



education services from the School District since that time.<sup>4</sup> (Respondent's Exhibits 7, 12, 14, 17-18, 23, 25-29, 31, 33, 40, 42, 45).

2. Pursuant to [REDACTED]'s eligibility for special education services, the School District convened a meeting to develop an individual education program (IEP) for [REDACTED] in August 1997. The School District contacted Ms. [REDACTED] and notified her of this meeting, and she attended it. (Respondent's Exhibit 7, page 13-14) At this meeting, Ms. [REDACTED] acknowledged that she had received a copy of the School District's brochure explaining her parental rights, and that she had an opportunity to have the rights reviewed with her. (Respondent's Exhibit 7, page 14).
3. The IEP committee (which included Ms. [REDACTED]) developed annual goals and short-term objectives for [REDACTED] to address his areas of disability. (Respondent's Exhibit 7, page 17-21). The IEP committee determined that [REDACTED] should receive a combination of home-based and community-based services in a special needs preschool classroom at the [REDACTED] school. The IEP committee also determined that [REDACTED] should receive a full occupational therapy evaluation. (Respondent's Exhibit 7, page 14).
4. Ms. [REDACTED] signed both the IEP itself and a separate consent for initial placement form, indicating her agreement with the IEP. (Respondent's Exhibit 7, page 14; Respondent's Exhibit 8, page 22). This IEP was to be in effect from September 2, 1997 to August 28, 1998. (Respondent's Exhibit 7, page 14).
5. [REDACTED] was referred for an occupational therapy evaluation on September 9, 1997, pursuant to the IEP committee's recommendation. (Respondent's Exhibit 9). On October 30, 1997, [REDACTED] received an occupational therapy evaluation that suggested [REDACTED] receive some occupational therapy services. (Respondent's Exhibit 10).
6. Pursuant to this evaluation, the IEP committee reconvened to amend the existing IEP. The IEP committee added occupational therapy services in the amount of 30 minutes per week for [REDACTED] (Respondent's Exhibit 11, page 26). Ms. [REDACTED] was "receptive and enthusiastic" about [REDACTED]'s receipt of these services. (Respondent's Exhibit 11 page 27). She signed the IEP amendment, indicating her agreement with it. (Respondent's Exhibit 11, page 26).
7. The IEP committee reconvened again in January 1998. The School District contacted Ms. [REDACTED] and notified her of this meeting, and she attended it. (Respondent's Exhibit 12, page 28-30). Ms. [REDACTED] received a copy of her parental rights, and they were reviewed with her. (Respondent's Exhibit 12, page 31).
8. At this meeting, the IEP committee (which included Ms. [REDACTED]) reviewed the September 1997 IEP. The IEP committee reviewed [REDACTED]'s progress and noted that he had either made progress or

<sup>4</sup> On May 9, 1997, the School District sought and received [REDACTED]'s parent's (Ms. [REDACTED]) permission to evaluate [REDACTED] for eligibility for special education services. (Respondent's Exhibit 4, page 8). The School District conducted an educational evaluation that same day. (Respondent's Exhibit 5). On August 20, 1997, the School District completed a Significantly Developmentally Delayed (SDD) Eligibility Report for [REDACTED] and found that he was eligible for special education services under the category of SDD. (Respondent's Exhibit 6).

mastered all of his goals and objectives. (Respondent's Exhibit 12, page 32). New goals and objectives were developed. (Respondent's Exhibit 12, pages 34-40). The IEP committee continued [REDACTED]'s placement in a community-based school, along with 30 minutes per week of occupational therapy. The IEP committee determined, based on available data, that [REDACTED] had language deficiencies and required such services. (Respondent's Exhibit 12, page 38). As a result, [REDACTED] was also provided 60 minutes per week of speech therapy. (Respondent's Exhibit 12, page 30).

9. Ms. [REDACTED] signed this IEP, indicating her agreement. (Respondent's Exhibit 12, page 30). This IEP was to be in effect from January 26, 1998 to January 26, 1999. (Respondent's Exhibit 12, page 30).
10. On July 15, 1998, the School District sent Ms. [REDACTED] a letter confirming [REDACTED]'s enrollment in a special needs preschool class for the 1998-1999 school year and informing her that the School District's transportation department would contact her in August 1998 regarding special needs transportation. (Respondent's Exhibit 13).
11. On January 19, 1999, the School District convened an IEP meeting to review [REDACTED]'s IEP and develop an IEP for the remainder of the academic year. Ms. [REDACTED] was notified of this meeting and received a copy of her parental rights. (Respondent's Exhibit 14, page 46).
12. The IEP committee (which included Ms. [REDACTED]) discussed [REDACTED]'s current functioning and progress on his goals and objectives. The committee noted that [REDACTED] was noncompliant and would actively refuse to follow his teachers' directions by saying "no." (Respondent's Exhibit 14, page 53). [REDACTED] had mastered ten of his thirteen short-term objectives and had shown good progress on the two of the remaining short-term objectives. (Respondent's Exhibit 14, page 54). Ms. [REDACTED] and Ms. [REDACTED], [REDACTED]'s grandmother, both attended this meeting and stated that they believed [REDACTED] had "made a lot of progress." (Respondent's Exhibit 14, page 48). The IEP committee then developed new goals and short-term objectives for the next IEP. (Respondent's Exhibit 14, page 56-61).
13. The IEP committee then discussed [REDACTED]'s placement for the remainder of the academic year. The committee placed [REDACTED] in a special needs preschool classroom. Additionally, the committee provided community-based and home visits, along with occupational therapy for 30 minutes per week and speech language therapy for 60 minutes per week. (Respondent's Exhibit 14, page 51). Finally, the IEP committee determined that [REDACTED] did not require extended school year (ESY) services during Summer 1999. (Respondent's Exhibit 14, page 52).
14. Ms. [REDACTED] signed this IEP, indicating her agreement with it. (Respondent's Exhibit 14, page 52). This IEP was to be in effect from January 1999 to June 1999. (Respondent's Exhibit 14, page 51).
15. Also on January 19, 1999, the School District sought and received Ms. [REDACTED]'s permission to evaluate [REDACTED] for adaptive physical education (P.E) services, and a referral was made. (Respondent's Exhibit 15, page 63-64). The School District evaluated [REDACTED] for eligibility for adaptive P.E. services on March 9, 1999. (Respondent's Exhibit 16). The evaluation suggested

that, rather than receiving adaptive P.E. services, [REDACTED] would participate in regular P.E. with the assistance of a paraprofessional. (Respondent's Exhibit 16, page 66).

16. In March 1999 the School District convened an IEP meeting to review [REDACTED]'s IEP and develop an IEP for the 1999-2000 school year. Ms. [REDACTED] received notice of this meeting. (Respondent's Exhibit 17, page 67).
17. The IEP committee (which included Ms. [REDACTED]) decided to continue the goals and objectives drafted at the January 1999 IEP. (Respondent's Exhibit 17, page 71). Ms. [REDACTED] stated that she felt [REDACTED] would benefit from being with typical peers, and the rest of the IEP committee agreed. (Respondent's Exhibit 17, page 69). The committee noted that [REDACTED] had a strong ability to imitate others around him, and that he might benefit from having typical peers as role models to imitate. (Respondent's Exhibit 17, page 69; Transcript [hereinafter "T."], Vol. 1, testimony of Bailey, page 39). Accordingly, the IEP committee determined that [REDACTED] would be included in a general education kindergarten class at [REDACTED] Elementary School, his home school, on a full-time basis, except for possible "pull-out" time to receive related services such as occupational therapy or speech language therapy. Because he was in an inclusion classroom, [REDACTED] would receive his special education services in a regular education classroom and among typical (i.e., nondisabled) peers. The IEP committee also provided [REDACTED] with paraprofessional assistance so he could participate in a regular P.E. class. The IEP committee determined that if regular P.E. was unsuccessful, the School District would seek Ms. [REDACTED]'s permission to attempt an adaptive P.E. class. (Respondent's Exhibit 17, page 72).
18. Ms. [REDACTED] signed this IEP, indicating her agreement with it. (Respondent's Exhibit 17, page 74). This IEP was to be in effect from August 23, 1999 to January 19, 2000. (Respondent's Exhibit 17, page 73).
19. In January 2000, the School District convened a meeting to review [REDACTED]'s IEP and to discuss re-evaluation. Ms. [REDACTED] received notice of this meeting, along with a copy of her parental rights. (Respondent's Exhibit 18, page 84).
20. The IEP committee (which included Ms. [REDACTED]) discussed [REDACTED]'s current functioning. (Respondent's Exhibit 18, page 86). The committee noted that there were concerns regarding "attention to task and direction following." [REDACTED] also showed some behavioral concerns related to his noncompliance, as he would "often want to roam and do what he pleases" and was "known to sit on the ground and refuse to move." These behaviors had been discussed with Ms. [REDACTED] during a previous conference and continued to require intervention from school staff. (Respondent's Exhibit 18, page 88).
21. The IEP committee then discussed [REDACTED]'s progress on his goals and objectives. [REDACTED] had either mastered or made good progress on all of his goals and short-term objectives. (Respondent's Exhibit 18, page 97-98). The IEP committee then drafted new goals and objectives for [REDACTED] (Respondent's Exhibit 18, page 99-102).
22. The IEP committee then discussed [REDACTED]'s placement. The entire committee agreed that [REDACTED] had made good progress within an inclusive kindergarten setting, with access to typical peers.

Ms. A was particularly supportive of B remaining in an inclusive setting. (Respondent's Exhibit 18, page 105). Accordingly, the IEP committee determined that B would remain in an inclusive, regular education classroom setting at C Elementary School. He would also receive speech language therapy for 60 minutes per week and occupational therapy for 30 minutes per week. (Respondent's Exhibit 18, page 106).

23. Ms. D signed this IEP, indicating her agreement with it. (Respondent's Exhibit 18, page 107). This IEP was to be in effect from January 2000 to January 2001. (Respondent's Exhibit 18, page 107).
24. Also at this meeting, the IEP committee discussed reevaluation considerations and determined that B required a full evaluation to delineate continued eligibility for special education services. B continued to be eligible for speech language services. Ms. A agreed with this recommendation. (Respondent's Exhibit 18, page 108). The School District also referred B for an assistive technology evaluation to determine whether he could benefit from assistive technology. (Respondent's Exhibit 20). Ms. D also gave her consent allowing the School District to evaluate B. (Respondent's Exhibit 19, Respondent's Exhibit 22, page 130).
25. In March 2000, the School District conducted a psycho-educational evaluation. (Respondent's Exhibit 22). The evaluation noted that B's inappropriate behaviors (such as his noncompliance and refusal to follow directions) were impeding his learning and were used as ways to escape demands placed on him. (Respondent's Exhibit 22, page 120). The evaluation also noted concern that some aggressive behaviors that B considered games at home (such as throwing rocks) were being carried over to school. (Respondent's Exhibit 22, page 120). During the evaluation, B "evidenced difficulty in formulating and expressing thoughts, used speech that was frequently difficult to understand, exhibited over-activity, [and] acted impulsively." (Respondent's Exhibit 22, page 121). The evaluation results showed B's cognitive functioning to be in the mildly intellectually disabled range. (Respondent's Exhibit 22, page 125).
26. In September 2000, at the beginning of B's second kindergarten year, the School District convened a meeting to discuss the results of B's reevaluation and to review his IEP. Ms. D received notice of this meeting. (Respondent's Exhibit 23, page 131). The IEP committee (which included Ms. D) reviewed B's eligibility for special education services. The committee agreed that the available information, including the recent psycho-educational evaluation, supported B's eligibility for special education within the mildly intellectually disabled category. (Respondent's Exhibit 23, page 132, 134-136). The committee also agreed that he continued to be eligible for speech language and occupational therapy services. (Respondent's Exhibit 23, pages 132-133).
27. The IEP committee then reviewed B's current functioning. The committee noted that he continued to have problems sustaining attention to tasks, showed oppositional behavior, noncompliance, refused to follow directions, and needed constant adult supervision. (Respondent's Exhibit 23, pages 137, 144). The IEP committee also reviewed B's progress on his goals and objectives. B had mastered or made progress on the majority of his goals and objectives, even though they had begun working on them just eight months prior.

(Respondent's Exhibit 23, page 142). The committee then developed new goals and objectives for the upcoming year. (Respondent's Exhibit 23, pages 147-151). The committee also noted that [REDACTED] had successfully been using assistive technology, specifically the Write Out Load computer program. (Respondent's Exhibit 23, page 152).

28. The committee then discussed [REDACTED]'s educational placement. Everyone agreed that he should remain in a fully inclusive regular education kindergarten classroom. (Respondent's Exhibit 23, page 153). [REDACTED] would receive special education services in the general education classroom, along with speech language services for 60 minutes per week and occupational therapy for 30 minutes per week. (Respondent's Exhibit 23, page 154). Finally, the committee determined that [REDACTED] did not require ESY services. (Respondent's Exhibit 23, page 155).
29. Ms. [REDACTED] signed this IEP, indicating her agreement with it. (Respondent's Exhibit 23, page 155) This IEP was to be in effect from September 6, 2000 to September 6, 2001, or the majority of [REDACTED]'s second kindergarten year. (Respondent's Exhibit 23, page 154).
30. In August 2, 2001, at the beginning of [REDACTED]'s first grade year, the School District convened an IEP meeting to draft an addendum to the September 6, 2000 IEP. Ms. [REDACTED] was notified of this meeting. (Respondent's Exhibit 25, page 157). The IEP committee (which included Ms. [REDACTED]) determined that [REDACTED] would receive services in a small group setting, rather than an inclusion setting, for specials (such as art, music, and P.E.) and for academics. (Respondent's Exhibit 25, page 158). The IEP committee determined that he required small group instruction due to his increasing behavior difficulties and noncompliance. (T. Vol. 1, testimony of Bailey page 42). Ms. [REDACTED], in particular, was adamant that [REDACTED] should receive small group instruction. (T., Vol. 4, testimony of Ms. [REDACTED], page 51). As a result, [REDACTED] began attending [REDACTED] Elementary School, the closest school that offered small group instruction.<sup>5</sup> (T., Vol. 1, testimony of Bailey, page 42).
31. Ms. [REDACTED] signed this IEP, indicating her agreement with it. This IEP was to be in effect from August 13, 2001 to September 6, 2001. (Respondent's Exhibit 25, page 158).
32. The School District attempted to schedule an IEP meeting on September 6, 2001 to review [REDACTED]'s IEP. Ms. [REDACTED] indicated that she could not attend and requested that it be rescheduled to September 10 or September 11, 2001. (Respondent's Exhibit 26, page 178). Accordingly, the School District rescheduled the meeting for September 10, 2001. Ms. [REDACTED] received notice of this meeting. (Respondent's Exhibit 26, page 177).
33. The IEP committee (which included Ms. [REDACTED]) reviewed [REDACTED]'s current functioning. The committee noted that he had made progress on his goals and objectives, but continued to have areas of weakness. Specifically, [REDACTED] continued to display inappropriate and noncompliant behaviors in an effort to escape demands and work he did not want to do, and he continued to have attentional difficulties. (Respondent's Exhibit 26, pages 180-183). The IEP committee then drafted goals and objectives for the upcoming year. (Respondent's Exhibit 26, page 184-188).

<sup>5</sup> [REDACTED] Elementary School is a full-inclusion school, where all classes are fully inclusive regular education classes with both regular education and special education students. [REDACTED] therefore has no small group special education classes.

34. The IEP committee determined [REDACTED]'s placement for the 2001-2002 school year, [REDACTED]'s first grade year. The committee concluded that [REDACTED] should remain at [REDACTED] Elementary School and that he should receive small group instruction for academic classes such as language and math. [REDACTED] would also receive 60 minutes per week of speech language therapy and 30 minutes per week of occupational therapy. Additionally, a paraprofessional would accompany [REDACTED] to any regular education classes he accessed. (Respondent's Exhibit 26, page 189).
35. Ms. [REDACTED] signed this IEP, indicating her agreement with it. (Respondent's Exhibit 26, page 193). This IEP was to be in effect from September 10, 2001 to September 10, 2002, or the majority of [REDACTED]'s first grade year. (Respondent's Exhibit 26, page 179).
36. In December 2001, the School District convened a meeting to review [REDACTED]'s IEP and consider possible program changes. Ms. [REDACTED] received notice of this meeting. (Respondent's Exhibit 27, page 197).
37. The IEP committee (which included Ms. [REDACTED]) reviewed [REDACTED]'s current functioning at [REDACTED] Elementary School. [REDACTED]'s behavior continued to be problematic. He would perform acceptably in the mornings but would become more distractible and leave his seat in the afternoons. (Respondent's Exhibit 27, page 201). His participation in some of his regular education classes was decreasing because of his increased behavioral problems. (T., Vol. 1, testimony of Bailey, page 42). By the time of this meeting, [REDACTED] had refused to come to school for the previous two weeks. (Respondent's Exhibit 27, page 201). Ms. [REDACTED] stated that [REDACTED] believed he would be at [REDACTED] only temporarily, that he felt that [REDACTED] was his school, and that he wanted to return there. (Respondent's Exhibit 27, page 201).
38. The IEP committee decided that [REDACTED] would return to [REDACTED], in a fully inclusive first grade classroom. A special education teacher would also be available in this class. (Respondent's Exhibit 27, page 202) He would also receive speech language therapy for 60 minutes per week and occupational therapy for 30 minutes per week. (Respondent's Exhibit 27, page 198). In addition, he would have a paraprofessional to assist him in P.E., music, art, and computer class. (Respondent's Exhibit 27, page 202). The IEP committee continued the goals and objectives drafted at the previous IEP just three months earlier. (Respondent's Exhibit 27, page 202).
39. Ms. [REDACTED] signed this IEP, indicating her agreement with it. This IEP was to be in effect from December 17, 2001 to September 10, 2002. (Respondent's Exhibit 27, page 198).
40. While at [REDACTED] during the 2001-2002 school year, [REDACTED] had the support of both a regular education teacher and a special education teacher, Ms. Danielle Blum, who would come into the regular education classroom. When Ms. Blum was not in the classroom, a paraprofessional was present. Therefore, he was with two adults for the entire school day. (T., Vol. 1, testimony of Blum, page 153).
41. [REDACTED] was away from school (as were all other students) during the scheduled winter break in December 2001. When he returned to school, his behavior problems had worsened. He was running from the classroom on a regular basis, so much so that the school had to put bells on the

classroom door so that the teacher would know if the door was opened and [REDACTED] was trying to run away. (T., Vol. 1, testimony of Blum, page 154).

