement.
41. E.B. believes that the p.m. placement is the better placement for the Student for the 2018-2019 school year.
42. E.B. believes that the Student was acting younger than her age in her behaviors (hair pulling, scratching, and biting) and the p.m. placement with older students would help the Student model behaviors of older students (who are less likely to act out aggressively/violently). E.B. has not seen instances of scratching or hair pulling since the start of the 2018-2019 school year.
43. E.B. sent the text message to Dr. McNew before she wrote the October 1, 2018 email (Exhibit 9 page 5).
44. E.B. spoke with Dr. McNew about what had occurred at the September 7, 2018 meeting.
45. E.B. sent the September 8 and 10, 2018 text messages to Renee Peterson.
46. E.B. received the August 2018 letter inviting her to the open house (Exhibit 6). She did not share this with J.F. because she assumed that he would have received it in the mail.
47. E.B. was surprised that J.F. did not know that the Student would be in the p.m. placement. J.F. indicated that the p.m. placement had not been discussed and that he did not agree with that placement. E.B. and Ms. Retli both told J.F. that this had been discussed previously, at the IEP meeting.
48. J.F. told E.B. and Ms. Retli that he had tape recorded the IEP meeting. J.F. said that he recorded everything that Ms. Retli and E.B. said. Ms. Retli asked J.F. to leave the open house, which he eventually did. J.F. did not raise his voice during this discussion.
49. E.B. believes that J.F. was being aggressive during that open house meeting.
50. E.B. filed for a PPO and asked that J.F. be barred from entering onto the property at the Student's school.
51. E.B. has been to the Student's classroom only once since the open house (to get the Student's boots). E.B. went to the Student's classroom only a few times during the 2017-2018 school year.

52. Dr. Ayyangar's report recommended keeping the Student in a.m. kindergarten and transitioning to p.m. kindergarten next year¹⁰. E.B. disagrees with this evaluation.
53. The Student is usually full of energy when E.B. picks her up in the afternoon. The Student has never fallen asleep in the car ride home this year.
54. At a Friday morning ENT appointment, the Student was tired because her room was too warm which caused her to wake up overnight.
55. The Student is more difficult to deal with when she is tired.
56. E.B. did not ask Dr. McNew to restrict J.F.'s access to school grounds. E.B. does not recall discussing her PPO request with Dr. McNew.
57. E.B. believes that the Student is excelling in the p.m. session even though she did not achieve her goals from the prior year. E.B. believes that the consistency of staying with her peers was important. E.B. has seen fewer instances of child-like behavior this year because she has better role models to mimic.
58. E.B. believes that the Student's language and speech will improve more in the p.m. session than the a.m. session because she has better speaking role models in her peers.
59. E.B. believes that Katelyn Todd may be the Student's speech therapist. E.B. remembers discussing the Student's speech and language goals at the June 1, 2018 IEP meeting.
60. The school created an experience book to help the parents and teachers communicate with each other about what was ongoing in school and at home. This continued during the 2018-2019 school year in the p.m. session. J.F. completed the experience book for the 2018-2019 school year because the book goes home on Wednesdays which is J.F.'s day to pick up the Student.
61. E.B. is seeking full custody of the Student and has been since mid-September of 2018.
62. E.B. was taking the Student to school, but J.F. was not taking the Student to school on the days that he had custody of the Student.
63. E.B. understands that the Monroe County Circuit Court ordered that the Student remain in the ISD p.m. placement.
64. E.B. believes that J.F. used proximity to intimidate Ms. Retli at the open house – staying very close to her rather than interacting with the Student (until he asked for a hug goodbye).

¹⁰ Dr. Ayyangar's report was not offered as an exhibit and she did not testify as a witness at the hearing.

65. Because the Student has Down Syndrome, she will never be typical but E.B. believes that the Student does well considering her deafness in one ear. E.B. believes that the Student is very high functioning for having Down Syndrome.
66. E.B. does not expect the Student to be functioning at the same level as her non-developmentally disabled peers.

Renee Retli, Student's Teacher for the 2017-2018 school year

67. Ms. Retli has a B.A. and M.A. in early childhood education and special education respectively. She has certifications in early childhood education and cognitive impairments. Ms. Retli is an early childhood education teacher at Arborwood elementary. She has been a teacher since 2007. She teaches special education pre-school, both an a.m. and a p.m. session (8:45am – noon and noon to 3:15pm respectively)
68. Ms. Retli was the Student's teacher for the 2017-2018 school year and the Student was enrolled in her classroom for the first week of school for the 2018-2019 school year but she only attended two days that week.
69. Ms. Retli is not friends with E.B. She did not send text messages to E.B. She believes that she may have spoken with E.B. on the phone but primarily emailed E.B. when she needed to contact her.
70. Ms. Retli described J.F. as an involved father who was very interested in the Student's educational process, having attended all relevant meetings. J.F. attended some classroom activities during the 2017-2018 school year, particularly activities where parents were invited: music therapy and holiday activities.
71. Ms. Retli believes that parental involvement is important for children's education, including classroom activities. Ms. Retli believes parental involvement is important because students are modeling activities and it creates a continuity between in school and at home activities.
72. Ms. Retli was familiar with the Student's IEP. Ms. Retli believes that the Student achieved some of her IEP goals and those that she did not achieve were age-referenced that the Student would likely not have achieved even if she did not have deficits.
73. The Student had speech and language deficits and received speech therapy typically twice a week for about 15 to 20 minutes each session.
74. Ms. Retli does not recall J.F. requesting additional speech therapy. Ms. Retli was aware that the Student was receiving private speech therapy.
75. Ms. Retli received the release for the private speech therapist to share records with her. Ms. Retli told the speech therapist about the release and put it in the Student's file. Ms. Retli also told the school speech therapist (Ms. Todd) that J.F.

expressed concern that records were not being provided. Ms. Todd told Ms. Retli that she was communicating with the private speech therapist.

76. Ms. Retli believes that the Student's p.m. placement was discussed during the June 1, 2018 IEP meeting although she is not sure. The a.m. versus p.m. session is normally discussed during the IEP meeting so the parents can participate in a discussion about which placement is most appropriate.
77. Ms. Retli received the August 27, 2018 email from J.F. about the open house.
78. Ms. Retli later learned that the open house invitation letter was only sent to one address for each student as part of the mail merge process.
79. When a parent disagrees with an IEP placement, Ms. Retli works with the parents to come up with an appropriate placement that everyone can agree is in the best interest of the student.
80. Ms. Retli currently has 10 students in the a.m. session and nine students in the p.m. session. She is unsure what the counts were at the beginning of the school year. There are never more than 12 students in any class.
81. There is one full time aide and one aide shared between her class and another class in both the a.m. and the p.m. sessions.
82. Age and prior participation in the program are the primary considerations for placement in the a.m. or the p.m. session. How the student performed the prior year and their progress towards their IEP goals are utilized in determining placement.
83. Ms. Retli looks at students who are going to remain in the program and makes recommendations about whether to place those students in the a.m. or the p.m. placement. This is communicated to the parents typically through the February conferences and again at the end of the year IEP meeting.
84. Ms. Retli spoke with E.B. at a February conference. J.F. was also at a February/winter conference.
85. Ms. Retli remembers that a parent brought up the Student's naps but she does not remember which parent raised that issue. Ms. Retli does not remember either parent discussing a.m. or p.m. placement at the February/winter conference.
86. The Student's placement was likely discussed at monthly staff team meetings since future projected placements are discussed at those meetings.
87. Ms. Retli sent emails to both E.B. and J.F. In particular, she remembers emails to J.F. about scheduling and absences.
88. Ms. Retli's February 15, 2018 and February 28, 2018 emails to E.B. covered matters that Ms. Retli had discussed verbally with J.F.

