

## LETTER OF RESOLUTION PROCEDURAL HISTORY

On November 10, 2015, the South Carolina Department of Education (SCDE) received a complaint filed against York County School District Four (District) by Jeff and Beckye Barnes (Complainants), on behalf of their son, Jared Doyle Barnes (Student), a student with a disability under Section 504 of the Rehabilitation Act of 1973 (504) who attends Fort Mill Middle School. The SCDE received confirmation that the District also received a copy of the complaint on November 10, 2015.

The Complainants alleged that the District violated the rights afforded to the Student under the Individuals with Disabilities Education Act (IDEA), the applicable federal and State Board of Education (SBE) regulations, and SCDE policies and procedures by failing to provide the Student a free and appropriate public education (FAPE) due to the District's failure to follow appropriate child find procedures as required by the IDEA. More specifically, the Complainants allege that the District predetermined that the Student would not qualify as having a disability under the IDEA before the initial evaluation occurred. The Complainants allege that the District failed to assess the Student in all areas related to the suspected disability, ignored the Standards for Evaluation and Eligibility Determination (SEED) guidelines for the evaluation for autism and the determination for eligibility under the categories of autism and emotional disability (ED), and ignored findings that support the Student's eligibility as a student with a disability under the IDEA and the development of an individualized education program (IEP) for the Student. The Complainants also specifically allege that the District used grades, test scores, and placement in the gifted and talented programs to determine eligibility for services rather than whether the disability impedes the Student's access to the general education curriculum.

The Complainants also allege that the District has failed to provide them with the Student's educational records as required by the IDEA. More specifically, the Complainants allege that the District willfully destroyed documents or failed to provide documents that may support the need for an IEP for the Student. The Complainants believe these violations affect the Student's right to a FAPE.

On November 12, 2015, the SCDE forwarded correspondence to Amy Maziarz, EdD, Director of Special Services, requesting a written response to the complaint no later than Monday, November 23, 2015. On November 12, 2015, the District submitted verification that it provided the Complainants the procedural safeguards in response to her complaint in accordance with the IDEA regulation 34 C.F.R. § 300.504.

On November 23, 2015, the District asked for an extension to submit its response. The SCDE granted an extension until Wednesday, November 25, 2015, at 10:00 am. On November 25, 2015, the District submitted its written response to the complaint and the SCDE provided a copy of the District's written response to the Complainants. On December 7, 2015, the SCDE received the Complainants' reply to the District's written response. The Complainants submitted additional documentation supporting the allegations on December 14, 2015.

The SCDE carefully reviewed all of the information submitted by the District and the Complainants and applied the IDEA, the applicable federal and SBE regulations, and SCDE

policies and procedures. After a review of the facts and evidence submitted by the District and the Complainants, the SCDE renders a decision in the following manner.<sup>1</sup>

### ISSUES

- 1) Whether the District failed to follow appropriate child find procedures as required by the IDEA; and
- 2) Whether the District failed to provide the Complainants with educational records upon request.

Issue 1: Whether the District failed to follow appropriate child find procedures as required by the IDEA.

### FINDINGS OF FACT

- The Complainants allege that the District predetermined that the Student would not qualify as having a disability under the IDEA before the initial evaluation occurred; failed to assess the Student in all areas related to the suspected disability; ignored the SEED guidelines for the evaluation for autism and the determination of eligibility under the categories of ED; ignored findings that support the Student's eligibility under the IDEA and the development of an IEP for the Student; and used grades, test scores, and placement in gifted and talented programs to determine eligibility for services rather than whether the disability impedes the Student's access to the general education curriculum.
- The Complainants assert that the Student's mother communicated the Student's disabilities to the District. His disorders include Convergence Insufficiency, Diplopia, Fusional Infacility, Strabismus Extropia, Binocular Vision Dysfunction, Reduce Stereopsis, Accomodative Insufficiency, Saccadic Dysfunction, Fixation Dysfunction, and Visual Perceptual Issues (diagnosed by Dr. Steven Halec June/July 2009); Attention Deficit Hyperactivity Disorder (ADHD) and Anxiety (stated in 504/IEP request sent 3/2014 to Sugar Creek by father from Madhu Enginee, MD, PA); ADHD and Anxiety (stated in paperwork faxed to Sugar Creek Elementary School 5/19/2014 from Dr. Enginee requesting accommodations); ADHD, Anxiety, Non-Verbal Learning Disorder (NVLD) (stated on Initial Planning Guide 8/15/2014) ; ADHD, Anxiety, Mood Disorder Not Otherwise Specified (NOS), Other Specified Neurodevelopmental Disorder (faxed paperwork by Dr. Enginee 9/18/2014 to the school); Autism Spectrum Disorder (ASD), ADHD, Anxiety (on 504 eligibility guide 11/17/2014); High Functioning Autism, ADHD combined type, Anxiety Disorder, Non-verbal Learning Disorder (on 504 eligibility guide 8/13/2015); NVLD, ASD, ADHD. Anxiety Disorder, Panic Attacks (on 504 eligibility guide 8/26/2015).
- The District objects to the SCDE's consideration of alleged violations occurring prior to November 10, 2014, based on 34 C.F.R. § 300.153(c) and S.C. Reg. 43-243(II)(K)(3)(c).

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<sup>1</sup>See attached Appendix for legal standards.

- The SCDE listened to the audio recording of the August 26, 2015, meeting to determine eligibility and finds that the transcript provided by the Complainants is accurate.

#### TIMELINE OF ISSUES AND EVALUATIONS

- During the 2011-12 school year, the Student began to exhibit behavior issues and the District implemented a Response to Intervention (RTI) program for the Student.
- An email dated November 15, 2011, from **Ashlee Threatt**, the Student's teacher, to the Complainants stated:

I just wanted to let you know that [the Student] had a very bad meltdown in my classroom at 7:45 this morning. He came in and realized that his new book, "Diary of a Wimpy Kid: Cabin Fever," had not yet arrived UPS and was extremely angry. He yelled and kicked and I had to make him go out into the hallway. The behavior continues, so I walked him to the office and he sat on the couch and took a "breather" before returning to class.

- An email dated May 3, 2012, from **Ms. Threatt** to Michelle Argo, EdS, school psychologist, stated: "**Jenny Burleson** [school counselor,] has seen [the Student] a time or two this year, but only when he has outbursts and/or meltdowns and cannot stay in class. I think she has pulled him twice."
- An email dated May 17, 2012, from **Threatt** to **Deidra Dalpoggeto**, administrator, with the subject line "HELP!!!," stated: "Please send someone to handle [THE STUDENT] ASAP!!!"
- An RTI meeting was held on May 18, 2012. The Student's mother asserts that she requested an evaluation at that time but were told that the Student does not qualify because of high grades and test scores.
- An RTI referral, dated May 18, 2012, included the following interventions: breaks for task completion; office support for throwing, kicking, screaming; daily behavior card; discuss positives each day; replacement behaviors; guidance counselor; and counseling to work on goals.
- An email chain dated May 21, 2012, included the following:

From **Kimberly Mathis** (bookkeeper at Sugar Creek Elementary School):

He refused to go to RA today. Started to have a melt down. I let him sit at the desk in the office to read. I did this because I couldn't find anyone to help. **Mrs. Threatt's** concern is that he wanted to sit in the office and read, and she is afraid he will learn to pitch a fit so that he can stay in the office instead of going to RA.

Response from Ms. **Burleson**:

I definitely was not going to let him sit and read...I asked him make the choice to pull it together and go rehearse or not be in the program tomorrow. He did not have another fit (or even start) and went up to his spot to practice on the riser. I think there is some legitimate stage fright going on...he look traumatized the entire first song, then proceeded to crouch down on the riser. I went to get him and he walked down with me - said he is very nervous but afraid to disappoint his parents. He went back up the riser and I left after he successfully practices the last song without looking like he was going to either meltdown or pass out.

- During the 2012- 13 school year, the Student continued to exhibit behavior issues.
- An email dated November 9, 2012, from **Lipi Prati**, teacher, to the Student's mother stated that the Student was not completing projects, not turning in work, and not doing homework:

I included a behavior reflection slip in [the Student's] communication folder on Wednesday along with his report card. It regarded his dishonesty with me about his report card. He has not turned the folder or the slip back in. He has also not had his math homework for two days this week. I am very concerned that [the Student] is developing a pattern of not sharing information with you and not doing any of this homework outside of the regular school day.

The Student's mother responded -Thank you for emailing me. I asked him about his project last week and he said it was to be done at school. I rarely can find things in his folder even when I look because everything is shoved in hodge podge. I am concerned by the changes [the Student] is showing this week also, he doesn't want to go to karate, he is requesting to go to bed early and he is sleeping late. I do have questions about [the Student's] overall behavior in school. Is he paying attention all the time or does he seem to zone out or get bored at times? I know he hyper focuses on the germs/illness issues. I am aware his organizational skills need help, his social skills are behind and his writing is messy. Are there other things I am unaware of?

Ms. **Prati** responded -As we discussed in the parent conference, [the Student] is still having great difficulty adapting socially and behaviorally in our class. He is still having trouble with routines, and is often needing redirects about his behavior. I have to remove his Star Wars Origami books from his desk and place them in his book box or have him place them in his book box where they belong on a daily basis. His social behaviors regarding things like burping, passing gas, and picking his nose continue to cause him to be held apart by the other children socially. As I mentioned in our conference, he needs to practice the correct way to handle these social niceties now so that he will not become labeled by the kids before he begins middle school. I have had to restrict [the Student] from using hand sanitizer in our class because he was licking it off his hands and fingers. He told me that he was worried about germs, but I did counter that with the fact that there are more germs in his mucus and he could use a tissue and that he would be fine. I have

tried using the "everything is fine" sign with him that we discussed in our conference with limited success."

- In an email dated December 3, 2012, Ms. [Prati] stated:

He has had difficulty in math class Friday and today. Both days he has completely checked out during instruction and has not responded positively to my redirects and attempts to get him back on track...Today I had to take the Gryffindor journal away from him because he would not put it away and try his math problems even after I asked him to. When we were checking the answers to the sample problems. He had his book closed and his head down instead of checking his work. When I corrected his behavior, he growled at me and attempted to break his pencil. I asked him to leave the room and wait in the hallway until he could regain his composure. He elected to stay outside the room with the door open for the rest of math class.

- In a later email, Ms. [Prati] stated: "He is not paying attention as a new algorithm is introduced and then becomes frustrated when it is time to solve them because he doesn't know what to do. He often needs to be redirected from reading and drawing and does this for a majority of his day."
- The Student's mother asserts that she called Ms. Argo on March 19, 2014, to determine if the District would perform a psycho-educational assessment before having their own testing performed, but that Argo told the Student's mother to get outside testing first.
- In an email dated April 10, 2013, Ms. [Prati] stated:

He rolled his ruler and unrolled his ruler while I explained and modeled how to convert measurement in inches into decimals and then how to multiply decimals in order to find area of rectangles. During the time that students were engaged in practicing their new learning, [the Student] was again doodling. I explained to him that it is disrespectful for him to daydream during the lesson and then expect me to reteach the lesson to him individually.

- The Student's mother asserts that she delivered a letter from Dr. [Engineer] to the District the week of March 24, 2014. This letter stated that the Student was diagnosed with ADHD combined type. Dr. [Engineer] added anxiety disorder to the diagnoses on April 21, 2015. This letter was faxed with the added diagnosis of anxiety disorder on May 9, 2015. The letter states: "The diagnoses are ADHD combined type and anxiety disorder NOS. The characteristics/symptoms of the condition that would adversely affect educational performance and cause significant learning problems at school include distractibility, difficulty following directions, hyperactive, limited attention, easily frustrated, impulsive, and disorganized. Please initiate 504 plan, IEP, and accommodation plan."
- The Student's mother asserts that on April 2, 2014, she informed the school that the Student was referred for neuropsychological testing by Dr. [Engineer].

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- On April 3, 2014, at 9:58 AM, **Melissa Covington**, guidance counselor, sent an email to Ms. **Threat** and wrote:

Hi **Ashlee**,

Two years ago you had [the Student] in your class. Apparently there was a behavior plan for him at this time. [The Complainants are] requesting a copy of this plan. I looked in his cumulative folder and did not see it there. Is there somewhere else it might be? Sorry to bother you at home.

Thank you,  
Missy

Ms. **Threat** responded -This is something Michelle Argo helped to come up with, I believe. I will check my hard drive to see if there is a copy saved. If I remember correctly, it was a chart that we taped to his desk and he earned stickers. We tried so many different things that year! It is interesting that mom wants a copy. I don't really remember him being successful with it. In fact, he hated it being taped to his desk, so I attached it to the side with a magnet. Let me check my hard drive and see if I saved anything.

- On May 5, 2014, **Ricky Knight**, teacher, sent an email to **Ms. Burleson**, stating [the Student] was having some issues and someone needed to come to the classroom.
- On May 5, 2014, Mr. **Knight** sent an email to the Student's mother, stating:

[The Student] had a very rough day today. Overall, he is very bothered by different things going on with his body. This has been an ongoing issue for a couple of weeks now, but not to the severity that it was today. He CONSTANTLY approached me first thing this morning worrying about his veins, his arms "swelling", and a potential spider bite. This became very overwhelming for him (and myself). that I spoke with the Assistant Principal, **Mrs. Wagner**, and also had the counselor speak with him to try and "ease" the worry.

This didn't seem to help too much as he only wanted to go back and see the counselor again or go to the nurse.

Please inform me (and Mr. **Christenbury**) of any changes that have taken place or anything that we need to know about as we are very concerned that these distractions will affect his performance in class and overall academic success.

Speaking of academic success - as you know, PASS testing starts tomorrow. If he happens to still be as bothered as he was today, he will have to take make-up testing at a later date. This is per our principal Mrs. Gritz.

Hopefully you guys can chat with him tonight and he'll be better tomorrow.