42. [REDACTED]'s bathroom behavior was also immediately an issue when he returned to [REDACTED]. Initially, Ms. Blum tried to have him use the general education restroom, right next to the classroom. [REDACTED] would be taken to the restroom at a separate time when there was no one else in the restroom. Ms. Blum took him at a separate time because she believed that he might misbehave, and she did not want to go in to get him if other students were also using the restroom. Even with this accommodation, [REDACTED] could not successfully use the general education restroom. He would misbehave, make noises, and lock himself in the stall and refuse to come out. When he locked himself in a stall, Ms. Blum would have to enter the bathroom and use a yardstick to reach over the stall door to unlock it. (T., Vol. 1, testimony of Blum page 156-157).
43. Because of this misbehavior, [REDACTED] began exclusively using the restroom located in Ms. Blum's classroom. This was a private restroom with a sink, toilet, and area for gloves and towels. There was no stall; it was its own room with a door. Either Ms. Blum or a paraprofessional would take [REDACTED] to the restroom. [REDACTED] would use the restroom while the adult would wait outside the door. Therefore, [REDACTED] was always accompanied by an adult when he went to the restroom and only used the private restroom in Ms. Blum's classroom. (T., Vol. 1, testimony of Blum, pages 157-158).
44. On February 19, 2002, the School District convened another meeting to discuss how [REDACTED] would take district- and state-mandated tests, specifically the Criterion Referenced Competency Test (CRCT) and the Iowa Test of Basic Skills (ITBS) and draft another addendum to the September 10, 2001 IEP. (Respondent's Exhibit 28). The IEP committee (which included Ms. [REDACTED]). determined that [REDACTED] should participate in both of these tests, but with several accommodations such as extra time, frequent breaks, having the test read to him and his answers coded for him, and taking the test in a small group. (Respondent's Exhibit 28, page. 223).
45. Ms. [REDACTED] signed this IEP addendum, indicating her agreement with it. (Respondent's Exhibit 28, page 220).
46. On September 12, 2002, the School District convened an IEP meeting to review [REDACTED]'s IEP to discuss eligibility/reevaluation, and to develop an IEP for the 2002-2003 school year, [REDACTED]'s second grade year. Ms. [REDACTED] received notice of this meeting. (Respondent's Exhibit 29, page 241).
47. The IEP committee discussed [REDACTED]'s eligibility for special education services. The IEP committee (which included Ms. [REDACTED]). completed a checklist to consider reevaluation and concluded that reevaluation was unnecessary at that time. The committee concluded that there was enough data to support [REDACTED]'s continued eligibility for special education services for speech language therapy, occupational therapy, and services for mild intellectual disabilities. Ms. [REDACTED] agreed with this conclusion. (Respondent's Exhibit 29, page 243, 254).
48. The IEP committee (which included Ms. [REDACTED]) reviewed [REDACTED]'s current functioning. The committee noted that that [REDACTED] had difficulty concentrating and completing tasks. He also became noncompliant and disruptive in class when he was asked to something he did not want to

do. The committee noted [REDACTED]'s "difficulty with impulse control, concentration, on task behavior, defiance, and compliance with class rules." (Respondent's Exhibit 29, page 243). He would fall on the floor and refuse to move. (T., Vol. 1, testimony of Bailey, page 43). The committee further noted that these inappropriate behaviors "occurred often," and that [REDACTED] would often need a "time out" to calm down. (Respondent's Exhibit 29, page 243). His noncompliance was so severe that School District personnel had to get Ms. [REDACTED]'s permission to physically move [REDACTED] when he fell on the floor and refused to move. (T., Vol. 1, testimony of Bailey, page 43). The committee also noted that [REDACTED] required adult supervision in the restroom, because he displayed inappropriate behaviors there. (Respondent's Exhibit 29, page 244).

49. The committee then reviewed [REDACTED]'s progress on his goals and objectives. [REDACTED] had mastered or made progress on all of his goals and objectives. (Respondent's Exhibit 29, pages 244 - 246). The committee then drafted new goals and objectives for the upcoming year. (Respondent's Exhibit 29, pages 246 - 249).
50. The committee then discussed [REDACTED]'s placement. The committee agreed that [REDACTED] would remain at [REDACTED] Elementary School in an inclusive classroom for his second grade year. In addition, he would continue to receive speech language therapy for 60 minutes per week and occupational therapy for 30 minutes per week. Further, he would receive assistance throughout the entire school day, either from a paraprofessional or a special education teacher. (Respondent's Exhibit 29, page 250).
51. Ms. [REDACTED] signed this IEP, indicating her agreement with it. (Respondent's Exhibit 29, page 267). This IEP was to be in effect from September 12, 2002 to September 12, 2003. (Respondent's Exhibit 29, page 242).
52. Ms. Blum remained [REDACTED]'s special education teacher for the 2002-2003 school year. (T., Vol. 1, testimony of Blum, page 159). Ms. Blum actually volunteered to keep [REDACTED] on her caseload because [REDACTED] had been through teacher changes the year before, as a result of his returning to [REDACTED] from [REDACTED] in the middle of the school. He would also have new teachers this year, and she wanted him to remain with someone familiar to him. (T., Vol. 1, testimony of Blum, page 159).
53. In addition to being taught by both a regular education teacher and Ms. Blum, [REDACTED] had the support of a paraprofessional. The paraprofessional remained in [REDACTED]'s classroom the entire day and was available to all the special education students who needed support. However, because [REDACTED] was the only student receiving special education services for the entire day, there were times during the day that the paraprofessional would work only with him. (T., Vol. 1, testimony of Blum page 160).
54. [REDACTED] continued to show the same behavior problems that he had in the past. He would refuse to do classwork, would fall on the floor and refuse to move, and run out into the hallways. (T., Vol. 1, testimony of Blum page 160-161). [REDACTED] engaged in these behaviors as a way of escaping work he did not want to do and as a way to get attention. Initially, [REDACTED]'s teachers tried to ignore the behavior, but it did not work. They tried time-outs, but he started asking to go to

time-out because that allowed him to escape work. (T., Vol. 1, testimony of Blum, pages 161-162). Eventually, the teachers put him on a timer schedule on which he would work for an amount of time and then receive a reward. This worked sometimes, but did not work other times. (T., Vol. 1, testimony of Blum, page 162).

55. During the 2002-2003 school year, [REDACTED] once again had an individualized bathroom procedure, as in the 2001-2002 school year. Ms. Blum did attempt to let [REDACTED] use the general education restroom early in the school year, at a separate time when there were no other students or individuals in the restroom, but [REDACTED] once again would misbehave. As a result, and as in the 2001-2002 school year, [REDACTED] only used the private restroom in Ms. Blum's classroom. He was supervised by an adult at all times. He was escorted to Ms. Blum's restroom by the paraprofessional in [REDACTED]'s classroom, because he would run in the halls if he were not escorted. He was the only student in that restroom when he used it, as it was a private restroom. This procedure was used throughout the entire 2002-2003 school year. (T., Vol. 1, testimony of Blum, pages 163-164).
56. Also during this school year, [REDACTED] would have toileting accidents, but only on Wednesdays. School District staff tried to figure out why this would happen only on Wednesdays. In January 2003, Ms. [REDACTED] called Ms. Blum at home and said that it was because someone had molested [REDACTED] in the bathroom. Ms. Blum assured her that it could not have happened at [REDACTED], since [REDACTED] was always escorted to the private restroom in Ms. Blum's classroom and was supervised. Ms. [REDACTED] acknowledged that this was true. She later called Ms. Blum back and clarified that she believed that this molestation had happened at [REDACTED], [REDACTED]'s previous school, and not at [REDACTED]. During that conversation, Ms. [REDACTED] asked Ms. Blum to have a guidance counselor talk to [REDACTED], and Ms. Blum did report this to a guidance counselor. (T., Vol. 1, testimony of Blum, pages 164-165).
57. In Spring 2002, Ms. [REDACTED] had also told Dr. [REDACTED], [REDACTED]'s pediatrician, that she believed he had been molested at [REDACTED]. Ms. [REDACTED] told Dr. [REDACTED] that [REDACTED] had showed some very severe, aggressive, acting-out behaviors. Ms. [REDACTED] asked [REDACTED] what was wrong, and he said that his penis hurt. Ms. [REDACTED] concluded, based solely on this statement, that [REDACTED] had been molested at [REDACTED] Elementary School. (T., Vol. 2, testimony of [REDACTED], pages 147-148). Dr. [REDACTED] did not feel it necessary to contact the Department of Family and Children Services (DFCS) after having heard Ms. [REDACTED]'s allegations, and she accordingly made no referral. (T., Vol. 2, testimony of [REDACTED], page 148). There has been no proof that [REDACTED] was actually molested at [REDACTED] Elementary School. (Record).
58. [REDACTED] was accompanied by an adult during every minute of the day while he was in school. In the mornings, either Ms. [REDACTED] or Ms. [REDACTED] would bring [REDACTED] to school, and a paraprofessional would greet [REDACTED] and take him to his classroom. When [REDACTED] left the classroom to go to P.E., lunch, or some other activity, he would also be escorted by an adult. (T., Vol. 1, testimony of Blum, page 164-165). In the classroom, he was always with at least two adults. (T., Vol. 1, testimony of Blum, page 160). [REDACTED] needed constant adult supervision to make sure he would not run away or misbehave. (T., Vol. 1, testimony of Blum, page 164).

59. On February 12, 2003, Ms. [REDACTED] signed a release requesting a copy of [REDACTED]'s special education records. She stated that [REDACTED]'s psychologist at that time, Dr. [REDACTED], needed to view them to assist in a developmental assessment. (Respondent's Exhibit 30, page 275). Ms. [REDACTED] told Ms. Blum that Dr. [REDACTED] was going to help develop a behavior plan for [REDACTED], because [REDACTED] was very noncompliant. Ms. [REDACTED] said Dr. [REDACTED] believed that [REDACTED] understood directions given to him but simply chose not to comply with them. (T., Vol. 1, testimony of Blum, page 167). Ms. [REDACTED] never gave Ms. Blum any copy of any behavior plan from Dr. [REDACTED]. (T., Vol. 1, testimony of Blum, page 167).
60. On February 24, 2003, Ms. [REDACTED] sent a note to Ms. Blum warning her that [REDACTED] would likely have a bad day at school that day. She stated that she was staying home from work that day because it was her birthday, and that [REDACTED] wanted to stay at home with her. (Respondent's Exhibit 36, page 400). Ms. [REDACTED] testified that [REDACTED] liked to stay home with her when she stayed home, so much so that she had decided not to tell [REDACTED] anymore when she planned to stay home from work. (T., Vol. 4, testimony of Ms. [REDACTED], page 154). She also stated that [REDACTED] enjoyed falling on the floor because it made Ms. Blum upset and had already made up his mind that he would do so on February 24, 2004. (Respondent's Exhibit 36, page 400).
61. As Ms. [REDACTED] had already predicted, [REDACTED] had a difficult day at school on February 24, 2003. [REDACTED] disrupted the class, falling on the floor and yelling, and going through other children's backpacks. (Respondent's Exhibit 37, page 416). He had to be put in time out for disrupting the class. While in time out, he knocked over chairs, pushed tables around, jumped on the tables, and took books off the bookshelf. (Respondent's Exhibit 37, page 415).
62. The next day, Ms. [REDACTED] sent another note to Ms. Blum regarding [REDACTED]'s inappropriate behavior the previous day. Ms. [REDACTED] said that [REDACTED] had already made up his mind the night before that he would misbehave. She also said that she and Dr. [REDACTED] agreed that [REDACTED] understood what was expected of him but actively chose not to comply. (Respondent's Exhibit 36, page 401).
63. Importantly, these same behaviors that [REDACTED] had always displayed, continued through the school year. In March 2003, Ms. Blum noted that he fell to the floor and refused to get up. He also threw objects. (Respondent's Exhibit 37, page 428). In May 2003, his teachers noted that he continued to be noncompliant, throw objects around the room, and spit. (Respondent's Exhibit 36, page 406).
64. On March 1, 2003, Ms. [REDACTED] called Ms. Blum at her home and asked about Mr. [REDACTED], a substitute teacher in another classroom on February 24, 2004. Ms. [REDACTED] said Mr. [REDACTED] molested [REDACTED] and called him a pedophile. She also blamed [REDACTED]'s disruptive behavior on February 24, 2004 on this alleged molestation. (Respondent's Exhibit 37, page 421). However, Ms. [REDACTED] had told Ms. Blum on February 24, 2004 that [REDACTED] would have a bad day that day, before the day had even begun and before any alleged molestation, because [REDACTED] had wanted to stay home with her that day. She had already predicted that [REDACTED] would misbehave on that day, that [REDACTED] had already made up his mind that he would misbehave because it upset Ms. Blum and he wanted to test her. (T., Vol. 1, testimony of Blum, page 172).

65. Ms. [REDACTED] stated that Mr. [REDACTED] had molested [REDACTED], and that this alleged molestation had definitely occurred on February 24, 2004. Ms. Blum responded that Mr. [REDACTED] was not [REDACTED]'s substitute teacher that day and that [REDACTED] had had adult supervision every minute of the day. Ms. [REDACTED] insisted that Mr. [REDACTED] had molested [REDACTED] that day, and that this alleged molestation had occurred one time, on February 24, 2004. (Respondent's Exhibit 37, page 422). Ms. [REDACTED] said that she had already contacted Dr. [REDACTED] and the police about her allegations. (T., Vol. 1, testimony of Blum, page 174).
66. On March 3, 2003, [REDACTED] came to school. His inappropriate behaviors continued as they always had, such as falling on the floor and throwing things, and they were typical for him. (T., Vol. 1, testimony of Blum, page 185).
67. Dr. [REDACTED] testified that he began seeing [REDACTED] because the School District had provided his name to Ms. [REDACTED] after her first allegation that [REDACTED] had been molested in a bathroom at [REDACTED] Elementary School.<sup>6</sup> (T., Vol. 3, testimony of [REDACTED], pages 156-157).
68. When [REDACTED] first began to see Dr. [REDACTED] in January 2003, Ms. [REDACTED] filled out a preliminary questionnaire. In that questionnaire, Ms. [REDACTED] stated that she was bringing [REDACTED] to see Dr. [REDACTED] due to [REDACTED]'s noncompliance in the home. (T., Vol. 4, testimony of Ms. [REDACTED], page 140-141). Ms. [REDACTED] described [REDACTED]'s noncompliance at that time as severe. Ms. [REDACTED] noted he was especially noncompliant when she had visitors to the home and in public places. [REDACTED] would run away from her in public places, so much so that Ms. [REDACTED] would have to keep [REDACTED] in a shopping buggy to prevent his running. (T., Vol. 4, testimony of Ms. [REDACTED], pages 141-142). Ms. [REDACTED] also stated that [REDACTED] was severely noncompliant when asked to do his homework or complete chores at home. (T., Vol. 4, testimony of Ms. [REDACTED], page 143). Ms. [REDACTED] acknowledged on this questionnaire that [REDACTED] was severely noncompliant, before any alleged molestation occurred in Spring 2003. (T., Vol. 4, testimony of Ms. [REDACTED], page 143).
69. Eventually, Ms. [REDACTED] informed Dr. [REDACTED] of the second alleged molestation occurring in Spring 2003. Dr. [REDACTED] was unable to get any conclusive, or even consistent, statement from [REDACTED] regarding this allegation. (T., Vol. 3, testimony of [REDACTED], page 159). Dr. [REDACTED] acknowledged that framing appropriate questions to ask any child who has allegedly been molested is an issue in itself. Framing appropriate questions for a child with Down's Syndrome, like [REDACTED], is even more challenging. (T., Vol. 3, testimony of [REDACTED], page 159).
70. Dr. Dudley reported Ms. [REDACTED]'s allegation to DFCS on or about March 6, 2003. Dr. [REDACTED] saw [REDACTED] for the last time on April 14, 2003. Ms. [REDACTED] did not tell Dr. [REDACTED] why she stopped bringing [REDACTED] to see him. (T., Vol. 3, testimony of [REDACTED], page 160).
71. Dr. [REDACTED] wrote a letter recommending in-home schooling for [REDACTED] for Spring 2003. He had not reviewed any of [REDACTED]'s education records when he made this recommendation. (T., Vol. 3, testimony of [REDACTED], page 171). The School District set up an IEP meeting to discuss this request for in-home schooling; however, Ms. [REDACTED] cancelled the meeting on the advice of her

<sup>6</sup> Dr. [REDACTED] is a former client of the [REDACTED] & [REDACTED] law firm, the same law firm that represented [REDACTED] during this hearing. (T., Vol. 3, testimony of [REDACTED], page 161). Dr. [REDACTED] referred Ms. [REDACTED] to the [REDACTED] & [REDACTED] law firm. (T., Vol. 3, testimony of [REDACTED], page 166).

attorney. (Respondent's Exhibit 37, page 430, 433).. Dr. ██████ acknowledged that, since he had stopped seeing ██████ in April 2003, he was unable to offer anything but a "purely hypothetical" opinion for the 2003-2004 school year. (T., Vol. 3, testimony of ██████, page 171-172).

72. The School District subpoenaed Dr. ██████, for both his testimony and for relevant documents in his possession. Although Dr. ██████ forwarded the relevant documents to counsel for the School District prior to the hearing, Dr. ██████ was unaware if Ms. ██████ had provided him with any release regarding these records in his possession. (T., Vol. 3, testimony of ██████, pages 169-170). The School District also subpoenaed relevant documents from Ms. ██████. In response to this subpoena, Ms. ██████ produced to the School District a copy of Dr. ██████'s records. (T., Vol. 4, testimony of, Ms. ██████, pages 135-136).
73. On March 14, 2003, the School District convened an IEP meeting to discuss extended school year (ESY) services for ██████ and draft an addendum to the September 12, 2002 IEP. Ms. ██████ received notice of this meeting. (Respondent's Exhibit 31, page 379).
74. The IEP committee (which included Ms. ██████) reviewed ██████'s progress on his goals and objectives. ██████ had either mastered or was making good progress on his goals and objectives. (Respondent's Exhibit 31, pages 281 - 286). The IEP concluded that ██████ did not require ESY. All other parts of the September 12, 2002 IEP were continued. (Respondent's Exhibit 31, page 286). Ms. ██████ signed this IEP, indicating her agreement with it. (Respondent's Exhibit 31, page 280).
75. On April 17, 2003, ██████'s speech language pathologist, Ms. Tracie Knauf, sent a note to Ms. ██████ regarding ██████'s continued inappropriate behavior. She stated that ██████ had fallen to the floor and refused to move when she tried to encourage him to complete his work. She asked Ms. ██████ for any suggestions that might be helpful. Ms. ██████ failed to reply to this note. (Respondent's Exhibit 33, page 321).
76. In May 2003, the School District reported ██████'s progress on his goals and objectives from the September 12, 2002 IEP. ██████ had either mastered or made significant progress on each and every goal and objective. (Respondent's Exhibit 32, pages 308 - 315). Teachers also reported, however, that ██████ continued to show severely disruptive behaviors that impeded his learning. His teachers reported that he did not work independently, interrupted his classmates when they worked, threw objects, crawled and ran around the room, was often noncompliant, and had difficulty following directions. (Respondent's Exhibit 32, pages 316 - 317). On several occasions, teachers noted on a daily basis that ██████ "needed an adult to sit next to him in order for him to complete" his work and that ██████ would run around the classroom, throw paper, and refuse to work. (Respondent's Exhibit 35).
77. These inappropriate behaviors had been ongoing, as reflected in correspondence between the School District and Ms. ██████. For instance, on September 9, 2002, ██████ flipped his desk over in class repeatedly. (Respondent's Exhibit 36, page 367). Also in September 2002, ██████ wrote on classroom walls and was extremely difficult to keep in his seat. (Respondent's Exhibit 36, page 370). On September 30, 2002, he ran out of the classroom and down the hall, and then threw

himself down on the floor and refused to get up. (Respondent's Exhibit 36, page 371). He would refuse to work and run away. (Respondent's Exhibit 36, page 386). He would also verbally refuse to work, fall on the floor, and disrupt class. (Respondent's Exhibit 36, page 387).