89. E.B. had requested of Ms. Retli a photo of the Student wearing a particular shirt which is why Ms. Retli sent the March 22, 2018 email to E.B.
90. Ms. Retli was uncomfortable with J.F. having recorded their conversation at the IEP and at the open house. J.F. had not raised his voice or acted aggressively or in a hostile manner. Ms. Retli asked J.F. to leave the classroom because J.F. indicated that he was recording everything and she wanted to discuss this with her supervisor or human resources. When Ms. Retli asked J.F. to leave the classroom, he complied after taking some papers from the Student's folder and saying goodbye to the Student.
91. E.B. did not discuss the incident with Ms. Retli or any restrictions for J.F.
92. Ms. Retli was not asked to attend the September 2017 meeting to discuss the Student's placement (a.m. versus p.m.).
93. J.F. told Ms. Retli at the open house meeting that "I told you that I wanted her to come in the morning." Ms. Retli believes that this means that it was previously discussed with J.F.
94. J.F.'s behavior made Ms. Retli uncomfortable: raising his voice to her on the phone, accusing her of "tattling" to E.B., and not making eye contact with her. J.F. accused Ms. Retli of telling E.B. that J.F. had taken the Student out of class early when E.B. called to ask about a diaper rash (the diaper check hadn't been done because J.F. took the Student out of class before diapers were checked).
95. Ms. Retli asked that administrators be present when she was speaking with either of the Student's parents because she was concerned that what she was saying was being misrepresented in court proceedings.
96. Ms. Retli was a little uncomfortable with J.F.'s proximity to her following the revelation of the recording and her asking him to leave.
97. Ms. Retli noted that the Student is easy to build relationships with and was interested in what the adults were doing. Ms. Retli noted that the Student was very observant and helpful.
98. Ms. Retli noted that the Student's strengths are observation and persistence. The Student has deficits in speech and language.
99. The Student's goals for the 2017-2018 school year included speech and language skills. Both Ms. Retli and the speech therapist are working on speech and language goals with the Student.
100. Ms. Retli would not expect the Student to be functioning at the same level as her non-developmentally disabled peers because of the Student's disabilities.
101. The Student made significant progress on her social goals and reached two of three objectives from her IEP by the end of the year. Not meeting all objectives does not require that a student be held back.

102. Ms. Retli recommended that the Student attend the p.m. session because the Student had been in the classroom for the whole year and understood the routine of the classroom. Ms. Retli believed that the Student would benefit from staying with her same age peers who were at her level of following the routine (rather than moving to a classroom with students who were focused on understanding and following the classroom routine).
103. Ms. Retli does not believe that the Student's deficits prevent her from attending the p.m. session.
104. Ms. Retli was happy with the Student's progress during the 2017-2018 school year and has no reservations about her attending the p.m. session. Ms. Retli believes that the Student is ready to move to the p.m. session.
105. The Student's failure to meet the goal of entering peer groups would not be a deficit for the Student since this is an expectation for non-developmentally disabled peers of age 4 to 5.
106. All early childhood special education students have an experience book.
107. The designation of a.m. or p.m. session is not an IEP decision.
108. All formal communication had two copies go home with the Student so that each parent would get a copy.
109. Ms. Retli sends home daily sheets with each student, including the Student.
110. Ms. Retli did not consider the Student's speech and language deficits in making her recommendation that the Student be placed in the p.m. session.
111. J.F. told Ms. Retli that the Student needed the a.m. placement because the Student needed to take naps.
112. Ms. Retli did not see the September 9, 2018 7:39 p.m. email (Exhibit 9 page 3).
113. There are students in both the a.m. and the p.m. session who have problems with aggression and misbehaving.

Ashley Russeau, Student's Private Speech Therapist

114. Ms. Russeau is a speech and language pathologist currently employed through ProMedica and has been for the last seven years. She has a B.A. and M.A. both in speech and language pathology. She is licensed through the American Speech and Hearing Association and the State of Michigan.
115. Ms. Russeau has been seeing the Student for just over one year. She was seeing the Student twice weekly and now sees her weekly (and the Student sees another speech therapist at the other weekly session).
116. Ms. Russeau spends 30 to 45 minutes with the Student in a one-on-one therapy session.

117. Ms. Rousseau obtained the Student's baseline level of functioning from the father's report. The Student put together only one and two word sentences (versus a norm of three and four word sentences) and had a vocabulary of only 30 to 40 words (versus a norm of 50 to 250 words).
118. Ms. Rousseau noted that the Student had word approximations, sign language, and gestures.
119. Ms. Rousseau would expect a Student with Down Syndrome to have diminished speech and language capacity.
120. Ms. Rousseau is working with the Student on verbal communication.
121. J.F. encouraged Ms. Rousseau to communicate her sessions with the ISD speech therapist(s). Ms. Rousseau has only had communication in the form of one email from the ISD speech therapist.
122. Ms. Rousseau noted that the Student is doing "really well".
123. Most students prefer to model other students' behavior.
124. The Student had improved her mean length of utterance (MLU) from 1-2 word sentences to two word sentences.
125. Ms. Rousseau believes that it is preferable to have the Student interacting with peers at her own MLU level or slightly above.
126. The Student has only recently improved to using two word sentences – she was lower functioning in September of 2018.
127. Ms. Rousseau has J.F. do speech and language exercises at home with the Student.
128. If a student is in an environment that is too advanced, the student could become frustrated and possibly not communicate.
129. Ms. Rousseau has observed the Student use hitting behavior but has not observed these behaviors over the last month.
130. Ms. Rousseau expects kindergarteners (five to six year old students) to be approximately 90% intelligible with over 2000 expressive words, answer 'wh' questions, and be able to express their desires.
131. Ms. Rousseau expects four to five year old students to have 400 to 500 expressive words, be beginning to answer 'wh' questions, and have a MLU of four to eight words per sentence.
132. Ms. Rousseau would be concerned if the Student's peers had MLUs greater than 4 words per sentence.

Elizabeth Taylor, Assistant Superintendent for Human Resources and Legal Counsel for (the Board of the) Respondent

133. Ms. Taylor has worked for the Respondent for 21 years in the same capacity.
134. Ms. Taylor has not had any contact with E.B. about the Student's education. J.F. did come to Ms. Taylor's office to discuss him being asked to leave the classroom. J.F. was visibly upset and loud. J.F. indicated that he was not being given the same information as E.B. about the Student.
135. The Respondent has a policy regarding recording IEP and 504 meetings (Policy 2461, Exhibit U). The policies are available on the Respondent's website.

Kathryn Bourbina, Early Childhood Director for the Respondent

136. Ms. Bourbina has been the Director for the last 10 years although her title changed slightly in November (when she assumed some additional duties). Ms. Bourbina currently reports to Dr. Kopke and previously to Dr. McNew and the previous Assistant Superintendent.
137. Ms. Bourbina was involved in the Student's June 2018 IEP, but not her June 2017 IEP. Ms. Bourbina was invited to the 2018 IEP because there was staff concern about parental conflict and so they wanted an administrator present at the IEP meeting.
138. Ms. Bourbina is not friends with E.B. Ms. Bourbina has had two telephone conversations with E.B. about the Student's educational issues. Ms. Bourbina contacted E.B. to invite her to the September 7, 2018 placement meeting.
139. The Respondent attempts to contact both parents in separate households individually to invite them to events. There was a clerical error that caused J.F. not to receive the open house invitation letter.
140. Ms. Bourbina spoke with J.F. the morning after the open house. J.F. seemed irritated, angry, and upset that he had been asked to leave the classroom. J.F. was surprised that there was a report of the teacher feeling intimidated at the open house.
141. Ms. Retli told Ms. Bourbina what had happened at the open house and that she had asked J.F. to leave her classroom and felt intimidated by J.F.'s actions at the meeting.
142. Ms. Bourbina believes that the a.m. versus p.m. placement is not an IEP placement but rather a system decision. The Respondent generally accommodates a parent's scheduling request.
143. The primary difference between the a.m. and the p.m. placement is the age of the students in the classroom. Many of the students in the p.m. session are preparing to move on to kindergarten.