I'm more than happy to chat in person if necessary - please just provide me with the best phone # and time that you're available and I'll be in touch.

- On May 5, 2014, the Student's mother responded to **Mr. Knight** -

[The Student] has anxiety based obsessive compulsive disorder (OCD), ADHD, and possible spectrum disorder. We are in line to test him for other issues but since the school doesn't want to do testing (which we have verbally requested a number of times) I am having to do it privately out of pocket - so that won't take place until May 28, 2014. His behavioral issues are not new and have been ongoing and interfering with his learning as well as others since 2 or 3 grade. When I requested an IEP I was told he did not qualify for it. We verbal addressed our concerns and that we suspected he would qualify for special education services under IDEA when/if testing was done. I will be glad to talk to you anytime tomorrow.

- On May 6, 2014, the Student was removed from the Palmetto Assessment of State Standards (PASS) testing for anxiety issues.
- On May 19, 2014, an internal school email was sent asking for recommendations for the "Bridges" program. The list included the Student. The Bridges program was a one week program to introduce children who have transitional/development and social issues in elementary school to Fort Mill Middle School.
- **Joy Granelz**, PhD, completed a psychological evaluation of the Student on May 28, 2014. Highlights from this evaluation include the following:

- **Developmental Milestones:** [The Student] was highly verbal from a young age. His parents said that he spoke in complete sentences by 15 months. Motor skills were not as strongly developed. He refused to walk without holding someone's hand until he was 19 months. His parents reported balance problems and [the Student] still does not ride a bicycle. He struggles with athletic activities but is willing to try. He has participated in karate in the past and will start up with this activity again in the near future. Fine motor skills have also been delayed. [The Student] has struggled with tying shoes, buttoning, and handwriting. [The Student] potty trained around the age of three and a half.
- **Medical History:** [The Student] has been diagnosed with convergence insufficiency as well as several other vision-related problems by vision therapist, Dr. Haleo.
- **Of [the Student's] strengths,** his teachers noted that he is a very bright child. When asked about areas of struggle in the classroom they noted he struggles with handling changes, staying on task, and organizational skills. His lack of neatness and organization make assignments difficult to read.
- They give him extra time and he receives support from his teachers. They have noticed that he tends to work best in a quiet, structured environment. He loves a

challenge if it is handled correctly. His teachers said that he is very adult friendly and needy and he does not relate well to his peers.

- Social/Emotional/Behavioral: [The Student's] parents said that he can be somewhat perfectionistic and things have to be exactly the way he wants it to be. In some settings he can be somewhat of a thrill seeker, but other times he is anxious (e.g., in a crowd). He has performance anxiety, as well as some shyness or social anxiety. He has always had difficulty handling change or transition. From a social standpoint, [the Student] has been a victim of bullying a few times. He has trouble relating to his peers often. His parents said that he cries a lot and can be overly sensitive and dramatic. His parents said that [the Student] sometimes talks about the same topic of interest, fixating or obsessing about it.
- Behavioral Observations: [The Student] transitioned easily from his parents and he warmed up to the examiner. During the initial interview, [the Student] was talkative and forthcoming. He was verbally expressive and able to discuss a wide range of topics. Mild articulation errors noted in his speech. During the testing, [the Student] appeared eager to please and genuinely seemed to want to do well. He frequently asked for feedback on his performance (e.g., was that correct?). When a task challenged [the Student], he became emotionally upset and said that he was not able to do it. He perseverated sometimes, repeatedly asking, "how many more questions?" On a few occasions, [the Student] got out of his seat and paced around the office. [The Student] struggled most on two computerized tasks, during these tasks, he became frustrated and emotionally upset. He made comments such as, "I'm never coming back here" and "I'm begging Dad to let me stay at school next time." After he calmed down, he apologized for his outburst and seemed to genuinely have remorse for his behavior.
- Attention & Executive Functioning: These tests measure how well a child can plan, organize, change, and control behavior. All three raters indicated challenges in day-to-day executive skills in [the Student]. [The Student's] mother, father, and teacher all reported significant problems with *behavioral regulation*, including problems with flexible shifting, inhibition, and emotional control. With regard to the *metacognitive* aspects of executive functioning, [the Student's] father reported problems with self-monitoring and [the Student's] teacher endorsed problems in the classroom with working memory, organization of materials, and self-monitoring.
- [The Student's] performance on the Wisconsin Card Sorting Test (WCST) fell within the High Average range. [The Student] demonstrated a good ability to problem solve on this task. Although his scores are high for his age, [the Student's] emotional response to the demands of this task was noteworthy. He was extremely frustrated and emotionally overwhelmed by the task, complaining throughout the task that he could not do it.



- Behavior & Socioemotional Well Being: Several psychological measures were used to assess psychosocial functioning. [The Student's] teacher's ratings fell within the Clinically Significant-range for problems related to anxiety, depression, somatization, and atypical behavior. The testing revealed that [the Student] has an imbalance in cognitive and socioemotional skills characterized by a variety of strengths and weaknesses. It will be critical for those working with him to have clear understanding of his competencies and challenges in order to surround him with experiences that maximize his assets and minimize demands that highlight his weaknesses. Interventions aimed at supporting and accommodating his weaknesses will help him to develop areas of challenge.
- [The Student] demonstrates challenges with aspects of executive functioning. He can be linear and rigid in his thinking. Key aspects of flexible thinking or shifting include the ability to (a) make transitions, (b) tolerate change, (c) problem-solve flexibly, (d) switch or alternate attention, and (e) change focus from one mindset or topic to another. Test data suggest that [the Student] has difficulties with behavioral shifting, inhibition, and emotional control. Caregivers often describe children like [the Student] as rigid and inflexible. Such children often prefer consistent routines, and are often unable to drop certain topics of interest or move beyond a specific disappointment or unmet need. Confronting a change in his normal routine may elicit emotional distress or repetitive inquiries about what is going to happen next. [The Student] can be somewhat scripted or perseverative. Some children may have specific repetitive behaviors that they are unable to stop. Often a child's preference for sameness or routines reflects the degree of anxiety and distress he experiences with change.... [The Student] exhibits a neuropsychological profile known as the non-verbal learning disorder profile, which can cause impairment in learning, academics, social skills, and emotional functioning.
- Although sometimes referred to as NVLD, it is not a validated diagnosis at this time. Children with this profile often display distinct strengths in the verbal realm and significant deficits in the visuospatial domain. It is a unique learning profile, as it often directly affects a child's social and emotional functioning. It affects three broad areas of functioning: motoric, visual-spatial-organizational, and social. Processing efficiency is typically slow. Mathematics is often impacted due to the perceptual challenges and difficulty understanding part/whole relationships. [The Student] exhibits some features of an autism spectrum disorder. For instance, very frequently [the Student] becomes obsessed with details and focuses on one subject for too much time. He frequently insists on doing things the same way each time, insists of things being the same way, needs things to happen just as expected, and becomes upset if routines are changed. These challenges may be a part of his anxiety and are consistent with the NVLD profile. Autism spectrum disorder remains a rule out to be considered in the future if concerns persist about this diagnosis. Parents and school staff should be aware of [the Student's] learning profile and his emotional challenges. He exhibits symptoms of anxiety, depression, low self-esteem, and withdrawal. It is suggested that he participate in extracurricular activities that are social in nature and appeal to

his interests and strengths. He should be surrounded with opportunities that allow him to be successful. Research suggests that authentic happiness arises through activities that exploit our signature strengths and interests. He will benefit from at least one school-based confidant-with whom he can regularly share some of his concerns about his school life, such as a counselor. The overarching goal is for success to be attainable for [the Student] and for his motivation and feelings of mastery to be enhanced this year. School staff should continue to make accommodations necessary to help him feel supported and less overwhelmed at school.

- [Christine McNeil], assistant principal, sent an email to [Jane Liotta], Rehabilitative Behavioral Health Services Supervisor, on July 31, 2014, which stated:

I wanted to touch base with you regarding a rising 6th grade student, [the Student]. Does this name sound familiar? I have notes from a May 14th meeting with SCES. It appears at that time in May, he was not permitted back to school until he saw a psychologist. He had been exempted from PASS and missed approximately 8-10 days of school due to high anxiety. At the time, according to my notes, [the Complainants] were seeking an outside evaluation to determine if he had Asperger's. [The Complainant] called me today and is attempting to schedule a preliminary parent-teacher-guidance-admin-school psy.-etc. meeting to help [the Student] with his transition. According to [the Complainant], [they have] had to involve district office in this case. It sounds like a meeting prior to school starting would be highly beneficial to all. What direction should I go next? Ideas?

Ms. [Liotta] responded: I was involved for crisis intervention only. [The Student] had a private mental health provider. (I believe at the time of that crisis he underwent a medication change that caused increased mental health problems). He seemed like a student who needed a 504 plan but I'm not sure SCES had an opportunity to get that started. I know the guidance counselors there were very involved. If you would like me to sit in on a meeting for general mental health input, let me know.

- A Section 504 initial evaluation planning guide was completed on August 15, 2014. The guide indicated that the Student struggles with social skills, is obsessive about health related concerns, and struggles with interpreting social cues.
- The planning guide states that the Student does not appear happy, comply with directions, adjust well to changes in routine, or maintain cooperative participation with others. It states that he has a short attention span, seems unaware of others, overreacts to a given situation, appears sad or withdrawn, appears to worry excessively, and gets frustrated or gives up easily.
- The guide also notes that the Student is overly sensitive to noise, there are fine motor concerns (balance, write legibly), and states that little things can bother him and he might "explode."

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- The guide indicates that a comprehensive evaluation will be conducted that included academic assessments, classroom and home observations, an occupational therapy (OT) evaluation, and a social/emotional assessment.
- The intervention record dated August 18, 2014, included the following accommodations:
  - o Close to board seating (teachers responsible)
  - o Teacher check for understanding/visibility
  - o Seat away from distractions
  - o Limited choices
  - o Teacher close
  - o Peer role models
  - o Teacher encourages participation
  - o Private counseling (mom and dad responsible)
- The Student's mother asserts that she gave a medical statement dated September 18, 2014, from Dr. [Engineer] to the District. The statement listed diagnoses of ADHD -combined type, anxiety disorder - NOS, mood disorder -NOS, and other specified neurodevelopmental disorder. Recommendations state: Please review psychological testing by Dr. [Granetz] on May 28, 2014. [The Student] needs 504 plan, IEP, and accommodation plan at school as indicated on the report.
- The Student's mother also asserts that the Student loses his ability to hear when he is extremely anxious.
- On September 19, 2014, the Student was required to draw a house with straight lines, exact measurements, and coloring in the lines. The Student's mother asserts that [the Student] received a "D" and had to redo the project. The Student's mother had to work with him for 3 hours on making the lines straighter, measurements correct and giving him time to color inside the lines. The teacher was aware of his difficulties with this.
- On September 23, 2014, the Student was taken to the Thompson Center for an evaluation. Highlights from this evaluation include:
  - [The Complainants] express concerns about client's anxiety and ADHD symptoms. [The Student] presents several hyperactive and inattentive behaviors. [The Student] struggles with focusing and is easily distracted by external stimuli. He struggles with organization, avoids task that require a lot of mental effort, and loses things necessary to complete task. At times, he fails to complete task and daydreams a lot. His hyperactive behaviors include difficulty sitting still in addition to impulsive behaviors including frequently interrupting others and difficulty with awaiting his turn.
  - In addition to having issues with inattention and impulsivity, [the Student] presents significant anxiety. Last school year, he was removed from school for seven days because of his anxiety. [The Student] is described as frequently obsessing over

thoughts of spiders, dying, and people following through with promises. [The Student] asks repeated questions until issues are resolved. Regarding his concern of spiders, [the Student] frequently looks for symptoms caused by a spider. For example, observing a bump on the skin is attributed to a spider bite.

- [The Student] is presenting a number of ADHD symptoms including poor organization demonstrated by forgetfulness and losing things necessary to complete task. He struggles with sustaining attention and is easily distracted by external stimuli. At times, he fails to complete task and avoids task that require mental effort. He exhibits a few hyperactive and impulsive behaviors evident by difficulty awaiting his turn, frequent interrupting, and difficulty sitting still. In addition, client is currently presenting issues associated with anxiety. He presents both obsessive thoughts and behaviors related to spiders and death.
- Individual therapy is recommended to continue evaluating client's anxiety symptoms and help him learn coping skills to manage his anxiety. In addition, client may benefit from learning ways to manage his inattentive behaviors by increasing focus and organization. Family therapy is recommended to work on building communication, learning ways to manage his anxiety and inattentiveness within the home, and identifying/resolving any barriers within the family.
- According to Complainants, the Student's grades dropped significantly until therapy was received at the Thompson Center.
- The Student's report card indicates that the Student's grades dropped from 97 to 93 in social studies, 97 to 90 in language arts, 91 to 85 in science, and 94 to 88 in math from the first to second quarter of the 2014- 15 school year.
- On October 5, 2014, the Student was referred to the office twice for rude/disruptive behavior and for verbally abusing another student.
- On October 15, 2014, the Student was sent to student time-out period (STOP) by his teacher, Lisa Pain. An email was sent by Ms. Pain to Theresa Bauer-Brown, school counselor, which stated:

If you have a chance, I just sent [the Student] to STOP. He blurted out that another student had been a "rear" all year long, cried because his notebook is missing, and was disrupting others. He seems "off today. Will email mom.

- The student handbook gives the following information about STOP:

STUDENT TIME-OUT PERIOD (STOP)-RECOVERY  
ROOM VISITS

Purpose:

- To provide a "cooling off" period for disruptive students in the recovery room.

Process:

- Assigned by the teacher for disruption of class.
- May be assigned by individual teacher for remainder of that period or any portion of that period.
- Any STOP visit assigned by an individual teacher must be accompanied by a phone call or email from that teacher to that student's parent to notify of the assigned visit.

