

STATE OF NORTH CAROLINA
COUNTY OF JOHNSTON

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
11 EDC 04970

[Student] by parents [Mother] and [Father],)
Petitioner,)
)
vs.)
)
Johnston County Board of Education,)
Respondent.)

FINAL DECISION

This contested case was heard before Beecher R. Gray, Administrative Law Judge Presiding, on July 13, 14 22, 25, August 1, 4, 5, 22, September 1, 8, 9, 19, 21, October 26, 31, November 10, 22, 23, and December 8 and 9, 2011, in Raleigh and Smithfield, North Carolina. Respondent filed a proposed decision on March 12, 2012. Petitioners filed a proposed decision on March 15, 2012. Respondent filed a motion to strike Petitioners' proposed decision as being filed outside the time allowed for such filing.

APPEARANCES

For Petitioners: Robert C. Ekstrand
Ekstrand & Ekstrand LLP
811 Ninth St., Suite 260
Durham, NC 27705

For Respondent: Carolyn A. Waller
Christine T. Scheef
Tharrington Smith, L.L.P.
209 Fayetteville Street
Post Office Box 1151
Raleigh, North Carolina 27602-1151

WITNESSES

For Petitioners: [E.S.]
[Mother]
[Father]
[A.P.]
[A.R.]
E.M.]
[K.B.]
[B.P.]
[T.V.]
For Respondent: [M.L.]

[K.C.]
[Dr. L.L.]
[K.B.]
[Dr. K.M.]
[N.N.]
[R.L.]
[M.H.]
[W.B.]
[M.Y.]
[K.A.]
[L.S.]
[K.B.]

EXHIBITS

The following exhibits were received into evidence:

Petitioners' Exhibits: 10, 11, 12, 13, 96, 97, 184, 110, 111, 112, 113, 114, 115, 116, 117, 121, 195, 202, 205, 206, 216, 218, 219, 220, 221, 302, 307, 324, 351, 355, 356, 364, 374, 378, 379, 390, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 423, 426, 428, 430, 431, 450A (audio), 450B (audio), 451 (audio), 452A (audio), 452B (audio), 453A (audio), 453B (audio), 457 (audio), 458 (audio), 459 (audio), 460 (audio), 461 (audio), 490, 500.1078, 500.1080, 500.1145, 500.1148, 500.1339, 500.1366, 500.1403, 500.1408, 500.1416, 500.1418, 500.1431, 500.1683, 501, 502, 503, 504, 505, 507, 509, 510, 511, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542

Respondent's Exhibits: 1, 2, 3, 5, 6, 7, 21, 22, 30, 33, 37, 41, 46, 47, 50, 51, 52, 53, 54, 55, 57, 58, 61, 65, 66, 67, 68, 69, 70, 71, 73, 74, 85, 86, 89, 92 (p. 1789-1797), 95, 96, 97, 98, 100, 101, 104, 105, 106, 108, 109, 110, 111, 112, 113, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157

The exhibits have been retained as part of the official record of this contested case.

STIPULATIONS

1. It is stipulated that all parties properly are before the Office of Administrative Hearings as to Petitioners' claims that [Student] was not properly evaluated, Petitioners' claims that [Student] was not properly identified as a child with a disability, and Petitioners' claims regarding [Student]'s placement or that [Student] was otherwise denied a free appropriate public education ("FAPE").
2. It is stipulated that the Office of Administrative Hearings has personal jurisdiction over the parties to this action and has subject matter jurisdiction over any issues raised in the Petition regarding [Student]'s identification, evaluation, and placement, or the provision of a FAPE to [Student]

3. In addition to the other stipulations contained herein, the parties hereto stipulate and agree with respect to the following undisputed facts:
- a. This is a proceeding arising under the Individuals with Disabilities Education Act (“IDEA”).
 - b. Petitioner [Student] is a “child with a disability” as that phrase is defined in IDEA.
 - c. [Student] has been determined eligible for services under IDEA, with a primary area of eligibility of “autism.”
 - d. Respondent Johnston County Board of Education is a “Local Educational Agency” as that term is defined in IDEA.
 - e. While [Student] was residing in Johnston County and enrolled in the Johnston County Schools, Respondent had a legal obligation under IDEA to provide [Student] with an opportunity for a FAPE.
 - f. IDEA mandates that local boards of education afford parents of a child with a disability an opportunity to meaningfully participate in meetings with respect to the identification, evaluation, and educational placement of the child and the provision of a FAPE to the child.
 - g. Prior to the March 29, 2011 Individualized Education Program (“IEP”) meeting, in an effort to protect staff from further injuries and incidents of violence, the Superintendent determined that it was important to place [Student] in a homebound setting. His position was shared by the interim principal of ABC Elementary School as well as the Director of Exceptional Children's Services.
 - h. On March 29, 2011, an IEP meeting was held that resulted in [Student]'s placement being changed from self-contained to homebound. All members of the IEP team were polled and individually expressed their support for the homebound placement, with the exception of Petitioners, who expressed their strong opposition to a homebound placement.
 - i. Since the IEP team reached the same decision as the Superintendent, it is impossible to separate the decision of the IEP team from the decision of the Superintendent, thereby creating a procedural violation under IDEA.
 - j. As a result of this procedural violation, the District accepts responsibility for providing compensatory services to [Student] from March 29, 2011 through the end of the 2011 school year, the period of time [Student] was placed on homebound.

ISSUES

1. Whether Respondent has provided [Student] with the opportunity for a FAPE.
2. Whether Petitioners have identified a private educational program for [Student] and, if so, whether that program is appropriate under IDEA.

Based upon the preponderance of the admissible evidence, the undersigned makes the following:

FINDINGS OF FACT

In making the following findings of fact, the undersigned has considered only the admissible evidence introduced at the hearing. The undersigned has weighed such evidence and has assessed the credibility of the witnesses by taking into account the appropriate and traditional factors for judging credibility such as the demeanor of the witness; the manner and appearance of the witness; any interests, bias, or prejudice the witness may have; the apparent understanding and fairness of the witness; the opportunity of the witness to see, hear, know, or remember the facts or occurrences about which the witness testified; whether the testimony of the witness is reasonable; and whether the testimony is consistent with all other credible evidence in the case. Based upon these standards, the undersigned make the following findings of fact:

1. The parties received notice of hearing by certified mail more than 15 days prior to the hearing and each stipulated on the record that notice was proper.
2. Respondent Johnston County Board of Education is a local education agency (LEA) receiving funds under the Individuals with Disabilities Education Act, 20 U.S.C. §1400 *et seq.*, (IDEA) and was responsible for providing special education to [Student] under Article 9, Chapter 115C of the North Carolina General Statutes.
3. The parties agree that [Student] is identified as a child in need of special education services, with an area of eligibility of autism. [Student] attended ABC Elementary School, in Johnston County, during the 2010-11 school year.
4. In their Petition for a Contested Case Hearing, Petitioners alleged that the Board had violated the IDEA and deprived [Student] of a free appropriate public education (“FAPE”) in numerous ways, including:
 - a. Failing to implement a verbal behavior analysis (VBA) program for [Student], despite [Mother] informing the principal of ABC Elementary School prior to the start of the school year that a VBA program was essential for [Student];
 - b. Failing to provide staff appropriately trained to meet [Student]’s needs;
 - c. Failing to educate [Student] in the educational placement required by his *** County IEP;

- d. Failing to educate [Student] in his least restrictive environment;
 - e. Refusing, for a time, to provide [Student] transportation, as required in his IEP;
 - f. Improperly suspending [Student] for behavior attributable to his disability;
 - g. Failing to provide a certified classroom teacher for a portion of the year;
 - h. Improperly changing [Student]’s educational placement to homebound; and
 - i. Failing to deliver the required homebound services.
5. Petitioners sought compensatory services for the alleged deprivation of a FAPE between August 25, 2010, and reimbursement for the cost of private services incurred beginning in April 2011, when [Student] started receiving behavioral therapy at Creative Consultants.
 6. During the hearing, [Father] testified that he and [Mother] also were seeking to have the school district pay for five years of private school at a school of their choosing. (Transcript (hereafter “T.”) 851) In September 2011, [Student] began attending [Private]School, a private school in Cary, North Carolina; however, it was not clear whether petitioners intended for [Student] to remain at [Private] School for five years.

[Student]’s program in *** County

7. [Mother] testified at the hearing that she first contacted [N.N.], the principal at ABC Elementary School, in early August 2010, after she had determined that the new home that she and her husband were purchasing was in the ABC Elementary School district. (T. 305)
8. [N.N.] served as the principal at ABC from its opening in July 2008 until February 2011, when she retired after working for the Johnston County Schools for 31 years. (T. 2574, 2578)
9. [N.N.] graduated from Appalachian State University with an undergraduate degree in special education, with a concentration in mental retardation. [N.N.] earned her Master’s degree in special education from North Carolina State University and then earned her Administrative certification. (T. 2577)
10. [N.N.] served in several capacities while employed by the Johnston County Schools, including Resource teacher at Smithfield Elementary School; Diagnostic Prescriptive Specialist with Exceptional Programs; Assistant Principal at [C**] Elementary School; Principal at [X] Elementary School; Principal at [Z] Elementary School; and Principal at ABC Elementary School. (T. 2574-2575)
11. As principal, [N.N.] was responsible for the overall operation of the school, including

maintaining a safe and orderly environment for the approximately 600 students. [N.N.] also was the instructional leader and worked with the school improvement team in reviewing data and developing goals for the school. (T. 2577)

12. Among the data that [N.N.] reviewed as the principal were the results of the Johnston County Schools in-house survey of students in third through fifth grades, staff, and parents. ABC had very high ratings on whether it was a good place for students to attend, whether it was safe, and whether parents were pleased with the level of communication with the teachers. (T. 2577-2578)
13. When [Mother] contacted [N.N.] the first time, she and her family still lived in *** County, in the home in which [Student] had lived since he was one year old. (T. 305, 430)
14. According to [Mother]--during that initial phone call--she informed [N.N.] that her family would be moving to Johnston County and that her two sons--[Student] and [Brother]--both special education students, would be enrolling at ABC. (T. 306-307)
15. She explained to [N.N.] that [Student] had behavior difficulties during the previous school year when he was enrolled at [C] Elementary School in *** County, but that “as soon as we implemented [a] VBA classroom and got him in an appropriate setting, he--from the first day--took off.” (T. 307-308)
16. During this telephone call, [Mother] asserted that the staff at ABC would need to be trained in VBA and she provided the name of the autism consultant--[L.S.]--who had worked with the *** County Schools. In addition, [Mother] made clear that she and her husband had filed a State complaint against the *** County Schools the previous year when they were unhappy with the district’s services for [Student] (T. 307-308)
17. Testimony offered by other witnesses at the hearing does not support [Mother]’s statements that [Student] received his educational services in a VBA classroom or that VBA constituted a substantial part of his educational programming.
18. The *** County Schools did contract with [L.S.]--an expert in VBA--who conducted an observation of [Student] in November 2009 while he was enrolled at [C] Elementary School. (T. 3343)
19. [L.S.] testified at the hearing for Respondent and was qualified as an expert witness in verbal behavior analysis, applied behavior analysis, and the use of those methodologies with children with autism. (T. 3339, 3343) [L.S.] testified that when she was first contacted by the *** County Schools about [Student], she learned that he was in a regular education setting for the entire day and she recommended that he be moved to a smaller setting. (T. 3352-3353) She made that recommendation because it was her opinion that the language demands and the level of social communication required in a regular education classroom were too much for [Student] (T. 3383)
20. [L.S.] felt that a separate classroom would provide [Student] with more opportunities for

interaction and verbal exchanges, as well as more frequent reinforcement. She believed that if [Student] were moved to a smaller setting, his maladaptive behaviors would decrease immediately. (T. 3383)

21. [L.S.]’s assessment of [Student]’s success in the regular education setting was correct. [Student]’s special education case manager--[E.S.]--had observed B.H in the regular education classroom and--according to her--“it wasn’t working” because [Student] was frequently getting frustrated. (T. 78-79)
22. Following [L.S.]’s recommendation, [Student]’s IEP was amended so that he was spending “half or more than half his day in a separate environment.” (T. 151-153; *see also* R. Ex. 7) The number of students in this separate classroom ranged from 5 to 11 and there were always a minimum of two adults. (T. 182)
23. Because of this change in placement, [E.S.] began providing [Student] his instruction in all “core subject areas” in the separate setting. (T. 148) The only academic services that [Student] continued to receive in a regular classroom were science, social studies, and enrichment classes such as art and music. (R. Ex. 7)
24. After this change was made, [E.S.] was “quickly able” to manage many of [Student]’s behaviors, before the introduction of any VBA strategies by [L.S.]. [E.S.] attributed that success to the fact that her “group setting—[her] setting was a lot different than that whole group setting.” (T. 181-184)
25. Contrary to [Mother]’s assertion that [L.S.] was essential to [Student]’s school program, after observing [Student] in November 2009, [L.S.] was only called on to provide input on [Student]’s program two or three times during the remainder of that school year. (T. 3344, 3381)
26. In addition, [L.S.] neither recommended nor set up a “VBA classroom” for [Student] in *** County. (T. 3389) In fact, although [Student]’s *** County IEP called for him to spend more than half of his day in a special education classroom, [L.S.] never observed [Student] in that classroom, nor did she ever provide any direct training to [E.S.]. (T. 3384, 3385)
27. Rather than setting up a VBA classroom for [Student], [L.S.] attended a meeting with the [C] Elementary School staff at which she provided strategies for working with [Student] (T. 3385)
28. [L.S.] also provided data sheets to the staff in *** County, but--to the best of her knowledge--they did not use those data sheets or any other verbal behavior checklists, as required by [Student]’s IEP. (T. 3387-3388) [E.S.] specifically told [L.S.] that she had modified the sheets. (T. 3388)
29. [E.S.] testified at the hearing that she used a journal with [Student], as [L.S.] recommended. (T. 84) During a telephone conversation early in the 2010-11 school year, however, she told [K.A.]--the Johnston County Schools’ compliance specialist--that

while [L.S.] had made some suggestions, [E.S.] did not find those suggestions particularly useful. (T. 3026; R. Ex. 104, pp. 4-6)