144. Ms. Bourbina disagrees that a child's IEP and benchmarks are considered in determining whether a student is placed in the a.m. or the p.m. section.
145. Ms. Bourbina makes the ultimate decision about whether students are placed in the am or the pm session after reviewing the teachers' recommended placements.
146. Ms. Bourbina does not believe that the Student's speech and language goals or progress is a factor in the a.m. versus p.m. placement since those goals can be addressed in either section.
147. Ms. Bourbina does not agree that placing a student with peers with language skills above the student's level is harmful to the student.
148. The Student currently receives 15 to 20 minutes of speech and language therapy, four to eight times per month.
149. Ms. Bourbina believes that the a.m. versus p.m. placement should have been discussed with J.F.
150. Dr. McNew forwarded a text message to Ms. Bourbina regarding information about the a.m. versus p.m. sessions. Ms. Bourbina asked Dr. McNew to have E.B. email her.
151. Ms. Bourbina did not perceive any of E.B.'s comments during the September 7, 2018 meeting to be inappropriate.
152. J.F. became upset after Ms. Bourbina said that the Respondent worked hard to accommodate a.m. and p.m. requests but that was not possible here where the parents disagree with each other.
153. J.F. raised his voice and made several comments about E.B. including, "we hate each other, I cannot even stand to be in the same room with her." Ms. Bourbina asked J.F. to lower his voice but he did not. J.F. told E.B. that he hoped that she dropped dead before the end of the 22 years of the Student's remaining schooling.
154. There were no restrictions placed on J.F. between September 7, 2018 and the September 17, 2018 letter.
155. Ms. Bourbina was scheduled to be part of the September 17, 2017 meeting.
156. Dr. McNew reported that he had asked J.F. to come into the conference room but that it was inappropriate to have an attorney attend the meeting. Dr. McNew asked J.F. to leave when J.F. insisted on having his attorney accompany him at the meeting.
157. Ms. Bourbina believes that Ms. Retli likely completed the CA60 Dispersion Form (Exhibit 4) noting that the file was to be kept in the file box for the next school year in the p.m. session.

158. Ms. Bourbina reviewed Dr. Ayyangar's report but it did not affect the Student's placement.
159. Ms. Bourbina asked Ms. Laskey if the Student felt tired in her class, and Ms. Laskey said that the Student did not seem tired.
160. Ms. Bourbina noted that the early childhood special education (ECSE) program is for special education pre-kindergarten students. Students are 2.5 to 5 years old when they start the program. There are 17 sections of ECSE throughout the county. The Respondent also operates a general education preschool program.
161. The ECSE program focuses on preparing students for kindergarten. The same curriculum is used in both the a.m. and p.m. sections of all ECSE classrooms.
162. The a.m. section students are generally younger and so the focus is more on foundational skills and learning the routine of school although each student's education is individualized.
163. The Student would have the same curriculum, therapies, and would be working on the same goals in either the a.m. or the p.m. session.
164. The Respondent attempts to accommodate parental requests for either the a.m. or the p.m. sections if scheduling allows for those accommodations.
165. When parents disagree on which section is most appropriate, the Respondent places the student in the default section (under four years old in the a.m., older than four years old in the p.m. section)
166. The a.m. or p.m. section is not written into the IEP because the ECSE is the program placement (regardless of a.m. or p.m. timing). All students in the ECSE program have IEPs.
167. After the open house confrontation, Ms. Bourbina called J.F. who told her that he had not received the open house letter, brought up his concerns about the p.m. placement, and that he had become upset when was asked to leave the classroom which he called unfair.
168. Ms. Bourbina had not received complaints from J.F. prior to speaking with him about this open house incident.
169. Ms. Bourbina scheduled the September 7, 2018 meeting to discuss the differences between the a.m. and the p.m. placement and to see if an agreement could be reached.
170. Ms. Bourbina was concerned about the September 7, 2018 meeting continuing after J.F. got upset at that meeting. Ms. Bourbina was anxious and fearful for her own, Ms. Peterson's and E.B.'s safety.
171. Ms. Bourbina decided to assign the Student to another teacher because the relationship between J.F. and Ms. Retli had deteriorated to the point where it could not be repaired. Ms. Bourbina notified the parents that the Student had

been reassigned to the other p.m. ECSE classroom section: Ms. Weyher's classroom (with Ms. Laskey serving as the substitute teacher while Ms. Weyher was on leave) (Exhibit 9 page 4). Ms. Bourbina knew that Ms. Laskey was the Student's assigned teacher consultant previously (when the Student was an infant).

172. J.F. requested that Ms. Bourbina move the Student from Ms. Retli's classroom to another teacher.
173. J.F. shared his concerns about the p.m. session during their telephone conversation the day after the open house. This is part of the reason for setting up the September 7, 2018 meeting. Ms. Bourbina believes that the phone call lasted about 20 minutes.
174. Ms. Bourbina does not remember E.B. being loud or aggressive at the September 7, 2018 meeting but was critical. Ms. Bourbina attempted to re-direct the conversation but was unsuccessful.
175. Ms. Bourbina was scheduled to attend the September 17, 2018 meeting. Ms. Bourbina was in a conference room off the lobby. Although she did not hear the words, Ms. Bourbina heard two male voices (Dr. McNew and J.F.'s lawyer) arguing.

Marsha Laskey, Student's Teacher from September through November 2018

176. Ms. Laskey was employed with the Respondent for 35 years: 20 years in cognitive impairment and pre-school classrooms and 10 as a teacher consultant. She also worked for a family for two years serving as a student's aide in a private school. She served as a substitute teacher this fall filling in for a teacher on maternity leave; the Student was in this classroom during the p.m. session. Ms. Laskey has a B.A. and M.A. in special education with an endorsement in early childhood education.
177. Ms. Laskey met the Student as an infant and performed an initial evaluation and occasional follow up visits as a service coordinator. Ms. Laskey also saw the Student two hours a week as part of an early intervention program through the ISD.
178. The Student was in Ms. Laskey's p.m. section starting the second week of school. There were 10 students in the p.m. section.
179. The p.m. section has children with speech and language delays, autism, and developmental delays. The students have a variety of disabilities, social, cognitive, and attending skills. The children are aged 3 to 5 but were mostly 3 and 4 year olds.