Timeline:

- First visit- Parent contacted by referring teacher.
- Second visit- Parent contacted by referring teacher.
- Third visit- Parent contacted by referring teacher and ISS teacher notifies guidance to set up a guidance conference with student.
- Fourth visit- Parent contacted by referring teacher and ISS notifies assistant principal to conference with a parent.
- Fifth visit- Parent contacted by referring teacher and student is assigned ISS for one full day.
- Sixth visit (and all subsequent visits) -Parent contacted by referring teacher and student is to serve OSS the next day or another designated day.

Students sent to the Recovery Room more than once a day will be assigned In-School Suspension for the remainder of the day. The main objective of this program is to provide an opportunity for students to take a "time out". While in the recovery room students will work with a facilitator in developing anger management, respect, and/or organizational skills. Students visiting the recovery room for repeated infractions may receive additional consequences as well as participating in a student/parent/teacher/administration conference.

- In a second email that day, Ms. [Redacted] stated: "He's been having more frequent melt-downs lately..."

Ms. [Redacted] responded:

Unfortunately, I was not able to see him before the bell rang and he went on to [Redacted] Crawford's room<sup>2</sup>. I spoke with [Redacted] Frank and went down to [Redacted] Crawford's room to observe him. He was engaged so I did not want to rile him up again. I will see him soon.

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<sup>2</sup> Lauren Crawford was the Student's sixth grade science teacher.

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- An email dated October 22, 2014, to Karen Monahan, Coordinator of Psychological and Related Services, from Elizabeth Harwood, PhD, School Psychologist, stated:

I have a question about the initial evaluation planning guide versus components that are required for specific disabilities. For [the Student], no concerns were listed on the planning guide in the areas of speech/language or adaptive skills. Assessments were not requested for those areas. We only requested educational, observations, motor, and behavior/emotional. Private testing was already done, which included rating scales and cognitive testing.

Initially, at the meeting, I thought the parent wanted to know if student had learning disability. However, as I have gotten to know [the Student], I am suspecting he is on the spectrum. After interviewing the parent she is consistently mentioning behaviors in line with this diagnosis.

My question is, in light of this information, should I have requested a communication and adaptive behavior evaluation? These areas were not listed as concerns on the planning guide. At the end of the day, it is highly unlikely he will qualify as he is doing very well in school and his mental health functioning at home/school has improved. Let me know if I need to request these additional assessments."

- On October 31, 2014, Grete Miller, teacher, sent an email to the Student's mother which stated:

I hope [the Student] shared with you our conversation that we had yesterday. He had a mini breakdown about not having his homework done. When I told him he would get a detention warning slip, he started crying. I made a deal with him; I asked him if he could bring all the missing work tomorrow I would give him a lowered grade, but no detention slip. He took that option. We will see if he has it for me today.

- On November 5, 2014, the Student had two disciplinary referrals. That same day, Ms. McNeil sent two emails to Dr. Harwood which stated:

I checked the system. It appears that the other incidents were not officially documented via office referral. Instead, the teacher has called the office to have me come get the Student. I could probably give you a good bit of information.

Yes, he has had at least three major melt downs that I have had to work with him through. One more was today. I will email you the referral.

- On November 6, 2014, the Student had a disciplinary referral for abusive and verbal aggression toward another student.
- On November 10, 2014, the Student had another disciplinary referral and was referred to Ms. Bauer-Brown. In addition, an email was sent from school regarding missing work.

- On November 10, 2014, the Student was given another disciplinary referral. Dr. [Harwood] sent an email to Ms. [Bauer-Brown] stating: "I will be calling her on Wednesday. They need family help/counseling. Which is what I recommended at the first meeting-ARGGGHHH!! "
- On November 10, 2014, the Student visited the school nurse for vomiting.
- On November 10, 2014, the Student overreacted to a test grade. This was documented in an email from [Lauren Crawford] to Ms. [Bauer-Brown]: "John said he cried like a baby for quite some time yesterday-in class-when he got a test back with a 70 something on it."
- On November 11, 2014, the Student had a crying incident. Ms. [Bauer-Brown] sent an email to the Student's mother that stated:

He was crying because his essay was not selected to be read at the program today. Treva sent him to [the] hall to get it together and called me. We spoke in the hallway and after about 5 mins of me calmly and firmly processing through his choices and consequences with him he chose to get back in the room and take the test that was being administered.

- Dr. [Harwood] completed a psycho-education evaluation on the Student on November 12, 2014 ("[Harwood] evaluation"). Dr. [Harwood] referenced the report from Dr. [Engineer] dated March 21, 2014, the report from Dr. [Granetz] dated May 28, 2014, and the Student's grades. She performed assessments for academic achievement, social/emotional adaptive functioning, Asperger's, Autism, and pragmatic language. Highlights from this evaluation include:
  - Historically, [the Student] has either met state standards or had exemplary performance on the PASS testing.
  - Most scores across English-language arts (ELA), Math, Science, and Social Studies were exemplary. [the Student] did not take the PASS testing in the Spring of 2014, due to extreme anxiety.
  - Dr. [Harwood] observed the Student in the classroom and lunchroom. She noted: Overall, it appears that [the Student] has a strong interest in reading and specific types of fantasy/fiction books. He enjoys discussing his interests with others. He initiates social interactions and invites reciprocal conversation; however, it is often directed towards his interests. The teacher gave the class several options for this time period. They were permitted to read or study for their vocabulary test. During lunch time, various staff on duty had noted that [the Student] typically reads while he is eating. He will occasionally speak to someone sitting near him. However, for the most part, he is reading quietly. Also, during recess time, [the Student] will typically walk around the courtyard with a book in hand. He does not typically interact with the other students. However, on a few occasions he has been seen talking with one particular student.

- The Behavior Assessment System for Children, II (BASC II) was utilized to further understand [the Student's] current level of social-emotional and adaptive functioning. ... [the Student's] behavior in the classroom setting is perceived as within the typical range across several areas assessed. However, Anxiety, Withdrawal, and Social Skills were in the At-Risk range. Parent ratings from the BASC II indicate [the Student] displays characteristics commonly associated with Anxiety, Depression, and Atypicality. There were also At-Risk concerns in the areas of Hyperactivity, Aggression, Somatization, Withdrawal, and Attention Problems. Within the adaptive scales, [the Student] was also rated as having difficulty with Adaptability and Leadership skills. Specific areas that were noted as occurring *almost always* included: argues when denied his own way, worries about making mistakes, worries about what his parents think, tries hard to please others, complains about being teased, and says 'nobody understands me.' Areas that were indicated as occurring *often* included: argues with parents, worries about school work, worries about things that cannot be changed, easily distracted, repeats one thought over and over, does strange things, is negative about things, says 'I want to die,' cries easily, interrupts others when they are speaking, afraid of getting sick, has trouble making friends, and is chosen last by peers for games.

Sometimes children display different behaviors based upon the environment or setting. In this particular case, it appears that [the Student's] behavior in the classroom setting, overall, is more typical of a student his age. However, [the Student's] parent reports more pronounced behavioral concerns that are occurring in the home setting. [The Student] appears to be struggling somewhat with Anxiety, Withdrawal, and Social Skills in school. His teachers' responses indicate that he sometimes argues when denied his own way, he sometimes has a short attention span, and is sometimes easily distracted. However, it was stated that he often listens to directions and listens attentively. Regarding anxiety, [the Student] sometimes worries about things that cannot be changed. He gets nervous during tests and is afraid of making a mistake. He sometimes worries about what other children think.

Withdrawal was another area in the at-risk range. Teacher reports indicate [the Student] sometimes makes friends easily, sometimes plays alone, or avoids other children. [The Student] will join group activities; however sometimes he is chosen last for games or he has difficulty making friends. Regarding his social skills, [the Student] often says 'please' and 'thank you.' Sometimes he encourages others to do their best, offers to help others, makes suggestions without offending others, or shows interest in other's ideas. He has not been observed complimenting or congratulating others when good things happen to them.

- [The Student's] Asperger Disorder Quotient fell above 80 which is a high/probability of Asperger's Disorder.
- Additionally, [the Complainants] provided the following information. It was shared that [the Student] will often turn a conversation to his own interests. He fixates over objects or things. For example, [the Student] is currently obsessed with Mine Craft



and wants to carry the laptop everywhere, so he can play the game. He also is fixated on the book, "The Giver" and he wants to discuss this book at length. [The Student's] interests consist of video games and books. However, his obsessions can change as he used to fixate on superheroes and spiders. He is also afraid of dying and will fixate on real or imagined ailments. [The Complainants] indicated that [the Student] does not pick up on social cues. He will consistently interrupt people. [The Student's] unawareness of social nuances occurs across settings and regardless of who is present. He has always presented this way and he tends to be an introvert by nature. If [the Student] wants something, he will continually ask [the Complainants] over and over again. He will become upset if he does not get what he wants. This can sometimes create embarrassment for himself and [the Complainants] in public settings. It was reported that [the Student] has friends in the neighborhood, but often when they come to the door, he will want to play on the computer instead. Moreover, if his friends want to play a different game, he does not want to participate. [The Student] has difficulty following authority figures. [The Complainants] indicated that the following behaviors are most concerning. He can be obsessive and repeat a question over and over again. When he has to do what others want, he has a difficult time. [The Student] has limited ability to see another person's point of view. He also lacks empathy, and becomes upset if he is ignored. On a scale of 1-10, [the Complainants] rated [the Student's] severity of problems between a 6 or 7 (depending upon the day). When people meet [the Student], they often suspect that he is different. For example, after church he will invite everyone to come over to his house. He does appear to understand social protocols. [The Complainants] reported that [the Student's] negative behaviors have improved since he has returned to the school routine. However, in the home setting, he continues to engage in arguing to try and force one to see his logic or point of view. Last May and June, [the Student] would become extremely agitated over imagined diseases and spiders. He would go on the Internet and look up various ailments or insects, which increased his anxiety. [The Student] has been prescribed medication sporadically since February of 2014.

- The Childhood Autism Rating Scale-High Functioning Version (CARS-HF) was also completed during an interview with Treva Hamlin in conjunction with other observations obtained by this examiner. [The Student] had a total raw score of 29.5 which converted to a T-score of 44. These ratings fell within the 28th percentile. According to the CARS-2 manual, [the Student's] scores fall in the mild to moderate range. Based on these ratings, there were low levels of autism-related symptoms compared to those with an autism diagnosis. [The Student's] teacher from last school year rated him in the elevated range on the Autism Spectrum Rating Scale.
- [The Student's] scores across the various domains assessed on the CARS-HF ranged from age-appropriate to moderately abnormal. Areas that were atypical included: Regulation of Emotions, Relating to People, Fear or Anxiety, and Adaptation to Change/Restricted Interests. During an interview with [the Student's] teacher, it was shared that he often takes sarcasm to heart. He is generally very serious and often says "sorry" for minor incidents. [The Student] presents as either flat/robotic or very

upset in his emotional presentation. He has only had two incidents where he became extremely upset. Both times, he could not locate a book. [The Student] has difficulty doing partner work, as he either won't help out or he does not like the other person's ideas. He also has difficulty sustaining a reciprocal conversation. [The Student] will try to remove himself from the group if he does not want to interact. Although [the Student] tends to perseverate on videogames, mythology, or fantasy related topics, he consistently completes his work. He has very high expectations for himself and he is motivated to obtain good grades.

- [The Student's] former psychological evaluation (May 28, 2014), in conjunction with the current assessment data provides support for the existence of symptoms that are related to Autism related spectrum disorder. There is further observation/qualitative data which support this diagnosis as well. For example, over the course of this evaluation, it has been clear that [the Student] resists change and views his world in very black and white terms. Transitions that are not routine cause him anxiety and he typically insists on sameness and adherence to routines. [The Student] also exhibits minimal interest in conducting a reciprocal conversation wherein someone shares their own interests and feelings. Conversations initiated by [the Student] are typically one-sided. [The Student] is a very high functioning individual and it is suspected that his social/relational impairments are becoming more obvious or pronounced during his middle school years, as there are more demands for social awareness, peer interaction, flexibility, and academic achievement. These developmental tasks are causing him anxiety, which often manifests through controlling or demanding behaviors. At times, these behaviors can escalate into temper tantrums. It should be noted; however, that [the Student's] communication evaluation did not detect any difficulties with pragmatic language. He appears to know what to do in certain social situations; however, he does not always follow these rules. Moreover, based on the current assessment, [the Student] does not appear to exhibit any sensory sensitivity that is extreme in nature. The multidisciplinary team should review the results of this evaluation, along with other sources of data in order to determine if [the Student] requires special education services. As [the Student's] academic skills, on standardized measures, are average or above, the team should also consider eligibility for classroom accommodations under a Section 504 plan, as his medical or mental health conditions may be having an adverse impact on his ability to concentrate and thereby, perform in the classroom.
- Several recommendations were offered for the regular classroom.
- The Complainants assert that there is evidence of pragmatic speech issues, including avoiding eye contact, inappropriate language, and inappropriate gestures, as evidenced by emails and statements.
- There was no autism expert or high-functioning autism specialist called in to observe or evaluate the Student.

- There were only two noted observations both done by Dr. Harwood.
- The Complainants assert that Dr. Harwood was also aware of the ongoing issues of behavior, homework, and declining/failing grades between October 30 and November 10, 2014, but chose to not mention this in her report.
- The Complainants assert that none of the recommendations from the Harwood evaluation were implemented.
- On November 17, 2014, the Student was removed from board games club.
- An eligibility determination meeting was held on November 17, 2014. The documentation from that meeting included:

ADVERSE EFFECTS ON EDUCATIONAL PERFORMANCE: [The Student] experiences occasional melt-downs when he is missing materials or when he has to engage in partner/group activities that are not highly structured. He has had two discipline referrals on file (as of November 5, 2014) during the current school year (2014- 15). Other incidents where [the Student] has become upset have been handled smoothly without disciplinary action. While [the Student] experiences occasional episodes, they do not appear to be impacting his educational performance at this time. A review of his recent report card grades are all A's. He also has earned A's in gifted and talented math, science, and English/language arts.