78. [REDACTED] also had bathroom accidents. On at least one such occasion, [REDACTED]'s teacher asked him to change his pants. [REDACTED] refused and instead took off his pants and threw them across the room. He was also spitting. (Respondent's Exhibit 36, page 376).
79. He also sometimes displayed some inexplicable behaviors. For instance, during a speech language therapy session, he refused to continue working and instead began talking about killing and dying. Ms. Knauf tried to redirect him back to his assignment, but he refused to change the subject. (Respondent's Exhibit 36, page 389).
80. [REDACTED] also showed difficulty in chronological organization. He talked about events that had happened long ago as if they had happened yesterday. (Respondent's Exhibit 36, page 392, T., Vol. 1, testimony of Blum, page 203).
81. [REDACTED] also had behavioral difficulties at home. Ms. [REDACTED] would put [REDACTED] in time out, often for fifteen minutes at a time, when he misbehaved at home. (Respondent's Exhibit 36, page 396). Ms. [REDACTED] stated that she used a "hickory stick" on [REDACTED] as a method of discipline both during Summer 2003 and prior to that, sometimes to keep [REDACTED] in time-out. (T., Vol. 4, testimony of, Ms. [REDACTED], page 221).
82. On March 1, 2003, the same day that she called Ms. Blum at home and accused Mr. [REDACTED] of molesting [REDACTED], Ms. [REDACTED] notified the police that she believed [REDACTED] had been molested. Detective [REDACTED], an officer with Cobb County's Crimes Against Children division, handled the investigation. Having handled between three and four hundred such investigations, Detective [REDACTED] is well trained and experienced in this area of investigation. (T., Vol. 3, testimony of [REDACTED], pages 5-6). Ms. [REDACTED]'s initial report to the police indicated that Mr. [REDACTED] had forced [REDACTED] to perform oral sex. (T., Vol. 3, testimony of [REDACTED], page 6). At a later time, Ms. [REDACTED] alleged to others that a student had witnessed the alleged molestation. (T., Vol. 4, testimony of Ms. [REDACTED], page 95). Ms. [REDACTED] did not tell Detective [REDACTED] that a student had witnessed the alleged molestation, as she had not yet added this allegation. (T., Vol. 3, testimony of [REDACTED], page 13; T., Vol. 4, testimony of Ms. [REDACTED], page 151).
83. On March 3, 2003, Detective [REDACTED] attempted to conduct a forensic interview of [REDACTED]. Forensic interviews are conducted so as not to give children information with which to make statements or embellish their statements, but simply to get children's statements themselves. Rapport is built with the child, but children are not led. (T., Vol. 3, testimony of [REDACTED], page 8).
84. During the interview, [REDACTED] was able to tell Detective [REDACTED] his name and age. He said that he lived with someone named "Tammy" whom Detective [REDACTED] was unable to ever identify and who was never identified by Ms. [REDACTED] during this hearing. Detective [REDACTED] introduced some anatomical drawings to [REDACTED] and asked him to help her name body parts. He identified the nose, eyes, and mouth on the drawing. When she pointed to the drawing's penis, he called it a

leg; and when she pointed to the drawing's bottom, he called it "pink." (T., Vol. 3, testimony of [REDACTED], pages 15-16). [REDACTED] made no disclosure or statement to Detective [REDACTED] that he had been molested. (T., Vol. 3, testimony of [REDACTED], page 8).

85. Detective [REDACTED] also spoke with individuals at [REDACTED] as part of her investigation. Initially, she spoke with Ms. Constance Carter, the principal during the 2002-2003 school year. The case was again referred to Detective [REDACTED] by DFACS in June 2003, when [REDACTED]'s pediatrician made a subsequent referral. DFACS always conducts joint investigation with law enforcement for all sexual abuse investigations, so as not to jeopardize criminal cases. Criminal cases are weakened when victims are repeatedly interviewed or when suspects are contacted prior to law enforcement involvement. Statements of victims become less and less reliable the more they are interviewed. (T., Vol. 3, testimony of [REDACTED], pages 17-18). In addition, Detective [REDACTED] spoke with Dr. [REDACTED]. (T., Vol. 3, testimony of [REDACTED], page 33).
86. Because Ms. [REDACTED] had specifically accused Mr. [REDACTED], Detective [REDACTED] scheduled a polygraph examination of him on March 10, 2003. (T., Vol. 3, testimony of [REDACTED], page 9). Mr. [REDACTED] passed the polygraph examination. (T., Vol. 3, testimony of [REDACTED], page 9). At that point, Detective [REDACTED] had no choice but to close the case, as the only identified suspect appeared to have been falsely accused, and [REDACTED] had not made any statement to her that he was molested. Detective [REDACTED] informed Ms. [REDACTED] of this and recommended that [REDACTED] receive counseling. (T., Vol. 3, testimony of [REDACTED], page 10). Based on a lack of evidence, the case could no longer be pursued by Crimes Against Children. (T., Vol. 3, testimony of [REDACTED], page 20).
87. On March 3, 2003, Ms. [REDACTED] attended a conference with Ms. Blum and Ms. Carter, then the principal of [REDACTED]. Ms. [REDACTED] again was insistent that [REDACTED] had been molested at [REDACTED] on February 24, 2004. (Respondent's Exhibit 37, page 422). Ms. [REDACTED] repeated her allegation that Mr. [REDACTED] had molested [REDACTED] in the bathroom. Ms. Blum assured her that [REDACTED] only used the special education bathroom in her classroom. Ms. Blum had previously had an experience with [REDACTED] in which he refused to come out of the stall and Ms. Blum had to crawl under the door to get him out. Since that time, [REDACTED] only used the bathroom in Ms. Blum's classroom. (Respondent's Exhibit 51, page 766).
88. Ms. [REDACTED] then alleged that a student had held [REDACTED]'s head in a sink full of water. Ms. Blum stated that she did not see any such incident or see [REDACTED] with his hair wet at any time. (Respondent's Exhibit 51, page 766). Ms. Blum had also asked [REDACTED]'s regular education teacher and paraprofessional about this. They, too, said they knew nothing about this and confirmed they had never seen [REDACTED]'s hair wet and that [REDACTED] was always supervised in the restroom. (T., Vol. 1, testimony of Blum, page 166). Either Ms. Blum or another teacher would have seen [REDACTED]'s hair wet if this incident had happened. (T., Vol. 1, testimony of Blum, page 229).
89. The School District contacted the DFCS that same day, reporting Ms. [REDACTED]'s allegation that Mr. [REDACTED] had molested [REDACTED] in the bathroom. (Respondent's Exhibit 51, page 767, 769-772). Also that same day, two detectives came to [REDACTED] to interview Ms. Carter about Ms. [REDACTED]'s allegations. (Respondent's Exhibit 51, page 767).

90. The next day, March 4, 2003, [redacted] came to school with Ms. [redacted] and Ms. [redacted]. Ms. [redacted] said that [redacted] said he was scared Mr. [redacted] would kill him. [redacted] attended school for part of that day, but became very noncompliant, as he had in the past. (Respondent's Exhibit 37, page 422).
91. Later, a parent of another student at [redacted] called Ms. Blum. The parent said she had heard there had been a molestation at [redacted]. The parent said that Ms. [redacted] had told her about it. (T., Vol. 1, testimony of Blum, page 181). Ms. [redacted] admitted during the hearing that she had told people in the community that Mr. [redacted] had molested [redacted]. One of these people had a child at [redacted] (T., Vol. 4, testimony of Ms. [redacted], pages 155-156). Another parent, [redacted], also called Ms. Blum. [redacted]'s daughter is also on Ms. Blum's caseload. (T., Vol. 1, testimony of Blum, page 182).
92. On March 7, 2003, Ms. [redacted] retracted her accusations against Mr. [redacted] and now said that a student had molested [redacted] (T., Vol. 1, testimony of Blum, page 177). Ms. [redacted] called Detective [redacted] and explained that [redacted] had said that Mr. [redacted] was "nice" and that she no longer believed Mr. [redacted] had molested [redacted], because [redacted] called him "nice." (T., Vol. 4, testimony of Ms. [redacted], pages 69-70). Ms. [redacted] called Ms. Blum at home and said that she thought [redacted] was saying a student named "Makeem" did it and asked if there were any students named "Makeem" or something similar. (T., Vol. 1, testimony of Blum, page 177). Ms. [redacted] said she asked [redacted] whether a man or a boy molested him, and [redacted] said that a boy molested him. (Respondent's Exhibit 37, page 424; T., Vol. 1, testimony of Blum, page 178).
93. On March 10, 2003, Ms. Blum called Ms. [redacted] at home because Ms. [redacted] had wanted [redacted]'s homework. She spoke with Ms. [redacted], and Ms. [redacted] said that [redacted] was too scared to come to school because she thought [redacted] was being bullied. Ms. [redacted] did not identify who might be bullying [redacted]. Ms. Blum suggested that a counselor at [redacted] could talk to [redacted] about it or do a lesson about bullying for his class. Ms. [redacted] thought this was a good idea. (T., Vol. 1, testimony of Blum, page 179).
94. On March 11, 2003, Ms. [redacted] came to [redacted] Elementary School for a conference with [redacted]'s regular education teacher, Ms. Steinberg and Ms. Blum (this was parent/teacher conference week). Ms. [redacted] met first with Ms. Steinberg. (T., Vol. 1, testimony of Blum, pages 179-180). When Ms. [redacted] was leaving this first conference, Ms. Steinberg saw Ms. [redacted] looking at some student work that was posted on the wall. Ms. [redacted] was copying down the students' names. (T., Vol. 1, testimony of Blum, page 181). Ms. [redacted] admitted during the hearing that she did this, trying to identify the student she believed at that time molested [redacted]. (T., Vol. 4, testimony of Ms. A., page 156).
95. After this first conference, Ms. Blum saw Ms. [redacted] and they spoke. Ms. [redacted] said that [redacted] had mentioned playing a "mouse game" and expressed concern about it. Ms. [redacted] also asked about some names of other students that [redacted] had mentioned. (Respondent's Exhibit 37, page 325). Ms. [redacted] said that [redacted] was jumping around and saying "I pick you, I pick you." (T., Vol. 1, testimony of Blum, page 180).
96. Ms. [redacted] said that [redacted] had mentioned some other students' names, as well. Ms. [redacted] said one student's name was the same as a boy on a videotape [redacted] had. Ms. [redacted] stated that she didn't

know if [REDACTED] was talking about a boy on a videotape he had at home or a real boy. [REDACTED] liked to act out what he saw in videotapes. (Respondent's Exhibit 36, page 383, 393; T., Vol. 4, testimony of Ms. [REDACTED], page 153). Ms. [REDACTED] wanted to know what the other boys knew about the "mouse game." (Respondent's Exhibit 37, page 425).

97. Ms. Blum answered that she would find out the answers to Ms. [REDACTED]'s questions. Also during this conversation, Ms. Blum and Ms. [REDACTED] agreed to have an IEP meeting regarding ESY services in the near future. (Respondent's Exhibit 37, page 425).

98. Ms. Blum became uncomfortable with the idea of questioning other children about the "mouse game" and told Ms. [REDACTED] the next day. During this conversation, Ms. [REDACTED] said that [REDACTED] was too scared to go to school, but he still wanted to go on a community-based instruction (CBI) field trip scheduled for March 14, 2003. (Respondent's Exhibit 37, page 426).

99. Ms. [REDACTED] and [REDACTED] were at [REDACTED] on March 14, 2003, the day of the CBI trip. The CBI had, however, been cancelled, so Ms. Blum set up a pizza party for her class. [REDACTED] remained at school for a while, then went home. Ms. [REDACTED] returned to school for a meeting with Ms. Blum and Ms. Carter. Ms. Knauf and Ms. Steinberg, [REDACTED]'s regular education teacher, were also there. The group talked about [REDACTED]'s return to school. Ms. [REDACTED] again stated that she no longer believed Mr. [REDACTED] had done anything to [REDACTED], and that [REDACTED] would return to school the following Monday. (Respondent's Exhibit 37, page 426; T., Vol. 1, testimony of Blum, page 183). The group asked Ms. [REDACTED] for her input on how to handle [REDACTED]'s return. Ms. [REDACTED] said that staff should do what they had done before, and that time-outs for inappropriate behavior should continue. (Respondent's Exhibit 37, page 427; T., Vol. 1, testimony of Blum, page 183). [REDACTED] did not return to school the following Monday, even though Ms. [REDACTED] said he would. (T., Vol. 1, testimony of Blum, page 183).

100. On March 24, 2003, [REDACTED] came to school, but wanted to go back home before the end of the day. Ms. [REDACTED] came to school to get him. By this time, Ms. [REDACTED] had requested homebound services for [REDACTED], and Ms. Blum set up an IEP meeting to discuss it. Ms. Blum observed Ms. [REDACTED] and [REDACTED] in the hallway while they were at [REDACTED] on March 24, 2003. [REDACTED] saw a custodian and said "[REDACTED]" Ms. [REDACTED] asked him whether this was the man who had allegedly molested him, and [REDACTED] didn't reply. Ms. [REDACTED] asked [REDACTED] if he was a nice man or a mean man. [REDACTED] said he was a mean man. Ms. [REDACTED] did not ask [REDACTED] why he said this was a mean man. Ms. [REDACTED] then took [REDACTED] home. (Respondent's Exhibit 37, page 427; T., Vol. 1, testimony of Blum, page 184). The custodian that Ms. [REDACTED] and [REDACTED] saw was not [REDACTED], the man Ms. [REDACTED] now alleges molested [REDACTED].<sup>7</sup> His first name is [REDACTED]. (T., Vol. 1, testimony of Blum, page 188).

101. Ms. [REDACTED] was still suspicious about the "mouse game" and why [REDACTED] associated it with Mr. [REDACTED] (Respondent's Exhibit 37, page 428-429). By that time, Ms. [REDACTED] had already retracted her accusations against Mr. [REDACTED]. When Ms. [REDACTED] came to pick up [REDACTED] from school, Ms. Blum told her about the "mouse game." (T., Vol. 1, testimony of Blum, page 186). Ms. Blum explained that this was the "quiet mouse game," where children lined up in the hallway against a wall and stood quietly. (Respondent's Exhibit 37, page 428). While [REDACTED] was at school, Ms. Blum had

<sup>7</sup> The School District performed a criminal background check on [REDACTED]. There was no indication that he had ever been convicted of any crime involving molestation or abuse of children. (T., Vol. 3, testimony of [REDACTED], page 55).

asked him what the "mouse game" was, since Ms. [REDACTED] had asked her about it and expressed concern. When she asked him to show her the "mouse game," he immediately got up and stood quietly against the wall. (Respondent's Exhibit 37, page 429; T., Vol. 1, testimony of Blum, page 186, 210). She asked him again to show her the "mouse game," and he again stood quietly against the wall.

102. Around this time, Ms. [REDACTED] had requested homebound schooling services for [REDACTED]. Ms. Blum set up the necessary IEP meeting to consider this request for change in placement and sent Ms. [REDACTED] a notification of the meeting. (T., Vol. 1, testimony of Blum, page 184).
103. On March 28, 2003, Ms. [REDACTED] cancelled their IEP meeting on the advice of her attorney, stating that there was no need for any IEP meeting since [REDACTED] would not be returning to school. (Respondent's Exhibit 37, page 430, 433). Ms. [REDACTED] also asked Ms. Blum about the custodian she and [REDACTED] had seen in the hallway on March 24, 2003. Neither Ms. Blum or Ms. [REDACTED] knew his name. (Respondent's Exhibit 37, page 430; T., Vol. 1, testimony of Blum, page 188).
104. On March 31, 2003, Ms. Blum learned that Ms. [REDACTED] had accused her of withholding information from the police regarding her allegations that someone had molested [REDACTED]. Ms. [REDACTED] alleged that [REDACTED] had told Ms. Blum who had allegedly molested him, and accused Ms. Blum of refusing to tell the police. Ms. Blum called Detective [REDACTED], the police officer investigating Ms. [REDACTED]'s accusations, and told her that [REDACTED] had not made any such statement to her but had only said that a man was mean. Detective [REDACTED] advised Ms. Blum that Ms. [REDACTED] appeared to be trying to implicate Ms. Blum in her allegations. (Respondent's Exhibit 37, page 430).
105. On April 2, 2003, Ms. [REDACTED] sent Ms. Blum an e-mail accusing her of withholding information from the police. (Respondent's Exhibit 37, page 434). She referenced the March 24, 2003 incident in which Ms. Blum had seen Ms. [REDACTED] and [REDACTED] see a janitor in the hallway and call him "mean." Ms. [REDACTED] said that she knew Ms. Blum had heard more, that [REDACTED] had actually identified this janitor as the man who allegedly molested him, and that Ms. Blum had withheld this information from police. Ms. [REDACTED] said that Ms. Blum should feel responsible for [REDACTED]'s pain and the "terror and violation that his (the pedophile janitor) future victims feel" (parenthetical in original). (Respondent's Exhibit 37, page 434). Ms. Blum was visibly and emotionally upset over this email. (T., Vol. 1, testimony of Blum, page 190). Ms. Blum was so frightened by this email that she spoke with a police officer about it and was advised to change her home telephone number, which Ms. Blum did. (Respondent's Exhibit 37, page 431; T., Vol. 1, testimony of Blum, page 191-192).
106. Ms. [REDACTED] claimed that she later sent Ms. Blum another e-mail apologizing for her earlier one. (T., Vol. 4, testimony of Ms. [REDACTED], page 192). Ms. Blum never received any such e-mail, and Ms. [REDACTED] failed to produce any such e-mail during this proceeding. (T., Vol. 1, testimony of Blum, page 198; record). Ms. Blum's email account was working and would have been able to receive any email that Ms. [REDACTED] sent. (T., Vol. 1, testimony of Blum, page 198).
107. Later, Ms. [REDACTED] alleged that a janitor named [REDACTED] molested [REDACTED]. Ms. [REDACTED] maintained her belief in this allegation throughout this hearing. The janitor Ms. [REDACTED] and [REDACTED] saw in the hallway on March 24, 2003, and to which Ms. [REDACTED] referred as a "pedophile janitor" in

an e-mail to Ms. Blum, is not [REDACTED] (T., Vol. 1, testimony of Blum, page 188). Ms. [REDACTED] found the name "Garous" in the [REDACTED] yearbook. (T., Vol. 3, testimony of [REDACTED], page 56). No one at [REDACTED] called him [REDACTED]. Everyone knew him as [REDACTED] or [REDACTED]. He appears as "[REDACTED]" only in the [REDACTED] yearbook. (T., Vol. 4, testimony of Ms. [REDACTED], page 159). Dr. [REDACTED], a licensed clinical social worker who had been seeing [REDACTED], had been showing [REDACTED] the [REDACTED] yearbook in her sessions with him. (T., Vol. 3, testimony of [REDACTED], page 56).