180. There was a teacher aide in the classroom full time, a program consultant half time, a speech therapist two days a week, and two other professionals one day a week each.
181. Each student is assessed each marking period and the appropriate level of the curriculum is then utilized with each individual student in each subject area. There is a daily focus on speech and language in the curriculum.
182. The Student was using many signs, some word approximations, and core vocabulary words (pictures of the words). The Student would sign or say the things that she wanted. Ms. Laskey noted that the Student was getting quite good at the word approximations which was giving the Student power and decreasing the Student's language frustrations.
183. Ms. Laskey described the Student as very active, inquisitive, and busy. As the semester progressed, she was becoming more focused on activities.
184. Ms. Laskey did not observe the Student do much hair pulling but she did grab other students' glasses or knock down their projects. When this occurred, Ms. Laskey would work with the Student about how that made the affected student(s) feel and have the Student say sorry to the affected student(s).
185. If the Student was in the a.m. section, the Student would be doing the same things but the peer group would be different because there are more two and young three year old children in the a.m. section.
186. In the p.m. section, the students are able to talk with the Student and say stop or no (including signing stop or no) or use the picture to show 'safe hands' to the Student. Younger students generally are not able to do that.
187. The Student enjoys working with the baby doll and playing with the dishes. The p.m. section has other students engaging in these activities. The a.m. section has less creative play (just throwing the blocks or dishes around rather than using them in a meaningful way).
188. Ms. Laskey has seen the Student more engaged in active play as the semester has progressed.
189. The Student is often showing an ability to show emotions through her pictures. The Student often interacts with her peers and shows emotions to her peers. The Student is still working on accepting disappointment and does better when peers show their emotions to the Student – this could not be done in the a.m. section because most of the students are too young. Ms. Laskey believes that the Student is on target for achieving her IEP social goals (Exhibit 3 page 8).
190. The Student can transition to the next activity, particularly in the classroom although the Student does have difficulty stopping outside play. The Student is also doing well on transitioning when following her peers to the next scheduled

- activity. Ms. Laskey believes that the Student is on target for achieving her IEP social goals (Exhibit 3 page 9).
191. The Student is labelling objects using signs and is using pictures to express wants and needs. The Student is using signs and trying to say words when they are presented to her. The Student makes her wants and needs known. Ms. Laskey has observed the Student using three consecutive signs. Ms. Laskey believes that the Student is on target for achieving her IEP language goals (Exhibit 3 page 10).
 192. Ms. Laskey saw growth in cognitive abilities in the Student. The Student is staying engaged in activities, more so in activities that she enjoys and less so when the activities are difficult. The Student enjoys large group learning activities. The Student can stay engaged for more than four consecutive minutes in an activity that she chooses and enjoys. The Student is still working on remaining in a designated area and can do so but becomes distracted easily, particularly with students who are wearing glasses. The Student is motivated by peers. She engages with her peers and does very well responding to peers' interactions. Ms. Laskey believes that the Student is on target for achieving her IEP cognitive goals (Exhibit 3 page 10).
 193. The Student has never taken a nap during class. There was one day when the Student had diarrhea and was less active, but otherwise is very active. The Student will run down the hall toward parents at the end of the day if not prompted to walk.
 194. The Student has a communication folder with sides for mom and dad with the same information (unless there was an art project that the Student created which would not be duplicated). The Student has daily activity logs that go home with the Student each day.
 195. Ms. Laskey is unsure whether she reviewed the June 2017 IEP but would have reviewed the June 2018 IEP prior to the Student joining her classroom.
 196. Ms. Laskey noted that goals are usually carried over rather than decreased in subsequent years if the goals were not achieved.
 197. Ms. Laskey sent a letter to each parent noting her last day and introducing the new teacher.
 198. The Student's program to maximize the Student's vocabulary was using the core vocabulary words.
 199. The Student's June 2017 goal for language was to use two to four word combinations using Total Functional Communication including signing to make requests during a structured language activity. The June 2018 goal was to use two consecutive signs or word approximations to express wants/needs or label objectives. Ms. Laskey is unsure whether this is a decreased goal because although two words is less than two to four words, the two words are sign or word

approximations whereas the two to four words are Total Functional Communication (which includes gesturing and pictures).

200. All the Student's goals are meant to make the Student as independent as possible.
201. The Student's 2017 goal was to achieve 50 new word signs/word approximations, but she had learned only 20 new signs by the end of the 2017-2018 school year.
202. The speech therapist worked with Ms. Laskey on the core curriculum words.
203. The Student receives individual speech therapy sometimes and receives speech therapy with another student at other times.

Katelyn Todd, Speech/Language Pathologist for Respondent

204. Ms. Todd has been employed since the 2017-2018 school year. She has a B.A. and M.A. in speech/language pathology. She is assigned to the ECSE classrooms and local elementary schools. Ms. Todd is in the ECSE classroom for half of the session twice a week.
205. The Student is one of Ms. Todd's sixty students that she works with. Ms. Todd worked with the Student both last year and this year.
206. Ms. Todd was working with the Student's word approximations with signs to request desired items, following one to two step basic directions, and developing sounds (p, b, m, w, h) in isolation, syllables and words.
207. Ms. Todd worked with the Student directly four to eight times a month both individually and in small groups.
208. The Student works on speech both with Ms. Todd and as part of the curriculum in the classroom.
209. In the ECSE classroom there is a board with sixty words used in everyday language that associates pictures with words.
210. Ms. Todd was involved in creating the Student's Progress Reporting (Exhibit B). It shows that the Student was progressing as expected towards goals 1 and 3 (50 new signs and producing sounds in isolation) and had achieved goal 2 of following two to four step directions.
211. At the end of the 2017-2018 school year, the Student was using 20-30 new signs but not consistently pairing the signs with word approximations. Although the Student had not achieved the goals, Ms. Todd believes the Student was making progress but had not yet achieved the goal. The Student was able to verbalize hi, bye, no, my and h and b in isolation but was using mostly signs and gestures to communicate and so was making progress but had not yet achieved that goal.

212. Ms. Todd did not participate in the June 2017 IEP but did participate in the June 2018 IEP and helped to develop the goals for the Student for the 2018-2019 school year. The Student's parents did not have any objections to the proposed goals and objectives for the Student.
213. Ms. Todd contacted the Student's outside speech therapist prior to the June 2018 IEP. Ms. Todd went over the proposed goals and objectives and discussed both therapists targeting the Student using two signs to communicate. Ms. Todd noted that it is typical to have students working on different goals in the school and in an outside environment. The focus in school is communicating in the school environment whereas outside speech therapy goals are broader.
214. Ms. Todd made changes to the Student's goals because the focus was on the Student communicating functionally in the educational environment. Although the Student was making some progress toward making sounds, her primary mode of communication was signing and so that was made the focus of her communication goals.
215. Ms. Todd spends 15 to 20 minutes with the Student four to eight times a month.
216. The students who have been in the a.m. session for a year are usually moved to the p.m. session.
217. Ms. Todd sees no concerns with the Student being in the p.m. section. Ms. Todd believes that the Student's placement in the p.m. section is beneficial to the Student because the Student's peers have more advanced language and assist the Student with the Student's language.
218. Ms. Todd has never observed the Student napping in the classroom or in her speech therapy sessions.
219. The experience book goes between home and school to communicate what is happening at home and at school so that parents and teacher can discuss what is happening at home and at school.
220. Ms. Todd's 60 students are at four buildings: Arborwood North and South, Rasinville and Waterloo. Ms. Todd provides services to the Student on Mondays and Wednesdays. Ms. Todd will work one-on-one with the Student, on average, twice per month.
221. Ms. Todd has not been in contact with the outside speech therapist during the 2017-2018 school year.
222. Ms. Todd believes that the MLU in the a.m. sessions is approximately three with a range from zero to four or five. Ms. Todd believes that the MLU in the Student's p.m. session is approximately four and a half and ranges from one to six.
223. Ms. Todd does not believe that students' peer's language abilities are necessarily important in determining a student's placement.

224. There is a difference between the school and medical models of speech therapy. Medical models often focus more on sounds whereas school models are more focused on allowing students to communicate whether that communication is through sound, sign, or pictures.
225. Ms. Todd believes that the p.m. session is more appropriate for the Student because the morning session is more focused on learning the routine of school while the afternoon focus is more on engagement and attending although that goal is present for the morning students as well.
226. Ms. Todd does not believe that the Student's peers' language abilities are relevant to her ability to meet her language and communication goals.