30. That statement is consistent with a telephone conversation that [E.S.] had with [M.Y.] -- the teacher in the separate autism classroom at ABC Elementary during the first nine weeks of the 2010-11 school year--shortly after the 2010-11 school year began. During that conversation, [M.Y.] asked [E.S.] about [L.S.] and the training she had provided in *** County. [E.S.] said that [L.S.] had provided specific training to the *** staff about what to do with [Student]. [E.S.] also said that--when [L.S.] left--the staff simply did what they believed worked with [Student] (T. 2925)
31. During the hearing, [E.S.] acknowledged that she did not fully implement or maintain many of the strategies [L.S.] suggested using with [Student].
32. For example, although [L.S.] recommended using verbal behavior cards with [Student], [E.S.] testified that she changed the use of the cards from the manner in which [L.S.] used them, "because [Student]'s IQ was higher." (T. 96) By the end of the year, she had stopped using the cards altogether. (T. 97)
33. [L.S.]'s testimony at the hearing was contrary to [E.S.]'s on this point. [L.S.] testified that the cards are designed so that [Student] would learn to engage in an exchange over any task, even tasks he did not know well, such as asking questions or copying. She further testified that [Student] would benefit from the continued use of the cards, regardless of his I.Q. (T. 3403-3404, 3406-3407)
34. According to [L.S.], the most demanding part of a lesson plan for [Student] was not the content of the academic material; instead, it was the exchange required in talking about a lesson and what was expected of him as a student. (T. 3404) [Student]'s behavioral issues were more severe with peers than with adults. (T. 3346)
35. He particularly struggled with reading comprehension, although he was able to read the words themselves. His ability to read--according to [L.S.]--was significantly more advanced than his ability to comprehend.
36. Although [L.S.] described [Student] as "very social" and that he likes to interact with others, [L.S.] also stated that he had weaknesses in intraverbal skills, which refers to the ability to engage in conversational exchanges. (T. 3348-3349)
37. [Student] could answer basic "Wh" questions such as, "What is your name?" or "Who is your teacher?" (T. 3350) For non-routine questions, however, he often either would not respond or would give an incorrect answer. (T. 3349) If [E.S.] had used the verbal behavior cards that [L.S.] had provided--according to [L.S.]--he would have been taught to ask questions such as, "What do you mean?" or "Can you show me?" (T. 3406)
38. The verbal behavior cards that [L.S.] had recommended to *** County to be used with [Student] were both maintenance cards--which were white--and prompted cards, which were colored. (T. 3399) The maintenance cards also had different colored print, with one

color print being a verbalization for the teacher and another color reflecting something [Student] is supposed to say. (T. 3400)

39. [L.S.] testified that the cards were designed to encourage continual prompting and engagement of [Student]. Typically, [L.S.] would provide about 20 prompted cards, which included the answers for [Student]. (T. 3401) For example, if [L.S.] were trying to teach [Student] to use the phrase “I don’t know,” she would provide a card that prompted the teacher to ask, “What is the capital of Yugoslavia?” and a card that would prompt [Student] to say, “I don’t know.” (T. 3400)
40. [L.S.] also would provide five maintenance cards, which included skills [Student] already had mastered. For example, [Student] might have five cards instructing him to do a particular thing because he already knew what “do this” meant. (T. 3401)
41. A card would move from a prompted card to a maintenance card when [Student] started using the question or phrase on the card spontaneously and across settings and people. [L.S.] continued to include maintenance cards in [Student]’s program because she wanted him to continue to practice the skills he already had demonstrated so that he would not lose the skills. (T. 3401-3402)
42. [L.S.] testified that as a student masters more cards, it suggests that the student is ready to learn a higher level of communication. (T. 3407) No one in *** County, however, ever asked [L.S.] to create more cards for [Student], although a student’s language needs increase as academic demands increase. (T. 3408)
43. In addition to the continued use of the verbal behavior cards, there were other recommendations that [L.S.] made to the *** County Schools that were not implemented.
44. For example, [L.S.] recommended that the district conduct a verbal behavior profiling across settings every four to nine weeks in order to track changes in [Student]’s verbal skills. (T. 3381-3382, 3386) [L.S.], however, never was asked to conduct another complete verbal behavior profile on [Student] while he was in *** County, nor did she complete one. (T. 3381-3382)
45. Finally, during the 2009-10 school year, [L.S.] recommended to the staff in *** County that [Student]’s “break mat” be removed. (T. 2941) [M.H.]--a teaching assistant who worked with [Student] in the regular education setting in *** County--testified that [Student] used the break mat throughout the year, and [E.S.] recommended its use to [M.Y.]. (T. 2796-2797)
46. [E.S.] made that recommendation in an email to [M.Y.], the teacher in the separate autism classroom at ABC Elementary during the first nine weeks of the 2010-11 school year. [M.Y.] is a certified special education teacher who retired from the Johnston County Schools in 2009 after working in a number of different capacities for more than 32 years. (T. 2901-2903) [M.Y.] was hired to work in the autism classroom at ABC Elementary School during the maternity leave of the regular teacher, [T.Z.]. (T. 2582-2583)

47. On August 23, 2010--shortly before the school year started--[M.Y.] emailed [E.S.] after meeting with T.H, who had suggested that [M.Y.] contact [E.S.] to get some insight into working with [Student] (R. Ex. 142)
48. In her email, [M.Y.] asked [E.S.] a series of questions, including how to set up expectations for [Student]; whether he needed a written schedule; the current grade level at which he was functioning; what motivated him; and tips for handling transitions. (R. Ex. 142)
49. In her response to [M.Y.], [E.S.] indicated that [Student] had a transition board and stated that “[h]e will do anything as long as he can pick his reward.” However, [L.S.] had recommended that the *** County Schools use a token economy system with B.H and--when she first came to ABC Elementary School--she provided [M.Y.] with the token boards that she believed [Student] had been using--upon her recommendation--in *** County. (R. Ex. 41, p. 2; T. 3371)
50. In her email to [M.Y.], [E.S.] explained that [M.Y.] would be able to simply write in a task for [Student] to complete--followed by the reinforcer he would earn upon completion--then set his timer, and “[i]t’s just that easy.” (emphasis added) (R. Ex. 142)
51. [E.S.] also recommended that [M.Y.] create a space in the classroom for [Student]’s “break mat,” to which he could retreat when he had a “moment.” [E.S.] stated that if [M.Y.] would set [Student]’s timer for five minutes that--after those five minutes elapsed--he would come back to the instruction table. (R. Ex. 142)
52. According to [E.S.], [Student] was academically functioning at the late second grade level in language arts and math and--although he could read anything--he struggled with higher-level comprehension questions. She also stated that he was almost ready for 2-digit subtraction with regrouping. (R. 142)
53. Finally, [E.S.] stated that [Student] did not need a written schedule and--if [M.Y.] just used his transition board and time--“things will go very smoothly.” (R. 142)
54. [E.S.] sent [M.Y.] a drawing of what [Student]’s choice board would look like and [M.Y.] began using the choice board with [Student] on the first day of school. (T. 2911, 2913)
55. [E.S.] made no mention of verbal behavior analysis in her email, nor did she describe [Student]’s maladaptive behaviors. After reviewing [E.S.]’s email, [L.S.] testified that she

- would have explained the range of behavior the teacher might expect from [Student] and also would have emphasized strategies that would help when [Student] had a behavioral issue. (T. 3426)
56. Given [L.S.]’s experience with [Student], it was her opinion that [E.S.]’s email to [M.Y.] would not have prepared [M.Y.] sufficiently for [Student]’s classroom behaviors. (T. 3427)
 57. In addition to [E.S.]’s testimony regarding her implementation of the strategies [L.S.] recommended, [M.H.] also testified about her use of those strategies.
 58. During the 2009-10 school year, [M.H.] was a teacher assistant in the regular education classroom for second grade students. (T. 2789)
 59. In her role in working with [Student], [M.H.] would intervene in the event of behavioral issues in the regular education classroom. [M.H.] did not work with [Student] in the resource classroom. (T. 2791-2792)
 60. [M.H.] testified that the types of behavioral episodes in which she had to intervene included [Student] going to the front of the classroom and singing, running around the classroom, and sometimes running out the door. To redirect that behavior, [M.H.] would give [Student] verbal prompts. (T. 2791)
 61. [Student] had a reward board, which [L.S.] had recommended using with [Student] The board would reflect what type of item [Student] was working toward. When [Student] would get off task, [M.H.] would ask him what reward he was working toward and [Student] would tell her. [M.H.] testified that the reward board was similar to the previous system, in which [M.H.] would write in a notebook [Student]’s potential rewards and he would choose what he wanted to earn. (T. 2796-2797)
 62. [L.S.] taught [M.H.] to use flash cards to restore [Student]’s focus when he got off task by flashing cards to which B.H already knew the answers. (T. 2793)
 63. [L.S.] also taught [M.H.] to use the prompted verbal behavior cards, which included phrases that [Student] was supposed to use, such as “I don’t know” or “Could you repeat that?” [M.H.] would show [Student] the card if the teacher asked a question that [Student] didn't understand. (T. 2794)
 64. [M.H.] testified that she used the cards initially to see how they worked, but only for about a month and a half. At that point, [M.H.] chose to use verbal prompts instead. (T. 2794)
 65. [L.S.] also showed [M.H.] how to journal with [Student] [M.H.] would use the journal to write a question that she wanted to ask [Student] For example, she might write “Are you listening?” or “What did she say?” and [Student] would respond. [M.H.] testified that she did not continue to use the journal with [Student] because it was time consuming and she preferred to use the verbal prompts instead. (T. 2794-2795)

66. [M.H.] testified that--at [L.S.]’s recommendation--she attempted to pair [Student] with two other students, but [Student] did not like having other students in his space and this strategy was not always effective. (T. 2796)
67. [M.H.] testified that [Student] used a break mat located in the room next to the regular education classroom. When [Student] needed a break from the regular education classroom, he would ask to go to the break mat. [Student] would be permitted to enter the adjoining room and would lie on the mat. [M.H.] would set a timer, most of the time for at least ten minutes. When the timer went off, if [Student] needed more time, he would ask for more time. [Student] used the break mat throughout the 2009-10 school year. (T. 2797)
68. [L.S.] also taught [M.H.] a technique in which she would “throw numbers out there” for [Student] so that he could remain focused. For example, [M.H.] would say, “13” and [Student] would have to say, “14.” [M.H.] abandoned this strategy after a month and a half because she felt it was very time consuming and did not help [Student] stay focused. (T. 2797-2798)
69. [M.H.] tried some of the techniques that [L.S.] recommended and found that many did not work with [Student] (T. 2798)
70. On the whole, the testimony and evidence offered at the hearing established that while [Student] was exposed to some VBA strategies while in *** County, those strategies were modified or--in some cases--not fully implemented.
71. Further, the program [L.S.] recommended to *** County for [Student] was more extensive than anything attempted for [Student] while in that district. [L.S.] testified that she would have recommended that she provide support for [Student]’s educational program once a week or twice a month; instead, she consulted three or four times during the course of the school year. (T. 3380-3381) The evidence does not support a finding that either [Student]’s academic or behavioral progress while in *** County was the result of the introduction of a verbal behavioral program.

Provision of Comparable Services

72. The services that *** County provided to [Student] were outlined in his IEP, which [Mother] gave to [N.N.] on August 9. (R. Ex. 7)
73. The IEP called for [Student] to receive five 50-minute sessions of math instruction per week; five 95-minute sessions of language arts instruction per week; and three 40-minute sessions of social skills instruction per week. All of this instruction was provided in the special education classroom. (R. Ex. 7, p. 13)
74. He also received one hour per week of occupational therapy; one hour and fifteen minutes per week of speech therapy; and transportation services five times per week. His transportation services were described as “special education bus with safety vest,”

although there was no justification or further description provided on the IEP. (*Id.*)

75. Because [Student] was removed from his non-disabled peers for half of the school day, he was considered “resource” on the continuum of alternative placements.
76. Petitioners claim that [Student] was not served in the appropriate educational placement. The testimony at the hearing established that the Johnston County Schools, with Petitioners’ agreement, initially attempted to provide [Student]’s educational program in two different special education classrooms—[M.Y.]’s autism classroom and Melissa Hill’s resource classroom.
77. According to [N.N.]--prior to the start of the 2010-11 school year--she spoke with [E.S.], who expressed her “excitement” at the fact that ABC had a separate autism classroom. (T. 2594)
78. During the conversation with [N.N.], [E.S.] stated that [Student] received his core academics in the separate setting and that he did go into the regular classroom for some instruction, but that he was pulled out frequently any time there was any kind of a problem. (T. 2596)
79. [E.S.] expressed her excitement not only to [N.N.], but also in an August 19, 2010 email that she sent to [Mother], in which she wrote: “I just talked to [N.N.] at ABC Elementary. She had some questions about [Student] which we expected. That school has an autism classroom. Knowing your boy the way I do, I suggested that they really get to know [Student] and learn about his dislikes/likes before they let me [sic] mainstream a whole lot. I know when [Student] came here, I really wished that I could have kept him closer at first so that I could ease him into transitions that really needed to be taught to him.” (R. Ex. 106)
80. [Mother] responded to [E.S.]’s email by writing: “Did they say anything about what they planned to do? Anything about an IEP meeting? I think I need to call them today. I agree about the mainstreaming thing, and I hope that they are not thinking about putting him in a regular ed setting!!!!” (R. Ex. 106)
81. [E.S.] responded: “She did not mention an IEP meeting time or date. She really wants to talk about placement in the AU classroom with some mainstreaming opportunities as he gets used to his new surroundings. She sounded very on the ball and had great questions. She took down my e-mail address, and she was very excited about your boys. She also mentioned that they have a very experienced teacher in the AU classroom.” (R. Ex. 106)
82. [N.N.]’ recollection is that, during a telephone conversation before school started, she discussed with [Mother] the possibility of basing [Student] in [M.Y.]’s autism classroom at the beginning of the year and [Mother] agreed. (T. 2602)
83. [N.N.]’ recollection is supported by an email that she sent to [W.B.], then the Johnston County Schools’ Director of Support Services, on August 20, 2010. In that email, [N.N.] wrote: “We are probably going to begin services in the AU classroom with Mary Ann to

assess needs. Mom agrees this is the best plan. We will mainstream for resource and enhancements.” (R. Ex. 108)