108. On April 15, 2003, [REDACTED] returned to school. Ms. [REDACTED] left a note for Ms. Blum stating that if [REDACTED] was anywhere in the building, the school should let her know immediately so she could come and get [REDACTED]. (Respondent's Exhibit 37, page 438). By this time, however, [REDACTED] was no longer an employee of the School District.<sup>8</sup> (Petitioner's Exhibit 9, page 64). On April 16, 2003, [REDACTED] was again in school. Another paraprofessional was assigned to [REDACTED]'s classroom at this time. (T., Vol. 1, testimony of Blum, page 193). This was done in an effort to help [REDACTED] feel safe upon his return to [REDACTED]. (T., Vol. 1, testimony of Blum, page 193). On that day, [REDACTED] saw the janitor that he had earlier said was "mean" (and who was not [REDACTED]). [REDACTED] had no reaction at all to seeing the janitor. (Respondent's Exhibit 37, page 436).

109. Throughout April and May 2003, [REDACTED] continued to display the same inappropriate behaviors that he always had. He was noncompliant, refused to do work, would fall on the floor, threw things, and was disruptive to the classroom. (Respondent's Exhibit 37, pages 436 - 441; T., Vol. 1, testimony of Blum, page 193). These behaviors were similar to the behaviors he had shown earlier in the 2002-2003 school year and during previous school years. (T., Vol. 1, testimony of Blum, page 193).

110. On May 21, 2003, the School District convened an IEP meeting to review [REDACTED]'s current functioning. Ms. [REDACTED] requested this meeting. (Respondent's Exhibit 36, page 414). She received notice of this meeting. (Respondent's Exhibit 33, page 318). Ms. [REDACTED] attended this meeting with [REDACTED], a parent advocate with the [REDACTED] & [REDACTED] law firm, the same firm that is representing Petitioner during this hearing. (Respondent's Exhibit 34, page 319). Ms. [REDACTED] had been preventing [REDACTED] from attending school; by the time of this meeting, [REDACTED] had missed approximately five weeks and two days of school. (Respondent's Exhibit 33, page 320).

111. At the meeting, Ms. [REDACTED] and Ms. [REDACTED] stated that [REDACTED] was under the care of a new psychologist, Dr. [REDACTED], and asked for [REDACTED]'s records. (Respondent's Exhibit 33, page 320).<sup>9</sup> Ms. [REDACTED] completed an authorization for the release of these records to herself. The IEP meeting was then tabled. (Respondent's Exhibit 33, page 320).

112. On August 11, 2003, the School District began a functional behavior assessment (FBA) for [REDACTED] to identify problematic behaviors, discover causes for these behaviors, and develop strategies to address them. (Respondent's Exhibit 38). The FBA was initiated due to

<sup>8</sup> As [REDACTED] was no longer an employee of the School District, the School District had no basis to pursue any investigation or employment action against him. (Petitioner's Exhibit 9, page 64).

<sup>9</sup> Ms. [REDACTED] was referred to Dr. [REDACTED] by Mr. [REDACTED] of the [REDACTED] & [REDACTED] law firm. (T., Vol. 4, testimony of Ms. [REDACTED], page 161). Dr. [REDACTED] has received other referrals from this law firm. (T., Vol. 5, testimony of [REDACTED], page 49).

inappropriate behaviors that [REDACTED] had shown in previous school years and continued to display. (T., Vol. 1, testimony of Bell, page 237). For instance, [REDACTED] would crawl around the room and under tables, refuse to follow directions, and fall on the floor. (T., Vol. 2, testimony of Knauf, page 211).

113. The School District worked with a behavior intervention specialist, Dr. [REDACTED]. Another School District employee, Mr. Terry Ryan, sat in the back of a classroom and took data. (T., Vol. 1, testimony of Bell, page 237). Mr. Ryan did not develop the FBA or behavioral plan for [REDACTED]. He simply sat at the back of the room and took data. (T., Vol. 2, testimony of Knauf, page 256). The School District noted general background and history for [REDACTED] had always been noncompliant, both at school and at home. (Respondent's Exhibit 38, page 441).
114. Mr. Ryan also testified during this hearing. He is currently an employee of the [REDACTED] & [REDACTED] law firm, the law firm that represented Ms. [REDACTED] during this hearing. He contacted the [REDACTED] & [REDACTED] law firm seeking employment with them as early as Fall 2002. He contacted them again for the same reason in Fall 2003. It was during Fall 2003 that Mr. Ryan sat in a room and took data for [REDACTED]'s FBA. (T., Vol. 4, testimony of Ryan, pages 5-6). Mr. Ryan admitted that he felt taking data was not his job, that he was a "home-based teacher, not a data collector." (T., Vol. 4, testimony of Ryan, page 27).
115. Mr. Ryan acknowledged that he had worked with [REDACTED] for only slightly over three weeks in total. Mr. Ryan further admitted that he is not a behavior specialist. (T., Vol. 4, testimony of Ryan, page 25). Initially, Mr. Ryan testified that he was with [REDACTED] for every minute of those three weeks, except for lunch. Mr. Ryan later admitted that this testimony was untrue. (T., Vol. 4, testimony of Ryan, page 26). Mr. Ryan has not seen [REDACTED] at [REDACTED] since early September 2003. (T., Vol. 4, testimony of Ryan, page 28).
116. Mr. Ryan was not knowledgeable about [REDACTED]'s educational and behavioral history. For instance, Mr. Ryan was unaware that [REDACTED] had a history of disrobing at inappropriate times. (T., Vol. 4, testimony of Ryan, page 30). Mr. Ryan also did not know what, if any, medications [REDACTED] was taking. (T., Vol. 4, testimony of Ryan, page 32).
117. Mr. Ryan left his employment with the School District in December 2003. (T., Vol. 4, testimony of Ryan, page 33). He had a contract for employment but asked to be released from that contract in December 2003. He told his supervisor that he was "in pain" and "depressed about where [he was] in [his] career."<sup>10</sup> (T., Vol. 4, testimony of Ryan, page 34). Initially, Mr. Ryan refused to answer a question regarding his statements to his supervisor about why he needed to be released from his employment contract. Mr. Ryan answered the question only after being specifically directed to do so by this Court. (T., Vol. 4, testimony of Ryan, page 34). Mr. Ryan admitted that he had reviewed his testimony with Ms. [REDACTED], Ms. [REDACTED]'s attorney and his own employer, before the hearing. (T., Vol. 4, testimony of Ryan, page 25).

<sup>10</sup> Mr. Ryan may have misrepresented the truth to the School District, inasmuch as he had already approached the [REDACTED] & [REDACTED] law firm for an employment position with no disclosure to the School District. (T., Vol. 4, testimony of Ryan, page 34).

118. [REDACTED]'s problematic behaviors, as listed in his FBA, were described as noncompliance and aggression towards adults. Instances of these behaviors, such as falling on the floor and refusing to move, throwing objects, and turning over furniture, had occurred throughout [REDACTED]'s school enrollment and predated Ms. [REDACTED]'s allegation that [REDACTED] had been molested at [REDACTED]. These behaviors occurred throughout the day and were precipitated by asking [REDACTED] to follow directions or do anything he did not want to do. (Respondent's Exhibit 38, page 442). Previous information had already revealed that [REDACTED] had a long-standing tendency to misbehave in an effort to avoid work and escape demands. (Respondent's Exhibit 22).
119. Based on this and other information, the School District developed a behavioral support plan for [REDACTED]. (Respondent's Exhibit 38, page 445). Implementation of this plan resulted in a reduction of these behaviors. (Respondent's Exhibit 38, page 446).
120. In September 2003, the School District convened an IEP meeting to review [REDACTED]'s IEP and develop an IEP for the 2003-2004 school year, [REDACTED]'s third grade year. Ms. [REDACTED] received notice of this IEP. (Respondent's Exhibit 40, page 471). Ms. [REDACTED] attended this meeting with Ms. [REDACTED] and her attorney, Ms. [REDACTED]. (Respondent's Exhibit 40, page 485).
121. The IEP committee (which included Ms. [REDACTED]) noted that [REDACTED] continued to display inappropriate behaviors, as he had all along and before Ms. [REDACTED]'s allegation that he had been molested at [REDACTED]. (Respondent's Exhibit 40, page 485). Ms. Josette Bailey, a special education supervisor with the School District, had observed [REDACTED] in the classroom and saw him crawl on the ground and refuse to comply with the teacher's instructions. (T., Vol. 1, testimony of Bailey page 44). [REDACTED]'s continued noncompliance had caused some of his mastery levels on his goals and objectives to decrease. The IEP committee also noted that [REDACTED] actively engaged in tactics to avoid work, as he had in the past. Specifically, [REDACTED] would use bathroom time as a means of work avoidance. (Respondent's Exhibit 40, page 486). Ms. [REDACTED] expressed concern that, should [REDACTED]'s paraprofessional be absent, a substitute might not know how to handle [REDACTED] in the bathroom. Ms. Peggy Pepper, the new principal at [REDACTED] Elementary School, stated that someone who knew [REDACTED] would be the substitute. Ms. [REDACTED] acknowledged that she was having difficulty piecing together the details of her allegations of molestation because of [REDACTED]'s impaired communication skills. (Respondent's Exhibit 40, page 486).
122. The School District noted that [REDACTED]'s behaviors had regressed since the previous Tuesday, when new staff began working with [REDACTED]. Ms. [REDACTED] stated that [REDACTED] had post-traumatic stress disorder (PTSD). Ms. [REDACTED], however, attributed [REDACTED]'s continued inappropriate behavior to medication changes. (Respondent's Exhibit 40, page 485; T., Vol. 1, testimony of Bailey page 47).
123. The IEP committee also developed new goals and objectives, as well as a behavior intervention plan. They discussed the results of the FBA begun in August 2003. The FBA determined that the basis of [REDACTED]'s noncompliance and inappropriate behaviors was his attempt to escape work, gain control of a situation, and gain attention. (T., Vol. 1, testimony of Bailey, page 45). The IEP committee then considered this FBA and developed a behavior plan where [REDACTED] would receive a baseball sticker when he behaved well and lose the stickers when he refused to follow

rules. (T., Vol. 1, testimony of Bailey, page 45). As [REDACTED] earned baseballs, he could trade them in for a preferred treat or activity. (T., Vol. 1, testimony of Bailey, page 46).

124. The IEP committee discussed placement. School District personnel believed that [REDACTED] required more small group instruction because of the large number of goals and objectives. Also, the curriculum in third grade would be more demanding and faster paced. Ms. [REDACTED] and Ms. [REDACTED] objected and insisted that [REDACTED] remain in an inclusion classroom. Ms. [REDACTED] did, however, agree that [REDACTED] should receive speech language therapy in a small group setting. (Respondent's Exhibit 40, page 486). [REDACTED] would also receive occupational therapy in a small group setting. Additionally, [REDACTED] would have the support of a paraprofessional throughout the day. (Respondent's Exhibit 40, page 482). This paraprofessional would work exclusively with [REDACTED] and was his one-to-one aide. (T., Vol. 1, testimony of Bailey, page 47).
125. The IEP committee determined that [REDACTED] would likely need ESY during Summer 2004, given his regression in behavior. In addition to being out of school during Summer 2003 (as any other child would), [REDACTED] had also missed nearly six weeks of instruction in Spring 2003. The IEP committee agreed to reconvene prior to Summer 2004 to determine ESY services. (Respondent's Exhibit 40, page 484).
126. In an additional effort to manage [REDACTED]'s continuing noncompliance and other inappropriate behaviors, [REDACTED] staff received training from a behavior intervention specialist on how to physically restrain [REDACTED] and physically move [REDACTED] when he fell to the floor. (T., Vol. 1, testimony of Bailey page 46).
127. The School District also completed an assistive technology referral for [REDACTED] so he could get help with typing. (Respondent's Exhibit 41). In November 2003, the School District conducted an evaluation and a report with recommendations for assistive technology was completed. (Respondent's Exhibit 43).
128. Ms. Susan Bell has been [REDACTED]'s third grade regular education teacher throughout the 2003-2004 school year. Ms. Abernathy is [REDACTED]'s special education teacher. In addition, [REDACTED] receives the support of other paraprofessionals assigned to work in Ms. Bell's class, as well as the paraprofessional, Ms. Soledad Kshatri, assigned solely to [REDACTED]. (T., Vol. 1, testimony of Bell, page 233).
129. During the 2003-2004 school year, [REDACTED] went to various locations at [REDACTED] for activities such as lunch and P.E. [REDACTED] was always accompanied by an adult. During lunch in particular, Ms. Kshatri always sat right next to [REDACTED]. (T., Vol. 1, testimony of Bell, page 235).
130. Ms. Kshatri described [REDACTED]'s school day during the 2003-2004 school year. Ms. Kshatri would greet [REDACTED] in the mornings and escort him to class. She stayed with [REDACTED] throughout the day. At various times during the class day, Ms. Abernathy came into the classroom to work with [REDACTED] and other students. The speech language teacher escorted [REDACTED] to her classroom for his speech language therapy. A similar procedure happened with the occupational therapist. In all instances, Ms. Kshatri went with [REDACTED] wherever he went. (T., Vol. 2, testimony of Kshatri, pages 173-175).

131. In addition, [REDACTED] was always escorted by two adults when he went to the restroom. A paraprofessional would escort him, along with either a regular education teacher or a special education teacher. (T., Vol. 2, testimony of Kshatri, page 159).
132. Also throughout the 2003-2004 school year, [REDACTED] continued to display the inappropriate and noncompliant behaviors that he had shown in previous school years. On a typical day, [REDACTED] would come into the classroom, go through other children's book bags, and crawl under desks. (T., Vol. 1, testimony of Bell, page 236).
133. Ms. [REDACTED], Ms. [REDACTED]'s attorney, suggested during the hearing that [REDACTED] could not understand Ms. Kshatri when she spoke, as Ms. Kshatri is an immigrant to this country and has an accent. (T., Vol. 2, testimony of [REDACTED], pages 193-194). According to others' observations, [REDACTED] appeared to understand Ms. Kshatri quite well. He communicated with her, responded to her directions, and appeared to have no difficulty understanding her. (T., Vol. 2, testimony of Knauf, page 221).
134. Ms. Abernathy, [REDACTED]'s special education teacher during the 2003-2004 school year, also noted [REDACTED]'s behavioral issues. Ms. Abernathy worked with [REDACTED] in Ms. Bell's classroom for a portion of each morning and a portion of each afternoon. She would send home daily sheets to Ms. [REDACTED] regarding [REDACTED]'s behavior for that day. Ms. Abernathy sent home two sheets daily, one for Ms. [REDACTED] to sign and return to the school, and the other for Ms. [REDACTED] to keep for her records. Ms. [REDACTED] was very good about returning these signed sheets daily. (T., Vol. 3, testimony of Abernathy, pages 63-64). Ms. Abernathy also kept a communication log in a spiral notebook, in which she and Ms. [REDACTED] would write notes back and forth to each other on a regular basis. (T., Vol. 3, testimony of Abernathy, page 64). Ms. [REDACTED] acknowledged during this hearing that she did receive this daily communication from the school. (T., Vol. 4, testimony of Ms. [REDACTED], page 189).
135. Ms. Abernathy noticed that the behavior plan developed for [REDACTED] worked well initially. Eventually, however, [REDACTED] became bored with it. When the behavior plan became less effective, Ms. Abernathy notified Ms. [REDACTED] through the communication log. At first, the behavior plan was effective because it was novel. As the novelty wore off, however, it was no longer effective for [REDACTED]. (T., Vol. 1, testimony of Bailey page 50). In order to keep the plan effective, Ms. Abernathy adjusted it. These adjustments were effective, but became less effective near the beginning of December 2003. Ms. Abernathy continued to send notes home informing Ms. [REDACTED] of [REDACTED]'s behavior. (T., Vol. 3, testimony of Abernathy, pages 65-67).
136. On November 24, 2003, the School District convened an IEP meeting at Ms. [REDACTED]'s request. (Respondent's Exhibit 42, page 494). Ms. [REDACTED] attended, along with Ms. [REDACTED] and Dr. [REDACTED], a psychiatrist who had seen [REDACTED] (Respondent's Exhibit 42, page 493). Ms. [REDACTED]'s attorney instructed Dr. [REDACTED] to attend. (T., Vol. 2, testimony of [REDACTED], page 84). At this time, Dr. [REDACTED] had neglected to review any of [REDACTED]'s records. (T., Vol. 2, testimony of [REDACTED], page 84). During this meeting, Ms. [REDACTED] alleged that another student at [REDACTED] had been teasing [REDACTED] that the janitor who allegedly molested [REDACTED] would return. Ms. [REDACTED] also stated that this student had witnessed the alleged molestation. Ms. [REDACTED] repeated her contention that a student had witnessed the alleged molestation during this hearing. (T., Vol. 4, testimony of Ms. [REDACTED], page 95).