Kathryn Spencer, Teacher Consultant for Hearing Impaired Students for Respondent

227. Ms. Spencer has been in her role for five years and previously taught as a resource room teacher for nine years in another district. She has a B.A. in deaf education and a M.A. in special education learning disabilities.
228. Ms. Spencer is a member of the Student's IEP team and was brought in to help determine whether the Student would benefit from using sign language. Following the May 2, 2018 amendment to the Student's IEP, she has worked with the Student and Student's teacher 15-30 minutes a month two to four times a year.
229. Ms. Spencer is working with the Student on the Student's expressive language objectives.
230. Sign language use can help with a student's verbal speech skills because it encourages and reinforces communication.
231. When she works with the Student, Ms. Spencer is utilizing play-based therapy with toys that encourage the Student to speak.
232. Ms. Spencer does not have any concerns with the Student being in the p.m. session. Ms. Spencer does not believe the p.m. session is too advanced for the Student. Ms. Spencer has never observed the Student be tired, asleep, or restless. Although the Student is sometimes frustrated, Ms. Spencer does not believe this is a result of being tired.
233. Ms. Spencer's services would not change if she provided services during the a.m. session.
234. Ms. Spencer believes that the p.m. session is beneficial to the Student because the Student's p.m. session peers model more advanced speech than the a.m. session students would model for the Student.
235. Ms. Spencer believes that a child with sign language abilities has the same educational opportunities as a verbal child.

236. The Student has apraxia, a language disorder, which is preventing her from being more verbal.

J.F., Petitioner (Student's Father)

237. J.F. is a Monroe police officer and has been for the last 20 years. J.F. is the Student's father. J.F. has joint physical and legal custody of the Student. From September through mid-June (during the school year), J.F. has physical custody 60% of the time.

238. During the 2017-2018 school year, on days when he had custody, J.F. picked up and dropped off the Student at school. J.F. continues to pick up and drop off the Student during the 2018-2019 school year in the p.m. session.

239. J.F. described the Student as sweet, loving, curious, hard-working, and is enjoying practicing writing. The Student has learned to cut paper and learned four new words including pretty. J.F. includes the Student in all his activities including play acting activities that he is doing.

240. J.F. describes the Student as a morning person – she is always up between 7:00 a.m. and 7:30 a.m.

241. During the 2017-2018 school year, the Student's bed time was 8:30 p.m.

242. When the Student gets tired, the Student is difficult and becomes easily frustrated and can have temper tantrums and screaming.

243. J.F. has had the Student participate in numerous after school activities.

244. The Student is getting both speech and occupational therapies privately – once per week for each. The goal of speech therapy is to get the Student to speak.

245. J.F. believes that the Student is capable of normal speech because she has full hearing in her left ear that is unlikely to deteriorate.

246. J.F. does speech activities with the Student at home. The activities are provided by both the Respondent and the private speech therapist. J.F. believes that the modeling that he does for the Student is helpful and has improved the Student's speech.

247. During the private occupational therapy, the Student is working on fine motor skills and activities of daily living (getting dressed and putting her coat on).

248. Last year the Student would attend morning sessions, come home and take a nap, and then go to therapies. She now goes to therapies in the morning or on Fridays when she has no school.

249. The Student has not been able to go to dance classes this school year because the Student is too tired after school. J.F. believes the dance class is helpful both

because of the activity and the fact that the Student gets to interact with other disabled children in the class.

250. The Student is also unable to attend most swimming classes now because she is too tired after school.
251. J.F. believes that the Student is very tired and falls asleep almost immediately in the car every day that he picks up the Student. The Student is most tired on Mondays after school.
252. The pictures of the Student asleep in her car seat (Exhibit 19) were taken shortly after J.F. picked up the Student from school.
253. J.F. takes the Student to her bed and she sleeps for two to two-and-a half hours after school.
254. The Student is re-energized after her nap and doesn't get ready for bed until 9:00 p.m. or 9:30 p.m. This affects her morning because she awakes tired and irritable. J.F. believes that the Student's mornings are now more difficult.
255. J.F. believes that the p.m. session has changed the Student because the Student is more tired.
256. The Student is not able to be woken up from her naps – she is a heavy sleeper.
257. J.F. believes that the p.m. session is not giving the Student the best opportunity to succeed. The Student had not experienced any of these issues during the 2017-2018 school year when she was enrolled in the a.m. session.
258. J.F. attended the Student's music therapies, and two parties in the classroom during the 2017-2018 school year. J.F. desires to attend the Student's classroom activities during the 2018-2019 school year.
259. J.F. desires to observe the Student's classroom to replicate and model those behaviors at home with the Student.
260. No one ever approached J.F. during the 2017-2018 school year with concerns about J.F. or his behavior.
261. J.F. carries a firearm as part of his job as a police officer. He does not bring his weapon or badge or uniform to school when he picks up the Student.
262. J.F. has always asked the Student's teachers to say the same things to him and the mother and has asked that communications be reduced to emails so that everyone had the same information.
263. J.F. believes that Ms. Retli used the word "tattling", not J.F.
264. J.F. believes that his voice wasn't being heard by the Respondent and that he wasn't getting the same information as the mother.
265. J.F. first learned that the Student would be in the p.m. session at the open house. This was not discussed during the June 2018 IEP.

266. J.F. knew that Dr. McNew and his wife were friends with his ex-wife, E.B. J.F. told Ms. Retli that he was concerned that he was being treated unfairly because of E.B.'s personal relationships with Respondent administrators.
267. J.F. attended the June 2018 IEP. J.F. brought up the issue of the Student receiving speech therapy focused on verbal communication and asked for additional focus on that area.
268. If the p.m. session had ever been brought up, J.F. would have remembered it and he would have expressed his concern about that placement.
269. J.F. believes that the p.m. session was discussed with E.B. but not with him because E.B. was not surprised about the p.m. placement at the open house (while he was).
270. J.F. was at the August 2018 open house for about 10 minutes. J.F. became upset when Ms. Retli and E.B. said that the p.m. placement was discussed at the June 2018 IEP.
271. J.F. was surprised when Ms. Retli asked him to leave the classroom.
272. J.F. was unaware of any policy about taping IEP meetings.
273. J.F. taped the June 2018 IEP to review the IEP on his own time.
274. J.F. taped the open house because he felt that information was being kept from him.
275. J.F. left when asked to do so after giving the Student a hug and asking for a copy of the materials that were being handed out to parents.
276. J.F. denies being too close to Ms. Retli. Instead, Ms. Retli was moving around the room and J.F. was standing in the same spot the entire time.
277. Ms. Bourbina called J.F. the morning after the open house. Ms. Bourbina told J.F. that Ms. Retli felt intimidated. J.F. told Ms. Bourbina that he did not do anything to intimidate anyone.
278. J.F. believes that Ms. Retli and E.B. were ganging up on him and that Ms. Retli was communicating things to E.B. that she was not communicating to J.F. J.F. told Ms. Bourbina that he felt uncomfortable during that open house because he felt ganged up on.
279. J.F. attended the September 7, 2018 meeting with his attorney. Ms. Bourbina told J.F. that the Student would not be moved to the p.m. placement but would remain in Ms. Retli's classroom. J.F. was not asked about his concerns with the Student's p.m. placement. E.B. berated J.F. for several minutes during that meeting.
280. J.F. admitted that he yelled and told E.B. that he hoped that E.B. would drop dead within the next 22 years.