84. The evidence offered at the hearing shows that this is the plan that was discussed several days later--on August 23, 2010--when [Mother] met with ABC Elementary School staff to discuss [Student] and [Brother]
85. The meeting held at ABC on August 23 was not a formal IEP meeting. When [N.N.] scheduled the meeting, [Mother] told her that she would not be willing to change any paperwork because her “advocate” was not able to attend. In addition, [Mother] wanted to meet with the teachers for both [Student] and his brother, as well as the related service providers who would work with both boys. (T. 2601-2602; R. Ex. 108)
86. As of the meeting on August 23, the school district still had not received any paperwork from *** County, including any evaluations or behavior plans. The only document that had been provided was the *** County IEP, which [Mother] had given to [N.N.]. (T. 2602-2603)
87. At the August 23 meeting, [Mother] was asked to share information about the educational services that [Student] had received in *** County. The *** County IEP that [Mother] had provided contained an occupational therapy goal, a speech/language goal, and a social language goal. There were no behavior goals, and--other than stating that [Student]’s deficits sometimes led to “off-task behaviors which escalate him”-- [Student]’s maladaptive behaviors were not described in the IEP. (R. Ex. 7)
88. In addition, although the parent concerns noted on the first page of the IEP stated that [Student]’s parents were concerned about academics and that his parents wanted [Student] to function on grade level, there were no academic goals. (R. Ex. 7)
89. During the meeting, [M.Y.] recalled that [Mother] said that [Student]’s brother “would be a breeze,” but that the school would have difficulty with [Student] [Mother] discussed his communication disorder and stated that [Student] had been exposed to verbal behavior analysis. [Mother] talked about [Student] relying on verbal cuing and the need for frequent breaks in the classroom. (T. 2907-2908)
90. [M.Y.] also recalled that [Mother] stated that Johnston County should contract with [L.S.], the consultant who had been used in *** County. [M.Y.] recalled that, during the meeting, [Mother] said that she had to threaten the previous school district with a lawsuit to have the district bring in [L.S.] to provide training. (T. 2908)
91. During the August 23 meeting, the team also discussed basing [Student] in [M.Y.]’s classroom, which was a separate setting. [Student] also would get instruction in the resource classroom. (T. 2908-2909)
92. The team did not discuss [Student] being in the regular education setting because [Mother] said during the meeting that he would not be successful in the regular education setting. (T. 2909) According to [M.Y.], [Mother] agreed with keeping [Student] in the

- separate and resource classrooms. (T. 2909-2910) Notes that [N.N.] took at the meeting indicate that the staff and [Mother] agreed on an initial placement schedule. (R. Ex. 99, p. 1)
93. At the beginning of the school year, the resource teacher--Ms. Hill--prepared work for [Student] on a second-grade level, based on the information shared by [E.S.]. (T. 2914) There was evidence that [Student] did go into Ms. Hill's classroom, in accordance with the plan to which [Mother] had agreed at the August 23 meeting. (*See, e.g.*, R. Ex. 101, p. 2 (On August 26, [Student] went to the resource classroom but tore up books and returned to the separate classroom))
 94. On August 26--after [Student] tore up books in the resource classroom and then returned to the autism classroom--[Student] chose to stay in the room with [M.Y.] during recess and completed work with her. During her time at ABC, [M.Y.] found that [Student] was more likely to complete schoolwork when someone was working with him directly. (T. 2919)
 95. While [Student] continued to go to the resource classroom during the first several weeks of school, most of the time he was sent back early due to behavioral issues, including hitting the teacher; throwing materials; and significantly disrupting the class. (T. 2914-2915) On September 2, he returned to [M.Y.]'s classroom early because he hit Ms. Hill. (T. 2923; R. Ex. 101, p. 4)
 96. Despite his struggles, the ABC staff worked to provide [Student] with appropriate educational work. Whenever [Student] returned to [M.Y.]'s classroom from the resource classroom, he would return with the second-grade level work that Ms. Hill had assigned to him. (T. 2923-2924)
 97. Throughout this time period, [M.Y.] continued to use the transition board and timer, just as [E.S.] had recommended. (T. 2940-2941) [Student] struggled with controlling his behavior, however. When academic demands were placed on [Student] in the classroom, [M.Y.] observed behaviors similar to those that resulted in [Student] being removed from the resource classroom. (T. 2915)
 98. Given [Student]'s struggles, his IEP team discussed [Student]'s placement at his first IEP meeting, held September 20, 2010.
 99. Immediately prior to this meeting, [L.S.] observed [Student] in [M.Y.]'s classroom. (T. 3424) [L.S.] shared with the IEP team that the verbal behavior cards [Student] had been using in *** had not come with him to Johnston County. (R. Ex. 22) While there were cards in the classroom, they were not the cards [L.S.] had created. (T. 3440)
 100. [L.S.] also noted during the meeting that while [Student] had regressed with academics, he was "picking up quickly." (R. Ex. 22) Specifically, she noted that he previously had been able to put several smaller tasks together to complete a bigger task, and that he was somewhat behind in that skill when she saw him in Johnston County. (T. 3441) She did not have any significant concerns about [Student]'s regression when she observed on

September 20, however. (T. 3441) [L.S.] testified it would have been “almost impossible” for [Student]--given his autism and his difficulties with transition--to have made a seamless transition to Johnston County, as [Mother] expected. (T. 3441-3442)

101. Prior to this meeting, [Father] had observed in both the resource classroom and in the autism classroom, and the IEP team discussed whether [Student] would best be served in one location. (T. 537-538, 2934-2936) [M.Y.] had noted by this time that [Student] often behaved better on days that he stayed in the autism classroom for the entire day, rather than going to the resource classroom. (T. 2927)
102. [L.S.] recommended that [Student] receive his educational services in the separate autism classroom at that time because she wanted him to have a consistent setting that would allow him the opportunity for success. (T. 3443-3444; R. Ex. 22)
103. According to [L.S.], no one at the IEP meeting objected to [Student] receiving his services in the separate setting, although there was discussion about how long he would remain in that placement. (T. 2937) [M.Y.] also recalled that [Student]’s parents agreed with this decision. (T. 3443-3444)
104. The team agreed that--based on [L.S.]’s recommendation--[Student] would be served in the autism classroom full-time beginning the following day. (R. Ex. 22) [Student]’s IEP was not modified at that time because the school district had not yet received a full copy of [Student]’s special education records from *** County, despite requests. (T. 3123-3125)
105. [K.A.], the school district’s compliance specialist, testified that in order to finalize [Student]’s Johnston County IEP, the school would be required to have certain documents--including the most recent evaluation and the parents’ permission--to provide special education services. (T. 3124-3125)
106. Given this discussion--for which [Mother] was present--as well as her August 19, 2010 email exchange with [E.S.] and her presence at the August 23 meeting at which [Student]’s team discussed basing him in the autism classroom to start the school year, [Mother]’s testimony that she did not know until October 11 that [Student] was receiving his services in the autism classroom was not credible.
107. By October 11, 2010, [Student]’s educational placement had been discussed at several points, and the testimony and evidence offered at the hearing supports a finding that [Mother] agreed with placing [Student] in the separate setting.

Transportation Issues

108. In addition to concerns about [Student]’s placement, Petitioners alleged in their Petition that Respondent failed to provide appropriate transportation services for [Student]
109. At the beginning of the 2010-11 school year, [Student] and his family first lived in a

relative's home in Fuquay-Varina, a Wake County township approximately 45 minutes from ABC Elementary School. (T. 303; R. Ex. 33, p. 5) Because the relative's house was not located in Johnston County, [Student]'s parents were responsible for transporting [Student] to and from school each day.

110. During her initial telephone conversation with [N.N.], T.H explained that she was "very intent on having the boys begin school on the first day," and said that the family was doing everything they could to complete their move so that could happen. (T. 2587, 2604-2605)
111. The *** County IEP that [Mother] provided to [N.N.] included transportation as a related service; however, there was no explanation for the service included in the IEP. (R. Ex. 7)
112. On August 31, 2010, [M.Y.] noted that, while being transported to school by [Mother], "[Student] tried to kick out car windows on way to school." (T. 2920) On that date, [Mother] pulled up at school and explained that they had a "very rough trip" to school because [Student] had tried to kick out the windows. (T. 2920-2921)
113. When he arrived at school that morning, [Student] did not have his shoes on. He had thrown one shoe into the front seat, and the second was underneath the back seat. [M.Y.] got into the car and helped [Mother] locate [Student]'s shoes. (T. 2921)
114. After this incident, [N.N.] suggested to [Mother] that if it was not safe to transport [Student] to ABC from Fuquay-Varina, perhaps [Mother] would prefer not to bring [Student] to school while the family was residing in Wake County. [N.N.] said that [Student] could resume school once the family moved to Johnston County, and the school district could provide transportation. However, [Mother] said that she did not want to do that because she was afraid of being alone with [Student] (T. 2614)
115. [T.V.]--a VBA expert who contracted with the Johnston County Schools in October 2010 to assist with [Student]'s educational program but testified on behalf of Petitioners at the hearing--submitted a written report to the district in October 2010 in which she noted that the 45-minute drive to school at the beginning of the year had paired school with discomfort. (R. Ex. 33, p. 5)
116. [T.V.] testified at the hearing that this long drive "definitely contributed" to [Student]'s behavioral issues at the beginning of the year because he associated the negative experience of the drive to school with his classroom in Johnston County. (T. 4213)
117. Even after the family moved to Johnston County, [Student]'s behavior continued to be a concern while he was transported.
118. On September 9, 2010, [N.N.] exchanged email with [W.B.] regarding [Student]'s behavior on the exceptional children's bus. In her email to [W.B.], [N.N.] wrote: "We experienced a severe behavior problem with [Student] this morning. It was reported that he was out of control in the yard at his home. He was swinging at mom, and she was unable physically to control him. According to Patty Whittington, it took both the driver

and monitor to restrain him on the bus. The driver was hit in the nose, causing it to bleed. The student was attempting to kick windows on the bus. Once at school, he had to be side-walked by Mr. Hudson and Mrs. Yansom. We will only put him on the bus in the p.m. if he is in control. What should I advise the bus driver to do in the morning if he is out of control in the yard?" (R. Ex. 109)

119. [W.B.] agreed that if [Student] was out of control, the bus driver should not bring him to school on the bus for safety reasons. [W.B.] suggested to [N.N.] that if the bus trip was causing safety issues, the district could suggest to his parents that they transport him under a contract with the district that would cover the cost. (R. Ex. 109)
120. [N.N.] responded by stating that she would talk with [Mother] about that suggestion and said that [Mother] had agreed not to put [Student] on the bus if he was "distraught." [N.N.] explained to [W.B.] that [Mother] had concerns about being alone in the car with [Student] because she "had no control over him in the car and he has tried to kick the back window out when she was driving." (R. Ex. 109)
121. [N.N.] and [M.Y.] met with [Mother] until 5:30 that afternoon, and [Mother] agreed that she would not put [Student] on the bus in the morning if he was upset. (T. 2614, 2927; R. Ex. 101, p. 6) In addition to discussing transportation issues during that meeting, [M.Y.] talked with [Mother] about [Student]'s eating habits. [M.Y.] was concerned that [Student] did not appear to be eating much during the school day. During the meeting with [Mother] on September 9, she talked with [Mother] about what [Student] liked to eat, and [M.Y.] suggested that he try school lunches. (T. 2928)
122. [M.Y.] also asked [Mother] how she handled [Student]'s behaviors at home, and [Mother] referred to the cuing system, using verbal behavior analysis cards. However, the school district had not received any VBA cards from *** County or [Student]'s parents. (T. 2928)
123. [M.Y.] had asked [Mother] for records or information about [Student]'s program in *** County on numerous occasions, and [Mother] repeatedly said that it was not her responsibility to provide the information from the school. (T. 2928) However, the only document in the statewide special education system known as CECAS was [Student]'s IEP. (T. 2929)
124. On September 13, 2010, [M.Y.] went out to the buses to get [Student] in the morning. He threw down his book bag, kicked off his shoes, and started yelling "monsters." With assistance from the teaching assistant, [K.C.], [M.Y.] brought him to the classroom where [Student] "tore up the bulletin board" and turned over a bookshelf. (T. 2929; R. Ex. 101, p. 6)
125. [M.Y.] called [Father] and [Mother], who then came to the school. [Mother] sang to [Student], played a game called "Creepy Mouse," and was able to calm him after about 15 minutes. Although [M.Y.] understood from prior conversations with [Mother] that [Student]'s parents were using verbal behavior analysis with him at home, [M.Y.] did not see [Mother] use any verbal behavior techniques with [Student] when she came to the

school that day. She was hoping [Mother] would model techniques for the school staff because they had not gotten any examples of what was working with [Student] (T. 2929-2930; R. Ex. 101, p. 6)

126. [M.Y.] also spoke with [Mother] that day about developing a transportation contract, given his difficulties on the bus, and [Mother] responded by saying that “transportation was on his IEP for a reason.” (T. 2929) During that meeting, [Mother] also said that for the first time in a long time, the family had a good weekend and that she actually enjoyed her child. (T. 2931; R. Ex. 101, pp. 6-7)
127. On September 14, 2010, [N.N.] and [M.Y.] received a letter from [Mother] stating that she was concerned about providing transportation for [Student], even under a contract with the school district. (T. 2822, 2931; R. Ex. 131) Upon receipt of this letter, [W.B.] agreed that if [Mother] did not feel safe transporting [Student] to school, the district would have to find another way to transport him, whether by contracting with another driver or providing a cab. (T. 2823)
128. Transportation issues continued to concern [Mother], who--in an October 6, 2010 meeting with [W.B.]--expressed concern about her interactions with [M.Y.] and [N.N.] regarding transportation. [W.B.] made clear during the meeting that she--not [N.N.]--had recommended that the district contract with [Mother] to provide transportation, a practice the district had used in the past. (T. 2834)
129. While there was testimony that the school district was concerned about transporting [Student] on a school bus due to safety concerns, there was no credible evidence presented that would support a finding that the school district refused to provide [Student] with transportation.

August through December 2010

130. Although Petitioners challenged the educational program that was provided to [Student] at ABC, there was considerable evidence that the school district put in place a variety of supports designed to meet [Student]’s needs.
131. Upon learning that [Student] would be attending ABC and after reviewing his *** County IEP, [N.N.] contacted [W.B.] and asked that a part-time teaching assistant be added on a substitute basis to help support [Student] at the start of the school year. (T. 2591; R. Ex. 105)
132. [N.N.] requested the additional position after reviewing [Student]’s *** IEP in August. The IEP stated that a teaching assistant provided [Student] with support when he was in the regular classroom for enrichments and non-core academics. (T. 2589)
133. While a teaching assistant provided support in the regular education third grade classrooms at ABC, each teaching assistant worked in two classrooms, spending half a day in each. Therefore, with the understanding that [Student] might need additional support in the regular education classroom, [N.N.] requested the position. (T. 2589-2590)

134. Even after [Student]’s team agreed before school started that he would be based in the autism classroom, [N.N.] maintained the substitute teaching assistant position.
135. With the addition of that position--which was increased to full-time on September 16, about three weeks after school started--there were ultimately three adults in the autism classroom for at least part of the day to provide support to only five students. (T. 2913-2914, 2934)
136. Even with this additional support, [Student] struggled. When academic demands were placed on him on the first day of school, he yelled and put his head down. (T. 2041) [M.Y.] had followed [E.S.]’s recommendation that [Student] be provided with a break mat, and [Student] did use the mat that day. (T. 2041-2042)
137. On August 26, 2010, the second day of school, [M.Y.] noted that “[Student] came to school in a real mood today. We had to physically get him in the building today.” According to [M.Y.], she and Mr. Hudson, the assistant principal, had to physically lock arms with [Student] to get him to come into the building. (T. 2918; R. Ex. 101, p. 2)
138. [Student] arrived at school in the same areas as the buses and other students who arrived by car, and [M.Y.] was concerned that if they did not physically walk [Student] into school, he would impede other students from coming into the building. (T. 2918-2920)
139. On August 27--the third day of school--[Student] ran from the classroom. [M.Y.] did not chase him because she already had learned by this time that if she chased him, he would “run farther and harder to get away.” Instead, [M.Y.] called him back into the building, and--on that day--he came back. (T. 2920)
140. On August 31, [Student] cried in the classroom but eventually calmed down for food. [M.Y.] noted that the list of reinforcers that [Mother] had recommended were not working consistently. (T. 2921; R. Ex. 101, p. 3)
141. The reinforcers were all visible to [Student], and [M.Y.] was using the choice board that [E.S.] had recommended. [Student]’s lack of consistency in responding to reinforcers remained an issue. During the nine weeks that [M.Y.] worked with [Student], the only reinforcer that worked with any consistency was food. (T. 2922)
142. [M.Y.] called [E.S.] to discuss [Student]’s reinforcers. [M.Y.] also wanted to discuss the behaviors that he was exhibiting at ABC and find out what suggestions [E.S.] might have. However, many of the behaviors in which [M.Y.] observed [Student] engaging were not behaviors that [E.S.] had seen. (T. 2924-2925)
143. On September 7 in her personal notes, [M.Y.] described [Student] kicking a filing cabinet door and running around the classroom. This was the first time that [M.Y.] could recall [Student] behaving this way during an instructional period. (T. 2925-2926; R. Ex. 101, p. 5)
144. Concerns about [Student]’s behavior led the district to bring in a number of specialists--

some of whom were employed by the school system and others who acted as consultants--to observe [Student] and provide recommendations.