137. The School District assured Ms. [REDACTED] that the student never came into contact with [REDACTED] because of their different schedules and different classes. (Respondent's Exhibit 42, page 494; R. 50, page 755). Further, [REDACTED] was always accompanied by Ms. Kshatri, his paraprofessional. (Respondent's Exhibit 50, page 748). Ms. Kshatri was with him and did not see anyone speak to him. (Respondent's Exhibit 50, page 755). Ms. [REDACTED] said that the teasing happened during lunch.
138. During lunch, Ms. Kshatri always sat right next to [REDACTED]. (T., Vol. 1, testimony of Bell, page 235). Ms. Kshatri had never witnessed anyone teasing [REDACTED] during this lunch time. As she sat right next to him, Ms. Kshatri would have heard this if it had happened. (T., Vol. 2, testimony of Kshatri, page 171). Ms. [REDACTED] acknowledged that Ms. Kshatri was always with [REDACTED] and would have heard if someone was teasing him. (T., Vol. 4, testimony of Ms. [REDACTED], pages 166-167).
139. [REDACTED]'s teachers reviewed [REDACTED]'s progress on his goals and objectives. They noted that [REDACTED] continued to be disruptive in class, as he had been before. Ms. [REDACTED] responded that [REDACTED] was on medication for ADHD and depression. (Respondent's Exhibit 42, page 494). The IEP committee (which included Ms. [REDACTED]) noted that [REDACTED] had made progress in refraining from aggressive behavior. He was, however, still noncompliant, as he had always been. (Respondent's Exhibit 42, page 497).
140. Dr. [REDACTED] stated that he had diagnosed [REDACTED] with PTSD, and that the symptoms of ADHD and PTSD are often similar and "difficult to tease out." Dr. [REDACTED] then offered some strategies. Ms. Abernathy, one of [REDACTED]'s teachers, stated that [REDACTED] had become bored with the behavior intervention plan, and it had become less effective, so she had appropriately adjusted it. (Respondent's Exhibit 42, page 495). Dr. [REDACTED] stated that, in terms of trying to address [REDACTED]'s behavior problems, it was not important to determine whether behaviors were caused by ADHD or PTSD, as the symptoms of these two conditions were difficult to tease out. Rather, it was important to simply address the presenting behaviors themselves. (T., Vol. 2, testimony of [REDACTED], page 83).
141. Ms. Bailey, a special education supervisor with the School District, and a former special education teacher, asked Dr. [REDACTED] if he believed that remaining at [REDACTED] was worsening [REDACTED]'s alleged PTSD. Dr. [REDACTED] definitively responded that [REDACTED] needed to work through his fears and remain at [REDACTED]. (Respondent's Exhibit 42, page 496). Ms. [REDACTED] stated that Dr. [REDACTED] had seen [REDACTED] twice by the time of this meeting, and that they engaged in role playing regarding the incident to help [REDACTED]. (Respondent's Exhibit 42, page 497).
142. In January 2004, when [REDACTED] returned to school from winter break, he was very noncompliant. He was openly defiant and said "I'm not going to do that. No, you can't make me do that." Ms. Abernathy kept Ms. [REDACTED] informed of [REDACTED]'s behaviors, both through the communication log and the daily behavior sheets sent home. (T., Vol. 3, testimony of Abernathy, page 72). He continued to be noncompliant and aggressive. He would run out of his classroom, turn over desks, and refuse to follow directions. These were all behaviors that [REDACTED] had exhibited in previous school years. This behavior occurred both before and after the winter break in December 2003. (Respondent's Exhibit 46, 47, 48).

143. On December 31, 2003, Ms. [REDACTED]'s attorney, Ms. [REDACTED], wrote to Ms. Sylvia Eaves, attorney for the School District. She alleged that Ms. Cindy Szwec, a counselor at [REDACTED], had questioned [REDACTED] regarding the alleged molestation from Spring 2003. Ms. [REDACTED] also alleged that the School District had failed to provide its investigative file regarding [REDACTED] (Respondent's Exhibit 57, pages 838-840).
144. Ms. Eaves responded that, after investigation, it appeared that Ms. Szwec had not questioned [REDACTED] at any time regarding any topic. Further, the School District had already provided the requested investigative file, but Ms. Eaves enclosed another copy again. (Respondent's Exhibit 57, pages 846-847).
145. Despite having received this assurance, Ms. [REDACTED] once again demanded the same documents. She also enlarged her previous accusations regarding School District staff and their alleged questioning of [REDACTED]. Despite having no evidence that [REDACTED] had been questioned by School District staff, and despite having received a direct response to her earlier accusation that Ms. Szwec had questioned him, Ms. [REDACTED] now demanded that the School District investigate whether "any other individual . . . might have possibly spoken to [REDACTED]." (Respondent's Exhibit 57, pages 849-851).
146. [REDACTED] returned to school after the winter break. He did not seem to be afraid. His demeanor was the same as it had been before the break; he seemed like the same child he had always been. (T., Vol. 1, testimony of Bell, page 245). He continued to show the same inappropriate behaviors that he had before. Sometimes he would behave, and sometimes he would not. (T., Vol. 2, testimony of Knauf, page 213). [REDACTED] was not always misbehaving after his return from winter break. In fact, he behaved quite well in his speech language therapy sessions. (T., Vol. 2, testimony of Knauf, pages 214). [REDACTED] likely behaved better in speech language therapy sessions because he received all the attention from the adults, as these were individual sessions. (T., Vol. 2, testimony of Knauf, page 215).
147. On January 7, 2004, the day after returning to [REDACTED] after winter break, [REDACTED] had a verbal outburst in which he talked in a very adult way. He was noncompliant, and when his teacher and paraprofessional attempted to redirect him, he shook his finger at them and yelled "You are not telling me what to do! You are not acting like this and that's final." He also yelled that several people would go to jail: "You are going to prison! Mrs. Abernathy, Mrs. Kshatri, and Mrs. Szwec are all going to prison and that's final! I don't want you to tell me anything and that's final! No more talking! They are going to prison and that's final! You are in trouble because you have done some inappropriate things!" (Respondent's Exhibit 48, page 701). He was standing very tall and adult in his presentation, and it appeared that he was mimicking statements that he had overheard from someone else. (T., Vol. 3, testimony of Abernathy, page 75). As already noted, [REDACTED] has strong imitation skills. Ms. Kshatri confirmed this incident. (T., Vol. 2, testimony of Kshatri, page 164-167).
148. On January 14, 2004, Ms. [REDACTED] was contacted regarding another episode of inappropriate behavior. Ms. [REDACTED] came to the school to get [REDACTED]. [REDACTED] was asked if he wanted to go home or if he wanted to stay at school; he wanted to stay at school. He ran into the front office of the school, laid on the floor, and refused to get up. He yelled at Ms. [REDACTED] that he was not going home

with her. Later, Ms. G. arrived. Ms. G. attributed [REDACTED]'s behavior to medication changes. Both the type of [REDACTED]'s medications and their dosages had changed several times recently. Ms. G. said she was not sure that all of these changes were being recorded at home. Ms. G. and Ms. G. then took [REDACTED] home. (Respondent's Exhibit 48, pages 703-704).

149. On January 16, 2004, [REDACTED] displayed inappropriate behavior in the bathroom. (Respondent's Exhibit 46, page 582). He went into the bathroom and completely disrobed. Ms. Kshatri described the incident. [REDACTED] seemed happy and appeared to be having fun. (T., Vol. 2, testimony of Kshatri, pages 170-171). Ms. Kshatri and Ms. Abernathy had escorted [REDACTED] to the bathroom. He appeared to have disrobed in an attempt to control the situation, since he knew that neither Ms. Kshatri nor Ms. Abernathy would come in to get him because they are both female. [REDACTED]'s inappropriate attempts to gain control of a situation had been an ongoing issue, as noted in the FBA. (T., Vol. 3, testimony of Abernathy; Respondent's Exhibit 38).
150. The School District had already noted that [REDACTED] displayed inappropriate bathroom behavior in an effort to escape demands. Further, [REDACTED] had a history of inappropriately disrobing. On at least one occasion, when [REDACTED] had wet himself, he refused to remove his pants when instructed. Instead, he took them off and threw them across the room. On another occasion, he undressed completely in the bathroom and refused to come out. (T., Vol. 3, testimony of Abernathy, page 77). On at least one other occasion, [REDACTED] disrobed in his living room and urinated on the living room floor in front of Ms. G. (T., Vol. 4, testimony of, Ms. G., page 56). Disrobing at inappropriate times is not an unusual behavior for intellectually disabled children. (T., Vol. 3, testimony of Abernathy, page 115).
151. On January 20, 2004, [REDACTED] ran out of his classroom and down the hall. Ms. Kshatri and Ms. Abernathy ran after him. Ms. Abernathy eventually found [REDACTED] in a room with Ms. Kshatri, and [REDACTED] had thrown a coffee mug at Ms. Kshatri. (T., Vol. 3, testimony of Abernathy, pages 90-91). [REDACTED] had been known to run before and throw objects. At one point, during the 2001-2002 school year, the school had to install bells on the classroom door so the teacher would know if [REDACTED] had run out. (T., Vol. 1, testimony of Blum, page 154). Also, in April 2002, [REDACTED] had run out into the road and in front of a car. (T., Vol. 2, testimony of [REDACTED], page 146).
152. [REDACTED]'s teachers kept both Ms. A and Ms. C informed about [REDACTED]'s behavior. (T., Vol. 1, testimony of Bailey, pages 146-147). The behavior that [REDACTED] displayed after his return to school from winter break was similar to behavior he had displayed in the past years. (T., Vol. 1, testimony of Bailey, page 147).
153. When [REDACTED] returned from winter break, he had been out of school and in an unstructured environment for two weeks. He then returned to the structure of a school setting. He had academic demands placed on him that he did not want to follow. As before, he tried to control the situation through his misbehavior and escape work. He had not been in school after winter break for a long enough period to readjust back to a structured school environment. (T., Vol. 1, testimony of Bell, pages 262, 265).
154. Throughout the 2003-2004 school year, [REDACTED] was put on a variety of medications prescribed by Dr. [REDACTED], as well as over-the-counter medications given to him by Ms. C. that she

purchased over the Internet and gave to [REDACTED] to change his behavior. (T., Vol. 4, testimony of Ms. [REDACTED], page 169-170). These medications, many of which have side effects that can alter behavior, were altered throughout the 2003-2004 school year. (T., Vol. 4, testimony of Ms. [REDACTED], pages 170-175).

155. During the last week prior to leaving for winter break in December 2003, [REDACTED] was showing some good behaviors at school. Ms. [REDACTED] received daily notes home indicating that [REDACTED] was having a good behavioral day. During this week, Ms. [REDACTED] was also seeing behavior improvements at home. (T., Vol. 4, testimony of Ms. [REDACTED], page 175-176). Dr. [REDACTED], too, noted that [REDACTED] was doing well prior to the winter break. After the holidays, however, he became more agitated and oppositional. (T., Vol. 5, testimony of [REDACTED], page 40). Dr. [REDACTED] admitted that this could be attributed to medication changes and to the need for a readjustment period to return to the structured environment of a school. (T., Vol. 5, testimony of [REDACTED], page 83). During the time that [REDACTED] returned to school for ten days in January 2004, Dr. [REDACTED] and Ms. [REDACTED] changed [REDACTED]'s medications no less than five separate times. (T., Vol. 4, testimony of Ms. [REDACTED], pages 176-178).

156. [REDACTED] attended school for only 10 days after he returned from winter-break. He last attended school on January 20, 2004, and Ms. [REDACTED] did not allow him to return beyond that date. (T., Vol. 1, testimony of Bailey, page 51). There had been 10 school days after winter break, but [REDACTED] had been absent for one-and-one-half of them. Therefore, [REDACTED] attended just eight-and-one-half days of school after winter break, before Ms. [REDACTED] began prohibiting his attendance. (T., Vol. 3, testimony of Abernathy, pages 72-73). Ms. [REDACTED] admitted that [REDACTED] is bored at home and wants to return to school. (T., Vol. 4, testimony of Ms. [REDACTED], page 182).

157. At the time he was removed from school by Ms. [REDACTED], [REDACTED] had made progress on his goals and objectives. (T., Vol. 2, testimony of Knauf, page 256). Ms. Abernathy took data on [REDACTED]'s goals and objectives. (T., Vol. 3, testimony of Abernathy, page 85). She used both observational methods, such as observing [REDACTED] interact with Ms. Kshatri and taking data at that time, as well as using assignment data sheets. (T., Vol. 3, testimony of Abernathy, page 86).

158. By January 20, 2004, [REDACTED] had achieved mastery or partial mastery on each and every goal and objective in his IEP. [REDACTED] alleges that he was regressing in all areas by January 20, 2004, but this is incorrect. In some cases, he was doing much better in January than earlier in the year. For instance, his rate of displaying socially appropriate behavior increased from 83.95% in November 2003 to 96.5% in January 2004. He also was more successful at refraining from physical aggression towards others, with an increase in appropriate behavior from 83.95% in November 2003 to 88.96% in January 2004. He was better able to complete assignments, as well. In November 2003, [REDACTED]'s teachers could not even focus on this goal, because they had difficulty getting [REDACTED] to work at all. By January 2004, he had increased his mastery level for this goal from virtually nothing in November 2003 to 42.857%. (Respondent's Exhibit 46, pages 525-534).

159. Concerned that [REDACTED] was missing so much school, Ms. Abernathy contacted Ms. [REDACTED] by email to inquire about him. (Respondent's Exhibit 50, page 758). Ms. Abernathy continued communicating with Ms. [REDACTED], offering to send the assistive technology report to her and again

expressing her concern for [REDACTED] and that she missed him. (Respondent's Exhibit 50, page 761). Ms. [REDACTED] responded that she was sure [REDACTED] also missed Ms. Abernathy and that he said he loved Ms. Kshatri. (Respondent's Exhibit 59, page 762).

160. In February 2004, Ms. [REDACTED] demanded that [REDACTED] receive homebound instruction rather than attend school, and she provided a letter from Dr. [REDACTED], [REDACTED]'s psychiatrist. Despite having previously stated to the School District that [REDACTED] should remain in school, Dr. [REDACTED] wrote on February 4, 2004 that [REDACTED] "would benefit from temporary in-home schooling." Dr. [REDACTED] did not state in his letter that [REDACTED] required home schooling in order to make educational progress. The sole reason Dr. [REDACTED] offered for his recommendation was that [REDACTED]'s behavior needed to be stabilized due to medication changes. (Respondent's Exhibit 44, page 513). Ms. [REDACTED] specifically asked Dr. [REDACTED] to write this letter. Dr. [REDACTED] discussed the contents of this letter both with Ms. [REDACTED] and with Ms. [REDACTED], Ms. [REDACTED]'s attorney. (T., Vol. 2, testimony of [REDACTED], page 92).

161. Ms. [REDACTED] had provided Dr. [REDACTED] with the state regulation regarding hospital homebound services prior to Dr. [REDACTED] writing the letter. Dr. [REDACTED] gave this letter to Ms. [REDACTED] for her review before it was finalized and sent. Ms. [REDACTED] reviewed this letter for its content before forwarding it to the School District. (T., Vol. 2, testimony of [REDACTED], page 93).

162. Dr. [REDACTED]'s letter was sent to Ms. Eaves as an enclosure to a letter from Ms. [REDACTED]. Ms. [REDACTED] echoed Dr. [REDACTED]'s response and characterized the request for in-home instruction solely as an issue of behavioral issues resulting from medication management. (Respondent's Exhibit 58, pages 855-857). Indeed, Ms. [REDACTED] had repeatedly stated that she believed [REDACTED]'s behavioral issues were the result of medication changes. Ms. [REDACTED] also stated that this in-home instruction would be on a temporary basis only. (Respondent's Exhibit 58, pages 855-857).

163. Ms. Eaves responded that the School District routinely and successfully addresses the needs of students undergoing medication changes in a school setting. Ms. Eaves suggested that the parties convene an IEP meeting to discuss the requested change in placement. (Respondent's Exhibit 58, page 858).

164. On February 20, 2004, the School District convened an IEP meeting to consider homebound instruction. Ms. [REDACTED] received notice of this meeting. (Respondent's Exhibit 45, page 514). The School District was required to convene this IEP meeting, as Ms. [REDACTED] had requested a change in [REDACTED]'s placement from an inclusion classroom to homebound instruction. A child's placement must be based on an IEP, so an IEP meeting was required. 34 C.F.R. § 300.552; Georgia DOE Rule 160-4-7-.09(6)(a)(5) She attended this meeting with her attorney, Mr. [REDACTED]. (D. 45, page 515). The notification received by Ms. [REDACTED] informed her that she could bring anyone she wanted to this meeting. Ms. [REDACTED] testified that she understood this. She acknowledged that she could have brought Dr. [REDACTED] to this meeting. She did not bring Dr. [REDACTED], even though she could have. (T., Vol. 4, testimony of Ms. [REDACTED], page 186).

165. The IEP committee (which included Ms. [REDACTED]) reviewed [REDACTED]'s progress on his goals and objectives, as well as implementation of [REDACTED]'s behavior plan.

166. Mr. ██████ then wanted to discuss ██████ receiving home-based services. Mr. ██████ stated that ██████ was reluctant to come to school following winter break due to something that had allegedly happened before winter break. (Respondent's Exhibit 45, page 518). Ms. ██████ explained that the request for home-based services was as stated in Dr. ██████'s letter, i.e., medication management. (Respondent's Exhibit 45, page 518).
167. The School District routinely serves students who are undergoing medication changes and attendant changes in behavior. School District staff know and expect that medication changes may impact behavior and are able to appropriately serve these students in a schools setting. (T., Vol. 1, testimony of Bailey, page 52). The School District was therefore prepared to address ██████'s medication changes in a school setting. Further, it was especially important that ██████ remain in school so School District staff could document behaviors in a school setting (a setting children must encounter) and work cooperatively with ██████'s treatment professionals. (T., Vol. 1, testimony of Bailey, page 52-53). Teachers often work cooperatively in this manner with doctors. (T., Vol. 1, testimony of Bailey, page 53).
168. Ms. Bell, in particular, has had personal experience in working cooperatively with doctors who supervise her students' medication changes. (T., Vol. 1, testimony of Bell, page 243). Ms. Bell has worked with parents and doctors to maintain regular, often daily, communication regarding a student's behaviors to cooperatively develop strategies to stabilize behavior. (T., Vol. 1, testimony of Bell, page 243-244).
169. Ms. Knauf also has had personal experience in working with children who are undergoing medication changes. In those situations, and when she was given the authority and opportunity to do so, she kept "in constant contact" with parents and physicians to address any school issues resulting from medication changes. (T., Vol. 2, testimony of Knauf, pages 219-220).
170. Ms. Knauf also believed that ██████ could be successful at ██████ and did not believe his remaining there would be harmful. ██████ had never expressed any fear about the school, "he never seemed scared, he never stated that he was scared, he never showed [her] any indication that he had any problem being there." (T., Vol. 2, testimony of Knauf, page 220).
171. School District staff felt strongly that ██████ could meet his goals and objectives in a school setting. (T., Vol. 1, testimony of Bell, page 242). It is important for children to practice appropriate behaviors in settings that they will encounter. ██████ would need to learn to control his behavior while at school, and it is important that he be allowed the opportunity to practice that behavior in that environment. (T., Vol. 1, testimony of Bell, page 243, 244). It can be difficult for children to generalize skills to other environments if they are denied the opportunity to practice those skills across environments. (T., Vol. 2, testimony of Knauf, page 218).
172. ██████'s instruction was geared towards teaching him functional skills, designed to help him function in community, home, and school settings. It "is impossible to teach school behaviors in a home setting with no peer interaction and very little adult interaction." (T., Vol. 3, testimony of Abernathy, page 94). Dr. ██████ agreed that it is important that children must practice skills in the environment in which they are to be used and in which the child will function. (T., Vol. 2, testimony of ██████, page 95).