281. J.F. denied threatening anyone (including E.B.).
282. J.F. and E.B. were both yelling during the September 7, 2018 meeting.
283. J.F. sent his September 12, 2018 email to Ms. Bourbina (Exhibit 9 pages 3 and 4) because he wanted to be heard. J.F. never received a response to that email.
284. J.F. attended the September 17, 2018 meeting with his attorney.
285. After J.F. signed in for the September 17, 2018 meeting, he spoke briefly with Dr. McNew and introduced his attorney.
286. Dr. McNew became upset and said that the attorney wasn't allowed in the meeting. J.F. indicated that he wanted to have his attorney there. Dr. McNew told J.F. to leave the building and that J.F. was not going to be allowed to be on any ISD property.
287. J.F. believes that Dr. McNew's behavior was worse than J.F.'s behavior by yelling and gesturing.
288. J.F. believes that he has been treated differently than E.B. because of E.B.'s relationship with Dr. McNew.
289. Dr. McNew contacted J.F.'s employer about the September 17, 2018 meeting and the restrictions.
290. J.F. believes that the a.m. placement is a better placement for the Student. J.F. is concerned that the Student will get frustrated with her peers in the p.m. session because they will be too advanced for her.
291. J.F. is receiving daily reports but those do not include any behavior or discipline problems that the Student may have had.
292. J.F. did not receive either of the letters from Ms. Laskey or Ms. Bourbina informing him that there was going to be a teacher switch. J.F. would have liked to have met the Student's new classroom teacher.
293. J.F. works with the Student on speaking because he believes that this is the best method for her to communicate moving forward.
294. J.F. sent Dr. Ayyangar's report to Katie Bourbina but received no response.
295. J.F. noted that they tried swimming lessons with the Student in the morning but it was tiring her out too much.
296. There are some possibilities for improving the Student's hearing in her left ear (through an amplification device) but there is nothing that can be done to affect her right ear where she will remain deaf.
297. J.F. has emailed Ms. Lasky a couple of times but has not received any responses. J.F. has not attempted to call anyone at the Respondent and has not requested a meeting with anyone at the Respondent.

298. J.F. did not understand the August 2018 letter that he received from Ms. Retli in an August 2018 email. That letter (Exhibit 6) does indicate that the Student will be placed in the p.m. session.
299. J.F. did not share his concerns about the p.m. session with Ms. Bourbina during the August 2018 phone call other than to indicate that the reason for the confrontation was his disagreement with the p.m. session.
300. J.F. taped the June 2017 IEP, June 2018 IEP, and the open house meeting.
301. J.F. has been invited to and attended all the Student's IEP meetings.
302. J.F. did not email or otherwise re-contact Ms. Bourbina to re-ask E.B.'s October 1, 2018 questions (Exhibit 9 page 7).
303. J.F. told Dr. McNew that he would be attending the September 17, 2018 meeting with his attorney.
304. J.F. expects all communications with one parent be relayed to the other parent.
305. One of J.F.'s concerns with the p.m. session is that the Student will get frustrated because the Student will be tired.
306. J.F. does not have faith in any of the Respondent teachers/therapists who testified and does not believe that those providers' testimony that the Student is not tired in the classroom.
307. Dr. Ayyangar was the first physician to recommend that the Student receive orthotics to help correct her pronating gait.
308. J.F. believes that it is important for him to participate in the Student's classroom education.
309. J.F. disagrees with Ms. Bourbina that E.B. was not yelling at the September 7, 2018 meeting.

CONCLUSIONS OF LAW

The Student's placement is the ECSE pre-kindergarten program, not the a.m. or p.m. session.

A due process hearing may address any issues "relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child." 34 CFR 300.507(a).¹¹ The MARSE 340.1724f(5) similarly lists issues that may be the subject matter of a special education due process hearing including (c) Educational Placement, and (e) Provision of a FAPE.

¹¹ 34 CFR 300.532(a) which governs disciplinary decisions is not applicable to this case.

Here both the Petitioner and Respondent are arguing for placement in an ECSE classroom so neither classroom assignment is either more or less restrictive under 34 CFR 300.114 through 117. All the children in both classrooms are disabled and require supplementary aids and services and there is no question that the Student cannot be educated in the classroom that she would attend if nondisabled (since she is not yet school-aged and is not eligible to attend a public classroom for nondisabled pre-kindergarteners).

Educational placement is not defined within IDEA or the Code of Federal Regulations. 71 Fed Reg 46540 (2006) notes that placement is a continuum of options available and is differentiated from physical location. Educational placement refers to the general type of educational program where the child is placed or overall instructional setting where the student receives her education. For the Petitioner to prevail, the Petitioner must establish by a preponderance of the evidence that there is a *fundamental* difference in a basic element of the educational program between the a.m. and the p.m. sessions of the ECSE pre-kindergarten classes. *Lunceford v District of Columbia Bd. Of Educ.*, 745 F.2d 1577 (D.C. Cir. 1984); *Knight v District of Columbia*, 877 F.2d 1025 (D.C. Cir. 1989)¹²; *McKenzie v Smith* 771 F.2d 1527 (D.C. Cir. 1985)¹³.

The “touchstone” is whether the modification “is likely to affect in some significant way the child’s learning experience.” *J.R. v Mars Area Sch. Dist.* 381 F. App’x 113 (3d Cir. 2009) citing *DeLeon v Susquehanna Cmty. Sch. Dist.* (3d Cir. 1984). Here, having considered all the evidence, there does not seem to be any significant **educational** difference between the a.m. or p.m. session. This is not to minimize the father’s concerns about the Student’s naps. Naps to a four year old child (and her father) are invaluable. To the extent that the Student’s naps interfere with her ability to take swimming and dance classes, this is truly unfortunate. However, the evidence does not show that the Student’s sleepiness after class is affecting her in any way in school. All the Student’s teachers testified that the Student is awake, alert, and engaged in her p.m. kindergarten session and, if not reminded to do otherwise, runs towards the parent picking her up at the end of the school day.

The educational services provided to the Student are virtually identical in the morning and the afternoon. The staffing is the same and the program is the same. Although the peers are different, and the curriculum is slightly less focused on learning the routines of school and slightly more focused on adapting to kindergarten, the difference is not significant enough to constitute a change in educational placement.

¹² A change from a private school to a private school *is not* a change in educational placement.

¹³ A change from a full-time special education program to a part-time regular education program *is* a change in educational placement.

The Student's 2018-2019 IEP could be carried out in either the a.m. or the p.m. session of the pre-kindergarten ECSE classroom. Either session is an appropriate placement for the Student. There is no fundamental difference between the two sessions.

The p.m. classroom session is the more appropriate setting for the Student.

Notwithstanding the above discussion that the placement is the ECSE classroom rather than the a.m. versus p.m. timing, a preponderance of the evidence establishes that the p.m. classroom is the more appropriate educational setting for the Student. The Petitioner, who bears the burden of proof, has set forth only the Petitioner's layperson opinion that the a.m. session is more beneficial to his daughter. J.F.'s testimony, while compelling, is contradicted by the mother's testimony¹⁴ and all the Student's teachers and educational¹⁵ therapists.

While J.F. indicated his concerns that the Student's peers were too advanced for the Student, this was contradicted by the Student's teachers who indicated, to the contrary, that the Student's peers are helpful in advancing the Student's language skills, leading her in transitioning to subsequent activities and correcting some of her inappropriate behaviors.

Petitioner argues that B.F. has significant deficiencies in her speech and language communication which would be better addressed in the a.m. section of the ECSE classroom (brief pages 5-8) and points to an exchange on pages 389-390 of the transcript where the school speech therapist agrees that she puts more emphasis on *any* communication (signs/pictures/words) than the private speech therapist who is focusing solely on word production. This is appropriate, as the school speech therapist, Ms. Todd, explained that the goal of school speech therapy was for the Student to engage in the educational curriculum. The goal of private speech therapy is to improve the Student's word production. This is a secondary function of the Student's school-based speech therapy.

Although the Petitioner believes that Ms. Todd's relative inexperience was somehow hindering the Student's language acquisition skills, there was no evidence presented to support this contention. Ms. Todd presented as an extremely knowledgeable and competent witness and the Student has been making progress with her speech, language and communication skills while the Student has been working with Ms. Todd. While it is certainly understandable that the Student's father is frustrated that the Student's progress has not been quicker, there is no evidence that the services Ms. Todd has been providing have been anything but exemplary. Further, it is unclear how the a.m. session will improve the Student's communication since the same speech therapist (Ms. Todd) staffs to both classrooms.