NEED FOR SPECIALIZED EDUCATION: There is limited evidence to support the need for specially-designed instruction. [The Student] is obtaining all A's in his classes, and most of these classes are advanced Gifted and Talented classes. [The Student] also performs well on state/district testing.

[The Student] is performing well academically. He is in gifted and talented classes and performs well on state/district testing. Any anxiety or social difficulties he may have are being managed through regular education procedures. [The Student's] needs are met as adequately as non-disabled peers.

- The Prior Written Notice (PWN) for the determination stated:

The IEP Team reviewed the assessment information, state/district testing, teacher reports, parent reports, grades, and overall functioning in the school environment to determine eligibility for special education services. Based on a review of all the available data, it was determined that [the Student] is not eligible for special education services at this time.

The IEP Team determined that [the Student] was not eligible for special education services since he performs well on state/district testing and he received all A's on his

report card this past quarter. Moreover, he is currently enrolled in gifted and talented courses and he is still obtaining A's, based on the most current report card.

The IEP Team considered whether [the Student] is eligible for special education services based on a specific learning disability, emotional disability, other health impairment, speech/language impairment, or ASD.

[The Student's] academic performance is exceptional (he is in gifted and talented courses) and he performs well on state/district testing. He does not show a need for specialized instruction at this time, nor do the conditions adversely affect his educational performance.

- Conference records from the meeting state:

He met the criteria for Autism in the Diagnostic and Statistical Manual of Mental Disorders (DSM) but not all criteria in school levels.

The issues that we see stem from social interactions. Current interventions that have worked involved removing [the Student] from class to hall for 2 minutes to get together, an adult to work through issue. If [the Student] cannot get himself together he will be walked to recovery room. All determined he is eligible for a 504 but no specific plan is in place as we wean away from hall time as he manages his behavior better and medicine is regulated.

- The Student visited the nurse for vomiting or malaise on November 18, 21, and on December 2 (twice), and 5, 2014.
- On December 5, 2014, Ms. Hamlin sent an email to the Student's mother which stated:

I want to let you know that I sent [the Student] to the Recovery Room for part of the ELA class period today. After the test, he refused to go over his work in his memoir. He then began to wail (not just cry) and could not get it under control, even after he and I went into the hallway to try and calm down.

- The Student visited the nurse on December 17, 2014.
- The Complainants assert that the Student had a major psychological breakdown over the weekend of January 12, 2015. The Student was removed from school to see Dr. Engineer and was referred to an applied behavior analysis (ABA) therapist. The Complainants assert that they informed the school of this development on February 10, 2015.
- The Student visited the nurse for vomiting, nausea, or sore throat on February 2, 10, 19, and March 2, 3, and 18, 2015.

- **Nancy Espinoza**, MS, Board Certified Behavior Analyst (BCBA), a third-party evaluator, completed a functional behavioral assessment (FBA) for the Student on April 8, 2015. Highlights from this assessment include:
  - I observed some rigidity in [the Student's] ability to complete a task and follow directions, as given. In particular, he made frequent attempts to run our conversations and would interrupt often when the conversation was not a favored topic. [The Student] frequently asked when would we be finished, particularly during conversations about his feelings. When asked what he would like for me to help him with, he quickly replied: "my anxiety and my social skills." Overall, [the Student] is a very bright young man and has an impressive vocabulary and can maintain a brief conversation with adults and peers when necessary. [The Student] shows a genuine desire to please others and to follow rules but appears to have difficulty relating to others' perspectives, seeing implicit social cues, and reading nonverbal body language. During conversations regarding social rules, he is aware of what the rules are but has trouble seeing how and why these may shift or change based on changes in person/place/behavior(s). [The Student] also has difficulty communicating his needs, feelings, and emotions, particularly when distressed, distracted, which may lead to overacting. Through my observations and conversations with [the Student's] mom, he appears to have rigid expectations and, if they are not met, he may become unhappy, or anxious. This is a primary concern that [the Complainants] have expressed.
  - A skills assessment was completed to determine what areas [the Student] and his family may benefit from focusing on during behavior therapy. The following are priority areas, along with some recommended interventions:
    - In conjunction with receiving medication therapy to treat symptoms of anxiety, [the Student] would benefit from learning strategies that will help him better cope with stress/anxiety producing situations that he may confront day-to-day and how to respond more appropriately when he is experiencing a "fight or flight" reaction to a situation of overwhelm.
    - [The Student] tends to demonstrate rigidity with new situations, changes in schedule/routine, rule breaking, and being asked to complete a task in a different way. [The Student] shows this same rigidity when exchanging thoughts/ideas when conversing with a peer or adult.
    - [The Student] shows some challenges with organizing tasks/items and may benefit from training and learning strategies that will improve his executive functioning skills.
  - It is recommended that [the Student] and [the Complainants] receive two hours a week of individual ABA Behavior Therapy and CBT (Cognitive Behavior Therapy) to address identified needs. This should include data driven goals to determine progress on anxiety/emotional regulation, social skills/peer interactions, and organizational skills.
- On April 20, 2015, the Student had another crying spell in school.

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- On April 28, 2015, the Student received a discipline referral for loud outbursts and refusing to do work.
- The Student visited the nurse for vomiting on April 28 and May 5, 2015.
- The Student's mother asserts that she faxed a letter from Dr. Engineer to the District with added diagnosis of anxiety disorder NOS on May 9, 2015.
- On May 21, 2015, Ms. Hamlin sent an email to the Student's mother that stated that the Student became upset in class, got angry, kicked things, and yelled. She had to remove him from the classroom. Later that morning, Ms. Bauer-Brown sent an email to the Student's teachers and to the Student's mother which stated:

Good Morning All-

[The Student] is having a difficult day today. He was not able to complete some of his homework in the Language Arts class because he did not have his materials so he started crying, kicking the chair and disrupting other students. He was moved to the hallway to gather his emotions and to talk to the teacher. When he still was having difficulty Mrs. Hamlin called me. I spoke with [the Student] and we walked to the Recovery Room to take the rest of the period to regroup. Outside the Recovery Room he began kicking and hitting the wall, and escalating as he talked about not being able to go to an "RPG event" tonight because he was in trouble. He did sit in the room and gather himself within the twenty minutes left of the period to return to class. While he was in the Recovery Room I called mom. She asked to speak to [the Student] on the phone and she had a conversation with him.

I spoke with [the Student's mother] on the phone regarding [the Student's] behavior today. She asked about the due dates of the LA assignments and I was not clear on that. Treva- can you please inform mom on what [the Student] is needing to complete and the due dates?

[The Student] has a 504 plan due to medical diagnosis on file. To support him as he manages his emotions we have a plan that allows [the Student] to be removed from the classroom to the hall, talk one on one with the teacher, then the school counselor, then moved into Recovery Room as opportunities to calm himself. Those opportunities we provided him and he was able to gather himself enough to go onto 2nd period.

- On May 22, 2015, the Student received another discipline referral for crying, becoming angry, and kicking a chair because he did not have his materials.
- A 504 meeting was held on August 13, 2015, with the Complainants, Dr. Harwood, principal Greg Norton, and [the Student's] former and current teachers. The PWN stated that the team considered referring this student for a more comprehensive evaluation in order to determine

eligibility under the IDEA, but determined it is not warranted because the Student is progressing in the general education curriculum.

- The 504 plan established at the meeting stated:

[The Student's] conditions adversely affect his hearing (understanding/processing of directions), interactions with others, learning, thinking, and working.

- Accommodations included:

[The Student] will write assignments in his agenda on a daily basis.

[The Student] will be given advance warning of any changes in his schedule (including fire drills).

[The Student] will have an extra set of text books to keep at home.

When [the Student] becomes upset-he will be given specific re-direction (re-iteration of the rules).

If [the Student] becomes very upset, he can take a time-out break. This could include a walk or going to a separate safe place (with supervision). When [the Student] says he is OK or has calmed down, he can be escorted back to class.

[The Student] will participate in a social skills group.

- On August 19, 2015, [Brandon Galbraith], teacher, sent an email to the Student's mother which stated:

Good afternoon. I just wanted to give you an update into how [the Student] is doing in SS. He has seemed to adjust to the routine with some small reminders. But at this point, all students need those. Today, he made a comment that was both inappropriate and made the entire class feel uneasy. We were discussing the motivations for early explorers today and referenced being famous in regards to being remembered forever, even after death. For example Washington and Alexander the Great. I used myself as an example, stating that when I pass away, I will be remembered only through family and close friends but not known past that time. [The Student] then stated, loudly, that "he would be the one that pulled the trigger." As you can imagine, the class got really quiet and I told him that he was not to say anything like that again in my class he would be told to leave. He remained quiet the remaining 20 minutes of class. After class, I talked with him about that being very inappropriate and that there was no tolerance for a statement like that towards a teacher, peer, or himself as it could be considered a threat. I am not sure still if he fully understands why that comment was wrong and I would appreciate it if you took some time to talk with him about this incident. I will continue to let you know if anything else should be communicated. Let me know if you have any questions. Have a great day.

- Dr. [Engineer] completed a treatment summary of the Student on August 25, 2015, which was provided to the District on August 26, 2015, and stated:

[The Student] has experience symptoms of psychiatric disorders, developmental, and learning disorders since early childhood. He has had extensive evaluations and treatment during the past two years. He has benefitted from medications and psychotherapy, but he still experiences moderately severe symptoms of anxiety, mood changes, emotional reactivity, social interactions, peer relationships, communication issues, and depression. He needs special education services while he is at school. The purpose of these services is to help him to learn appropriate social skills when he has intense emotional reactions and behaves inappropriately.

- In the 504 meeting on August 26, 2015, Dr. Harwood stated: "...the bottom line is your son is very high performing. He's in gifted and talented classes. He ... I have his transcript here. He's got all As, uh, at the end of last quarter. Uh, he performed in the 80 to 90th percentile on the MAP testing and let me just back track. Educational diagnosis is different than mental health. To qualify in, in the school system, you have to impact your education meaning you have to pass your grades. Uh, typical special education students performing 1 to 2 grade levels below the average student."
- In the meeting, the mother stated that the Student had been attending therapy, and that it was only after therapy that his grades started to improve.
- In the meeting, Dr. Harwood stated that there was a requirement for a student to "constantly get in trouble" or constantly be removed from class in order for there to be shown a pattern of educational impact.
- In the meeting, Dr. Maziarz stated: "I think when ... We got to look at the whole picture and I'm not minimizing the situation at all but when you look back at his whole record, there's not a pattern of these inappropriate behaviors that at least have been documented to the level that it requires disciplinary actions."
- Ms. Liotta stated: "If a student requires a functional goal, then that's usually covered with the 504. The services are providing the way our school does it. The services have provided to inclusion setting where the student remains in the general education curriculum and then, uh, a parent, professional, or myself would be in the class along with the teacher. ... As far as functional skills, that usually takes place with our, um, groups. I don't usually work on those per se in terms of social group because we do have social groups here."
- The following exchange also took place:

Dr. Maziarz: When he came last year, Dr. Harwood had access to a child and family development and all the outside reports. She took that into consideration when the team discussed eligibility last year. We will take into consideration all the things you just presented and if you have other additional outside providers, we will take that into consideration.

But what I am saying is that when we're determining eligibility, we are looking at his performance, his whole performance in the school environment.



Student's mother: But that's not what it says.

Dr. Maziarz: And I agree with that. I agree with that. That focuses solely on academics and yes, we should have expanded on that and address the social emotional function.

Student's mother: So in his files, you denied the IEP based on grades, test scores and placement in gifted and talented. That's what it says.

Dr. Maziarz: I would disagree. That's what that says but

Student's mother: Does this mean that we can't trust those?

Dr. Maziarz: I would say that **Dr. Harwood** looked at all the data that was presented and looked at the criteria which is in front of you and ...

- The Complainants introduced an undated fitness training summary by Marcell Allmond, International Sports Science Association Certified, National Academy of Sports Medicine Certified, Certified Strength and Conditioning Specialist, which stated that the Student is severely behind most of the children his age. His gross motor skills are at the level of a 7 to 8 year old child.
- Dr. Mazairz and **Mr. Gailbraith** both confirmed in the August 26, 2015, meeting that there is a no tolerance policy in the District and another student would have been given a referral with a likely expulsion for the comments made in **Mr. Gailbraith's** classroom.
- The Student was to be involved in the social skills group at the start of 2015-16 school year, but this had not been provided by the date of the meeting.
- The Student's mother asserts that in a conversation on October 8, 2015, Dr. Maziarz acknowledged that she was unaware of his behavior record at that the time. She acknowledged that there was "bad judgment" regarding the 504 dated November 17, 2014, and troubling things in the official record that could look bad. She refused to determine eligibility without a new partial psychoeducational evaluation. The District did not refute this allegation.
- On September 2, 2015, the Student had an incident in art class that required the teacher to have the Student escorted to the guidance counselor. He stayed with the counselor for approximately five minutes.
- On September 8, 2015, the Student became upset during homeroom and was sent to the Recovery Room. Shortly thereafter, he saw the school counselor.
- On September 12, 2015, the Student was unable to take a math quiz.

- The Student visited the school nurse on September 17, October 6, and 8, 2015.
- The Student's mother asserts that the Student had the following counseling and therapy, which she has paid for:

February 2014 to August 2015 -Regular visits to Dr. [Redacted] (psychiatrist). September to December 2014 -Therapy one hour a week in school with [Redacted] and monthly family counseling.

February to May 2015 -One hour a week switching between [Redacted] and Ms. [Redacted].

April to June 2015 -Social Skills 1 hour a week with Dr. [Redacted].

October 2015 to present -3 hours a week of therapy with Blooming Kids Learning Center and [Redacted]. Visiting [Redacted] every 3 weeks.