173. Mr. [REDACTED] alleged that [REDACTED] had been questioned before winter break about the alleged molestation that occurred in February 2003. Mr. [REDACTED] accused the School District of improperly questioning [REDACTED] in this manner. (Respondent's Exhibit 45, page 518). Mr. [REDACTED] then demanded to question each person at the IEP meeting. Each and every person confirmed that they had not questioned [REDACTED] about the incident. (Respondent's Exhibit 45, page 518). They also confirmed that they did not know of anyone else at the School District who could have done this. (Respondent's Exhibit 45, page 519).
174. Ms. [REDACTED] then accused Ms. Szwec of taking [REDACTED] out of class, showing him a yearbook, and questioning him about the incident. Ms. Pepper said that this could not have happened, as Ms. Szwec does not serve any third grade children. Ms. [REDACTED] then altered her accusation and said that Ms. Szwec may not have gotten [REDACTED] out of class. Ms. [REDACTED] refused to go into any further detail. (Respondent's Exhibit 45, page 519). Ms. Szwec did not remove [REDACTED] from his class. In fact, no one had removed [REDACTED] from his classroom during Fall 2003. (T., Vol. 1, testimony of Bell, page 246). Ms. Kshatri further confirmed that no one took him out of the classroom, save for his speech language therapist and occupational therapist, so they could provide those services to [REDACTED] (T., Vol. 2, testimony of Kshatri, pages 161-162).
175. Mr. [REDACTED] continued to accuse School District staff of questioning [REDACTED] regarding the alleged incident, despite the fact that each and every person at the meeting confirmed that they had not questioned him. (Respondent's Exhibit 45, page 520).
176. The School District noted that the Functional Behavior Assessment (FBA) of [REDACTED] indicated that he wanted to be at home. Ms. [REDACTED] responded that he wanted to be in school, but not [REDACTED]. The School District then inquired as to whether [REDACTED] could attend another school, as suggested by Ms. [REDACTED]. (Respondent's Exhibit 45, page 521).
177. Ms. Bailey began to describe [REDACTED] Elementary School, another nearby school that [REDACTED] could attend. She began describing the small group class at that school, but Mr. [REDACTED] objected to discussion of changing the delivery model from full inclusion to small group instruction. (Respondent's Exhibit 45, page 522). The School District noted that [REDACTED] had previously attended a small group classroom at [REDACTED] Elementary School at Ms. [REDACTED]'s request, but that she had pulled him out. (Respondent's Exhibit 45, page 522). The School District was prepared to transition [REDACTED] to another school, as soon as Ms. [REDACTED] notified the School District which school she wanted him to attend. (T., Vol. 1, testimony of Bailey, pages 140-141).
178. The School District suggested investigating the possibility of [REDACTED] receiving small group instruction because he could get more individualized attention and more structure. Also the instructional level closely matches [REDACTED]'s skills, as they are functional skills. (T., Vol. 3, testimony of Abernathy, page 93). Mr. [REDACTED] refused to discuss the possibility of small group instruction any further. (T., Vol. 3, testimony of Abernathy, page 93).
179. Mr. [REDACTED] was asked to present Dr. [REDACTED]'s February 4, 2004 letter requesting temporary in-home schooling. Mr. [REDACTED] responded that [REDACTED] had emotional wounds that were being

reopened and that he therefore required homebound instruction. (Respondent's Exhibit 45, page 523). Dr. [REDACTED]'s letter made no such statement and limited the request for in-home schooling solely to behavioral issues caused by medication changes. (Respondent's Exhibit 44).

180. The School District's attorney, Ms. Eaves, stated that another conversation with Dr. [REDACTED] would be helpful. Neither Mr. [REDACTED] nor Ms. [REDACTED] had ever signed any release allowing the School District to have any such conversation, and they did not sign any such release at this time or any time thereafter. (T., Vol. 3, testimony of Abernathy, page 111). Mr. [REDACTED] stated that Ms. [REDACTED] was not withdrawing [REDACTED] from the School District but might seek public reimbursement for private services. Ms. Bailey then offered Ms. [REDACTED] an opportunity to observe [REDACTED] Elementary School, another school in the School District that [REDACTED] might attend, rather than [REDACTED]. The meeting was adjourned. (Respondent's Exhibit 45, page 524). Throughout this meeting, Ms. [REDACTED] never asked the School District to perform any evaluation for [REDACTED]. She never asked for counseling for [REDACTED]. She was represented by counsel, and he never asked for any such services, either. (T., Vol. 4, testimony of Ms. [REDACTED], pages 187-188).
181. On February 23, 2004, Mr. [REDACTED] sent Ms. [REDACTED] a letter alleging that he "had the meaning and intent of the letter from Dr. [REDACTED] confirmed." Mr. [REDACTED] failed to state with whom he had spoken regarding the content of Dr. [REDACTED]'s letter and specifically failed to state that he had ever spoken with Dr. [REDACTED]. Mr. [REDACTED] failed to provide any new information from any treatment professional that an IEP committee could consider in evaluating a request for homebound instruction. (Respondent's Exhibit 59, pages 874-875).
182. Pursuant to the School District's suggestion that [REDACTED] could attend another school and that Ms. [REDACTED] could observe at other schools, Ms. [REDACTED] did in fact do such observations. On February 20, 2004, she visited [REDACTED] Elementary School. Ms. [REDACTED] took [REDACTED] and Ms. [REDACTED] with her to visit [REDACTED]. [REDACTED] enjoyed this visit. (T., Vol. 4, testimony of Ms. [REDACTED], page 181).
183. On February 27, 2004, she sent Ms. Rhonda Thompson, a special education supervisor with the School District, an email stating that she did not want [REDACTED] to attend [REDACTED]'s self-contained classroom. Instead, she wanted [REDACTED] to immediately begin attending [REDACTED] Elementary School. (Respondent's Exhibit 60, page 878).
184. Ms. [REDACTED] went again to [REDACTED] on Friday, February 27, 2004. She emailed Ms. Bailey at 2:57 p.m., stating that she was very impressed with the teacher with whom she spoke and that both she and [REDACTED] wanted him to start attending that school the following Monday. (Respondent's Exhibit 60, page 880). Ms. [REDACTED] then consulted with her attorney, Ms. [REDACTED] (T., Vol. 4, testimony of Ms. [REDACTED], page 182). At 3:16 p.m., less than twenty minutes after her prior email and after consulting with Ms. [REDACTED], Ms. [REDACTED] emailed Ms. Bailey again and this time stated that she did not want [REDACTED] in any school. (Respondent's Exhibit 61, page 881). Ms. [REDACTED] did not indicate that she had talked to any treatment professional before she retracted her decision to allow [REDACTED] to attend [REDACTED] Elementary School. (T., Vol. 4, testimony of Ms. [REDACTED], page 182).
185. In a subsequent email to Ms. Abernathy, Ms. [REDACTED] alleged that the School District never made clear to her that she was to investigate any other schools. (Respondent's Exhibit 60, page 882). This appears to be an untrue statement. In actuality, the School District had explicitly suggested

that Ms. [REDACTED] look at another elementary school and had even helped facilitate her observations at that school. Ms. [REDACTED] did, in fact, conduct such observations.

186. [REDACTED] was not in school at the time of this hearing and had not attended school since January 20, 2004. (Respondent's Exhibit 62).
187. No School District employee at this hearing ever spoke to [REDACTED] about the alleged molestation or showed him any pictures from the yearbook in order to allow him to identify anyone regarding the alleged molestation. No one saw anyone take [REDACTED] out of class, except to go to speech language therapy and occupational therapy. These witnesses saw [REDACTED] every minute of the school day. (T., Vol. 1, testimony of Bell, pages 246; T2 Knauf, pages 220-221; T3 Abernathy, page 94).
188. Dr. [REDACTED] testified regarding the content of the letter he wrote requesting in-home schooling. In testimony, he contended that his recommendation was based on concern for [REDACTED]'s "physical, emotional, you know, safety or state, you know, kind of in his current situation." (T., Vol. 2, testimony of [REDACTED], page 47). Dr. [REDACTED] failed to include these concerns in his letter that he provided to the School District. Dr. [REDACTED] also acknowledged that he does not see [REDACTED] in order to address his behaviors; rather his treatment is limited to provision of medication. (T., Vol. 2, testimony of [REDACTED], page 89).
189. [REDACTED] is the only child with Down's Syndrome that Dr. [REDACTED] has ever treated in his practice. He had been in practice for less than one year at the time of this hearing. (T., Vol. 2, testimony of [REDACTED], pages 69-70). Dr. [REDACTED] has only been to "two or three" IEP meetings, one of which was in November 2003 for [REDACTED]. (T., Vol. 2, testimony of [REDACTED], page 72).
190. Dr. [REDACTED] diagnosed [REDACTED] with PTSD. He failed to contact anyone at [REDACTED] or get any input from any school professional who worked with [REDACTED] in making this diagnosis. (T., Vol. 2, testimony of [REDACTED], page 74). Dr. [REDACTED]'s diagnosis was based only on information provided by Ms. [REDACTED]. (T., Vol. 2, testimony of [REDACTED], page 75).
191. Dr. [REDACTED] generally neglected to get information regarding [REDACTED] from the school. For instance, when he began seeing [REDACTED], he asked Ms. [REDACTED] for information on [REDACTED]'s behavior on particular days and on particular times of day. This type of information helped him track how [REDACTED] might respond to medication. Dr. [REDACTED] never asked the school for any such information, and thus had no information from them regarding how [REDACTED] behaved at school. (T., Vol. 2, testimony of [REDACTED], page 79). Dr. [REDACTED] was told by the School District at the November 2003 IEP meeting that he could observe [REDACTED] any time he wanted. Despite receiving this specific invitation, Dr. [REDACTED] never observed [REDACTED]. (T., Vol. 4, testimony of Ms. [REDACTED], page 186-187).
192. Dr. [REDACTED] stated that, in terms of trying to address [REDACTED]'s behavior problems, it was not important to determine whether behaviors were caused by ADHD or PTSD, as the symptoms of these two conditions were difficult to tease out. Rather, it was important to simply address the presenting behaviors themselves. (T., Vol. 2, testimony of [REDACTED], page 83).

193. [REDACTED] has never stated to Dr. [REDACTED] that he was molested. Instead, Dr. [REDACTED] has gotten all of his information about these allegations only from Ms. [REDACTED]. Ms. [REDACTED] told Dr. [REDACTED] that [REDACTED] had been abused twice at [REDACTED]. (T., Vol. 2, testimony of [REDACTED], page 74). Initially, Ms. [REDACTED] believed that [REDACTED] had only been molested once. Dr. [REDACTED] told her it had happened twice, and that is how Ms. [REDACTED] came to believe this. Ms. [REDACTED] never told anyone at the School District that she believed the molestation happened twice. (T., Vol. 4, testimony of Ms. [REDACTED], page 165).
194. Dr. [REDACTED] acknowledged that [REDACTED] had behavior problems, including not following directions. (T., Vol. 2, testimony of [REDACTED], page 74). He also threw things around the room. (T., Vol. 2, testimony of [REDACTED], page 75). Dr. [REDACTED] also acknowledges that [REDACTED] has difficulties with expressive and receptive language, and that Dr. [REDACTED] has difficulty understanding [REDACTED] when he speaks. (T., Vol. 2, testimony of [REDACTED], page 87). Ms. Knauf, [REDACTED]'s speech language pathologist since August 2002, confirmed that [REDACTED] has significant language difficulties.
195. Ms. Knauf noted that [REDACTED] had difficulty with receptive language, or the ability to understand language. He had a difficult time answering W-H questions (such as who, what, when, where, and why). He had difficulty providing answers that matched the W-H component of the question. For instance, if Ms. Knauf asked him what he had for dinner the night before, [REDACTED] might respond "at home." (T., Vol. 2, testimony of Knauf, page 203). Ms. Knauf also noted that [REDACTED] had additional difficulties with his receptive language, including following directions and understanding new concepts. (T., Vol. 2, testimony of Knauf, page 204).
196. [REDACTED] also had difficulty with expressive language, or the ability to use language verbally to express himself. He used very short sentences and had difficulty using adverbs and adjectives. (T., Vol. 2, testimony of Knauf, page 205). In addition, he would often give different (and sometimes nonsensical) answers to the same question. He also had difficulty time sequencing and was unable to retell stories accurately. (T., Vol. 2, testimony of Knauf, page 208).
197. Finally, [REDACTED] had problems with clearly articulating his speech. He was often difficult to understand. People who did not know him would have a particularly hard time understanding [REDACTED]. (T., Vol. 2, testimony of Knauf, page 210).
198. Dr. [REDACTED] contacted [REDACTED] in January 2004 because Ms. [REDACTED] told him that someone at [REDACTED] had questioned [REDACTED] about the alleged molestation. Dr. [REDACTED] spoke with Ms. Szwec, and she told him she had not questioned [REDACTED]. (T., Vol. 2, testimony of [REDACTED], page 51-53). Dr. [REDACTED] testified that he had no reason to doubt Ms. Szwec. He acknowledged that, if someone had questioned [REDACTED], it could very well have been someone outside of the School District. (T., Vol. 2, testimony of [REDACTED], page 90).
199. In December 2003, Ms. [REDACTED] frequently contacted Dr. [REDACTED] asking about changing dosages to the many medications [REDACTED] took. (T., Vol. 2, testimony of [REDACTED], page 78). In January 2004, Dr. [REDACTED] received frequent phone calls from Ms. [REDACTED]. All of these phone calls concerned the many medications [REDACTED] took and problems he was having with these medications. (T., Vol. 2, testimony of [REDACTED], page 77). Dr. [REDACTED] agreed that some of the medications that [REDACTED] was

on made his behavior worse, and that he and Ms. [REDACTED] had a discussion regarding this on January 12, 2004. (T., Vol. 2, testimony of [REDACTED], page 78). Either Ms. [REDACTED] or Ms. [REDACTED] also stated to Ms. Abernathy that [REDACTED]'s "little system was all messed up from all those medications." (T., Vol. 3, testimony of Abernathy, page 138). In response, Dr. [REDACTED] made medication changes for [REDACTED] on approximately January 21, after Ms. [REDACTED] had begun preventing [REDACTED] from attending school. (T., Vol. 2, testimony of [REDACTED], page 77).

200. Dr. [REDACTED] was not aware of any behavioral interventions of any sort that [REDACTED] was receiving in the home. (T., Vol. 2, testimony of [REDACTED], page 94). Since the time Ms. [REDACTED] has prevented [REDACTED] from attending school, Dr. [REDACTED] has had repeated communication with her. Ms. [REDACTED] admitted to Dr. [REDACTED] that [REDACTED] was upset that he was not going to school. (T., Vol. 2, testimony of [REDACTED], page 97-98). Dr. [REDACTED] admitted that [REDACTED] may very well have been able to attend school at the time of the hearing, and perhaps even prior to that. (T., Vol. 2, testimony of [REDACTED], page 98).

201. Dr. [REDACTED], [REDACTED]'s pediatrician, also testified during this hearing. She admitted that she had reviewed her testimony with Ms. [REDACTED], Ms. [REDACTED]'s attorney, prior to testifying. (T., Vol. 2, testimony of [REDACTED], page 142). On March 26, 2003, Ms. [REDACTED] told Dr. [REDACTED] that [REDACTED] had been molested at school by a janitor. Ms. [REDACTED] requested that Dr. [REDACTED] write a letter requesting homebound services for [REDACTED]. Dr. [REDACTED] complied with Ms. [REDACTED]'s wishes. (T., Vol. 2, testimony of [REDACTED], pages 121-122). Despite having received knowledge of an alleged molestation, Dr. [REDACTED] made no report to DFCS at this time. (T., Vol. 2, testimony of [REDACTED], pages 123).

202. On June 30, 2003, Dr. [REDACTED] saw [REDACTED] for what she characterized as a routine check-up. (T., Vol. 2, testimony of [REDACTED], page 125). Dr. [REDACTED] testified that [REDACTED] seemed anxious, so she asked Ms. [REDACTED] and Ms. [REDACTED] to leave the examination room. Dr. [REDACTED] testified that [REDACTED] told her that "someone named [REDACTED]" had molested him. Dr. [REDACTED] then told Ms. [REDACTED] and Ms. [REDACTED] about [REDACTED]'s statement and said she would call DFCS.<sup>11</sup> (T., Vol. 2, testimony of [REDACTED], pages 126-129). Ms. [REDACTED] had told Dr. [REDACTED] three months prior, in March 2003, that she believed [REDACTED] had been molested.

203. It appears that, rather than being a routine check-up, Ms. [REDACTED] took [REDACTED] to see Dr. [REDACTED] on June 30, 2003<sup>1</sup> for the specific purpose of attempting to get a disclosure from [REDACTED] about the alleged molestation. On June 16, 2003, Ms. [REDACTED] wrote a letter to Dr. [REDACTED]. In that letter, she called Dr. [REDACTED] "worthless." She also said that [REDACTED] would identify for Dr. [REDACTED] the man who had allegedly molested him, and that she intended to videotape this for court purposes. (T., Vol. 4, testimony of Ms. [REDACTED], pages 163-164). Also in this letter, Ms. [REDACTED] said that this alleged molestation happened twice in Spring 2003. (T., Vol. 4, testimony of Ms. [REDACTED], page 165).

204. Dr. [REDACTED] stated that [REDACTED] needed to feel safe, and that providing him with constant adult supervision would accomplish that. (T., Vol. 2, testimony of [REDACTED], page 136). Dr. [REDACTED] acknowledged that assigning a paraprofessional to be with [REDACTED] throughout the day would be important in making in [REDACTED] feel safe. (T., Vol. 2, testimony of [REDACTED], page 151). The School District had, in fact, made such an assignment for [REDACTED].