¹⁴ Fact #42 and #48.

¹⁵ The Student's private therapist did not offer an opinion as it was outside of her area of expertise.

Although the Student did not fully meet her IEP goals in the a.m. session, this is not a reason to repeat the session. The Student is showing progress towards her goals in the p.m. session¹⁶ and should remain there through the remainder of the school year.

The September 17, 2018 Restrictions on J.F.'s involvement do not negatively affect J.F.'s rights under IDEA.

A parent's rights under IDEA are limited to the identification, evaluation, and educational placement of their children with disabilities. A 2014 United States Department of Education Office of Special Education and Rehabilitative Services (OSEP) opinion letter provided an opinion on "whether the (IDEA) guarantees parents and their representatives a reasonable opportunity to observe their children's classrooms and proposed placement options." Although not entirely analogous to the issue presented here, this letter serves as a good starting point for both a recitation of parental rights under IDEA and OSEP's opinion¹⁷ of their limitations:

One of the key purposes of the IDEA Amendments of 1997 is to strengthen and expand the role of parents in the identification, evaluation, and educational placement of their child. The IDEA specifically provides that the parents of a child with disabilities:

- (1) have an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of their child, and the provision of a free appropriate public education to their child (§§300.501(b), 300.344(a)(1), and 300.517));
- (2) be part of any group that determines what additional data are needed as part of an evaluation of their child (§300.533(a)(1)), and determine their child's eligibility (§300.534(a)(1)) and educational placement (§300.501(c));
- (3) have their concerns and the information that they provide regarding their child considered in developing and reviewing their child's IEP (§§300.343(c)(iii) and 300.346(a)(1)(i) and (b)); and
- (4) be regularly informed, as specified in their child's IEP, at least as often as parents are informed of their nondisabled children's progress, of their child's progress toward the annual goals in the IEP and the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year (§300.347(a)(7)).

¹⁶ Fact #172.

¹⁷ Though not bound by OSEP rulings that interpret IDEA, courts often give due deference to these agency policy interpretations of statutes and regulations so long as they are reasonable. *Honig v Doe*, 484 U.S. 305 (1984). *Letter to Mamas* (2014) cited here seems reasonable.

While the IDEA expects parents of children with disabilities to have an expanded role in the evaluation and educational placement of their children and be participants, along with school personnel, in developing, reviewing, and revising the IEPs for their children, neither the statute nor the regulations implementing the IDEA provide a general entitlement for parents of children with disabilities, or their professional representatives, to observe their children in any current classroom or proposed educational placement. The determination of who has access to classrooms may be addressed by State and/or local policy. However, we encourage school district personnel and parents to work together in ways that meet the needs of both the parents and the school, including providing opportunities for parents to observe their children's classrooms and proposed placement options.

Letter to Mamas (2014).

Parental rights are generally limited to and covered through and by attendance at IEP meetings. The September 17, 2018 letter restricting J.F.'s presence at the school does not limit his participation in the Student's IEP meetings. It similarly places restrictions on but does not limit access to the Student's teachers or ability to discuss the Student's progress, evaluation, educational placement, or provision of services.

Petitioner argues in his reply brief that he was not afforded the opportunity to participate in the discussion about the Student's placement in the p.m. section of the ECSE classroom. As discussed above, the p.m. section is not the Student's placement, and so J.F.'s non-participation in that discussion was not a deprivation of his right to participate in the discussion about the Student's placement.

J.F.'s rights are limited under IDEA. The undersigned Administrative Law Judge has no authority to hear any claims that the Respondent may have violated J.F.'s civil rights under any other statute. The question then becomes whether the September 17, 2018 restrictions on J.F., the Student's father, deprive the Student of a free appropriate public education by limiting her father's opportunity to participate in her classroom activities.

The September 17, 2018 Restrictions on J.F.'s Involvement do not deprive the Student of a Free Appropriate Public Education.

The Petitioner presented no evidence during the hearing to establish how the restrictions on J.F.'s participation deprives the Student of a free appropriate public education. Petitioner argues in his brief that the restrictions are "to the detriment of B.F. and her educational and personal development" but points to very little evidence in support of that contention. Petitioner's brief spends pages 12 through 18 arguing that the restrictions are unjustified but barely a page on the alleged deleterious effects of those restrictions on the Student.

Petitioner notes only three pieces of evidence in support of their contention that the Respondent's restrictions are harmful to the Student:

1. Michigan Department of Education *Parent Engagement* website.¹⁸
2. Testimony by Ms. Retli (pages 131-132) that parental involvement is important in children's education
3. Petitioner's past attendance at music therapy, Halloween parties, and Christmas parties during the 2017-2018 school year (testimony of J.F. page 429).

There can be no doubt that parental involvement and engagement is important in children's education. However, it does not follow that any limiting of that parental involvement or engagement is necessarily harmful to a child's education or to what degree. It is the Petitioner's burden of proof to establish, by a preponderance of the evidence, that the limitations cause harm so severe as to not only negatively affect the Student's education but to deprive the Student of a free appropriate public education. The Petitioner has not done that.

The Petitioner has not established what he would have done in the Student's classroom but for the Respondent's restrictions. Petitioner argues in his Reply brief on page 6, "What Petitioner is actually requesting is that the restrictions placed by the September 17th letter be rescinded, so that he may attend school functions and meetings, and be fully engaged and immersed in his daughter's education, so that B.F. can optimally develop both at school and at home." Although there was testimony that there were parties and open houses and music therapy sessions that he attended last year, there was no testimony that there were any such events scheduled for the 2018-2019 school year, that he would have attended them if permitted, what impact his attendance (if allowed) would have had, or how that deprivation affected one or more of the Student's IEP goals or other educational outcomes to the point of depriving her of a free appropriate public education. There is simply no evidence in the record to establish what J.F. is unable to do because of the restrictions and how that affects the Student to such a degree that she is not receiving a free appropriate public education.

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). Absent a showing by the Petitioner just how the Respondent's restrictions on J.F. impeded the Student's ability to receive a free appropriate public education, regardless of their reasonableness, the Administrative Law Judge may not second guess whether the Respondent's restrictions are the best educational policy.

Because the Petitioner has not established that the restrictions deny the Student a FAPE, there is no need to discuss the appropriateness of the Respondent's restrictions.

¹⁸ Although attached as Exhibit B to Petitioner's Memorandum in Opposition to Motion for Summary Judgment, this website was not offered or admitted as an exhibit at the hearing.

Conclusion

The proper placement for the Student is the ECSE pre-kindergarten classroom. The a.m. and the p.m. sessions of that ECSE pre-kindergarten classroom are not placements within the meaning of IDEA. The Respondent is entitled to deference in the assignment of the Student to either the a.m. or the p.m. session. The evidence also shows that the p.m. session is the more appropriate educational setting for the Student.

The Petitioner has not established, by a preponderance of the evidence, that the Respondent's restrictions on J.F. have negatively affected J.F.'s parental rights under IDEA or denied the Student a free appropriate public education.

There are several elements of this case that are concerning and worth comment. The most important aspect of this case must be the Student and her education. To effectively continue her education for the next 14 to 22 years it is imperative that the Student mother, father, and intermediate school district teachers, therapists, and administrators work together. It is the opinion of the undersigned Administrative Law Judge, there is considerable room for improvement by the mother, father, and intermediate school district administrators here.

J.F.'s statement at the first meeting that he hoped that his ex-wife, the mother of his child, dropped dead before the end of their 22 years of raising their child together is obviously unacceptable. B.F.'s statements degrading her ex-husband at that meeting, while less detailed at the hearing, are also unacceptable. In addition to being parents, these are professionals (a teacher and a police officer) accustomed to working with individuals who can be difficult. J.F. and B.F. simply must find a way to be civil with each other.