145. The staff at ABC first sought the assistance of [M.L.]--a school psychologist who works primarily with students with autism--after [Student]'s first suspension. (T. 2934)
146. On September 15, [Student] went to the resource classroom but came back to the autism classroom early after pulling the teaching assistant's hair. When he returned to the autism classroom, he had an outburst, and [M.Y.] took him out of the room to calm him. (T. 2933)
147. [Student] ran around the school to the front of the building, which was busy with afternoon traffic. [M.Y.] and Lee Hudson, the assistant principal, each went in opposite directions so that one of them would catch him. When they caught him, they brought him back into the classroom. [Student], however, was yelling in the other student's ears, and the other student had to be removed from the classroom. (T. 2933; R. Ex. 58, p. 11)
148. [N.N.] determined that [Student] should be suspended for one day while the school put in place measures to address the issue of [Student] running and maintaining his safety. (T. 2620) [N.N.] felt it was important to develop a system where other people in the school could be contacted in the event that [Student] ran from the classroom again. (T. 2622-2623)
149. [N.N.] spoke with [Mother] that afternoon. [Mother] was angry that [Student] had been suspended and informed [N.N.] that she could not suspend [Student] because he had a disability. [N.N.] explained that she *could* suspend [Student] and that a manifestation determination would not be required for a one-day suspension. (T. 2621-2622)
150. In an email to [W.B.] on September 15, [N.N.] wrote: "[Student] disrupted the classroom this afternoon and ran from Mary Ann [Yansom] around the school campus. I have suspended him tomorrow. The mother told the bus driver that she was contacting her attorney and [Student] would ride the bus to school tomorrow. I am going to call her. We will have the sub in place full-time on Friday when he returns." (R. Ex. 110)
151. [N.N.] and [W.B.] had determined by September 15 that Tracy Condie--a substitute teaching assistant who had been part-time up to that point and whose position was specifically created--should be in the classroom full-time to assist with [Student] (T. 2621)
152. [N.N.] placed walkie-talkies in the classroom; alerted other building staff to the need to be available to the autism classroom in the event that B.H had some kind of incident; and talked with [W.B.] about having staff in the EC department come into the classroom on the day [Student] returned. (T. 2622-2623) [M.Y.] also spoke with the school counselor about how she could assist. (T. 2934)
153. [M.L.] came to observe when [Student] returned to school from his suspension. This was one of 10 to 15 times that [M.L.] observed [Student] (T. 1849-1850)

154. [M.L.] earned his undergraduate degree in psychology from Virginia Tech. (T. 1839) He earned a master's of education in educational psychology from Indiana University of Pennsylvania, and he has certification as an education specialist in school psychology. (T. 1839)
155. [M.L.] worked as a school psychologist for the Johnston County Schools during the 2004-05 school year and then worked as a school psychologist in Pennsylvania for two years. (T. 1837) [M.L.] returned to the Johnston County Schools in 2007. (T. 1837)
156. [M.L.] has specific experience working with students with autism, including a summer working as a one-on-one aide with a student, prior to starting graduate school. (T. 1840-1841) He also has received numerous trainings--both through TEACCH and other entities--since becoming a school psychologist. (T. 1841)
157. For the past several years, [M.L.]'s work with the school district specifically has focused on students with autism, in both evaluation and consultation with teachers. (T. 1837) In that role, [M.L.] consults with both general education and special education teachers, familiarizing them with the characteristics of autism and also providing strategies and teaching practices that will be effective for students. (T. 1838)
158. [M.L.]'s role within the school district shifted to working more specifically with students with autism after he noted the need for more specialized services for autistic students. (T. 1843) [M.L.] "lobbied" his then-supervisor--[W.B.]--to create a school psychologist position specifically for students with autism. (T. 1843-1844)
159. [M.L.] is a member of the school district's autism team, which includes psychologists, classroom teachers, speech and language pathologists, and occupational therapists. (T. 1844) The team provides trainings and workshops for parents, staff, and administrators who are interested in learning more about autism and teaching strategies that would be effective for students with autism. (T. 1844)
160. A child's autism is independent of the child's cognitive function, but--according to [M.L.]--both are important in considering the student. (T. 1847) Students with high cognitive functioning and a high level of autism impairment create an "interesting profile" because the child may be aware of his social, communication, and behavioral differences but would be unable to address those differences without support. (T. 1849) [M.L.] testified that [Student] would fit this category. (T. 1859)
161. Based on his observations of [Student], [M.L.] believes that [Student] has very strong cognitive functioning and a strong ability to perform at or near grade level. (T. 1850) However, [M.L.] also noted that [Student]'s autism impairment--particularly in the areas of communication and patterns of behavior--is severe, and that it significantly impacts his ability to interact with others. (T. 1850) According to [M.L.], [Student] is "easily within the top 5 percent" of students with autism with whom [M.L.] has worked, in terms of the degree of his impairment. (T. 1859)

162. According to [M.L.], [Student] has great difficulty in managing the demands of an educational setting, including transitions and routine changes during the school day. (T. 1856) For example, if the day's schedule changed because of a field trip or assembly--or even if [Student] simply had to transition from a preferred activity to a non-preferred activity--he would have difficulty coping with those situations. (T. 1862)
163. [Student]'s struggles with changing routines are not uncommon for students with autism. [M.L.] has worked with students who would have meltdowns if their parents took a different route to school in the morning. (T. 1863)
164. [M.L.] was aware that prior to his enrollment at ABC Elementary School, [Student] and his family had just moved to the area from *** County. (T. 1864) He also knew that the family had lived for a brief time in Wake County before moving into Johnston County. (T. 1864)
165. In addition to a new house and location, [Student] also was required to acclimate to a new school with new teachers and a new building. (T. 1864) [M.L.] believes all of those factors were at play regarding some of the difficulties [Student] had adapting to the new school and classroom setting. (T. 1865)
166. In addition, [Student]'s struggles with expressing himself verbally caused behavioral difficulties. (T. 1856) Those difficulties ranged from mild--such as increasing the volume of his vocalizations or activity level--to more severe, such as physically acting out or attempting to run away from adults. (T. 1857)
167. Within a week of [M.L.]'s first visit to the classroom, Petitioners' hand-picked autism consultant--[L.S.]--also observed [Student] in the classroom and attended his first Johnston County IEP meeting on September 20, 2010.
168. [L.S.] is a co-owner of Behavior Consultations & Psychological Services. (T. 3312) She is licensed by the North Carolina Psychology Board as a psychological associate and has worked as an autism therapist and consultant in North Carolina for 17 years. (T. 3317)
169. [L.S.] earned her undergraduate degree in psychology from East Carolina University, from which she graduated magna cum laude. [L.S.] also holds a master's degree from East Carolina University. Her master's degree is in general psychology, with a concentration in mental retardation and developmental disabilities and a behavior analysis approach. (T. 3314-3315)
170. [L.S.] consults on behavior concepts and working with behavior problems and disabilities--predominantly autism--and has consulted in approximately 15 school districts in North Carolina. (T. 3314) As a consultant, [L.S.] has a range of responsibilities, including demonstrating teaching strategies; conducting staff trainings; providing input on a specific child's program; or working directly with an entire class of students. (T. 3321-3322)
171. As a licensed psychological associate, [L.S.] is required to submit to one hour of

- supervision per month by a doctorate-level psychologist. (T. 3317-3318) In order to qualify for only one hour of monthly supervision, [L.S.] had to log more than 7,000 hours working in the psychological field. (T. 3318-3319)
172. [L.S.] estimates that during her career, she has worked with more than 1,000 students with autism, which is her preferred area of focus. (T. 3322)
 173. Prior to coming to ABC on September 20, [L.S.] spoke with [N.N.] in late August. (T. 2607-2608, 3422; R. Ex. 98, p. 2) Because neither had permission from [Student]'s parents to discuss his program specifically, they talked in generalities about when [L.S.] might be available for an IEP meeting. During that conversation, [L.S.] offered to be available on September 20. (T. 3422, 3424)
 174. [L.S.] attended the IEP meeting on September 20 and visited [Student]'s classroom prior to that meeting. (T. 3424) While in the classroom, she asked [M.Y.] for the verbal behavior analysis cards and the token board that she had provided in *** County, but which had not been provided to ABC. [M.Y.] had been using the reinforcer board that she had created based on [E.S.]'s email. (T. 2935)
 175. When [M.Y.] told [L.S.] that the school did not have the cards or a token board, [L.S.] went to her car and came back with token boards. She said that they were the same token boards that she had left in *** County. (T. 2935)
 176. [L.S.] made VBA cards in [M.Y.]'s classroom, and she modeled how to use them. She also left handouts and some web resources that the classroom staff could use to access information. (T. 2935)
 177. [Student] and his brother were both present in the room for the September 20 IEP meeting. During the meeting, [Father] had to intervene with [Student], who lay down on the floor and was flailing his arms and legs because he wanted to leave. (T. 3438) According to [M.Y.], [Father] left the room during the meeting because [Student] hit [Mother] in the face with a shoe. (T. 2995)
 178. Immediately following [L.S.]'s visit, [M.Y.] put in place the techniques and strategies that [L.S.] had modeled the day before. [M.Y.] and Tracy Condie both worked with [Student] in an effort to replicate the intensity that [L.S.] had modeled. (T. 2938-2939)
 179. On September 21, the day after [L.S.] visited the classroom, [M.Y.] noted: "Relatively better day. Worked two to one most of the day to implement VBA techniques. Completed a lot of written work. Participated in social and speech language time in the afternoon." (T. 2939-2940; R. Ex. 101, p. 9)
 180. However--on the following day--[Student] did little work, yelled, and threw materials. [M.Y.] was attempting to use the VBA cards and the token board, but [Student] would take the tokens off and throw them. (T. 2940; R. Ex. 101, p. 9)
 181. During this time, the classroom staff also still were using the choice board and timer. (T.

2940-2941)

182. In a September 21, 2010 email to [W.B.], [N.N.] described the meeting and [L.S.]’s recommendation that the staff receive VBA training. [N.N.] suggested that Tracy Zukowski be included in any training because she would be the permanent classroom teacher. (T. 2627-2628; R. Ex. 112)
183. [N.N.] also asked [W.B.] if Ms. Condie’s position could be made permanent, which would keep that position in place for the remainder of the school year. (R. Ex. 112)
184. [W.B.] understood that [L.S.] was an expert in VBA, and--in her experience--the expertise of an outside consultant drives the recommendations that consultant will make regarding methodology. (T. 2827-2829)
185. However, [W.B.]’s experience is that the various methodologies used with students with autism have varying degrees of overlap and share the common goal of reducing verbal interaction and reinforcing positive behavior common. (T. 2828)
186. Given [L.S.]’s expertise in VBA, [W.B.] was not surprised that she recommended the use of VBA. According to [W.B.], [L.S.] is devoted to VBA training and speaks only to that training. [L.S.] acknowledged during the hearing that her bias is toward VBA. (T. 2829)
187. [W.B.] contacted the autism consultant at the Department of Public Instruction (“DPI”) to find someone to provide training. DPI’s consultant recommended that [W.B.] speak with the Exceptional Children’s program director in Dare County, who had worked with [T.V.], another expert in VBA. (T. 2829-2830)
188. [W.B.] informed [N.N.] that based on her conversation with the staff at DPI, she was considering employing [T.V.] to provide VBA training for the district. She also agreed that Tracy Zukowski should participate in that training if she were able to do so, given her maternity leave. (T. 2629-2630; R. Ex. 112)
189. Based on that reference and her knowledge of [T.V.], [W.B.] contracted with her to provide support to ABC Elementary School. [T.V.] rearranged her schedule to get into ABC as quickly as possible. In [W.B.]’s experience, two weeks is a short period of time to get a consultant in for an observation. (T. 2830-2831)
190. [W.B.] originally discussed with [T.V.] the possibility of staff engaging in a two-day training session, but she ultimately asked that [T.V.] come in and observe [Student] in the classroom and provide recommendations regarding training. (T. 2832)
191. In addition, [N.N.] ultimately received approval to make the additional teaching assistant position permanent, although Tracy Condie was not able to accept the permanent position due to other commitments. (T. 2630-2631) The district hired Jason Kemp to fill the new full-time position. (T. 2939)
192. On September 27, [Student] “pulled puzzles off shelves, threw pencil, cleaned his work

table, threw shoes, ran around the room. He did not go outside. It was raining. And then he hit another student two times today.” (R. Ex. 101, p. 9)