- The Complainants assert that they have received constant phone calls from school over the past 3 years regarding the Student's behavioral issues.
- The District asserts that they have no information for a request for an evaluation. In its response, the District stated:

While [the Complainants] assert that they were unilaterally denied an evaluation when they verbally requested an IDEA evaluation multiple times, the District has established channels and procedures for evaluation referrals by parents, [as noted in the ] District's Office of Special Services Policies & Procedures Manual... . When parents request an IDEA evaluation or special education services, there is a specific process used and documentation that is generated. The District does not have such information here.

- The District's Office of Special Services Policies & Procedures Manual states the following:

The regulations at 34 CFR §300.301(b) allow a parent/legal guardian to request an initial evaluation at any time to determine if a child is a child with a disability.

A parent/legal guardian may request an evaluation. If this request is made in writing, it should be date stamped.

- There are no other procedures listed for requesting an evaluation in the District's manual.
- The District asserts that it conducted a comprehensive and thorough evaluation that examined all areas of need identified by the team.
- The District asserts that it took affirmative steps to ensure that the evaluation report was comprehensive and covered additional areas of concern identified within the evaluation process. For example, [Redacted] felt additional areas needed to be pursued after interviewing with [the Complainants]. After seeking input on how to add additional

evaluation components and assessment areas, Dr. Harwood contacted the parent to obtain consent to expand the evaluation to include speech/language assessments.

- The evaluation included an assessment of motor skills, including visual perception and motor coordination; behavior rating scales; the Gilliam Asperger's Disorder Scale; the Expressive and Receptive One-Word Picture Vocabulary Tests (EOWPVT, RONPVT), the CARS-HF; the Test of Pragmatic Language (2nd Edition); and Checklist of Pragmatic Skills.
- State Board of Education Regulation 43-243.1 reads:

All evaluation procedures must ensure that the following minimal requirements are met:

8. The student is assessed in all areas related to the suspected disability, including, if appropriate, his or her health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

9. In the assessment of each student with a disability, the methods of evaluation are sufficiently comprehensive to identify all of the student's special education and related-services needs, whether or not they are commonly linked to the category in which the student is suspected of having a disability.

## B. Autism

### 1. Definition

Autism is a developmental disability, generally evident before age three, which adversely affects a student's educational performance and significantly affects developmental rates and sequences, verbal and non-verbal communication and social interaction and participation. Other characteristics often associated with autism are unusual responses to sensory experiences, engagement in repetitive activities and stereotypical movements and resistance to environmental change or change in daily routines.

Students with autism vary widely in their abilities and behavior. The diagnosis of Autism does not apply if a student's educational performance is adversely affected primarily because the student has an emotional disorder. Autism may exist concurrently with other areas of disability.

Autism, also referenced as autism spectrum disorder, for the purpose of eligibility, may include Autistic Disorder, Pervasive Developmental Disorder Not Otherwise Specified (POD-NOS), or Asperger's Syndrome provided the student's educational performance is adversely affected and the student meets the eligibility and placement requirements.

### 2. Eligibility Criteria

There is evidence that the child has any of the Pervasive Developmental Disorders, such as Autistic Disorder, Asperger's Disorder, POD-NOS as indicated in the following diagnostic references:

#### a. Asperger's Disorder:

( 1) There is evidence that the child demonstrates impairments in social interaction, such as marked impairment in the use of multiple nonverbal behaviors such as eye-to-eye gaze, facial expression, body postures, and gestures to regulate social interaction; failure to develop peer relationships appropriate to developmental level; a lack of spontaneous

seeking to share enjoyment, interests, or achievements with other people (i.e., by a lack of showing, bringing, or pointing out objects of interest); or lack of social or emotional reciprocity are noted; and

(2) Restricted repetitive and stereotyped patterns of behavior, interests, and activities such as encompassing preoccupation with one or more stereotyped and restricted patterns of interest that is abnormal either in intensity or focus, apparently inflexible adherence to specific, nonfunctional routines or rituals, stereotyped and repetitive motor mannerisms, persistent preoccupation with parts of objects.

(3) The adverse effects of the Asperger's Disorder on the child's educational performance require specialized instruction and/or related services.

#### b. Autistic Disorder

(1) In addition to the characteristics listed in (a)(1) and (2) of this subsection, there also is evidence that the child demonstrates impairments in communication, such as delay in, or total lack of, the development of spoken language (not accompanied by an attempt to compensate through alternative modes of communication such as gesture or mime). In individuals with adequate speech, marked impairment in the ability to initiate or sustain a conversation with others, stereotyped and repetitive use of language or idiosyncratic language, or lack of varied, spontaneous make-believe play or social imitative play appropriate to developmental level is noted.

(2) The adverse effects of the Autistic Disorder on the child's educational performance require specialized instruction and/or related services.

#### c. POD-NOS

(1) There is evidence that the child demonstrates any of the characteristics listed in a or b of this subsection without displaying all of the characteristics associated with either Asperger's Disorder or Autistic Disorder.

(2) The adverse effects of the POD-NOS on the child's educational performance require specialized instruction and/or related services.

### F. Emotional Disability

#### 1. Definition

Emotional Disability means an emotional disturbance defined as a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects the student's educational performance:

- a. an inability to learn that cannot be explained by intellectual, sensory, or health factors;
- b. an inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
- c. inappropriate types of behavior or feelings in normal circumstances;
- d. a general pervasive mood of unhappiness or depression;
- e. a tendency to develop physical symptoms or fears associated with personal or school problems.

The term includes schizophrenia. The term does not apply to children who are socially maladjusted unless it is determined that they have a serious emotional disturbance.

## 2. Eligibility Criteria

- a. There is evidence that the child exhibits one or more of the following characteristics over a long period of time and to a marked degree: an inability to learn that cannot be explained by intellectual, sensory, or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings in normal circumstances; general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms or fears associated with personal or school problems.
  - b. The adverse effects of the emotional disability on the child's educational performance require specialized instruction and/or related services.
- The eligibility documentation indicates that the District addressed Autism spectrum disorders by examining communication; social interaction; sensory responses/experiences; and restricted, repetitive, or stereotypic patterns of behavior, interests, and/or activities. The District did not examine resistance to environmental change or change in daily routines; marked impairment in the use of multiple nonverbal behaviors such as eye-to-eye gaze, facial expression, body postures, and gestures to regulate social interaction; failure to develop peer relationships appropriate to developmental level; a lack of spontaneous seeking to share enjoyment, interests, or achievements with other people (i.e., by a lack of showing, bringing, or pointing out objects of interest); lack of social or emotional reciprocity; marked impairment in the ability to initiate or sustain a conversation with others; stereotyped and repetitive use of language or idiosyncratic language; or lack of varied, spontaneous make-believe play or social imitative play appropriate to developmental level.
  - The eligibility documentation indicates that the District addressed emotional disability by examining whether the Student had an inability to learn that cannot be explained by intellectual, sensory, or health factors; inappropriate types of behavior or feelings in normal circumstances; general pervasive mood of unhappiness or depression; a tendency to develop physical symptoms or fears associated with personal or school problems; or schizophrenia. The District did not examine an inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
  - The SEED guidelines from the SCDE state:

During the evaluation process, the child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities (34 CFR § 300.304(c)(4)). All assessment tools and strategies must provide relevant information that directly assists in determining the educational needs of the child (34 CFR §300.304(c)(7)).

The SEED Guidelines for evaluation for Autism spectrum disorders include:

### a) Asperger's Disorder

The child exhibits both characteristics:

1) Impairments in social interaction and

2) Restricted, repetitive, and stereotyped patterns of behavior, interest, and actions.

The following are required:

1. A social and developmental history that includes family background, information on communication, social interaction, play, sensory development, and physical milestones. The documentation must show evidence of impairments in social interaction and restricted, repetitive, and stereotyped patterns of behavior that are significantly different from peers'. The social/developmental history must also help determine the age of onset of Asperger's.

2. A diagnostic interview(s) with parent/teachers that provides evidence of impairments in social interaction and restricted, repetitive, and stereotyped patterns of behavior that are significantly different from peers'.

3. A minimum of three thirty-minute direct behavioral observations of the student in at least two environments on two different days by more than one member of the multidisciplinary evaluation team. Observations should be completed during both structured and unstructured activities. Observations may take place in such settings as the classroom, home, recess, lunch, related arts, small group, large group, and social skills training. The documentation must provide evidence of impairments in social interaction and restricted, repetitive, and stereotyped patterns of behavior that are significantly different from peers'.

4. A standardized instrument designed to measure autistic behavior and characteristics that is administered and interpreted in consultation with a professional with experience with autism. The documentation must provide evidence of impairments in social interaction and restricted, repetitive, and stereotyped patterns of behavior that are significantly different from peers'. The consulting professional must be an appropriately certified or highly qualified teacher, a certified school psychologist, licensed psychoeducational specialist, or a licensed psychologist with training in autism.

5. A standardized adaptive behavior scale containing information provided by the parent/caregiver and teachers of the child. The documentation must provide evidence that the student's communication and social skills are significantly different from peers'.

6. A measure(s) of academic achievement that provides evidence that the student's disability adversely impacts his/her educational performance. This measure may include standardized achievement measures such as norm-referenced assessments as well as curriculum based measures.

7. Other areas which may yield evidence, but are not required, include fine and gross motor skills assessments, visual-motor skills assessments, sensory processing measures, curriculum based measures, and standardized achievement measures.

8. Evidence that the Asperger's has an adverse effect on the student's education performance. There must be evidence to link the student's disability to the difficulties in educational performance.

b) Autistic Disorder

The child exhibits all three characteristics:

1) Impairments in social interaction (see Asperger's Disorder above);

2) Restricted, repetitive, and stereotyped patterns of behavior, interest, and actions (see Asperger's Disorder above); and

3) Impairments in communication.

The following are required:

1. A social and developmental history that includes family background, information on communication, social interaction, play, sensory development, and physical milestones. The documentation must show evidence of impairments in social interaction, restricted, repetitive, and stereotyped patterns of behavior, and communication that are significantly different from their peers. The social/developmental history must also help determine the age of onset of the disorder;

2. A diagnostic interview(s) with parent/teachers that provides evidence of impairments in social interaction, restricted, repetitive, and stereotyped patterns of behavior, and communication that are significantly different from peers';

3. A minimum of three thirty-minute direct behavioral observations of the student in at least two environments on two different days by more than one member of the multidisciplinary evaluation team. Observations shall be completed during both structured and unstructured activities. Observations may take place in such settings as the classroom, home, recess, lunch, related arts, small group, large group, and social skills training. The documentation must provide evidence of impairments in social interaction, restricted, repetitive, and stereotyped patterns of behavior, and communication that are significantly different from peers'.

4. A standardized instrument designed to measure autistic behavior and characteristics that is administered and interpreted in consultation with a professional with experience with autism. The documentation must provide evidence of impairments in social interaction, restricted, repetitive, and stereotyped patterns of behavior, and communication that are significantly different from peers'. The consulting professional

must be an appropriately certified or highly qualified teacher, a certified school psychologist, licensed psychoeducational specialist, or a licensed psychologist with training in autism.

5. A standardized adaptive behavior scale containing information provided by the parent/caregiver and teachers of the child. The documentation must provide evidence that the student's communication and social skills are significantly different from peers'.

6. A current communication evaluation conducted by a speech-language therapist/pathologist. This evaluation should include assessment in the areas of receptive, expressive, pragmatic, and social/functional communication skills. The documentation must provide evidence that the student's communication skills are significantly different from peers';

7. A developmental or cognitive assessment that includes both verbal and non-verbal components completed by a certified school psychologist, licensed psychoeducational specialist, or a licensed psychologist with training in autism.

8. A measure(s) of academic achievement that provides evidence that the student's disability adversely impacts his/her educational performance. This measure may include standardized achievement measures such as norm-referenced assessments as well as curriculum based measures.

9. Other areas which may yield evidence, but are not required, include sensory processing measures, curriculum based measures, and standardized achievement measures.

10. Evidence that the Autistic Disorder has an adverse effect on the student's education performance. There must be evidence to link the student's disability to the difficulties in educational performance.

c) Pervasive Developmental Disorder-Not Otherwise Specified

The child exhibits any of the following characteristics without displaying all of the characteristics associated with Asperger's Disorder or Autistic Disorder:

- 1) Impairments in social interaction (see Asperger's Disorder above);
- 2) Restricted, repetitive, and stereotyped patterns of behavior, interest, and actions (see Asperger's Disorder above); and
- 3) Impairments in communication (see Autistic Disorder above).

The following are required:

1. A social and developmental history that includes family background, information on communication, social interaction, play, sensory development, and physical milestones.



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The documentation must show evidence of impairments in social interaction, restricted, repetitive, and stereotyped patterns of behavior, and communication that are significantly different from peers'. The social/developmental history must also help determine the age of onset of the disorder;

2. A diagnostic interview(s) with parent/teachers that provides evidence of impairments in social interaction, restricted, repetitive, and stereotyped patterns of behavior, and communication that are significantly different from peers';

3. A minimum of three thirty-minute direct behavioral observations of the student in at least two environments on two different days by more than one member of the multidisciplinary evaluation team. Observations shall be completed during both structured and unstructured activities. Observations may take place in such settings as the classroom, home, recess, lunch, related arts, small group, large group, and social skills training. The documentation must provide evidence of impairments in social interaction, restricted, repetitive, and stereotyped patterns of behavior, and communication that are significantly different from peers';

4. A standardized instrument designed to measure autistic behavior and characteristics that is administered and interpreted in consultation with a professional with experience with autism. The documentation must provide evidence of impairments in social interaction, restricted, repetitive, and stereotyped patterns of behavior, and communication that are significantly different from peers'. The consulting professional must be an appropriately certified or highly qualified teacher, a certified school psychologist, licensed psychoeducational specialist, or a licensed psychologist with training in autism.