There is nothing inherently wrong with J.F. taping/audio recording an IEP meeting, although it is certainly a best practice to notify others that you are recording them. Ms. Retli's reaction, at the open house, to learning that she was being recorded could best be described as one of surprise and a sense of being violated rather than anger. Ms. Retli asking J.F. to leave is certainly understandable for a teacher who is learning that a student's parent has previously and is actively recording her. J.F. should follow the Respondent's (admittedly voluminous and difficult to locate) policies on audio recording interactions with district staff.

Several of J.F.'s statements in his September 12, 2018 email are quite concerning. J.F.'s characterization that Ms. Retli lied to him about a previous discussion about the Student being in the p.m. session is a mischaracterization. Ms. Retli's contention that she believed that she had discussed this with J.F. is credible. Whether it was discussed is unknown, but Ms. Retli certainly believed that it was. J.F. calling his daughter's teacher a liar is not furthering the Student's education. In that same email, J.F. made the following statements:

Per our divorce decree, I have more parenting time than <E.B.>. During the school year, I have her three days of the school week and every other weekend while conversely <E.B.> has her only two days a week and every other weekend. ... Given the schedule outlined above, I am much more able to weigh in on what is in <Student's> best interest. I know my daughter and I know what her needs are.

This is borderline nonsensical. Both the Student's parents need and deserve to have input in the Student's education, regardless of the allocation of parenting time during the school year. Both parents need to stop focusing on who is 'winning' the divorce and instead focus on what is best for the Student.

J.F.'s statements about his distrust of his daughter's teachers and therapists is concerning. In addition to the statement above calling Ms. Retli a liar, J.F. testified during the hearing:

A: There is not one person here – maybe one that I would have a little bit of ounce of faith in.

Q: Okay. So basically what you're saying is it's your position that everyone who testified today or yesterday, all of the service providers that have worked with <Student>, have been working with <Student>, are not telling the truth about the progress she's making in the p.m. class?

A: I believe they're not telling the truth about her frustration and about the lack – that she gets tired. I believe those two things are not being presented properly on their part, correct.

Transcript page 502.

The undersigned Administrative Law Judge did not see this. The Student's teachers and therapists, past and present, without exception, all presented as qualified, competent and caring instructors with the Student's best interests at heart. Ms. Retli, Ms. Laskey, Ms. Todd, and Ms. Spencer are all providing exemplary services to the Student and should be commended for the work that they have done and are continuing to do for the Student. The Student's private speech therapist, Ms. Rousseau, also is providing excellent services for which J.F. should be commended for seeking out and providing as they are an excellent supplement to the school's services. As noted below, some of J.F.'s frustrations with the Respondent's administrators are justified. J.F.'s frustrations with the Respondent's service providers – the front line teachers and therapists providing services to the Student – are not justified. The Student's teachers and therapists just want to work with the Student and not get involved in the parents' divorce. They aren't interested in tattling on one parent or the other and are hesitant to communicate only because they fear their words will be misconstrued later on in a courtroom by one or both parents. J.F. should have trust and faith in his daughter's teachers and therapists; they are doing excellent work educating his daughter.

The Respondent must ensure that all communications are distributed to both parents equally. At least some of the difficulties here could possibly have been avoided if the invitation to the open house had been mailed to both parents. The letter states that the Student was to be in the p.m. session and J.F. likely would not have been surprised at the open house, or if he had been, it would have been a result of his not carefully reviewing the correspondence sent to him¹⁹. The Respondent's explanation that J.F. was not sent this letter as a result of a mail merge clerical error is reasonable and mistakes do happen, but the Respondent is certainly on notice now that those mistakes simply cannot happen with this family in the future.

What was not a mistake was Ms. Bourbina's non-response to J.F.'s attorney's emailed questions. That was done at Ms. Taylor's direction: "I would not answer the email." To be sure the email is very pointed and contains some assertions that the Respondent certainly disagrees with, but at a minimum a response of "thank you for your email, we will be sure to address these questions at our meeting" would have been preferred over ignoring communication from a parent's attorney who has concerns including about a perceived lack of communication. J.F.'s concerns about a lack of communication have been reinforced by the Respondent and what was initially an unfortunate oversight (a failure to invite him to the orientation) turned into an active omission (an instruction to ignore his attorney's questions).

The Respondent must not be perceived as taking sides in these parents' divorce. J.F. wanted to be heard about his concerns with the a.m. pre-kindergarten class. J.F.'s concerns were not manufactured or illegitimate; naps, tiredness/irritableness, missing dance and swimming class, and the resulting social opportunities are all legitimate concerns even if they are not educational and are outweighed by the benefits of the p.m. session. J.F. felt that his concerns were not being heard because he was not invited to the open house (clerical error), asked to leave the open house early (because he was taping it), not asked about his concerns by Ms. Bourbina (not the focus of that conversation), the concerns were not covered before the first meeting was terminated (because of his and his wife's bad behavior), and because the second meeting never took place at all (because the Superintendent and his attorney got into a shouting match and he was subsequently banned from school property). The Respondent then reported J.F.'s behavior to his employer, further deteriorating relations between the parties.

¹⁹ J.F. received the invitation letter only a day or two before the open house. The invitation letter indicates that the Student is in the p.m. session but also notes that the open house (which is discussed in a different section of the letter) is from 1:00pm to 3:30pm. This refers to the time that p.m. students' parents can come to the classroom (versus a.m. students' parents' presumably were invited to the open house in the morning). J.F. indicated that this was confusing. Perhaps if J.F. had received the letter in the mail earlier, in paper form, and had additional time to review it, he would have learned of the Student's p.m. assignment or at least had time to ask questions of Ms. Retl or Ms. Bourbina.

There is nothing inherently wrong with J.F. bringing an attorney to a meeting. It is unclear exactly what was said at the second meeting between the Superintendent and J.F. and his attorney, but apparently the Superintendent and his attorney were yelling at each other about whether the attorney could be present at the meeting. The Superintendent should not be yelling at a parent or his attorney (and vice versa). It was implied that the attorney was not welcome at the meeting although it is unclear why this would be. Although the Superintendent may have been taken by surprise by the attorney's attendance, he likely shouldn't have been since J.F. brought his attorney to the previous meeting and an attorney for the Respondent, Ms. Taylor, was planning on attending the meeting and had indicated she was prepared to handle J.F.'s attorney (in response to a question from Ms. Bourbina about the earlier meeting).

The Administrative Law Judge strongly recommends that both parties consider starting fresh with a renewed focus on the Student and her continued education. J.F. should trust that his daughter's teachers and therapists are doing the right things for his daughter and let them do their important work; the Respondent's teachers and therapists are doing excellent work educating the Student and should continue to do so. Respondent's administrators should review their restrictions on J.F. and seriously consider revising or removing those restrictions in the spirit of continued cooperation and renewed focus on the Student's educational success if not immediately, at least for next school year.

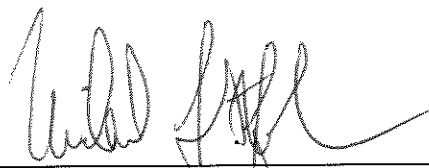
The undersigned Administrative Law Judge wishes all the parties well in their continued progress towards their important endeavor of providing the best possible education for Student.

ORDER

NOW, THEREFORE, IT IS ORDERED Petitioner's complaint is dismissed.

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.



Michael J. St. John
Administrative Law Judge

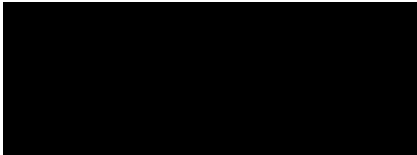
PROOF OF SERVICE

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 14th day of February, 2019.



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