193. This was the first time that [M.Y.] could recall [Student] hitting another student. At that point, he never had hit [M.Y.]. (T. 2941-2942)
194. Later that same day, [N.N.] met with [M.Y.], who expressed concern about [Student]’s behavior in the classroom. According to [M.Y.], when she was not directly paying attention to [Student] or when he was trying to avoid work, he was hitting other children or destroying things that other students were working on. (T. 2631-2632)
195. [M.Y.] explained that she was using the strategies suggested by [L.S.], but they were not effective: [Student] was throwing the tokens from his token board; running around in circles in the classroom; and throwing his shoes and pencils. (T. 2632)
196. Although [M.Y.] had tried to use the break mat as [E.S.] had described--allowing [Student] to go to the break mat and then return to his work after a certain period of time--it did not work very well in the autism classroom. (T. 2915-2916)
197. [M.Y.] found that it was difficult to place the break mat far enough from things that could be kicked or moved. When [Student] went to the break mat, he would kick other things that would fall over. (T. 2915-2916)
198. For example, [Student] kicked over a heavy bookcase, sending it to the floor. [M.Y.] was worried about [Student]’s safety as well as that of the other students. She ultimately moved the break mat to a corner with a concrete wall on one side and a built-in bookcase on the other, creating a more stable environment for [Student] (T. 2915-2916)
199. While that was a safer place for the break mat, [M.Y.] did not find that it helped [Student] because it was difficult for him to set the timer and regroup without intervention, as he reportedly had done in *** County. (T. 2916)
200. The ABC staff removed the break mat after [L.S.] told them that it had been faded in *** County. (T. 2941) This was contrary to what [E.S.] had recommended in her August 23 email and contrary to the testimony of [M.H.], who stated that [Student] used the break mat throughout the 2009-10 school year. (T. 2797; R. Ex. 142)
201. Until that point, [M.Y.] had been successful in working with the other students in the classroom. She was able to find motivating tasks and reinforcers for the other students. However, the classroom staff--despite trying a number of different reinforcers--were having and would continue to have difficulty finding anything that consistently worked for [Student] (T. 2632-2633)
202. Although the other students in the classroom had behavior problems, their outbursts were not anything like those that the school was experiencing with [Student] (T. 2632) [Student] had the most maladaptive behaviors of any student in the classroom. (T. 2943)

203. On September 28, [Student] came to school with two large scratches on his chin. He ran from the teacher five times; threw himself on the floor four times; threw material eleven times; was squealing; and hit the teacher and teaching assistant 27 times. He also hit another student two times that day. (T. 2942; R. Ex. 101, pp. 9-10)
204. On September 30, [Student] had a “meltdown” in music and hit a teaching assistant. He came back to the classroom to work with [M.Y.] and knocked over a divider that hit [M.Y.] in the back of the head. [Student] was taken to the guidance office, where he turned over furniture and hit staff there. (T. 2943-2944)
205. [N.N.] went to the guidance counselor’s office and stayed, so there would be two adults present until [Student] calmed down. (T. 2944)
206. That afternoon, [M.Y.] took [Student] to the cafeteria to wait for the bus, but he took off his shoes and threw them at the window. She ultimately took him outside, where they waited on the sidewalk for the bus. (T. 2944)
207. [M.Y.] again noted in her journal that there were no consistent reinforcers that worked with [Student], except food. (T. 2944; R. Ex. 101, p. 10)
208. During the same timeframe, [N.N.] was fielding complaints from other parents who were concerned about their own children’s safety in the classroom, given [Student]’s aggressive behavior. (T. 2633)
209. During the first semester of the school year, the district brought in a number of individuals to observe the classroom and offer suggestions for how to work with [Student] In addition to [L.S.]’s observation and participation at the IEP meeting in September 2010 and [T.V.]’s observation and subsequent report in early October, Charlene Butala--an autism teacher at a Johnston County middle school who previously served as the district’s autism consultant--also came in and conducted an observation. (T. 2017-2019)
210. [C.B.] had taught in Johnston County Schools for several years in an elementary autism classroom. She left the district to work as a trainer for TEACCH and returned to the district as an autism specialist. She recently had decided to return to classroom teaching when she helped [M.Y.] set up the classroom at ABC. (T. 2810-2811)
211. In her role as the autism specialist, [C.B.] provided trainings for parents and went into classrooms to provide additional support and suggestions to teachers, even working directly with students on many days. (T. 2811)
212. [C.B.] observed in the classroom on October 1. During her visit, [C.B.] recommended that the classroom staff use “wait time” with [Student]--allowing him to calm himself down--rather than having the staff intervene to direct him toward the break mat. (T. 2945)
213. [M.Y.]’s notes indicate that [C.B.] had to wait for 40 minutes for [Student] to comply with a directive. (R. Ex. 101, p. 11)

214. [C.B.] recommended that [M.Y.] use a picture schedule with [Student], although [E.S.] had said that [Student] did not need a schedule. [M.Y.] implemented that recommendation almost immediately and noted that he seemed to respond well to seeing the visuals. (T. 2946-2948; R. Ex. 47)
215. [C.B.] recommended that the teaching assistant use the VBA cards for “sit” and “quiet” to redirect [Student] At this point, the staff consistently tried to use those cards. (R. Ex. 47)
216. [C.B.] recommended that the staff “corral” [Student] when he ran around the classroom to keep him from hurting himself or others. That meant that two adults would get between [Student] and the other students. (T. 2947; R. Ex. 47)
217. [C.B.] suggested that the work that [Student] was being given in the classroom was too difficult and suggested that [M.Y.] make the work easier. (R. Ex. 47)
218. Although [M.Y.] was attempting to implement the strategies that [L.S.] had recommended, they were very intense and did not always work with [Student] His level of success depended on the level of the task on which [Student] was working. [M.Y.] expressed her frustration with some of those techniques in an email exchange with [C.B.], but she viewed VBA as a continued piece of [Student]’s program, as well as other strategies. (T. 2948-2949; R. Ex. 47)
219. On October 5, [M.Y.] followed [C.B.]’s recommendation regarding corralling [Student] to keep him from hurting himself and other students. However, he had three tantrums that day. (T. 2951; R. Ex. 101, p. 12)
220. [T.V.] is a licensed speech language pathologist who operates her own clinic, Let’s Talk Speech and Language. (T. 4142) She has worked with students with autism in North Carolina for 30 years in home, clinical, and classroom settings. (T. 4141-4172)
221. [T.V.] was qualified as an expert witness in the areas of working with students with autism and implementing ABA and VBA, including the training of teachers in those methodologies. (T. 4178)
222. On October 6, [T.V.] observed [Student] in the classroom. (T. 4142-4143) This also was the first day of work for Jason Kemp in the newly-created, full-time teaching assistant position. (T. 2952; R. Ex. 101, p. 12)
223. On that day, [Student] asked to leave the cafeteria and returned to the classroom with Mr. Kemp. While [Student] was social and making conversation with Mr. Kemp in the classroom, when the other students returned, [Student] started screaming. He refused to work and ran around the room. Ultimately, [Mother] came to pick him up. (T. 2953-2954; R. Ex. 101, p. 12)
224. [M.Y.] noted in her journal that [Mother] came to pick [Student] up by herself. This was

- noteworthy to [M.Y.] because [Mother] had previously said that she did not go anywhere alone with [Student] because she could not handle him by herself. (T. 2953)
225. In addition to observing [Student] in the classroom on October 6, [T.V.] attended a meeting with [Mother] and [W.B.]. [T.V.] discussed her recommendations for training and a proposed schedule. [W.B.] felt the meeting ended on a positive note. (T. 2833-2834)
226. At the time of this meeting, about six weeks into the school year, [W.B.]’s understanding-based on reports given to her--was that the other students in the classroom were doing well. Thus, while the district was willing to provide training, [W.B.]’s concerns were solely directed toward [Student] (T. 2836-2837)
227. Shortly after her observation, [T.V.] provided the school district with a written report. (R. Ex. 133) One recommendation in [T.V.]’s report was the subject of considerable testimony during the hearing. Specifically, her fifth recommendation was:
- “Regain instructional control. See attached handout on the specific steps. Work with his assistant out of the classroom setting until instructional control is established to avoid inadvertent reinforcement by peers or other untrained school personnel. Teach in a low stimulating environment. As soon as instructional control is established and escape and attention motivated behaviors decrease, move him back into teaching with other children.” (R. Ex. 33, p. 6)
228. [K.C.]’s understanding of this recommendation was that [T.V.] was suggesting that [Student] be in a separate classroom with a one-on-one. (T. 2010) [L.S.] also understood that this was the recommendation and--based on her experience working with [Student]’s parents--believed that they were not in favor of segregating [Student] from other students full-time. (T. 3606-3607)
229. [L.S.] also testified that there were periods where the ABC staff--particularly the teaching assistant, [K.C.]--had instructional control over [Student] during the fall semester. (T. 3461, 3607)
230. [T.V.] testified that she intended that [Student] be removed to another setting with a teaching assistant rather than a certified teacher. (T. 4215)
231. Despite Petitioners’ contention that the school district never attempted to implement [T.V.]’s recommendation, by mid-October, the staff decided to make use of a vacant classroom--Room 125--next to the autism classroom to work with [Student] (T. 2954)
232. [Student] initially was removed to Room 125 because there were concerns that he was engaging in maladaptive behaviors to generate peer attention. (T. 3800)
233. When he went to the alternative classroom, whatever academic work he had been assigned in the autism classroom went with him. Requiring [Student] to continue to work

- on his classwork meant that he was not able to escape a task. (T. 3801)
234. According to [K.B.], the Exceptional Children program director, the autism classroom was reinforcing for [Student] because he liked being around his peers. (T. 3801)
235. On October 11, [Student]’s IEP team convened to complete his transition to the Johnston County Schools. [M.Y.] prepared a summary of [Student]’s academic skills, including the level at which he was functioning and his progress on IEP goals. However, she noted that [Mother] did not respond to the summary. (T. 2955-2956; R. Ex. 101, p. 13)
236. [Mother]’s lack of responsiveness was curious. In [L.S.]’s conversations with [Student]’s parents, they expressed their belief that [Student] had potential and how important getting to grade level was for him. [L.S.] testified that this was particularly important to [Mother] (T. 3451)
237. That concern also was reflected in [Student]’s *** County IEP, in which the parents’ vision for the student’s future was that [Student] would be on grade level. (R. Ex. 7)
238. In addition, in late September, [Father] had questioned Melissa Hill--the resource teacher--about [Student]’s access to the regular education classroom. (T. 573; P. Ex. 307)
239. On the afternoon of October 11, [T.V.] provided VBA training to [K.C.] and Mr. Kemp in Room 125. One staff member was required to stay in the classroom with students, and [M.Y.] was chosen to be that person because she would be leaving within three weeks. (T. 2955-2956)
240. On October 12, [M.Y.] noted in her journal that the classroom staff had “initiated more time for fun, less academics” for [Student], at [T.V.]’s suggestion. Specifically, [T.V.] believed that Mr. Kemp and [Student] needed to bond outside the academic arena. However, in her journal [M.Y.] noted that Mr. Kemp had difficulty engaging [Student] and was “exhausted.” (T. 2956; R. Ex. 101, p. 14)
241. That day, [M.Y.] also had to go to urgent care. [Student] started the day “agitated,” and Mr. Kemp was not yet at school. [M.Y.] came to get [Student] off the bus, but--halfway to the classroom--[Student] threw himself on the floor, kicking and screaming. Other students were in the hallway, so [M.Y.] attempted to put herself between [Student] and the other students to make sure that no students were kicked. (T. 2957-2958; R. Ex. 101, p. 14)
242. Unfortunately, [Student] kicked [M.Y.] in the knee. [M.Y.] was not able to get [Student] to Room 125 on her own; she required assistance from Mr. Hudson and Mr. Kemp. (T. 2958)
243. Mr. Kemp’s work schedule was changed so that he would be present to greet [Student] off the bus in the morning. On October 13, Mr. Kemp and [Student] played basketball in the gymnasium so they would have the opportunity to engage with each other outside an academic setting. (T. 2959-2960)

244. On October 13, [Student] and Mr. Kemp went to Room 125 on more than one occasion for engagement and instruction. Either [M.Y.] or [K.C.] would provide relief to Mr. Kemp every 30 minutes, and [K.C.] was able to get [Student] to complete some schoolwork on that day. (T. 2960; R. Ex. 101, p. 14)
245. On October 15, [Student] requested the break mat, which had by that time been removed at [L.S.]'s suggestion. (T. 2960; R. Ex. 101, p. 15)
246. In addition to all of the other observers in [M.Y.]'s classroom--[L.S.]; [M.L.]; [T.V.]; and Charlene Butala--Michael Thompson, the school district's behavior specialist, also observed. (T. 2961)
247. Each of the observers made recommendations to [M.Y.]. She and the other classroom staff attempted to implement those recommendations, but the level of success with each recommendation varied. (T. 2961-2962)
248. According to [M.Y.], [Student] did not have any discernible pattern to his behavioral difficulties, even though there were more academic demands in the morning than in the afternoon. (T. 2963)
249. Based on [C.B.]'s recommendation, on October 21, [M.Y.] reverted from non-academic tasks in the morning to coloring, cutting, and pasting to try to reduce [Student]'s aversion to academic demands. (T. 2963)
250. After working on those skills, [M.Y.] and [Student] went to Room 125 to work on the quarterly third-grade assessment. During the assessment, [Student] read the third-grade reading passages aloud. (T. 2963)
251. Although [Student] could read third-grade passages, he could not answer questions about those passages. When asked to answer questions on the quarterly assessment, he would mark A for the first question, B for the second question, and C for the third. (T. 2963-2965; R. Ex. 101, pg. 17)
252. [M.Y.]'s last day in the classroom was October 28, 2010. (T. 2962)
253. After providing the initial VBA teacher training at ABC, [T.V.] was unable to continue because of a family emergency. (T. 2837)
254. When it became clear that [T.V.] would not be able to fulfill her contract, [W.B.] immediately contacted [L.S.] near the end of October. This was shortly before [T.Z] took over as the classroom teacher. (T. 2837-2839)
255. [L.S.] met with [W.B.] and [K.A.] about entering into a contract with the district. After that contract was completed in November 2010, [L.S.] was far more involved in [Student]'s educational program in Johnston County than she had been in *** County. Beginning in October, 2010, she saw [Student] at least twice a month, sometimes for several days in a row, through the remainder of the 2010-11 school year. (T. 3345)