5. A standardized adaptive behavior scale containing information provided by the parent/caregiver and teachers of the child. The documentation must provide evidence that the student's communication and social skills are significantly different from peers'.

6. A current communication evaluation conducted by a speech-language therapist/pathologist. This evaluation should include assessment in the areas of receptive, expressive, pragmatic, and social/functional communication skills. The documentation must provide evidence that the student's communication skills are significantly different from peers';

7. A developmental or cognitive assessment that includes both verbal and non-verbal components completed by a certified school psychologist, licensed psychoeducational specialist, or a licensed psychologist with training in autism.

8. A measure(s) of academic achievement that provides evidence that the student's disability adversely impacts his/her educational performance. This measure may include standardized achievement measures such as norm-referenced assessments as well as curriculum based measures.

9. Other areas which may yield evidence, but are not required, include sensory processing measures, curriculum based measures, and standardized achievement measures.

10. Evidence that the Pervasive Developmental Disorder-Not Otherwise Specified has an adverse effect on the student's education performance. There must be evidence to link the student's disability to the difficulties in educational performance.

The multidisciplinary evaluation team must include the members of the IBP team and other qualified professionals, as appropriate. The team must also include a speech-language therapist/pathologist and a certified school psychologist, licensed psychoeducational specialist, or a licensed psychologist with training in autism as well as an autism specialist who is knowledgeable and experienced in the education of children with autism. The autism specialist could be a highly qualified teacher in the area of autism, or a certified school psychologist, a licensed psychologist, a licensed psycho-educational specialist, or a speech-language therapist or pathologist who is knowledgeable and experienced in the education of students with autism.

The SEED Guidelines for evaluation for emotional disability include:

Evidence that the child exhibits one or more of the characteristics to a marked degree may be found in the following required evaluation components:

The student is rated within the highest level of significance on a valid and reliable problem behavior rating scale by both a certified teacher and another adult knowledgeable of the student. The scale(s) must be interpreted in consultation with a certified school psychologist, licensed psychologist, or a licensed psycho-educational specialist. If the rating scale is a multi-dimension scale then subtest scores may be used. However, if the rating scale is a single-dimension scale then the composite score will be used. In the event of discrepant ratings, additional ratings may be necessary in order to support a trend or pattern regarding a true emotional disability across settings. An explanation must be given for any discrepancies;

A self-report behavior rating scale completed by the student and interpreted in consultation with a certified school psychologist, licensed psychologist, or a licensed psycho-educational specialist. If the rating scale is a multi-dimension scale then subtest scores may be used. However, if the rating scale is a single-dimension scale then the composite score will be used.

Documentation that the student's observable school and/or classroom problem behavior is occurring at a significantly different rate, intensity, or duration than the substantial majority of typical school peers, or the student is currently displaying behavior that is endangering his or her life or seriously endangering the safety of others; and

A valid and reliable personality measure, when developmentally appropriate, administered by a certified school psychologist, licensed psychologist, or a licensed

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psycho-educational specialist where the student's score falls within the highest level of significance or there exists a significant discrepancy between the observed behavior and the student's performance on the personality measure. A report of a valid and reliable personality measure, when developmentally appropriate, that has been directly administered by a licensed clinical or counseling psychologist with training in the assessment of children and adolescents may be accepted by the school district.

A structured student interview, when developmentally appropriate, to gain insight into the student's perception of the functionality of his/her behavior.

Evidence that the child exhibits one or more of the characteristics over a long period of time may be found in the following required evaluation components:

Documentation that the problem behavior has existed for at least six months or that the behavior seriously endangers the student's life or seriously endangers the safety of others. This documentation includes the following required sources:

- o Anecdotal records collected over a period of at least ten school days within a period of thirty calendar days;
- o Three direct observations in at least two different settings, both of which may be school settings, by a certified school psychologist or a licensed psychoeducational specialist, and/or an observer with expertise in behavior intervention that provide evidence that the problem behavior occurs at a significantly different rate, intensity, or duration than in a substantial majority of typical school peers;
- o A structured parent/guardian interview to gain information not gathered through standardized assessment tools. This may include but is not limited to areas such as family background, functioning in the community, socio-cultural background, developmental history, educational history, special services and supports received, behavior, psychosocial functioning, and other developmental information. This is a person-to-person collection of information, supplemented by paper reporting and records;
- o Discipline referrals;
- o A current behavior intervention plan that has been developed in consultation with a certified staff member such as a special education teacher, guidance counselor or a certified school psychologist, licensed psychologist, or a licensed psychoeducational specialist with expertise in behavior intervention and the classroom teacher(s) and other appropriate staff members; the plan must have been implemented for a minimum of six weeks. This consultation period may be shortened if the student is currently displaying behavior that is endangering his/her life or seriously endangering the safety of others; and

o Progress monitoring documentation showing that the specifically prescribed and consistently employed interventions in the behavior plan have not resulted in significant improvement in the student's problem behavior.

The multidisciplinary evaluation team must include the members of the IEP team, a certified school psychologist, licensed psychologist, or a licensed psycho-educational specialist, and other qualified professionals, as appropriate.

- The District did not complete the following required components of the SEED guidelines:

A minimum of three thirty-minute direct behavioral observations of the student in at least two environments on two different days by more than one member of the multidisciplinary evaluation team.

A current communication evaluation conducted by a speech-language therapist/pathologist.

- The South Carolina Special Education Process Guide states:

The evaluation must be sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category being considered for the child. If the child is found eligible, this information translates into the present levels of academic achievement and functional performance and forms the basis for making all the decisions in the IEP. If the child is not found eligible, this information assists the LEA in determining other appropriate supports for the child. Ultimately, at the close of an evaluation, the team must have enough information to support the child whether or not the child is found eligible for special education services. The team must be able to describe where the child is currently performing within the general education curriculum and standards as well as able to describe how (or it) the child's unique learning characteristics are impacting his or her ability to access and make progress in the general education curriculum (or for early childhood, to participate in appropriate activities). Other issues that are impacting the child's ability to function in the learning environment must also be described so that the extent of the child's needs may be realized.

- The District asserts that on June 11, 2014, the Complainants contacted Fort Mill Middle School (FMMS) to request a 504 plan. They indicated that an evaluation report from Child and Family Development would be forthcoming. Fort Mill Middle School contacted Sugar Creek Elementary School staff to receive a status update on the request, during which time Sugar Creek noted that they had not recommended either a 504 plan or an IDEA evaluation. The District states there was no reason to suspect that [the Student] was a child with a disability in need of special education. The District asserts that upon the Complainants' request and notice of the private neuropsychological evaluation, however, FMMS began the process of convening a multidisciplinary team to consider evaluations under Section 504 and the IDEA.

- The District asserts that the Student's behaviors were successfully handled through that point within the classroom and using classroom strategies. The District asserts that it first received notice of a private evaluation on January 29, 2014, when the Complainants emailed the classroom teachers to notify them that "[the Student] is being evaluated for some issues" and that they were requesting behavior information from his teachers.
- The multi-disciplinary team reconvened on August 26, 2015, and adjusted the Section 504 plan. At that meeting, the Complainants sought clarification regarding why an IEP was denied and shared additional information from outside providers, including an FBA by Ms. Espinoza, a treatment summary from Engineer, and a fitness training summary. The team determined that the additional information warranted a second initial IDEA evaluation. The team proposed an evaluation to obtain additional information in the areas of adaptive behavior, social/emotional behavior, motor (fine motor, sensory, and physical therapy (PT) observation), which would be supplemented by observations and a review of existing educational records and the Complainants' private evaluations.
- The District asserts that after considering all data, it determined [the Student] did not require specialized instruction because the conditions do not adversely affect his educational performance, that is, he does not require specially-designed instruction in order to access the general education curriculum.
- Since the complaint was filed, a meeting was held and a third party evaluation has been scheduled. According to the Student's mother, the District is paying for the evaluation.
- The Student was placed on medical homebound for six weeks, beginning on October 9, 2015. He has since returned to school. He began attending half days the week of November 23, 2015. According to the Student's mother, the Student has not yet had a complete week of school due to his issues.

## CONCLUSION

### CHILD FIND ISSUES:

The "child find" provision of the IDEA imposes on States a requirement that "[a]ll children with disabilities residing in the State, . . .regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated." 20 U.S.C. § 1412(a)(3)(A). The "child find" duty extends even to "[c]hildren who are suspected of being a child with a disability ... even though they are advancing from grade to grade." 34 C.F.R. § 300.111(c)(1). Furthermore, where a child is suspected of being a child with a disability, the local educational agency shall ensure that "the child is assessed in *all* areas of suspected disability." 20 U.S.C. § 1414(b)(3)(B) (emphasis added).

Though the "child find" duty does not impose a specific deadline by which time children suspected of having a qualifying disability must be identified and evaluated, evaluation should take place within a "reasonable time" after school officials are put on notice that behavior is

likely to indicate a disability. *W.B. v. Matula*, 67 F.3d 484, 501 (3d Cir. 1995), *abrogated on other grounds by A. W. v. Jersey City Pub. Schs.*, 486 F.3d 791 (3d Cir.2007). Thus, the "child find" obligation is triggered where the state has reason to suspect that the child may have a disability and that special education services may be necessary to address that disability. *Dept. of Educ., State of Haw. v. Cari Rae S.*, 158 F.Supp.2d 1190, 1194 (D. Haw. 2001). A local educational agency (LEA) is deemed to have knowledge that the child may suffer from a disability where (1) "the parent of the child has expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;"(2) "the parent of the child has requested an evaluation of the child pursuant to section 1414(a)(1)(B);" or (3) "the teacher of the child, or other personnel of the local educational agency, has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education of such agency or to other supervisory personnel of the agency."20 U.S.C. § 1415(k)(5)(B).

To establish a procedural violation of the "child find" requirement, the claimant "must show that school officials overlooked clear signs of disability and were negligent in failing to order testing, or that there was no rational justification for not deciding to evaluate." *Bd. of Educ. of Fayette Cnty., Ky. v. L.M.*, 478 F.3d 307, 313 (6th Cir.2007) (adopting the standard set forth in *Clay T. v. Walton Cnty. Sch. Dist.*, 952 F.Supp. 817, 823 (M.D.Ga.1997));

Local educational agencies (LEAs) must have, in effect, policies and procedures to ensure that all students with disabilities residing in the state, including students with disabilities who are homeless, or wards of the state, and students with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated. 34 C.F.R. § 300.111. In short, LEAs are responsible for conducting child find and identifying all IDEA-eligible students who reside in their jurisdiction, including children who attend who are homeschooled. Students in need of special education services should be identified as soon as possible after the concern is noted, to diminish the impact of the concerns on the student's education. This includes all children who are suspected of having a disability, including children who receive passing grades and are "advancing from grade to grade." 34 C.F.R. § 300.111(c).

Consistent with the consent requirements in the IDEA regulation 34 C.F.R. § 300.300, either a parent of a student or a public agency may initiate a request for an initial evaluation, at any time, to determine a student's possible eligibility as a student with a disability. Although a parent's request does not automatically trigger the right to an evaluation, school districts and agencies charged with the responsibility of providing educational services to students with disabilities must not delay in responding to a parent's request for an evaluation by either moving forward with granting the evaluation request or specifically denying the request through the issuance of PWN. Each public agency must conduct a full and individual initial evaluation, in accordance with §§ 300.305 and 300.306, before the initial provision of special education and related services to a student with a disability. The initial evaluation must be conducted within sixty days of receiving parent consent for the evaluation. An exception to the 60-day time frame includes if a student enrolls in a school of another public agency after the relevant timeframe has begun and

prior to a determination by the student's previous public agency as to whether the student is a student with a disability. 34 C.F.R. § 300.301.

In considering whether child find violations have occurred, it may be appropriate to consider evidence that precedes the one-year limitation for other state complaint issues. See *Bd. of Educ. of Fayette Cry., Ky. v. L.M.*, 478 F.3d 307, 314 (6th Cir. 2007) (in which a hearing officer considered evidence as far back as five years to determine if there was a violation of child find procedures by a school district)

As part of an IDEA eligibility determination, a team must determine whether the child needs special education and related services as a result of the disability. Special education is specially- designed instruction that adapts the content, methodology, or delivery of instruction to address the unique needs of a child that resolute from the child's disability to ensure access of the child to the general education curriculum in order to meet the educational standards that apply to all children. 34 C.F.R. §300.39(b)(3)(i)- (ii). The SCDE has explained that "in order to have a need for special education services, the child has specific needs which are so unique that they require specially designed instruction in order to access the general education curriculum." SCDE Office of Exceptional Children Special Education Process Guide, p. 37 (March 2013).

## PREDETERMINATION

The Fourth Circuit discussed predetermination in *Spielberg ex rel. Spielberg v. Henrico County Public Schools*, 853 F.2d 256 (4th Cir.1988). There, the district court had concluded, based on a series of letters written before the IEP meeting that focused on a change in placement, that the school district had decided to change the disabled student's placement before developing an IEP to support the change. *Id.* at 258-59. The Fourth Circuit affirmed the district court's determination that a procedural violation had occurred that deprived the student of a FAPE:

Under the EHA [the predecessor to the IDEA], the general rule is that placement should be based on the IEP. 34 C.F.R. § 300.552. The appendix interpreting the EHA regulations states that "IEP objectives must be written before placement." 34 C.F.R. Part 300, App. C., Question 42. The decision to place Jonathan at Randolph before developing an IEP on which to base that placement violates this regulation as interpreted by the Secretary of Education. It also violates the spirit and intent of the EHA, which emphasizes parental involvement. After the fact involvement is not enough.

*Id.* at 259 (footnote omitted). The relevant regulation provides that, in determining the educational placement of a disabled child, the public agency must ensure that the placement "[i]s based on the child's IEP." 34 C.F.R. § 300.552.