<sup>11</sup> On June 30, 2003, Dr. [REDACTED] made a report to DFACS, this time alleging that [REDACTED] had molested [REDACTED] (Respondent's Exhibit 52, pages 775-777; 797-799).

205. Dr. [REDACTED] admitted that she had not reviewed all of [REDACTED]'s education records, only the ones that Ms. [REDACTED] provided her. The only knowledge Dr. [REDACTED] had regarding [REDACTED]'s persistent behavior problems, present since preschool, came from Ms. [REDACTED]. Dr. [REDACTED] did not contact anyone from the School District for information. (T., Vol. 2, testimony of [REDACTED], page 143). In fact, Dr. [REDACTED] did not speak to anyone at the School District regarding [REDACTED] for the entire 2003-2004 school year. (T., Vol. 2, testimony of [REDACTED], page 150).
206. Dr. [REDACTED] did, however, admit that [REDACTED] had a long history of displaying extreme behaviors. For instance, in April 2002, [REDACTED] had run out into the road and in front of a car. (T., Vol. 2, testimony of [REDACTED], page 146). Dr. [REDACTED] attributed this extreme behavior to [REDACTED]'s taking Zoloft. Dr. [REDACTED] stopped prescribing Zoloft to him as a result. (T., Vol. 2, testimony of [REDACTED], page 151). Dr. [REDACTED] acknowledged that medications can make [REDACTED] aggressive, and that changing medications over a period of several weeks can also negatively impact behavior. (T., Vol. 2, testimony of [REDACTED], page 152).
207. Dr. [REDACTED] knew that, in March 2003 when Ms. [REDACTED] told her that [REDACTED] had been molested, [REDACTED] was also seeing Dr. [REDACTED] and Dr. [REDACTED]. She did not contact Dr. [REDACTED] regarding what he had learned from [REDACTED]. She also did not talk to anyone at the School District about [REDACTED]'s behaviors. (T., Vol. 2, testimony of [REDACTED], pages 144-145).
208. [REDACTED] saw Dr. [REDACTED] during Summer 2003. Ms. [REDACTED] testified that [REDACTED]'s behavior during that summer was "terrible" and "getting worse and worse" because he had been seeing Dr. [REDACTED] (T., Vol. 4, testimony of Ms. [REDACTED], page 210). Dr. [REDACTED] told Ms. [REDACTED] that [REDACTED] was reliving the alleged molestation during their sessions. (T., Vol. 4, testimony of, Ms. [REDACTED], page 210). Ms. [REDACTED] testified that [REDACTED]'s behavior caused her to use a "hickory" on him to keep him in time-out. (T., Vol. 4, testimony of Ms. [REDACTED], page 210). Ms. [REDACTED] stated that she used a "hickory stick" on [REDACTED] as a method of discipline both during Summer 2003 and prior to that. (T., Vol. 4, testimony of, Ms. [REDACTED], page 221).
209. Dr. [REDACTED] acknowledged that [REDACTED]'s behaviors could be attributed to other causes, rather than being symptoms of abuse or PTSD. Dr. [REDACTED] stated that children are oppositional "most likely" because they want to escape a nonpreferred activity. (T., Vol. 5, testimony of [REDACTED], page 81). [REDACTED] has a history of noncompliance as a means of escaping work. (Respondent's Exhibits 22, 38).
210. Dr. [REDACTED] testified during this hearing. She expects to be compensated for her appearance at this trial by Ms. [REDACTED]. (T., Vol. 5, testimony of [REDACTED], page 49). She reviewed her testimony with Ms. [REDACTED]'s attorney prior to testifying. (T., Vol. 5, testimony of [REDACTED], page 50). Dr. [REDACTED] has been in continual contact with Ms. [REDACTED]'s attorney since she began seeing [REDACTED] (T., Vol. 5, testimony of [REDACTED], pages 51-52). She began seeing [REDACTED] on May 22, 2003. (T., Vol. 5, testimony of, [REDACTED], page 21). By the time Dr. [REDACTED] began seeing [REDACTED], three or four months had passed since the alleged molestation occurred. (T., Vol. 5, testimony of [REDACTED], page 59).

211. Dr. ██████ attempted to conduct a forensic interview of ██████. In a forensic interview, it is improper to ask a child leading questions or suggest things. Rather, it is for the purpose of gaining information. There is a clear delineation between a forensic interview and a therapeutic interview. (T., Vol. 5, testimony of ██████, pages 12-13). The goal of a forensic interview is to gain uncontaminated and true information about whether abuse has occurred. (T., Vol. 5, testimony of ██████, page 53). In order to competently perform a forensic interview, it is important to obtain information about the incident from other sources, such as medical evaluations, school reports, and interviews with other people who might have knowledge about it. (T., Vol. 5, testimony of ██████, pages 53-54). Dr. ██████ did not speak to any of ██████'s teachers or paraprofessionals in coming to any conclusion regarding Ms. ██████'s allegations. (T., Vol. 5, testimony of ██████, page 55, 60). Dr. ██████ has also never visited ██████ (T., Vol. 5, testimony of ██████, page 60).
212. Also during a forensic interview, it is important that the examiner test different hypothesis regarding the child's statements and the allegations. In a therapeutic or clinical evaluation, however, the examiner simply trusts what the child says, because the aim is to treat the child, rather than to get the truth. (T., Vol. 5, testimony of ██████, pages 53-56).
213. The forensic interview with ██████ was unsuccessful and was insufficient for Dr. ██████ to determine what, if anything, had occurred. (T., Vol. 5, testimony of ██████, page 22).
214. Dr. ██████ videotaped one session with ██████. On July 8, 2003, Dr. ██████ videotaped this session with him and used a yearbook from ██████ that Ms. ██████ had given her. (T., Vol. 5, testimony of ██████, page 25). By Dr. ██████'s own admission, this interview was "not forensically sound." (T., Vol. 5, testimony of ██████, page 26). Dr. ██████ acknowledged that appropriate and standard techniques of interviewing children suspected of having been molested were unsuccessful with ██████ (T., Vol. 5, testimony of ██████, pages 26-27).
215. In August 2003, Ms. ██████ gave Detective ██████ this videotaped session between Dr. ██████ and ██████ from July 8, 2003, stating that ██████ had made a disclosure on the tape. (T., Vol. 3, testimony of ██████, page 11). Dr. ██████ wrote to Detective ██████. She said she had a difficult time communicating with ██████ and with understanding what he said. She told Detective ██████ that she had made several attempts to interview ██████, but they were not successful. Dr. ██████ also admitted to Detective ██████ that nothing on this videotape could be used as evidence for any criminal matter, since ██████ had not freely made any disclosure; rather he had been fed substantial information. (T., Vol. 3, testimony of ██████, page 11).
216. Detective ██████ viewed this videotape. On it, ██████ said he had to pee. Dr. ██████ then asked him "Where did he pee," referring to the alleged molestation. ██████ gave inconsistent answers to this question, at one point saying that whoever had allegedly molested him peed in a mailbox. At another point on the videotape, ██████ looked at a picture of ██████ the man Ms. ██████ maintains molested ██████. ██████ looked at the picture and said he was a nice man. (T., Vol. 3, testimony of ██████, page 12; T5. ██████, pages 88-89). Earlier, Ms. ██████ had retracted her (by her own admission, false) accusation against Mr. ██████ because ██████ said Mr. ██████ was "nice." (T., Vol. 4, testimony of Ms. ██████, pages 69-70).

217. Dr. [REDACTED] acknowledges that she has based her belief that [REDACTED] was abused on her conversations with Ms. [REDACTED]. Ms. [REDACTED] and Dr. [REDACTED] spoke before Dr. [REDACTED] ever saw [REDACTED]. During that conversation, Ms. [REDACTED] told her that [REDACTED] had been molested at [REDACTED] by [REDACTED] (T., Vol. 5, testimony of [REDACTED], pages 59-60).
218. On August or September 2003, Dr. [REDACTED] called [REDACTED] Elementary School and participated in a phone conference with Ms. Pepper, [REDACTED]'s principal, and Bill McCollum, a behavioral intervention specialist. Ms. [REDACTED] told Ms. Pepper that she had signed a release for Dr. [REDACTED] to communicate with the School District. (Petitioner's Exhibit 21, page 168A). This release is in Dr. [REDACTED]'s possession and was never given to the School District. (T., Vol. 4, testimony of Ms. [REDACTED], page 191).
219. Dr. [REDACTED] stated that [REDACTED] was very difficult to interview, and that he was "all over [her] office and destructive" and would "break things." Dr. [REDACTED] felt [REDACTED] needed a psychiatrist and recommended one. (Respondent's Exhibit 48, page 695). Dr. [REDACTED] was unable to offer any recommendations to the School District on how to handle [REDACTED]. Instead, she herself was seeking such advice from the School District. (T., Vol. 1, testimony of Bailey, page 92). Dr. [REDACTED] believed from this conversation that [REDACTED] was "really putting forth an effort and trying to organize a team approach about working with [REDACTED]" (T., Vol. 5, testimony of [REDACTED], page 35).
220. Dr. [REDACTED] had not talked to anyone within the School District regarding [REDACTED]'s educational program or the services he was receiving. (T., Vol. 5, testimony of [REDACTED], pages 84-85). She also did not talk to any of [REDACTED]'s teachers or paraprofessionals about Ms. [REDACTED]'s allegations. (T., Vol. 5, testimony of [REDACTED], page 60). She had no knowledge that [REDACTED] was escorted everywhere around the school, including the bathroom. (T., Vol. 5, testimony of [REDACTED], page 61). Dr. [REDACTED] had also failed to review any of [REDACTED]'s education records from before August 2003. She was unfamiliar with the kinds of inappropriate behavior that [REDACTED] had exhibited prior to August 2003. (T., Vol. 5, testimony of [REDACTED], pages 61-62). Dr. [REDACTED] acknowledged that it is important to know a child's behavioral history before determining whether current behaviors can be interpreted as symptoms of abuse. (T., Vol. 5, testimony of [REDACTED], page 80).
221. Dr. [REDACTED] also did not know that [REDACTED] has difficulty with the concept of time, and that he often retells events that occurred long ago as though they happened very recently. Dr. [REDACTED] acknowledged that this would have been important knowledge for her to have when interviewing [REDACTED] (T., Vol. 5, testimony of [REDACTED], pages 65-66). Dr. [REDACTED] had also never visited [REDACTED] in his home or observed him there. (T., Vol. 5, testimony of [REDACTED], page 68).
222. Dr. [REDACTED] was unaware of some of the varying allegations that Ms. [REDACTED] has made regarding the alleged molestation. Dr. [REDACTED] did not know that, at one point, Ms. [REDACTED] had alleged that a student had molested [REDACTED] (T., Vol. 5, testimony of [REDACTED], pages 70-71). Dr. [REDACTED] was also unaware that the janitor that [REDACTED] called a "mean man" on March 24, 2004 was not [REDACTED]. Dr. [REDACTED] was under the impression that this was [REDACTED] (T., Vol. 5, testimony of [REDACTED], page 71).

223. Dr. [REDACTED] was aware that [REDACTED] had been questioned by several other people, including Ms. [REDACTED] and Ms. [REDACTED], about the alleged molestation before he came to see her. (T., Vol. 5, testimony of [REDACTED], page 68-69). Dr. [REDACTED] stated that repeated questions asked by an authority figure, such as a parent, can lead to false statements from a child, as children are suggestible. Ms. [REDACTED] admitted that she had questioned [REDACTED] regarding the alleged molestation, prior to sending [REDACTED] to see Dr. [REDACTED]. (T., Vol. 4, testimony of Ms. [REDACTED], page 161). Ms. [REDACTED] also admitted that [REDACTED]'s grandmother had likewise questioned him. (T., Vol. 4, testimony of Ms. [REDACTED], page 162).
224. Further, asking leading questions to a child can also taint any responses given by a child. Asking these leading questions leads to suggestibility, where a child may effectively be coerced into making false statements. (T., Vol. 5, testimony of [REDACTED], pages 71-73). The negative effects of these improper questioning techniques are magnified when there is a length of time between the alleged event and the questioning. (T., Vol. 5, testimony of [REDACTED], page 74).
225. Dr. [REDACTED] testified that Ms. [REDACTED] had asked her if she thought it would be better for [REDACTED] to remain at home. Dr. [REDACTED] stated that she thought it would important for [REDACTED] to remain in school, so he could feel safe in that environment. Dr. [REDACTED] had no reason to believe that [REDACTED] was an unsafe environment for [REDACTED]. (T., Vol. 5, testimony of [REDACTED], pages 85-86).
226. Ms. [REDACTED] testified that she has provided private services for [REDACTED]. She said that a teacher's assistant works with [REDACTED] for three hours per week. (T., Vol. 4, testimony of Ms. [REDACTED], page 133). This teacher's assistant had seen [REDACTED] for a total of approximately six hours at the time of this hearing, or for the two weeks just prior to the hearing. (T., Vol. 4, testimony of Ms. [REDACTED], page 183). [REDACTED] had been out of school for 10 weeks at the time of this hearing.
227. Ms. [REDACTED] did not know which IEP goals that this teacher's assistant had addressed with [REDACTED] in her six hours with him. She did not know if the teacher's assistant had taken any data regarding any aspect of her time with [REDACTED]. (T., Vol. 4, testimony of Ms. [REDACTED], page 182-183). Ms. [REDACTED] offered no information regarding any professional or qualifications or experience that this teacher's assistant possessed in teaching children, disabled children, or children with Down's Syndrome. (Record).
228. On February 25, 2004, [REDACTED] filed a request for due process hearing. (Petitioner's Exhibit 1). In his hearing request, [REDACTED] sought solely to dispute the School District's decision not to provide homebound instruction in Spring 2004 when Ms. [REDACTED] prevented [REDACTED] from attending school. (Petitioner's Exhibit 1, page 5).

### III. Conclusions of Law

1. The pertinent laws and regulations governing this matter include the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 *et seq.*), 34 C.F.R. § 300 *et seq.*, the Family Educational Rights Privacy Act (FERPA) (20 U.S.C. § 1232g), O.C.G.A. § 20-2-152, and Ga. Comp. & Regs. at Chapter 160-4-7 *et seq.* (DOE Rules). Other statutes and rules that may apply include, but are not limited to, the Americans with Disabilities Act (42 U.S.C. § 12101 *et seq.*), the Rehabilitation Act (29 U.S.C. § 700 *et seq.*), the Georgia Quality Basic Education Act (O.C.G.A. § 20-2-130 *et seq.*), and the compulsory attendance provisions of O.C.G.A. § 20-2-

690 *et seq.* Appeals before this Tribunal are *de novo* proceedings, and the standard of proof is the preponderance of the evidence. See OSAH Rule 616-1-2-.21.

2. Claims brought under IDEA are subject to a two-year statute of limitations. *Mandy S. v. Fulton County Sch. Dist.*, 205 F. Supp. 2d 1358 (N.D. Ga. 2000), *aff'd without opinion*, 273 F.3d 1114 (11<sup>th</sup> Cir. 2001). Claims under IDEA begin to accrue "when the parents know or have reason to know of the injury or event that is the basis for the claim . . . The cause of action accrues when the plaintiff learns (or should have learned) of the injury, whether or not they know that the injury is actionable." *Mandy S.*, 205 F. Supp. 2d at 1365.
3. As [REDACTED] filed his hearing request on February 25, 2004, any and all claims related to any events occurring before February 25, 2002 would be barred by the applicable statute of limitations. [REDACTED], however, has elected through his due process hearing request to restrict this proceeding to only one issue: whether the School District's recommendation in Spring 2004 that [REDACTED] actually attend school, as outlined in the IEP agreed upon by both the School District and Ms. [REDACTED], rather than receive homebound instruction, afforded [REDACTED] a free appropriate public education. [REDACTED] does not waive any claims that he may have related to events occurring between February 25, 2002 and Spring 2004. However, he did not in his hearing request choose to challenge the appropriateness of any School District action until his request for homebound services in Spring 2004. As such, this Court will restrict itself solely to considering the appropriateness of his request for homebound services and the School District's response.
4. [REDACTED] makes raises several issues that are not available for determination by this Court, due to [REDACTED]'s decision to voluntarily restrict the scope of this proceeding. Even if these were issues properly available for decision by this Court, however, [REDACTED] cannot prevail. The Court addresses each issue in turn.
5. The Individuals with Disabilities in Education Act (IDEA), 20 U.S.C. § 1400 *et seq.*, requires that the District provide a free appropriate public education to children with disabilities. 20 U.S.C. § 1412(a)(1). The United States Supreme Court in *Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 102 S. Ct. 3034 (1982), considered the meaning of the IDEA's requirement of a free appropriate public education and held that an appropriate education is one which is provided pursuant to an IEP that has been developed in compliance with the procedural requirements of IDEA, is designed to meet the student's specific needs, and is calculated to enable the student to receive educational benefit.
6. In determining whether an IEP provides an opportunity for a student to receive educational benefit, the Supreme Court in *Rowley* specifically held that the Act does *not* require that the education services provided to the disabled student "be sufficient to maximize each child's potential." *Id.* at 198. The Court further stated that "to require . . . the furnishing of every special service necessary to maximize each handicapped child's potential is, we think, further than Congress intended to go." *Id.* at 199. The Court held that the IDEA requires a school district to provide a "basic floor of opportunity" for the disabled child. *Id.* at 201.
7. The Eleventh Circuit Court of Appeals in *J.S.K v. Hendry County Sch. Bd.*, 941 F.2d 1563 (11<sup>th</sup> Cir. 1991), addressed the issue of the level of educational benefit required under EAHCA (now

IDEA). Following *Rowley*, the Eleventh Circuit held: [W]hen measuring whether a handicapped child has received educational benefits from an IEP and related instructions and services, courts must only determine whether the child has received the basic floor of opportunity. *Todd D. v. Andrews*, 933 F.2d 1576, 1580 (11<sup>th</sup> Cir. 1991). This opportunity provides significant value to the handicapped child who, before EAHCA might otherwise have been excluded from *any* educational opportunity. The IEP and the IEP's educational outcome need not maximize the child's education. *Id.*; *Doe v. Alabama State Dep't of Educ.*, 915 F.2d at 665. If the educational benefits are adequate based on surrounding and supporting facts, EAHCA requirements have been satisfied. While a trifle might not represent "adequate" benefits, *see, e.g., Doe v. Alabama State Dep't of Educ.*, 915 F.2d at 655, *maximum improvement is never required*. Adequacy must be determined on a case-by-case basis in the light of the child's individual needs. *Id.* at 1572-73 (emphasis added). The Eleventh Circuit also noted that in determining whether an IEP provided adequate educational benefit, courts must pay great deference to the educators who develop the IEP. *Id.* at 1573. The *J.S.K.* decision continues to be the standard in the Eleventh Circuit for determining the educational benefit required under IDEA. *See, e.g., Devine v. Indian River County School Board*, 249 F.2d 1289 (11<sup>th</sup> Cir. 2001).