256. In November, the IEP team reconvened to conduct an annual review of [Student]’s IEP. At the IEP meeting, [Student]’s parents expressed their appreciation for [T.Z] ’s “passion and eagerness to work in the classroom.”
257. On November 4, [Student] had to be restrained. The practice at ABC Elementary School was to document each restraint and forward a copy of the documentation to both [W.B.] and the parents of the student who was restrained. (T. 2637-2638; R. Ex. 58, p. 9)
258. [Student] was restrained and then suspended for two days after he hit the teacher with an open hand several times in the face. He also hit the teaching assistant on the back, leaving a mark, and threw a shoe, hitting another student in the face. (T. 2641; R. Ex. 98, p. 21) The parent of the other student sought reassignment from ABC to another school. This was not the only complaint that [W.B.] received during the school year; at another point, the parent of another child requested a meeting with [W.B.] and her supervisor. (T. 2838-2839)
259. [Student] also knocked over furniture and took off his clothes. (T. 2641; R. Ex. 58, p. 9)
260. During his suspension, [N.N.] contacted [L.S.] so that she might share additional strategies with the classroom staff on working with [Student] [L.S.] agreed to send a consultant to assist the staff when [Student] returned. (R. Ex. 98, p. 21)
261. [T.Z] only remained in the classroom for one month. Due to a family situation, [T.Z] discovered that working full-time was too much for her both emotionally and physically. (T. 2642)
262. [L.S.] trained [T.Z] and Jason Kemp, and the VBA strategies that she recommended were tried with [Student] (T. 2021) During the month that [T.Z] was in the classroom, [L.S.] was the primary person providing support. (T. 2021)
263. [W.B.] testified that the Johnston County Schools have had children with extreme behavioral issues that were identified as autistic in the past and that [Student] would be in the top five in terms of challenges. (T. 2840-2841)
264. The team that was working with [Student], including [M.L.], Charlene Butala, and Michael Thompson, had previous experience in working with students with extreme behavior difficulties, including a student who exhibited aggression towards others, and were successfully able to return that student to school after a brief homebound placement. (T. 2842-2844)
265. [W.B.]’s involvement with [Student]’s educational program was reduced when the new Exceptional Children’s program director, [K.B.], started work on November 8, 2010. (T. 2812)
266. [K.B.] obtained her undergraduate degree in speech pathology and audiology from Marshall University. She subsequently obtained her master’s degree in special education and learning disabilities and reading from North Carolina State University. She then

- attended the University of North Carolina to earn her educational leadership certification as an exceptional children's director and currently holds a license as an Exceptional Children's Director. (T. 3708)
267. She also has a master's degree in learning disabilities and speech pathology and is a pre-kindergarten exceptional children's program specialist. (T. 3709)
268. [K.B.] was the first educator from North Carolina to be nationally board certified as an educational diagnostician, which is the national board certification to diagnose educational disabilities. (T. 3708)
269. [K.B.] was qualified to testify as an expert witness in the area of educational diagnostics, as well as the education and instruction of children with autism for the purposes of this hearing. (T. 3749)
270. [K.B.] became involved with [Student]'s educational program almost immediately upon starting work for Johnston County in November 2010. (T. 3714)
271. By this time, Tracy Zukowski already had submitted her resignation and [L.S.] had made some recommendations for changing the classroom structure. Those changes were implemented almost immediately with the hope that the new classroom teacher would not have to make the changes upon her arrival. (T. 3772)
272. When [T.Z] left at the end of November, [N.N.] made [K.C.] the substitute teacher. [N.N.] made that decision because [K.C.] had been in the classroom consistently since the beginning of the year, and she was familiar with both [Student] and the interventions that were in place. (T. 2643)
273. In addition, [M.Y.], [T.Z] , and [L.S.] had expressed that they were impressed with her interactions with [Student] (T. 2643) [L.S.] described [K.C.] as "indispensable" and stated that she was always willing to implement the strategies that [L.S.] modeled. (T. 3461-3462) [M.L.]'s experience was that [K.C.] was often already doing the things that he would have recommended in working with [Student]. (T. 1896-1897)
274. [K.B.] agreed that [K.C.] was the most appropriate person to fill the position on an interim basis because she had an excellent relationship with all of the students in the classroom, including [Student] According to [K.B.], there were times when [Student] wanted to work only with [K.C.]. (T. 3820-3823)
275. To support [K.C.] during the time that she served as the interim teacher in the autism classroom, the district contracted with a retired special education teacher, Karen Hicks, and a program specialist, Vivian Hall, to assist with lesson planning, documentation, and collecting data. (T. 2643, 3823-3824)
276. During the period of time that [K.C.] served as the interim classroom teacher, the number of students in the classroom decreased from five to four, including [Student] (T. 2023) In addition, another substitute teacher, Bob Seroka, was added to the classroom so that there

would be three adults present at all times. (T. 2023)

277. In addition to having three adults in the classroom full-time, the district arranged to have additional support in the classroom throughout [K.C.]’s time serving as the substitute teacher. [N.N.] met with [K.B.] to develop a schedule for additional staff to be in the classroom to assist [K.C.]. (R. Ex. 98, p. 23)
278. [L.S.] continued to provide support, and [K.B.] visited the classroom at least once a week, sometimes more. (T. 2024) [K.B.] also was in frequent contact with the staff at ABC as well as transportation staff. (T. 3795) Transportation staff contacted [K.B.] weekly to discuss issues with [Student], and she recalled being contacted “every other day, if not daily” by the staff at ABC. (T. 3795-3796) Sometimes those contacts were simply to alert her to incidents and other times just to inform her of how the day had gone. (T. 3796)
279. Michael Thompson, the district’s behavior specialist, also was in the classroom three or four times during the month that [K.C.] served as the substitute teacher. (T. 2024) [N.N.] was in the classroom several times a day, as was Lee Hudson, the assistant principal. (T. 2024-2026) Lee Woodburn, the ABC Elementary School psychologist, also provided support in the classroom during that time. (T. 3826)
280. In December 2010, [Student] injured a speech language pathologist, Jessica Masciarelli, when he threw a toy rocket at her, splitting her lip and chipping a tooth. (R. Ex. 98, pp. 25-26) Following the incident, Ms. Masciarelli, who was pregnant, asked that she no longer be required to work with [Student] (T. 2742)
281. After the incident, [N.N.] contacted [L.S.], who suggested that [Student] not be permitted to have any objects that could be dangerous if he threw them. She also advised cutting and rounding off the corners of his token board and using felt toys for reinforcers. (T. 2649)

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282. On January 10, 2011, Ms. Masciarelli came to [N.N.], who observed that Ms. Masciarelli was “visibly upset.” Ms. Masciarelli told [N.N.] that [Mother] had come to the school, unannounced, to meet with her and asked Ms. Masciarelli if she intended to sue the school system for the incident involving [Student] (T. 2650-2651)
283. Ms. Masciarelli told [Mother] that she was not intending to sue the school district, and [Mother] responded that she had been collecting data and wanted to share it with Ms. Masciarelli to help her build a case. [N.N.] documented the conversation in an email to senior staff in the Johnston County Schools. (T. 2650-2651; R. Ex. 114)
284. Ms. Masciarelli was not the first staff member who was concerned about [Mother]’s intentions. Beginning with their initial conversations, she had made clear to the school system staff that she had filed a state complaint against [Student]’s previous school district, and [M.Y.], early in the school year, had indicated to [W.B.] that she always felt

- that [Mother] was “building a case.” (T. 2932-2933)
285. Shortly after [Mother]’s conversation with Ms. Masciarelli, Helen Westbrook began working as the teacher in the separate autism classroom at ABC Elementary School. (T. 2656)
 286. [N.N.] felt fortunate to be able to find someone with Ms. Westbrook’s qualifications available in the middle of the school year. Ms. Westbrook accepted the position only after observing the classroom and talking with the current staff, and she chose to work in the separate autism classroom over another open classroom position. (T. 2656-2657)
 287. [K.C.] returned to her position as a teaching assistant, and Bob Seroka remained as a teaching assistant as well. (T. 2026-2027)
 288. [Student]’s removals to Room 125 increased in January and February, at [L.S.]’s suggestion. (T. 3802) [L.S.] was concerned about both [Student]’s safety and the safety of others. (T. 3802)
 289. In addition to [L.S.], [N.N.], [K.B.], [K.C.], and [M.L.] all recalled that [Student]’s behavior issues became more severe in the second semester of the school year. [K.B.] testified that the [Student] she observed in November and December was behaviorally “very unlike” the [Student] that returned to school in January. (T. 1882-1883, 2126, 2658-2659, 3774)
 290. Specifically, [K.B.] observed that while [Student] did not always want to return to the instructional area, in November or December he was able to calm himself sometimes. [K.B.] was able to get him to return to instruction by setting the timer and explaining that he would be required to return when the timer went off. (T. 3775)
 291. [K.B.] testified that in November and December, [Student]’s outbursts were typically 5 to 20 minutes, and [Student] often was able to calm himself. (T. 3778-3779)
 292. [Student] was more likely to throw himself on the floor in January and--although that was a behavior he had exhibited occasionally in the fall--it was more difficult to calm him and reintegrate him into the classroom by January. (T. 3781)
 293. In addition, [Student] would move his arms and legs and try to get away from the adult working with him. While [K.B.] previously had observed [Student] trying to escape tasks, by January he was trying to escape from the adults who were working with him. (T. 3782)
 294. His outbursts also were lasting significantly longer, approximately 35 minutes. [K.C.] testified that in January, the intensity of [Student]’s behavior was “a lot stronger and he really did not want to have to do any type of work at all.” (T. 2126)
 295. After the break mat was removed from the classroom at [L.S.]’s suggestion, she recommended that staff use the verbal behavior cards, flipping through the ones that

- [Student] had with automaticity, to calm him if necessary. (T. 3780)
296. However, when [K.B.] observed [K.C.] and Mr. Kemp trying to implement this strategy, which reportedly had worked with [Student] in *** County, it did not appear that it was having an effect on [Student] (T. 3781)
 297. On January 20, [N.N.] emailed [K.B.] and [R.L.], the district's Chief Human Resources Officer, and expressed concern about [Student] hitting and kicking staff and her worry that someone might be injured. (R. Ex. 115)
 298. [N.N.] also was seeking clarification about when incidents should be reported to law enforcement. (R. Ex. 115) [R.L.] confirmed that [N.N.] should notify the School Resource Officer if a staff member was injured and had completed workmen's compensation forms. At that time, only Jessica Masciarelli had done so. (T. 2659-2660)
 299. On January 25, Assistant Principal Lee Hudson had to assist [K.C.] in restraining [Student] after he bit her on the hand. Mr. Hudson reported that [Student] was lying on the floor shaking, crying, and kicking, including a kick to [K.C.]'s stomach. (T. 2661; R. Ex. 98, p. 33)
 300. [N.N.] suspended [Student] on February 8, 2011, after she witnessed him kick his teacher, Helen Westbrook, so hard in the stomach that she fell to the floor in the hallway. (T. 2662; R. Ex. 116)
 301. After the incident, [N.N.] contacted [L.S.], and they discussed a plan to review [Student]'s Functional Behavior Assessment (FBA) and Behavior Intervention Plan (BIP). The school was waiting to schedule the meeting until [Student]'s parents could provide dates that they were available. (T. 2662)
 302. On February 15, 2011, [N.N.] observed the teaching assistant and assistant principal attempting for more than an hour to implement the strategies that [L.S.] recommended. [N.N.] was concerned about the need for the teacher to be away from the other students during that time, as well as the fact that furniture had to be removed from the room because [Student] was throwing desks, turning over items, and throwing himself on top of furniture. (T. 2664-2666; R. Ex. 117)
 303. Despite becoming distraught and crying on February 15, 2011, [Student] continued to insist that he wanted to go back to the autism classroom. (T. 2666)
 304. Later that day, [N.N.] emailed [R.L.] and Rick Johnson, who was in charge of the district's workers' compensation program. [N.N.] wanted to inform them that [Student] had hit Ms. Westbrook, his teacher, in the face with his fist. Although Ms. Westbrook did not initially think she was injured, her jaw started to hurt, and she completed workers' compensation forms the following day. (T. 2667; R. Ex. 118)
 305. On the same day that [Student] hit Ms. Westbrook in the face, he also hit a student. Gravely concerned, [N.N.] met with Michael Thompson, the district's behavior specialist,

- and [K.B.]. (T. 2668-2669)
306. [K.B.] attempted to contact [L.S.] but was unable to reach her. The district ultimately determined that [L.S.] was out of town at a conference. Because she was not able to attend a meeting, [Mother] asked that [Student]’s upcoming IEP meeting be rescheduled so that [L.S.] could attend. (T. 2669)
 307. In addition to the escalating behaviors that the school district staff observed, [Student]’s parents were concerned about his behavior. In late January, they took him to see his pediatrician, Lori Langdon. (R. Ex. 97, p. 1868)
 308. At the appointment with [Dr. L.L.] on January 28, 2011, [Student] was extremely agitated. (R. Ex. 97, p. 1868) During the appointment, [Student] hit and kicked [Mother] multiple times. [Mother] tried to control him, but [Student] simply hit her harder. (*Id.*) [Dr. L.L.] described [Student] as “increasingly violent” and aggressive, kicking his mother; the nurses; and anyone around him. (R. Ex. 97, p. 1867)
 309. His behavior was so out of control that the doctor ultimately had to give him an injection of Ativan, a drug that [Dr. L.L.] typically would not administer in her office. (T. 2242-2243) She was concerned that [Student]’s behavior was a safety issue, and the office staff could not get him into the car. (T. 2242) [Dr. L.L.] noted in her records that [Mother] was physically smaller than [Student], and she was afraid that [Mother] would be injured by [Student] (T. 2243-2244)
 310. After the appointment, [Dr. L.L.] consulted with and ultimately referred [Student]’s parents to Kristi Milowic, a developmental pediatrician at Raleigh Neurology. (T. 2440)
 311. [Dr. K.M.] has been with Raleigh Neurology for nine years. (T. 2440) She attended college at the University of Texas and medical school at the University of Texas Southwestern Medical School. (T. 2441)
 312. [Dr. K.M.] completed a two-year fellowship in Chapel Hill that specifically prepared her for treating children with developmental disabilities, including “more and more” children with autism. (T. 2440-2441, 2443)
 313. [Dr. K.M.] estimated that 85 percent of her practice consists of working with children with autism. (T. 2443) In an average week, [Dr. K.M.] sees about 40 kids with autism. (T. 2443)
 314. [Dr. K.M.] was accepted as an expert in developmental pediatrics. (T. 2444)
 315. [Dr. K.M.] saw [Student] after speaking by telephone with [Dr. L.L.]. (T. 2444-2445) During the initial conversation between the doctors on January 28, 2011, [Dr. L.L.] informed [Dr. K.M.] that [Student] had an outburst, after which he was given a dose of Ativan. (T. 2450; R. Ex. 96, p. 2000-2003) Because [Dr. L.L.] reported that [Student] had done well with the Ativan, [Dr. K.M.] recommended clonazepam, a longer-acting medication from the same category, that he could take twice a day until [Dr. K.M.] could see [Student] (T. 2451-2452)

316. On February 10, 2011, [Dr. K.M.] saw [Student] for the first time. Both of [Student]’s parents also were present. (T. 2453) [Student] was “out of control” while in [Dr. K.M.]’s office, such that her staff were concerned about the safety of the other patients in the waiting room and put [Student] in a room by himself so that he could not hurt anyone. (T. 2453)
317. [Student]’s behavior in her office was consistent with behaviors that [Dr. K.M.] might see from a patient “every other month, maybe, every third month.” (T. 2454) Based on what she saw of him in February 2011, she would have considered him to have more moderate/severe autism. (T. 2454-2455)
318. During the first visit, [Student]’s parents reported that he had severe tantrums beginning as early as age two to four, and they were continuing to see those tantrums. (T. 2453) They also reported that he was having difficulty getting to sleep and staying asleep. (T. 2455)
319. At the time of this appointment, [Student] was taking a number of medications, including levothyroxine, a thyroid supplement; clonidine, which [Dr. K.M.] assumed he was taking to help him sleep; and clonazepam, which is an anti-anxiety drug similar to Ativan. (T. 2455-2456, 2458-2459)
320. [Dr. K.M.] recommended that [Student] stop taking clonidine because she believed it may have been causing his nighttime awakenings. (T. 2457) [Dr. K.M.] replaced the clonidine with trazodone, which is an antidepressant prescribed to help with sleep. (T. 2457-2458)
321. [Student] had an “idiosyncratic” reaction to the trazadone—it made him hyperactive—so he was taken off of it after only a few days. (T. 2482) [Student] later took melatonin, an herbal supplement, to help with sleep. (T. 2482)
322. [Dr. K.M.] also recommended in February 2011 that [Student] stop taking clonazepam over a three-week period because the side effects were unacceptable to [Student]’s parents. (T. 2461)
323. At his February 2011 appointment, [Dr. K.M.] prescribed Prozac for [Student] In [Dr. K.M.]’s experience, the children with autism she treats often have “significant anxiety,” and she thought Prozac would “settle down his behavior some.” (T. 2459; R. Ex. 96, p. 201) [Dr. K.M.] was hopeful that [Student] would not need the clonazepam if he was taking Prozac. (T. 2461)
324. The prescription called for [Student] to start taking 5 milligrams of Prozac and then step up to 10 milligrams after two weeks. (T. 2459-2460; R. Ex. 96, p. 201) According to [Dr. K.M.], the full effects of the Prozac would not be apparent until about four to six weeks after [Student] began taking it. (T. 2464)
325. Based on the information that was provided by [Student]’s parents, [Dr. K.M.]