*W.G. v. Board of Trustees of Target Range School District No. 23*, 960 F.2d 1479 (9th Cir.1992), was a similar case. There, the Ninth Circuit agreed with the district court that the school district had independently developed a proposed IEP that would place the student in a preexisting,

predetermined program. *Id.* at 1484. At the IEP meeting, no alternatives to that program were considered. *Id.* The court held that in order to fulfill the goal of parental participation in the IEP process, the school district was required to conduct, not just an IEP meeting, but a *meaningful* IEP meeting. *Id.* at 1485.

There is evidence that the District predetermined that the Student would not qualify for special education services before an evaluation was completed. Personnel made such statements as "it is highly unlikely he will qualify as he is doing very well in school." During the 504 meeting on August 26, 2015, District personnel stated that in order to qualify, the student must be "constantly" getting in trouble or consistently be removed from class. The District stated that disciplinary actions must be taken before behaviors are deemed sufficiently inappropriate to warrant services.

The United States Department of Education *Letter to Anonymous, Office of Special Education Programs*, 55 IDELR 172, 110 LRP 52277 (January 13, 2010), is particularly instructive in this case. The letter states:

The IDEA is silent regarding "twice exceptional" or "gifted" students. It remains the Department's position that students who have high cognition, have disabilities and require special education and related services are protected under the IDEA and its implementing regulations. Under 34 C.F.R. §300.8, a child must meet a two-prong test to be considered an eligible child with a disability: (1) have one of the specified impairments (disabilities); and (2) because of the impairment, need special education and related services. For example, a child with high cognition and ADHD could be considered to have an 'other health impairment,' and could need special education and related services to address the lack of organizational skills, homework completion and classroom behavior, if appropriate. Likewise, a child with Asperger's Syndrome could be considered under the disability category of autism and the individualized evaluation would address the special education and related services needs in the affective areas, social skills and classroom behavior, as appropriate.

In other words, "The mere fact that a student is 'gifted' does not disqualify him from eligibility for special education and related services under the IDEA. OSEP explained to an interested individual that students with high cognition may also have disabilities, such as ADHD, Asperger syndrome, or a specific learning disability, that require IDEA services."

Most troubling is the statement by the District that if a student requires a functional goal, then "the way our school does it" is only through 504 plans, and that functional skills instruction takes place during social groups. Just as in *W.G. v. Target Range*, this amounts to placing the Student in a preexisting, predetermined program, without considering the need for special education services.



## FAILED TO ASSESS THE STUDENT IN ALL AREAS RELATED TO THE SUSPECTED DISABILITY AND IGNORED SEED GUIDELINES

According to 34 C.F.R. § 300.304(c)(4), the District must ensure that children who are evaluated are assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. An initial evaluation involves the use of a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information to assist in determining if the child is eligible for special education services. There is a two-pronged test for eligibility: (1) whether the child is a child with a disability and by reason thereof, (2) has a need for special education and related services. This two-pronged test has driven eligibility decisions for many years. Current statutes and regulations require that evaluations must determine present levels of academic and functional performance (PLAAFP) (related developmental needs) of the child (34 C.F.R. § 300.305(a)(2)(i)-(iii)). This adds to the purpose of the initial evaluation to also determine what the child needs to enable him/her to learn effectively and to participate and progress in the general education curriculum. During the evaluation process, the child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities (34 C.F.R. § 300.304(c)(4)). All assessment tools and strategies must provide relevant information that directly assists in determining the educational needs of the child (34 C.F.R. § 300.304(c)(7)).

The SCDE Office of Exceptional Children Special Education Process Guide states that evaluations must determine the PLAAFP (related developmental needs) of the child (34 C.F.R. § 300.305(a)(2)(i)-(iii)). The District correctly asserts that the SEED guidelines were issued as nonregulatory guidance providing direction to where evaluation and eligibility teams may find evidentiary support for the criteria contained in SBE Reg. 43-243.1. The eligibility for autism and/or emotional disability under R43-243.1 must be based on an analysis of the criteria in R43-243.1, not based on a DSM diagnosis without meeting the rest of the criteria. However, this does not excuse the District for failing to follow regulatory criteria.

S.C. Code Ann. § 59-33-30 states that the State Department of Education under the direction of the State Superintendent of Education shall establish screening, evaluating and placement procedures for students with special education needs. The SCDE, under the direction of the Board, may promulgate such rules and regulations, not inconsistent with law as it shall deem necessary and proper. The SEED contains the standards designed to assist evaluation teams in implementing the regulation and should be used to explain what was done to meet the requirements under R43-243.1. Some of the components of the SEED document are required when evaluating a student, which others are suggested.

The 504 Planning Guide, dated August 15, 2014, stated that the student is overly sensitive to noise, there are fine motor concerns (balance, write legibly), and states that little things can bother him and he might "explode." The District completed an evaluation for the student after this meeting. As of the time of the filing of this complaint, this is the only evaluation conducted by the District. This evaluation was completed by **Dr. Harwood** on November 12, 2014. **D**

Harwood had access to school records and previous medical and psychological evaluations. One of the evaluations was completed by Dr. Granetz on May 28, 2014. In that evaluation, she states that the Student had vision-related problems, motor skills difficulties, anxiety, problems with executive functioning, and depression. She also states that the Student exhibits features of an autism spectrum disorder and that this remains a rule out to be considered. Dr. Harwood referred to this evaluation in her report.

While the District asserts that the Student was given a comprehensive evaluation, many areas were not assessed. The District failed to follow required components of the SEED document. In addition, the District failed to provide a comprehensive evaluation of the Student. While the 504 planning guide indicates that there are sensitivities to noise, the Harwood evaluation states there were no sensitivities extreme in nature. There is no source cited for this finding by Dr. Harwood. No examinations, other than a visual perception test, were completed to support this assertion. While the 504 planning guide states that there are fine motor concerns, the District did not conduct a PT or OT evaluation. Although the District was aware of the Student's problems with executive functioning, the Harwood evaluation failed to assess the student for functional performance. The Harwood evaluation failed to address the discipline referrals received by the Student, the Student's multiple trips to the nurse and/or recovery room, and the Student's multiple absences from school due to his disability. Finally, in the conference meeting to discuss the Harwood evaluation, the District stated the Student met the criteria for autism in the DSM but not all criteria in school levels. The District should have given the Student a comprehensive evaluation to determine if the Student met the criteria for autism under R43-243. 1.

Even though the Student may be functioning well academically, the District has an obligation to assess and evaluate the Student on functional performance. A FAPE includes not only academics, but also access to the general education curriculum. If a student's disability is causing excessive absences or removal from the classroom (whether documented as a disciplinary issue or not), the disability is impeding the Student's education. The record is replete with evidence of removal from the classroom, whether voluntarily or as punishment, since 2011, when the District began an RTI program for the Student. However, the majority of the absences from the classroom have occurred since the 2013\_14 school year. According to emails, the Student missed approximately 8-10 days of school that year for anxiety issues. In the 2014-15 school year, the Student missed class time 28 times due to visiting the nurse, being removed from class by the teacher, getting a referral, or having a "melt down" or crying episode.

The District conducted its first evaluation of the Student on November 12, 2014. However, the District knew or should have known that the Student was a student with a disability who may be eligible for services before this date. In other words, the District overlooked clear signs of a disability and was negligent in failing to order an evaluation. In addition, according to the evidence presented, there was no rational justification for not deciding to evaluate the Student before this date.

## IGNORED FINDINGS THAT SUPPORT THE STUDENT'S ELIGIBILITY FOR SPECIAL EDUCATION SERVICES

The District also ignored findings that support the Student's eligibility for special education services, since there was plentiful evidence that indicated the Student was not accessing the general education curriculum because of his disability. While the District asserts that the Student failed to meet the second prong of the determination for services, evidence supports that the Student's disability has an impact on his access to the general education curriculum.

Ample evidence exists that the District should have suspected a disability beginning in the 2013-14 school year. For example, the Student's absences, coupled with the Complainants' emails and communication to the District for the reason behind these absences, should have triggered child find obligations. *See Bd. of Educ. of Momgomery Cty., Maryland v. S.G.*, 230 F. App'x 330, 334-35 (4th Cir. 2007) (a hearing officer did not err in considering the impact of a student's absences on educational performance). The Complainants alerted the District to the possibility of a disability on March 19, 2014, but was told to pay for a private assessment first. In addition, the Complainants supplied the District with statements from the Student's physicians requesting special education services and informed teachers of the developments with the Student's anxiety issues.

At the start of the 2014-15 school year, within 21 days, the Student had seven behavioral incidents and numerous trips to the nurse. District personnel stated in emails that the Student "seemed like a student who needed a 504 plan." The Student's grades dropped significantly at the beginning of the 2014-15 school year until the Complainants paid for therapy. Teachers from the 2014-15 school year noted that the Student had frequent "melt downs." **Dr. Harwood**, before performing her evaluation, noted in an email that she suspected the Student was on the autism spectrum. The Student began accumulating discipline referrals and had other incidents that were "not officially documented via office referral." There was negative impact on access to extracurricular and nonacademic activities. Teachers noted that the Student was crying and "wailing" in class. The Student made numerous trips to the school nurse. As stated above, the Student missed class time 28 times in the 2014-15 school year due to visiting the nurse, being removed from class by the teacher, getting a referral, or having a "melt down" or crying episode.

The documentation from the 504 meeting held on August 13, 2015, states that the Student's conditions adversely affect his hearing (understanding/processing of directions), interactions with others, learning, thinking, and working. The accommodations included a possibility of removal from the classroom. On August 19, 2015, the Student exhibited behavior that, according to the District, would normally have resulted in expulsion.

## USED GRADES, TEST SCORES, AND PLACEMENT TO DETERMINE ELIGIBILITY

Section 614(b)(2)(A) of IDEA and the final regulations at 34 C.F.R. § 300.304(b) state that in conducting an evaluation, the public agency must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information. Therefore, the IDEA and the regulations clearly establish that the determination about whether a child is a child with a

disability is not limited to information about the child's academic performance. 34 CFR § 300.101(c) states that each State must ensure that a FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade.

It is important to note that in determining whether a child has a disability -- whether an SLD or any of the other disability categories identified in 34 CFR §300.8 -- the IDEA requires the use of a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, and prohibits the use of any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child. 34 CFR §300.304(b)(1) and (2). Therefore, it would be inconsistent with the IDEA for a child, regardless of whether the child is gifted, to be found ineligible for special education and related services under the SLD category solely because the child scored above a particular cut score established by State policy.

The United States Department of Education, OSEP Policy Memo, December 20, 2013. Functional is a term that means "routine activities of everyday living." In other words, the education of students includes not only academics, but also instruction, if needed, in behavior, occupational therapy, or physical therapy, if the student needs this instruction to access the general education curriculum. Commentary in the Federal Register, page 46661.

The evidence submitted indicates that the District placed extreme emphasis on the Student's academic performance to determine if he was eligible for special education services and little to no emphasis on whether the Student's disability impacted his access to the general education curriculum. The documents from the eligibility determination conducted on November 17, 2014, state:

While [the Student] experiences occasional episodes, they do not appear to be impacting his educational performance at this time. A review of his recent report card grades are all A's. He also has earned A's in gifted and talented math, science, and English/language arts.

There is limited evidence to support the need for specially designed instruction. [The Student] is obtaining all A's in his classes, and most of these classes are advanced Gifted and Talented classes. [The Student] also performs well on state/district testing.

At the 504 meeting on August 26, 2015, Dr. Harwood stated: "[T]he bottom line is your son is very high performing. He's in gifted and talented classes. He . . . I have his transcript here. He's got all A's, uh, at the end of last quarter. Uh, he performed in the 80 to 90th percentile on the

MAP testing and let me just back track. Educational diagnosis is different than mental health. To qualify in, in the school system, you have to impact your education meaning you have to pass your grades. Uh, typical special education students performing 1 to 2 grade levels below the average student."

**Dr. Harwood** is correct in that in order to qualify for special education services, education must be impacted. However, this does not mean only passing grades, nor does it mean that academic achievement should be the only criteria for determining if special education services are needed. There is no requirement that a student must "constantly get in trouble" or constantly be removed from class in order for there to be an educational impact.

**ADDITIONAL AREA OF CONCERN:**

**USING INTERVENTION TECHNIQUES AND STRATEGIES IN LIEU OF PROVIDING AN EVALUATION AND/OR SPECIAL EDUCATION SERVICES**

The questions and answers document on Response to Intervention and Early Intervening Services, January 2007, USDE, states:

The Federal regulations under 34 CFR §300.309(c) require that if a child has not made adequate progress after an appropriate period of time, a referral for an evaluation must be made. However, the regulations do not specify a timeline for using RTI or define "adequate progress." As required in 34 CFR §300.301(c), an initial evaluation must be conducted within 60 days of receiving consent for an evaluation.

The Student began an RTI program in 2012. However, even after the program was implemented, the Student continued to have "melt downs" and behavior issues in the classroom. An email chain indicated that there was a behavior plan in place for the Student that was not effective. At the end of the 2013-14 school year, the Student was referred to the "Bridges" program to assist in transition to middle school based upon his development and social issues. The intervention record dated August 18, 2014, stated that the Complainants were responsible for providing private counseling as an accommodation. Finally, there is evidence that not all of the Student's incidents, including "major melt downs," were being documented by the school.

Based on the foregoing, the SCDE finds the District in violation of the child find requirements in the IDEA regulation at 34 C.F.R. § 300.111 by failing to appropriately identify and evaluate the Student in a timely manner.

Issue 2: Whether the District failed to provide the Complainants with educational records upon request.