8. The procedural prong of the FAPE analysis under *Rowley* assesses whether a school district has complied with procedures set forth in the IDEA in creating an IEP. In determining whether a procedural defect has deprived a student of FAPE, a court must consider not merely the defect *per se* but whether the procedural violation caused demonstrable harm. Harm occurs if the violation denies parents the opportunity to participate effectively in the IEP process. *Doe v. Alabama State Dept. of Education*, 915 F.2d 651 (11<sup>th</sup> Cir. 1990).
9. [REDACTED] has alleged that he did not receive all the records from the School District to which he was entitled. [REDACTED] contends that he relied on the School District's parental rights brochure, stating that parents have the right to "examine all records" related to their children.<sup>12</sup> The School District argues that this refers to education records. [REDACTED] maintains that this refers to any record regarding the child whatsoever, including those that are plainly not education records. [REDACTED] argues that, because this parental rights notice did not explicitly refer to "education records," that *all* records of any sort must be made available to the parent upon request. [REDACTED]'s argument cannot be sustained.
10. As an initial matter, IDEA requires that school districts present parents with written notices regarding their parental rights in "language understandable to the general public." 34 C.F.R. § 300.503(c); 34 C.F.R. § 300.504(c). Would [REDACTED]'s reasoning be adopted, school districts would be forced to include in their parental rights notices arcane and legalistic definitions of "records" and "education records." Even the meaning of the seemingly clear phrase "education record" is a matter of very real dispute and is still open for interpretation, even among attorneys. By [REDACTED]'s reasoning, school district would need to provide intricate, legalistic and often difficult to understand parental rights materials. No doubt, were a school district to adopt [REDACTED]'s reasoning and burden a parental rights notice with such complicated verbiage, that same school district would come under attack for failing to provide this notice in "understandable language." This is an absurd outcome that cannot be supported in law or in fact.

<sup>12</sup> It is undisputed that Ms. [REDACTED] received this parental rights brochure at all appropriate times.

11. Moreover, ██████'s argument that "records" includes *all* records, taken to its inevitable conclusion, leads to yet another illogical result. ██████ argues that because there is no limiting language surrounding the term "records," that the School District's parental rights brochure must mean all records of any sort. But, just as there is no explicit language limiting this to *education* records, there is similarly no explicit language limiting this to *records in the School District's possession*. By the logic of ██████'s own argument, the School District must be responsible for providing access to all records regarding children, whether or not the School District actually possesses them, because the parental rights notice does not specifically limit the definition of "records" to "records within the School District's possession." Again, ██████'s argument leads to an illogical and unsustainable result. The Court accordingly rejects it and finds that the School District provided ██████ and his parent with appropriate access to his education records, as required by federal law, state law, and the School District's own policies and procedures.<sup>13</sup>
12. ██████ has also alleged that his parent was not given the opportunity to fully participate in the development of the IEP at issue in this matter because draft goals and objectives and a draft behavior intervention plan (BIP) were prepared at "premeetings" of District staff. ██████'s argument is entirely unsupported by law.
13. The Sixth Circuit Court of Appeals has recently addressed this issue in *N.L. by Ms. C. v. Knox County Schools*, 315 F.3d 688 (6th Cir. 2003). The court found no basis to the parent's allegation that a meeting of a school-appointed evaluation team held before an IEP team meeting violated the procedural requirements of IDEA. The court noted that the parent was an active participant in the IEP meeting and not only registered her disagreement with the IEP team's conclusion but also requested alternative to the reports. The court held that when a parent fully participates in an IEP meeting and is an active participant in the final determination of the child's eligibility, there is no substantive harm caused when the school-appointed experts and school officials confer *ex parte* so as to coordinate the drafting of an assessment report. In fact, the court stated that it is far from clear that such meetings constitute even technical violations of IDEA procedures. *Id.*, at 694.
14. In reaching its decision in *N.L.*, the Sixth Circuit cited its prior decision in *Burilovich v. Board of Educ.*, 208 F.3d 560 (6th Cir. 2000), in which it addressed the procedural issues raised by meetings held outside the presence of the parent in the context of an alteration of an existing IEP. The court there held: Plaintiffs have not indicated how they were prevented from participating in the development of the IEP. The parents attended a December 1996 IEPC [Individualized Educational Program Conference], strongly expressed their views at the March 1996 IEPC, had

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<sup>13</sup> ██████ also argues that the School District improperly obtained Dr. ██████'s records related to ██████. As an initial matter, Ms. ██████ herself produced her copy of his records to the School District in response to a valid and enforceable subpoena. ██████ cannot credibly claim that the School District improperly obtained the very same documents that his parent surrendered to it. Second, ██████ contends that, because Ms. ██████ did not sign a release allowing Dr. ██████ to communicate those documents that were in his possession and control, that the School District acted improperly in receiving them. Again, this argument cannot be taken seriously. As the holder of the documents, it was Dr. ██████'s responsibility to ensure that he handled and distributed them properly. If Ms. ██████ is upset that the Dr. ██████ released these documents to the School District, her objection is appropriately directed towards Dr. ██████, rather than the School District. Finally, ██████ contends that the School District improperly engaged in prehearing "discovery" by receiving these documents prior to the hearing. Once again, this argument is not plausible. Discovery is a compulsory process, in which a party is *required* to produce information to another party.

the opportunity to participate in the May 1996 IEPC, and also expressed their views through letters and telephone conversations with district staff. *Furthermore, plaintiffs have cited no support for their implicit assertion that schools may never discuss a child's IEP, goals, objectives, or educational methodology out of the presence of the parents.* For these reasons, plaintiffs have failed to demonstrate that they were denied participation in the IEPC process. 208 F.3d at 568 (emphasis added).

15. Just as the parents in *N.L. and Burilovich*, Ms. ■ attended each and every IEP meeting, was represented by counsel or by advocates at several of them, actively participated, requested alteration to the drafted goals and objectives, and strongly voiced her disagreement. On multiple occasions, the School District even elected to accede to Ms. ■'s particular demands for placement, despite their own disagreement. On this occasion, it is fair to say that, not only did Ms. ■ have the opportunity to participate in the IEP, her request regarding placement was followed. Therefore, Ms. ■'s opportunity to fully participate in the IEP process was not denied, and no procedural violation occurred.
16. ■ further argues that, because he sometimes did not achieve the criteria for mastery listed in his goals and objectives, that he did not make adequate progress and therefore did not receive a FAPE. This argument is contrary to the law. It is well settled that the IDEA does not require that a school district guarantee "to produce any particular outcome." *Rowley*, 458 U.S. at 192 (internal quotations omitted). In fact, IDEA's implementing federal regulations specifically provide that a school district shall not "be held accountable if a child does not achieve the growth projected in the annual goals and benchmarks or objectives." 34 C.F.R. § 300.150(b).
17. Accordingly, courts have consistently held that mastery of goals and objectives is not required to provide a FAPE. Rather, progress alone, even when that progress falls short of the mastery levels contained in an IEP, constitutes "adequate progress" and the provision of a FAPE in accordance with IDEA. *See, e.g., C.J.N.*, 323 F.3d at 638 ("specific results are not required" by IDEA); *O'Toole v. Olathe Dist. Schools Unified Sch. Dist.*, 144 F.3d 692, 707 (10<sup>th</sup> Cir. 1998) (progress short of mastery on goals and objectives was evidence of adequate educational progress); *Slama v. Independent Sch. Dist. No. 2580*, 259 F. Supp.2d 880, 883 (D. C. Minn. 2003) (IDEA does not require specific results); *McGovern v. Howard County Public Schools*, 2001 U.S. Dist. LEXIS 13910, \* 45 (U.S. Md. 2001) (student who had only mastered math goals and no others made "meaningful educational progress"); *Mandy S.*, 205 F. Supp. 2d at 1366 ("guaranteed outcome" standard is inapplicable to IDEA); *Cavanaugh v. Grasmick*, 75 F. Supp. 2d 446, 475-476 (D. C. Md. 1999) (even though child had not mastered a single goal or objective, he had made adequate progress).
18. By arguing that his lack of mastery of his goals and objectives constitutes a denial of FAPE, ■ is advocating the exact "guaranteed outcome" standard specifically disavowed by IDEA, its implementing regulations, and well-settled case law. ■ has made progress on the specific goals and objectives contained in his IEP's. These same IEP's allowed him to receive adequate educational benefit, as evidenced by this progress. The School District has, therefore, provided ■ a FAPE in accordance with IDEA, and ■ has failed to show otherwise.

19. In essence, only one question lies at the heart of this case: did [REDACTED] require homebound instruction, beginning in Spring 2004, in order to receive FAPE? The answer, based on all the evidence, is that he did not, and that the IEP offered by the School District (and agreed to by his parent) afforded him FAPE.
20. [REDACTED] was clearly making good progress on his goals and objectives. By January 2004, he had mastered or partially mastered each and every goal and objective in his IEP. That he had not fully mastered these goals by January 2004 (before the expiration date of the IEP), or that his mastery levels on some goals was slightly lower in January 2004 than in November 2003, is inapposite. As noted, [REDACTED] was out of school for two full weeks for winter break. He had attended only eight-and-one-half days after this winter break before Ms. [REDACTED] prohibited him from returning to school. It is to be expected that all children, away from the structure and demands of school for a two-week vacation, would require some time to readjust to the demands of a school environment.
21. In fact, [REDACTED] had specifically shown the need for a short period of time to readjust to a school environment after winter breaks. Ms. [REDACTED] did not allow [REDACTED] this opportunity for readjustment, an opportunity that any child would need. Moreover, [REDACTED] apparently returned to school from this vacation, having spent two weeks exclusively with his family, under the belief that he did not have to follow the instructions of his teachers because they were going to jail. This Court will not speculate on where, how, or from whom these beliefs may have been formed. Nevertheless, [REDACTED] clearly required some adjustment period at school that his parent denied him by her decision to prevent his school attendance.
22. Not only does it appear that [REDACTED] did not require homebound instruction, the School District had no reliable information on which to allocate such instruction to him. Georgia DOE rules make clear that the provision of homebound services should be based on receipt by the local school system of a completed medical referral form signed by a physician, as defined in state law and licensed by the appropriate state agency or board, stating that it is anticipated the student who is able to participate in educational instruction will be absent a minimum of 10 consecutive school days or that the student has a chronic health condition causing him or her to be absent for intermittent periods of time, i.e., of greater than, equal to, or less than 10 days on each occasion during the school year. Georgia DOE Rule 160-4-2-.31(2)(a)(1).
23. [REDACTED] presented only one reason to the School District in support of his demand for homebound instruction: behavioral issues due to medication management. As such, this is the only reason the School District could legitimately consider. Any post-hoc rationalizations presented by [REDACTED]'s attorneys at subsequent IEP meetings or during this trial cannot form the basis for this School District's (or any school district's) decision to grant or deny homebound services. By definition, attorneys are not medical professionals, and they do not have the medical expertise necessary to justify a request for homebound services. Thus, the attorney's rationalizations that were presented at the February 20, 2004 IEP meeting, because they were beyond the scope of anything provided by any actual treatment professional, could not form the basis for the provision of homebound services. And, while Dr. [REDACTED] may have expanded his rationale for requesting homebound services during this hearing, beyond what he actually put in his letter, he never presented these reasons to the School District (and apparently never attempted to do so) at

the time. Obviously, the School District could not consider this information that he did not provide.

24. Moreover, this Court finds it unlikely that Dr. [REDACTED]'s letter requesting homebound instruction was somehow unrepresentative of his actual opinions, despite his testimony. It is beyond dispute that he wrote this letter at the request of [REDACTED]'s parent. It is further beyond dispute that her attorney actually provided materials to Dr. [REDACTED] to assist him in writing this letter, and later reviewed and approved this letter before providing it to the School District. Ms. [REDACTED] had every opportunity, in Spring 2004, to fully present her request for homebound instruction, to list all the reasons he requested it, and to provide all the necessary information. Apparently, both Ms. [REDACTED] and her attorney agreed that Dr. [REDACTED]'s letter fully captured the entire rationale behind their request for homebound instruction. Any post-hoc rationalizations presented now are unpersuasive.
25. As established, the sole reason presented to the School District for [REDACTED]'s request for homebound instruction was due to possible behavioral changes due to medication management. In this instance, this reason was insufficient to justify the request. School districts routinely serve students undergoing medication changes and are well equipped to address and respond to any associated behavioral changes. [REDACTED]'s teachers, in particular, were well equipped to address any and all such issues with [REDACTED]. They could have continued to serve him appropriately in a school setting, had Ms. [REDACTED] not prevented his school attendance.
26. Further, the School District made every reasonable effort to accommodate Ms. [REDACTED]'s concerns. Ms. [REDACTED] objected to School District employees questioning Petitioner regarding the alleged molestation. It does not appear, however, that any such questioning by a School District employee ever took place. At the most recent IEP meeting, each and every participant assured Ms. [REDACTED] that they had not questioned [REDACTED] and that no one else had, either. Meanwhile, it is undisputed that [REDACTED] faced repeated questioning regarding the alleged incident by his parent, grandparent, and the many outside professionals seeing him.
27. Ms. [REDACTED] further objected to [REDACTED] remaining at [REDACTED], citing a fear for his safety there. The School District then allowed Ms. [REDACTED] to visit another school that [REDACTED] could attend. Ms. [REDACTED] did visit this school and, via an email that lavished praise on the teacher with whom she had spoken, requested that [REDACTED] begin attending [REDACTED] Elementary School immediately. Less than twenty minutes later, and after seeking the advice of her attorney, Ms. [REDACTED] retracted her request and continued to prevent [REDACTED] from attending any school. Ms. [REDACTED] did not speak to any treatment professional to discover what medical, emotional, psychological, or educational impact her decision to send [REDACTED] to [REDACTED] might have. Given this, Ms. [REDACTED]'s change of course appears to have been an effort to enhance a litigation position, rather than an effort to address [REDACTED]'s educational needs.
28. Indeed, there is no evidence whatsoever that [REDACTED] could not have returned to school (whether that school be [REDACTED] or another school in the School District) long before the start of this hearing. By Ms. [REDACTED]'s own admission, [REDACTED] is bored at home and wants to return to school. In the ten weeks he had been absent by the time of this hearing, Ms. [REDACTED] had provide only six hours of instruction, provided by a "teacher's assistant" of unknown qualifications or expertise. Even

Dr. [REDACTED] who wrote the letter requesting "temporary in-home schooling" for [REDACTED], acknowledged that [REDACTED] may very well have been able to attend school at the time of this hearing, if not earlier. In short, the School District has been prepared to adequately address each and every one of Ms. [REDACTED]'s concerns and appropriately educate [REDACTED] in a school setting. There has been no showing that any homebound services were required to provide [REDACTED] FAPE.

29. Even if [REDACTED] had shown that the School District denied him a FAPE by requiring that he attend school, in order to obtain reimbursement for private services at public expense, [REDACTED] bears the burden of proving that the private services he elected to obtain, albeit only six hours of them, were appropriate. 1412(a)(10)(C); 34 C.F.R. § 300.403(c); *School Committee of the Town of Burlington v. Dep't of Educ. of the Commonwealth of Mass.*, 471 U.S. 359, 105 S. Ct. 1996 (1985). [REDACTED] has failed to make such a showing.
30. As an initial matter, homebound instruction represents a far more restrictive environment than the appropriate placements that the School District has provided and proposed for [REDACTED]. While he is prevented from attending school by his parent, [REDACTED] has no opportunity at all for any interactions or learning experiences with any peers. The School District, meanwhile, has successfully implemented IEP's that allow [REDACTED] to receive instruction with nondisabled peers.
31. IDEA expresses a strong preference for "mainstreaming" and requires that children be educated in the least restrictive environment, with nondisabled peers to the maximum extent possible. 20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.550(b); see also, e.g., *Rowley*, 458 U.S. at 194. It is clear that homebound instruction is not the least restrictive environment for [REDACTED]. Indeed, it denies him the very important opportunity for an education with any peers at all, nondisabled or otherwise. It is particularly critical for [REDACTED] to be educated with other students, as he has strong imitative skills that render other children appropriate role models for him.
32. Moreover, [REDACTED] has failed to show how his unilaterally obtained private services meet his educational needs. [REDACTED] failed to show that the teacher's assistant who has worked with him for a total of just six hours is providing appropriate services. Ms. [REDACTED] did not know IEP goals that this teacher's assistant had addressed with [REDACTED] in her six hours with him. She did not know if the teacher's assistant had taken any data regarding any aspect of her time with [REDACTED] (Ms. [REDACTED] offered no information regarding any professional qualifications or experience that this teacher's assistant possessed in teaching children, disabled children, or children with Down's Syndrome. Based on this lack of information, this Court cannot find that [REDACTED] has proven the appropriateness of these services.
33. This Court is sympathetic to Ms. [REDACTED]'s concerns regarding [REDACTED], given her belief that [REDACTED] was molested.<sup>14</sup> That belief, however, cannot justify withholding [REDACTED] from the appropriate education that has continually been available to him from the School District. Even [REDACTED]'s own treatment professional concedes that there is no evidence that [REDACTED] cannot currently be in school, and there is likewise no evidence that [REDACTED] Elementary School is an unsafe environment for

<sup>14</sup> This Court cannot determine whether [REDACTED] was molested at [REDACTED] given both the conflicting and evolving nature of Ms. [REDACTED]'s allegations, the admitted lack of any forensically sound interviews of [REDACTED] himself, and the lack of any other legally sufficient evidence to conclude such an incident occurred. Further, this question is both beyond the scope of this proceeding and the scope of this Court's authority.

him. The School District has shown a willingness to hear Ms. [REDACTED]'s concerns and address them properly, including allowing [REDACTED] to attend another school, an option that Ms. [REDACTED] appeared to want until advised not by a treatment professional but by her attorney. The School District has offered and continues to offer [REDACTED] FAPE, in a school setting. It is Ms. [REDACTED]'s decision whether she will allow [REDACTED] the opportunity to access it by attending school.

34. Because the School District has offered [REDACTED] FAPE, this Court finds in favor of the School District on all issues for resolution. Accordingly, all requests for relief by Petitioner are hereby DENIED.

#### IV. Decision

The placement provided to [REDACTED] by the School District was appropriate and provided him FAPE in the least restrictive environment in accordance with IDEA. The private services unilaterally obtained by [REDACTED] have not been shown to be either necessary or appropriate. Accordingly, [REDACTED]'s requested relief is DENIED.

SO ORDERED, this 30<sup>th</sup> day of June 2004.

  
STEVEN W. TEATE  
Administrative Law Judge