- recommended that a behavior intervention plan be put in place at school. (T. 2464; R. Ex. 96, p. 2003) [Dr. K.M.] did not speak with anyone from the *** County Schools or the Johnston County Schools about [Student], nor did she review his Individualized Education Plan. (T. 2464)
326. [Dr. K.M.] recommended to [Student]’s parents that they consider a referral to the PATH program at the Murdoch Center. (T. 2465; R. Ex. 96, p. 2003) The Murdoch Center is a residential facility for individuals with disabilities, and the PATH program is specifically designed for individuals with autism. (T. 2466)
327. [Dr. K.M.] raised the Murdoch Center as a possibility because she was concerned about [Student]’s aggressive behaviors and the safety of the other people in his home. (T. 2465-2466)
328. [Dr. K.M.] reviewed other medications that [Student] previously had taken, including Risperdal, Abilify, Tenex, and Depakote. Although she frequently uses Risperdal, an antipsychotic medication, for children with aggressive behaviors, [Dr. K.M.] did not prescribe it for [Student] because he had gained weight when he previously took it. (T. 2467-2468, 2470)
329. She did not prescribe Abilify, which also would address aggression, because it was not helpful to him when he previously took it, based on the report by his parents. (T. 2470-2471)
330. Although [Student] previously had been on Tenex, which treats hyperactivity and impulsivity in children, [Dr. K.M.] did not believe it was necessary when she saw [Student] (T. 2471-2472)
331. [Dr. K.M.] noted that [Student] previously had taken Depakote, a “mood stabilizer.” (T. 2472) A mood stabilizer helps with outbursts and mood swings. (T. 2472-2473)
332. According to [Dr. L.L.]’s review of [Student]’s medical records, he began taking Depakote at some point between November 2009 and February 2010, after taking another mood stabilizer, Abilify. (T. 2228-2229)
333. When [Dr. L.L.] began seeing [Student] in October 2010, [Mother] reported that [Student] was on Depakote. [Dr. L.L.] testified that she did not prescribe Depakote for [Student], as that is something that she typically would not prescribe. (T. 2229) [Dr. L.L.]’s medical records do not indicate that she or anyone else in her office ever recommended that [Student] be taken off Depakote.
334. By the time [Student] saw [Dr. K.M.] on February 11, 2011, the evidence shows that [Student] no longer was taking Depakote.
335. Although [Dr. K.M.] did not prescribe Depakote at [Student]’s February 2011 appointment, [Mother] contacted her office in early March and asked whether [Student]’s problems may have been related to taking him off Depakote because the timing seemed

- to fit with his escalated behavior. (T. 2475)
336. According to [Dr. K.M.], if a child is prescribed Depakote to address aggressive behaviors and is then taken off Depakote without another medication replacing it, the child is likely to “go right back where [the child was] before” and see the behaviors come back. (T. 2476)
 337. Based on [Student]’s parents’ request, [Dr. K.M.] prescribed Depakote for [Student] on March 9, with the intent being to begin at a small dosage and then taper up. (T. 2476-2477) [Dr. K.M.] prescribed a four-week taper, meaning that it would take four weeks for [Student] to get to his full dosage. (T. 2477) It could take eight to 12 weeks after [Student] began taking the Depakote to see its full effects. (T. 2477-2478)
 338. Several weeks before that, on February 21, [L.S.] had spent the entire school day at ABC providing additional suggestions for the staff and offering dates that [L.S.] would be able to be at the school in the future. (T. 2669)
 339. Shortly after that, [N.N.] retired from the Johnston County Schools. She stated that during the 2010-11 school year, she spent considerable time and energy on issues related to [Student] as compared to the other 600 students at ABC. (T. 2674) When [N.N.] met with the interim principal that would succeed her, she spent 75 percent of her time with him explaining the situation involving [Student] (T. 2675-2676)
 340. As [Student]’s behavior escalated and as concerns about additional violent incidents grew, more senior staff in the school district were joining the conversation about [Student]
 341. [R.L.], the school district’s Chief Personnel Officer and the senior staff contact for issues at ABC Elementary, learned about [Student] from [N.N.] during a conversation in late September 2010. At that time, another parent was seeking to transfer his child from the autism classroom due to his concerns over [Student]’s behavior. (T. 2728-2729)
 342. [N.N.] explained to [R.L.] that the Exceptional Children’s department was monitoring the classroom and making modifications based on the input of a VBA consultant with whom the district had contracted. (T. 2729)
 343. During a senior staff meeting on October 6, [R.L.] mentioned that she was monitoring a situation at ABC. These meetings, called “cabinet,” are held once a week and include the Superintendent; Chief Academic Officer; Chief Finance Officer; Chief Operations Officer; Deputy Superintendent; and Public Information Officer. (T. 2730, 2732-2733)
 344. All of those senior staff--with the exception of the Chief Finance Officer--are assigned to seven schools. Principals from these schools can report issues to the senior staff member to whom their school is assigned. During cabinet meetings, each of the senior staff would report on issues that had arisen at any of the schools they oversaw. (T. 2723, 2730-2731)
 345. During the October 6 meeting, [R.L.] informed the other staff that [N.N.] had contacted

- her about an EC issue at ABC. [R.L.]’s recollection is that she made only brief mention of the situation. (T. 2730)
346. By mid-February, 2011, when [R.L.] learned about the incident in which [Student] had hit Ms. Westbrook in the face, she was becoming concerned about [Student]’s behavioral outbursts. (T. 2747)
347. This was the second workers compensation claim filed as the result of an injury sustained from an incident with [Student]; the first had been filed by Jessica Masciarelli--the speech language pathologist--who sustained cuts and a chipped tooth after [Student] threw a toy rocket at her in December. (T. 2747-2748)
348. After [Student] hit Ms. Westbrook in the face, her jaw began bothering her, and she ultimately filed for workers compensation because of the injury. [Student] was suspended for three days after that incident. During his suspension, the school system staff met with [L.S.], who recommended that when [Student] returned, he should return to Room 125 and spend more time there. (T. 3862)
349. On March 4, 2011, Ms. Westbrook again was injured after an incident with [Student] in which he struck her in the face. As a result of the second incident, Ms. Westbrook filed another workers’ compensation claim. (T. 2750)
350. After the second incident, Ms. Westbrook’s doctor recommended that she not be placed in a position to be injured again. In addition, Ms. Westbrook spoke with the interim principal at ABC Elementary School--Gary Ridout--and stated that she preferred not to continue teaching [Student] (T. 2759, 2757-2758)
351. In the wake of the continued escalation of [Student]’s behaviors, the school district increased the staff support to the autism classroom. Behavior specialist Michael Thompson was in the classroom March 7 through 9; he described his observations in the classroom in an email to [Father] in mid-March. (T. 3844; P. Ex. 379)
352. [K.B.] also asked Scott Stage, a behavioral psychologist and professor at N.C. State, to observe [Student] in the classroom and provide suggestions for how the district might address his behavior. (T. 1631, 1633)
353. Dr. Stage observed in the classroom on March 10, the first of two consecutive days that [M.L.] also was in the classroom. In an email to [K.B.] dated March 10, 2011, Dr. Stage summarized his observations, including how impressed he was with [K.C.]’s work with [Student] (P. Ex. 500.1683)
354. Even after all of the resources the district put toward stabilizing [Student]’s behaviors, [K.B.] continued to seek other guidance. As she explained at the hearing, [K.B.] contacted [T.V.] because she was trying to “get as much information from as many people as [she] could get to offer guidance.” Unfortunately, [T.V.] was not available until the end of May. (T. 3845-3846)

355. [K.B.] also called Dreama McCoy, an autism consultant at the Department of Public Instruction (“DPI”), to see whether she could come and provide some guidance. (T. 3846) In addition, she called other Exceptional Children’s program directors in Charlotte; Alamance County; and Winston-Salem to see whether they could provide any guidance. (T. 3846)
356. [K.B.] contacted her DPI regional consultant--Mary Hutchins--to find out whether Ms. Hutchins knew of any resources that were available which had not been exhausted. (T. 3847)
357. [K.B.] researched a private residential placement at Stone Mountain, at which a high school student in Johnston County had been enrolled. She learned that [Student] was too young to enroll at Stone Mountain. (T. 3848)
358. During a conversation with [K.B.], Mr. Thompson mentioned a group home in the Clayton area called Lighthouse. (T. 3848-3849) However, group home placement would require mental health involvement; it was not something the school district could impose. (T. 3849)
359. On March 9, 2011, the cabinet met again. During that meeting, [R.L.] received an email from Mr. Ridout in which he stated that he had spoken with Ms. Westbrook’s doctor, who was concerned about Ms. Westbrook’s physical and mental state. (T. 2763; R. Ex. 127)
360. Also on March 9, in an email to Keith Beamon, then-Chief Academic Officer, [R.L.] expressed the Superintendent’s concern about the situation at ABC. In that email, [R.L.] wrote: “Dr. Croom is very concerned about the last situation with the student at ABC. Gary Ridout sent me an e-mail this morning during cabinet that I will forward to you in a minute. When I read it to Dr. Croom, his response was that we are going to homebound the student, and he asked me to let you know. What do I need to do to assist you with the process for homebound instruction?” (R. Ex. 127)
361. Later that same day, [R.L.] alerted Dr. Croom and Mr. Beamon that a substitute teacher had been located for Ms. Westbrook, who had been out of work since [Student] hit her the second time, on March 4. (T. 2768-2769; R. Ex. 128)
362. Despite Dr. Croom’s concerns and directive that [Student] would be placed on homebound, [Student]’s IEP team did not immediately make that determination. (T. 3858)
363. Instead, at a March 15, 2011, IEP meeting, [Student]’s team discussed what steps the district could take to ensure both [Student]’s safety and the safety of those around him, including staff and other students. During that meeting, the team agreed that partitions would be placed in the autism classroom. (T. 3858) This would allow [Student] to remain in the autism classroom, which was reinforcing for him. (T. 3858) It also would remove the potential reinforcer of peer attention in the event of a maladaptive behavior. The partitions would make it more difficult for [Student] to escape a task. (T. 3859)

364. The team originally had discussed using partitions at the February 17, 2011, IEP meeting. (T. 3859)
365. The team agreed that while the district completed the process of ordering and installing the partitions, [Student] would remain in Room 125 with [K.C.] and Mr. Proctor, the substitute teacher, with [L.S.]'s support. (T. 3861-3863)
366. After the March 15, 2011, IEP meeting, [K.B.] informed [R.L.] that--consistent with the IEP team decision--there would be partitions placed in the classroom. (T. 2773)
367. When the Facilities staff reviewed the proposed partition project, the staff determined that they would not be able to safely install partitions.
368. [Student]'s behavior continued to escalate. In an email dated March 16, Helen Westbrook relayed to [K.B.] a conversation that she'd had with Michael Thompson in which he suggested that [Student] be served in a one-on-one setting. Specifically, Mr. Thompson was concerned that the situation was not "stable enough for [Student] to go to lunch, recess, or enhancements" with the other students in his class. (T. 3864-3865; P. Ex. 500.1408)
369. Mr. Thompson recommended that [Student] be observed for a week in the one-on-one setting in Room 125 and then discuss his future placement at the next IEP meeting, scheduled for March 29, 2011. (T. 3864-3865; P. Ex. 500.1408)
370. Mr. Thompson--who had been in the March 15, 2011, IEP meeting--had gone to ABC the following day and observed [Student] in music class. [Student]'s difficulties in that class are what led Mr. Thompson to recommend that [Student] be maintained in the one-on-one setting. (T. 3866)
371. Even as there were internal discussions about [Student] remaining in the separate classroom by himself, [K.B.] viewed that setting as temporary. In fact, she did not recommend that the IEP team remove [Student]'s social goal on his IEP--even when he was placed on homebound--because that was a goal toward which she believed [Student] would continue to work after he returned to the autism classroom. (T. 3867)
372. There were emails exchanged between [R.L.], [K.B.], and Mr. Beamon regarding the need for a teacher in Room 125; however--according to [K.B.]--there was no agreement that the teacher would serve in that role for the remainder of the school year. (T. 3868-3869)
373. [K.B.] had talked with Adam Proctor--a substitute teacher who had been hired while [Student] was in Room 125--about working one-on-one with [Student] (T. 3871)
374. On March 24, [K.B.] discussed options for [Student] in a meeting with Keith Beamon, Gary Ridout, and Lee Hudson, the assistant principal. During that meeting, those present discussed the safety concerns raised by having [Student] full-time in Room 125, which

- had a door that exited to the outside. (T. 3872-3873)
375. [K.B.] also told the others about her conversation with Ms. Floyd, the program director at Murdoch. [K.B.] also told the others about the residential programs she had located, including one in Kansas--which she considered too far away--and Stone Mountain, in which [Student] was too young to enroll. (T. 3874)
376. Mr. Beamon emailed the Superintendent about the meeting; his description of the discussion, however, was dramatically different from [K.B.]'s recollection. (T. 3875-3876)
377. For example, while [K.B.] recalled that the group had talked about medical concerns and the fact that [Student]'s parents had sought assistance from a physician in Carrboro, she did not have any recollection of an agreement that [L.S.] would suggest that [Student] be hospitalized and placed in a group home subsequent to his discharge. (T. 3877; P. Ex. 503)
378. [L.S.] made no such suggestion at the March 29, 2011, IEP meeting, and hospitalization was not suggested by anyone at the meeting. (T. 3877)
379. In addition, while Mr. Beamon's email suggested that the IEP team would "force" group home placement--as [K.B.] explained--the IEP team did not have the authority to force such a placement. (T. 3877-3878)
380. Given the serious misstatements in Mr. Beamon's email, [K.B.] called him and explained that he had apparently confused [Student] with another child who was coming out of a Murdoch placement. She also explained that the IEP team would decide [Student]'s placement, based on the available options. (T. 3879)
381. In advance of the March 29, 2011, IEP meeting, [K.B.] investigated a number of options. During a conversation with [L.S.], she mentioned the Mariposa School, a private program in Cary that provides students a one-on-one setting. [L.S.] told [K.B.] that she had provided [Student]'s parents with some information about Mariposa; however, [L.S.] thought that [Student] was too old and academically advanced to attend Mariposa. (T. 3849-3850)
382. [K.B.] spoke with the director of Mariposa. During the conversation, she asked him about the program, including the age of the students there; how many students attended Mariposa; and whether Mariposa had teachers on staff. She also asked about the nature of Mariposa's academic instruction. (T. 3851)
383. [K.B.] learned that the academic program at Mariposa focused on pre-academic skills rather than the higher-level academics [Student] had demonstrated the capability to complete. (T. 3851) She also learned that there were not Exceptional Children staff working at Mariposa. (T. 3851)
384. Also prior to the March 29, 2011, IEP meeting, [K.B.] spoke with Sharon Floyd--the program administrator at Murdoch--about its programs for students with autism.