### FINDINGS OF FACT

- The Complainants assert that the District failed to provide the following education records upon request:
  - o Attendance records;
  - o All emails from kindergarten **Ms. Brown**, and Springfield Elementary;
  - o Notes and documentation of RTI meeting September 28, 2009, from **Ms. Argo** and **Scott Frateroll**;
  - o Emails from second grade;
  - o Documents involving child abandonment/criminal neglect by the bus driver on the first day of second grade;
  - o Third grade observation notes, RTI and the Behavioral plan meetings notes, prior written notice;
  - o Fifth grade- Notes from **Ms. Gritz** and **Ms. Wagner** regarding [the Student] sent or discussed with FMMS;
  - o Notes from SCES to the staff at FMMS regarding incoming sixth graders on May 14, 2014;
  - o Notes referenced by **Ms. McNeil** on July 31, 2015, from SCES regarding [the Student];
  - o Attachment to an email received by **Ms. McNeil** and forward to Hardwood on November 5, 2014 at 3:28 pm;
  - o Discussions between **Ms. Gritz** and the Student's mother from her email address; o Notes and commentary sent to the SCDE regarding PASS 2014; and
  - o November 5 and November 6 documentation of verbal warnings
  
- The District asserts that the Complainants requested copies of "all special and regular school records and information regarding ...[the Student] ... since 2008." The District asserts that District Administrative Rule JRA-R specifically advises to whom a records request should be directed; however, the Complainants hand-delivered the request to Dr. Harwood, a school psychologist, on August 13, 2015.
  
- No evidence was submitted to show that **Dr. Harwood** redirected the Complainants to another District staff member or school to obtain the records. However, emails indicate that Dr. Maziarz provided the documents to the Complainants.
  
- According to the District's Policies and Procedures Manual, education records are those that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. They may include academic work completed and level of achievement, attendance data, scores and test protocols of standardized intelligence, aptitude, and psychological tests, interest inventory results, health data, family background information, information from teachers or counselors, observations and verified reports of serious or recurrent behavior patterns, IEPs, and documentation of notice and consent. They

do not include records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record.

- District Policy JRA reads:

Students and parents/legal guardians will have access to their school records. The schools will notify parents/legal guardians and adult students of the following:

- o type of records kept.
- o procedure for inspecting and copying these records.

Cumulative record folders for all students will be kept in each school office. The educational records or school records include all materials directly related to a student that a school maintains.

Records and notes maintained by a teacher, administrator, school physician or school psychologist for his/her own use, and which are not available to others are exempted from this definition.

#### Location of the student records-

The school or the district records office (if a student is no longer enrolled) will maintain a cumulative record folder that contains directory information, scholastic information, standardized test data, health records, discipline records, and other information.

Except as provided in paragraph 4 of this section, the district maintains copies of psychological reports and related records if the district has given psychological evaluations to the student as follows:

- o in the office of special services.
- o in the student's school in a file especially for psychological reports.

The appropriate personnel in the district office and/or the appropriate school will keep records concerning students who have had administrative hearings.

Once a student graduates, the district files the student's records in the high school. If a student drops out of school before graduation, the school will file his/her records for five years and then transfer the records to the district's central location for record storage.

#### Request for inspection-

Anyone who wants to inspect the records must make the request for inspection (or an explanation or interpretation) of a student's record

to the principal of the school in which the student is enrolled or where the record is housed.

The school district is responsible for the maintenance of each student's record. Therefore, school personnel are not to turn the original record or microfilmed copy of a record over to any person or organization unless they have a specific, written judicial order for such action.

#### Destruction of education records-

The school district may destroy data that are no longer needed for providing direct educational services as long as the following conditions apply.

- o There is no outstanding request to inspect and review the education record.
  - o The district keeps the record of disclosures as long as it maintains the education record to which it relates.
  - o The data do not concern the referral, evaluation, staffing and placement of a disabled student or a student suspected at one time of having a disability. Such data will be sent to the office of programs for the disabled when no longer needed for providing direct educational services to a student.
- The District asserts that the request by the Complainants is more appropriately characterized as a FERPA request.
  - The District asserts that it attempted to retrieve emails related to the Student. By email dated September 18, 2015, Dr. Maziarz notified the Student's mother that the records were available for review and sought dates/times that the Complainants could review the records. She again followed up regarding the Complainants' access to the records by email dated September 24, 2015 and September 29, 2015.
  - The District asserts that the Complainants never advised the District of the additional records they believed existed. For example, a summary attendance record was provided; however, the District is willing to go back and pull a more comprehensive attendance report. Similarly, the District is willing to scan the email system using additional email addresses to determine if additional emails exist. The District can also review the specific emails and attachments identified to see if those are maintained and available for the Complainants' review.

### CONCLUSION

The definition of "education records" under 34 C.F.R. § 300.61 l(b) is: "Education records means the type of records covered under the definition of "education records" in 34 CFR part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA))." A record includes any information recorded in any way, including, but not



limited to, handwriting, print, computer media, video or audio tape, film, microfilm and microfiche. 34 C.F.R. § 99.3. Therefore, the documents listed above are clearly education records and subject to the Complainants' inspection and review, regardless of whether they are maintained in one specific location along with the Student's permanent record, in the individual teacher's files, or with the special education records at the District office. In addition, while the District implies that the Complainants failed to make her request to view records with the appropriate personnel in accordance with District policy, the SCDE disagrees. The District policy indicates that records are kept in multiple locations. For example, some records are kept at individual schools while other special education records are housed at the District office. Rather than make multiple requests, the Complainants reasonably made her request to District personnel who could contact the appropriate personnel to locate the documents.

The Complainants received some documents she requested from the District. The request for "all special and regular school records and information regarding ... [the Student] ... since 2008" would generate multiple documents, some of which may not be available due to the nature of the document. However, apparently there were specific items that the Complainants desired. The District has expressed willingness to search for and supply these documents. Since the District has substantially complied with the request for the educational records, and is willing to search and provide the remaining records, the SCDE finds the District is NOT in violation of the FERPA regulations at 34 C.F.R. §99.3 and 34 C.F.R. § 99.10(a). The SCDE encourages the District to locate the remaining records within ten days and provide them to the Complainants.

#### CORRECTIVE ACTIONS

When issues of noncompliance are identified, corrective actions must be taken.

- 1) The District must, as soon as possible, but no later than Friday, January 22, 2016, convene a meeting with the Complainants to schedule an evaluation of the Student that appropriately examines all areas of S.C. Reg. 43-243.1 for autism and emotional disability; that the Student is assessed in all areas related to the suspected disability, including, if appropriate, his or her health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities; and that is sufficiently comprehensive to identify all of the student's special education and related-services needs, whether or not they are commonly linked to the category in which the student is suspected of having a disability. The District must provide a written, detailed explanation of each eligibility finding and the outcome to the SCDE no later than February 5, 2016.
- 2) The District must convene a team meeting to determine, based on the new evaluation, whether the Student qualifies for special education services under the IDEA. The team must consider any adverse impact on the Student's education and not only an adverse impact on the Student's grades and test scores. The District must provide a written, detailed explanation of this determination to the SCDE no later than February 8, 2016.
- 3) If the District determines that the Student is eligible for services, the team must reconvene to:

- a) determine how and the extent to which the Student was negatively impacted by the District's failure to comply with the IDEA child find requirements by failing to appropriately identify, locate, evaluate, and place the Student as a student with a disability in a timely manner and provide the Student the appropriate special education and related services, which include, but are not limited to, counseling and other behavioral intervention services; and
- b) determine what remedies are necessary to put the Student in the place that it is reasonable to anticipate he would have been, if not for the violations that occurred.

If the team believes an appropriate remedy includes the provision of compensatory services, the IEP team must determine the amount, type, and frequency of compensatory services owed to the Student and develop a plan for the delivery of the services. The team should consider the options of whether to use the District's personnel to provide compensatory services or contract with outside service providers.

The District must also provide documentation of the team's decisions relative to:

- a) the amount of compensatory services owed to the Student;
- b) a detailed explanation of how the determination was made concerning the amount of services the Student needs to remedy the identified issues;
- c) who will provide the compensatory services;
- d) how the District will measure the effectiveness of the compensatory services;
- e) the proposed timeline for the delivery of the compensatory services; and
- t) how the District will document the delivery of the services. The District must provide the required documentation of these determinations no later than February 8, 2016.

The District must develop and maintain an efficient and accurate system for capturing and reporting the provision of any compensatory services and provide this documentation to the SCDE beginning no later than March 1, 2016, and the first day of each month thereafter, until the provision of all compensatory services is completed.

The IEP team must use a thoughtful process in determining the appropriate amount of compensatory services owed to the Student and how and where the services will be delivered. The IEP team must determine the impact of the noncompliance and make individualized determinations. The IEP team must document the process used in making each determination. The process should include input from persons such as outside service providers, the teachers, and the Complainants.

If the team determines that no compensatory services are warranted the District must provide a detailed written explanation regarding the team's decision and forward this explanation to the SCDE.

- 4) The District must develop a training plan that instructs all personnel in the IDEA child find process (to include training that explains how 504 plans and accommodations cannot substitute for special education services) and training for all appropriate personnel relative to

when a parent requests testing for his or her child. The District must also submit documentation, which includes, but is not limited to, the training materials the District plans to use, a list of persons who will participate in the training and their titles or jobs within the District, and copies of the agenda from the training activities, no later than one week after the completion of each training activity. The District is not required to provide copies of statutes, regulations, or any SCDE policies and procedures or guidelines used during training activities. A listing of any such documents is sufficient. The District must also include an explanation of how the District will determine the effectiveness of the training activities and submit a long-range training plan to avoid a recurrence of the identified issues of noncompliance with current and future staff. The District must submit the required training plan to the SCDE no later than February 8, 2016.

- 5) The District must develop policies and procedures relative to the RTI process detailing if and when the interventions are not successful, the procedures to be followed to ensure that students are being appropriately identified and evaluation under the child find process. The District must submit the policies and procedures to the SCDE no later than February 8, 2016.
- 6) The District must conduct a review of all parental requests and referrals for evaluations and referrals for evaluation initiated by District personnel, student assistance and intervention teams, or Section 504 committees during the 2014-15 and 2015-16 school years and determine whether the same issues of noncompliance as with the Student exist. The District must also conduct a review and develop a spreadsheet or other data reporting method that includes the name of each student and the status of the evaluation request or referral. If there are any similarly-situated students who are not in the Enrich IEP system, the District must immediately contact the applicable parents, guardians, surrogate parents, or other persons acting as the parent, and obtain written consent to begin the evaluation process for each student. The District must provide the SCDE evidence of its review no later than February 8, 2016. The data report should include each student's name, the student's school, and the dates of any evaluation reviews or other meetings that are scheduled to obtain parental consent to evaluate. The District must continuously update the report to indicate when the evaluations and determinations of eligibility are completed for each affected child and submit the updated data reports beginning no later than March 1, 2016, and the first day of each month thereafter, until each student is evaluated and a determination of eligibility is completed.

For each similarly-situated student identified as having been denied an evaluation in a timely manner and who is later identified as eligible for special education and related services, the District must convene an IEP team to:

- a) determine how and the extent to which each student was negatively impacted by the District's failure to comply with the IDEA child find requirements by failing to appropriately identify, locate, evaluate, and place the student as a student with a disability in a timely manner; provide the Student the appropriate special education and related services and

- b) determine what remedies are necessary to put the student in the place that it is reasonable to anticipate he or she would have been, if not for the violations that occurred.

If a student's IEP team believes an appropriate remedy includes the provision of compensatory services, the IEP team must:

- a) determine the amount and type of compensatory services owed to each student;
- b) explain how the determination was made concerning the amount of services the student needs;
- c) identify who will provide the compensatory services;
- d) describe how the District will measure the effectiveness of the compensatory services;
- e) provide the proposed timeline for the delivery of the compensatory services; and
- t) explain how the District will document the delivery of the services.

Beginning no later than March 1, 2016, and the first day of each month thereafter, the District must submit documentation that evidences the completion of this step for each affected student until a review is completed for each student.

If a team determines that no compensatory services are warranted for a student, the District must provide an explanation regarding the team's decision.

- 5) The District must provide a written assurance signed and dated by the District's superintendent and the executive director of special education that all issues of noncompliance identified in this letter of resolution and the corrective actions, which include those developed by the District, will be addressed in accordance with this letter of resolution and as set forth in the training plan that the District must submit to the SCDE. The District must assure that it will cease and desist with any practices that may be unilateral by school personnel or system in failing to obtain written parental consent to evaluate students who are suspected of having disabilities in a timely manner. The District must assure that it will comply with the IDEA child find requirements and provide parents a copy of the procedural safeguards when a parent requests that the District conduct an evaluation of his or her child. Additionally, the District must indicate that it understands that if it fails to correct the issues of noncompliance identified during this investigation, pursuant to its general supervisory authority, the SCDE may order additional corrective actions that include, but are not limited to the imposition of sanctions. The District must submit the required letter of assurance to the SCDE no later than Friday, January 22, 2016.

Dated this 8<sup>th</sup> day of January, 2016



Meg Havel, Complaint Investigator

Office of General Counsel

South Carolina Department of Education

1429 Senate Street-Room 1015 Columbia,

South Carolina 29201

THIS WRITTEN DECISION CONCLUDES THE SCDE'S INVESTIGATION OF THIS COMPLAINT

The IDEA provides mechanisms for resolution of disputes affecting the rights of students with disabilities. This complaint is in the process of being resolved. It cannot be closed, however, until the District submits verification that it completed the required corrective action activities. All corrective actions must be completed as soon as possible, but in no case later than one year from the January 8, 2016, letter of resolution. This decision may not be reconsidered or appealed. The Complainant retains any and all rights provided under federal and state law, including the right to mediation and/or a due process hearing, to further pursue this matter.

General Supervision

In accordance with the IDEA regulation 34 C.F.R. § 300.151(b), the state educational agency, pursuant to its general supervisory authority must address the failure to provide appropriate services, including corrective actions appropriate to address the needs of the student and appropriate future provision of services for all children with disabilities. The SCDE, Office of General Counsel and the Office of Special Education Services will determine if additional activities are necessary, which include, but are not limited to monitoring, technical assistance, or any other activity deemed necessary. Failure to comply with the corrective actions may result in sanctions as outlined in the IDEA.