According to [K.B.], Ms. Floyd said that there was a space available in Murdoch's long-term program. (T. 3854) Given the impending IEP meeting, Ms. Floyd informed [K.B.] that if the school district could come to a decision quickly, [Student] might be able to fill that open space. (T. 3854)

385. Unfortunately, [K.B.]'s investigation had made clear that there were few options for students with [Student]'s academic ability and his level of autism impairment.
386. Shortly before the IEP meeting, Keith Beamon exchanged email with the Superintendent, Ed Croom and asked him what option the Superintendent would like to pursue regarding [Student]'s educational placement. (R. Ex. 503)
387. Dr. Croom responded, "Homebound." (R. Ex. 503) In response, Mr. Beamon emailed Gary Ridout and [K.B.] on March 25, 2011, and informed them that the Superintendent had directed that [Student] be placed on homebound. (R. Ex. 505)
388. There was no evidence that any other members of the IEP team were informed of Mr. Beamon's March 25, 2011, email.
389. At the March 29, 2011, IEP meeting the team discussed three options: Mariposa; Murdoch; or homebound.
390. [L.S.] expressed her opinion that Mariposa was not appropriate for [Student], given its lack of an academic focus. (T. 3479-3480) Although she did not mention Creative Consultants during the meeting, [L.S.] was aware of Creative Consultants and knew that it also did not provide an academic component. (T. 3631-3632, 3634)
391. [L.S.] did not believe that [Student] remaining in a school setting was an acceptable option. According to [L.S.], if the level of behavioral difficulties that [Student] was exhibiting required the daily support of someone with her expertise, then it no longer was safe for [Student] to remain in a classroom setting. (T. 3599-3601)
392. Petitioners interpreted [L.S.]'s remarks to mean that she felt the staff at ABC were incompetent. As [L.S.] clarified at the hearing, however, she did not believe *any* teacher was competent to address--in a public school setting--the type of behavior [Student] was exhibiting. [L.S.] testified that--given the magnitude of [Student]'s behavior by the time of the March 29, 2011, IEP meeting--she would not have expected a teacher to address that behavior. (T. 3483)
393. The team briefly discussed Murdoch as an option; however, the IEP team could not impose that option because it was a mental health placement, and Petitioners did not appear to be in favor of pursuing that. (T. 3985)
394. During the IEP meeting, [Mother] reviewed the data sheets from *** County. [L.S.] noted that the tasks [Student] was working on in [E.S.]'s classroom were "far from" the tasks he had been working on in Ms. Brown's classroom. For example, [Mother] referenced a phonetics task, which confused [L.S.], given [Student]'s strong reading

ability. (T. 3414-3415)

395. [L.S.] also was concerned about a reference to a file folder project because her experience has been that projects with file folders often involve matching and sorting, and she believed that [Student] has more skills than just matching and sorting. (T. 3415)
396. According to [L.S.], as [Student]’s teachers used VBA with him more frequently, he should have had more access to academic tasks because he would have been more able to understand the instructions and what the teacher was asking of him. (T. 3417-3418)
397. [L.S.] was concerned that the academic demands in [E.S.]’s classroom were not rigorous enough, and she testified that a student will behave better if they are reinforced for lower-level academics. (T. 3418-3421)
398. According to [L.S.], if [E.S.] placed less challenging academic demands on [Student], the introduction of higher-level academics would lead to behavior problems, potentially even setting [Student] “right back to stage one.” (T. 3420-3421)
399. After the team discussed Mariposa and Murdoch, the only other option available was a homebound placement.
400. The team ultimately agreed--after each member individually was polled--that [Student] would be provided services in his home. (T. 3883-3884) Five hours per week would be academic instruction provided by a certified teacher, and five hours per week would be behavior support provided by [L.S.]. In addition, [Student] would receive 90 minutes per week of speech therapy. [K.C.] was to attend all 11 ½ hours per week, in order to provide consistency. (T. 3890-3891)
401. [L.S.] concurred with this approach. She hoped that by removing [Student] to the setting in which he would be most comfortable--his home--his behavior would stabilize, and he slowly could be re-introduced to a school setting. (T. 3484-3487)
402. [L.S.] also concurred with the decision to have [K.C.] provide homebound services, as she had been impressed with [K.C.]’s rapport with [Student] as well as her ability to implement the strategies that [L.S.] modeled. (T. 3487-3488)
403. [Student]’s parents were disappointed in the decision to place [Student] on homebound, and at the March 29, 2011, IEP meeting, they announced their intent to enroll [Student] in a private school program at public expense.
404. After the March 29, 2011, IEP meeting, [K.B.] toured Mariposa. Although [Student] was on homebound by then, [K.B.] visited Mariposa because “homebound was temporary” and she still considered Mariposa an option. (T. 3852)

April 2011 through Present

405. [Dr. K.M.] saw [Student] again in her office on April 8, at which time she recorded that

his medications “are probably about where they needed to be.” (T. 2482-2483; R. Ex. 96, pp. 1993-1995) During the April 8 office visit, [Student] was “significantly calmer” than he had been at his first appointment, and based on the parent report, he was much less agitated. (T. 2483-2484)

406. [Student] was not yet on his full dosage of Depakote at the April 8 appointment. (T. 2484) He also had not started his services with Creative Consultants as of that appointment. (T. 2519)
407. [Dr. K.M.] spoke with [Student]’s parents at the April 8 appointment about alternative educational placements, including two schools specifically for children with autism. (T. 2484-2485) Those were the only two schools of which [Dr. K.M.] was aware that are specifically for children with autism. (T. 2485)
408. [Dr. K.M.]’s recommendations about [Student]’s education were based entirely on the information she received from his parents. (T. 2485)
409. Although [Dr. K.M.] believed that [Mother] and [Father] were transitioning [Student]’s care to a psychiatrist at the University of North Carolina, [Student]’s parents later informed Raleigh Neurology that [Student] would continue to come there. (T. 2479-2481, 2486)
410. [Dr. K.M.] saw [Student] again on August 3. During that visit, [Student]’s parents reported that he was being homeschooled in addition to getting “intensive behavioral therapy” and that they were considering enrolling him in a Montessori school. (T. 2487-2489; R. Ex. 96, pp. 824)
411. [Dr. K.M.] expressed some concern about [Student] enrolling in a Montessori school, which “didn’t have a lot of structure.” (T. 2489) In [Dr. K.M.]’s experience, children with autism “have a tendency to opt out when given a choice of doing work or not doing work,” which would be the case at a Montessori school. (T. 2489)
412. [Student] was on his full dosage of Depakote by the time [Dr. K.M.] saw him in August 2011. She believed that the medication changes were benefiting him and that the Depakote, which she prescribed for him in early March 2011, “was necessary, and that when he went back on it, things leveled out.” (T. 2492-2493)
413. According to [Dr. K.M.], Depakote and Prozac, both of which [Student] was taking by the time she saw him in August, work together to address anxiety and mood stabilization. (T. 2493) [Dr. K.M.] did not see [Student] again between his August visit and her testimony.

Homebound program

414. Although [Student]’s team agreed at the March 29, 2011, IEP meeting that he would receive 11 ½ hours of instruction per week--including his speech services--the evidence shows that Petitioners made it difficult for the district to deliver that instruction.

415. [Mother] initially informed [K.C.]--the teaching assistant who would be working with [L.S.] on [Student]'s behavior issues--that she would not be permitted to come into the house. [K.C.] had contacted [Mother] to schedule speech therapy. (T. 2124-2125; R. Ex. 85, p. 23)
416. Although [K.C.] was proposing to attend speech therapy rather than academic instructional hours, [Father] insisted--in an email to [K.B.]--that [K.C.] was not qualified to instruct [Student] (R. Ex. 86, p. 35)
417. In response to [Father]'s concerns, [K.B.] proposed a schedule to Petitioners that would include 10 hours per week of VBA with [L.S.], as well as four 90-minute academic sessions per week provided by a certified teacher. The hours would be provided until all of the homebound hours that [Student] was owed from March 31 were completed. (R. Ex. 86, p. 2009)
418. Petitioners would not agree to this schedule. Although [L.S.] offered to make herself available for five-hour sessions, Petitioners rejected that offer, insisting that it was too long a period of time for [Student] to work with [L.S.]. (T.1133)
419. In addition, Petitioners insisted that [L.S.] be present when the teacher was present. (T. 1133)
420. Petitioners sometimes would cut short scheduled homebound sessions to take [Student] to music therapy or for other reasons. (T. 2353)
421. As a result, the district continued to provide [Student] with homebound services even after [Father] and [Mother] withdrew him from the Johnston County Schools on May 2, 2011. The district continued [Student]'s homebound services through June 2011 so that [Student] would receive all of the instructional hours required by his IEP between March 30, 2011, the first day of his homebound placement, and the date of his withdrawal from the school system.
422. Despite the difficulties in delivery, the instruction provided during the homebound hours was appropriate for [Student] In addition to [L.S.]'s support, [K.B.] provided [Student]'s academic instruction. [K.B.] is a certified teacher employed by the Johnston County Schools. (T. 2351)
423. [K.B.] usually went to [Student]'s home for homebound sessions lasting an hour and a half. (T. 2353) According to [L.S.], [Student] and [K.B.] had a "nice relationship" that reflected a "good balance of work and reinforcement."
424. [K.B.]'s work with [Student] demonstrated that despite his behavioral issues, he had made some academic progress during the school year.
425. During her first meeting with [Student], [K.B.] and [Student] read a book, and she noted that he was able to read fluently; make connections; and respond to vocabulary questions.

(T. 2372-2373; R. Ex. 30)

426. During her sessions with [Student], [K.B.] sometimes would use National Geographic for Kids, which is geared toward students on the third to fifth grade level. (T. 2365-2366)
427. [Student]'s reading comprehension skills were not as strong as his reading fluency, although he was able to spot answers in a reading passage and order events in a story with "some prompting." (T. 2354-2356) [Student] also was able to identify antonyms and synonyms. (T. 2373)
428. According to [K.B.], [Student] did not like math as much as reading. (T. 2354) She started working with him on number identification and worked through multiplication with him. (T. 2387)
429. During their sessions, [Student] completed addition and subtraction problems--including carrying numbers--which initially he was able to do, with reminders. (T. 2360, 2373) By the end of May, [Student] completed an addition-with-regrouping task independently. (T. 2379) He was able to do three-digit subtraction, a third-grade skill. (T. 2377) According to [E.S.]'s email eight months earlier when he left the *** County Schools, [Student] was getting ready to start two-digit subtraction.
430. [K.B.] also had started working with him on geometry concepts such as three-dimensional shapes, which is covered in the third through fifth grade curricula. (T. 2374-2375)
431. [Student] worked on "elapsed time" with [K.B.], a skill that had been included in the third grade curriculum but recently was moved into the fifth grade curriculum. (T. 2378-2379) [K.B.] worked with [Student] on some multiplication tables; he was able to complete 10 to 15 multiplication problems by himself by early June. (T. 2381)
432. [K.B.] worked on a few writing activities with [Student], although that was not his best subject. (T. 2380) [K.B.] found that [Student] was more willing to engage in writing activities when provided with a keyboard on which he was able to save files. (T. 2380) [K.B.] found that [Student] was a very good speller. (T. 2385)
433. [K.B.] worked with [Student] using strategies that [L.S.] taught her. (T. 2357) Those strategies included using a journal both to work on academic tasks and also to allow [Student] to communicate his wants. (T. 2358-2359) [K.B.] found that if [Student] became frustrated, he was responsive and would become calm after being asked in his journal what it was he wanted. (T. 2377)
434. [K.B.] used index cards with [Student] to get him back on task and also to work on academic tasks, including synonyms and antonyms; multiplication; and addition and subtraction. (T. 2359-2360)
435. [K.B.] originally used "too many words" in instructing [Student], and [L.S.] taught her to use shorter commands and speak more directly. (T. 2360) [K.B.] also used a strategy

- suggested by [L.S.] to redirect [Student] when he would “script” from television shows. (T. 2361)
436. While [L.S.] provided [K.B.] with “statement” cards to use with [Student], [K.B.] only used them a few times and did not rely on them much. (T. 2362)
437. During [K.B.]’s sessions, [Student] would work at the dining room table, with breaks after every task for a reinforcer that [Student] was able to choose. (T. 2364) [Student] would work for 15 to 20 minutes on an academic task, with a five- or ten-minute break to follow. (T. 2365)
438. While [Student] would have to be redirected during his homebound sessions, [K.B.] found that she was able to get him back to his work most of the time. (T. 2366)
439. The most intense behavioral issue that [K.B.] observed with [Student] occurred during one of her first two visits, when [Student] ran into the living room and was on the floor kicking and crying for “maybe 15 minutes.” (T. 2367)
440. [L.S.] was able to redirect [Student] after this incident, and he returned to complete work for [K.B.]. (T. 2367) That was the longest meltdown that [K.B.] recalled observing during her time working with [Student] (T. 2367)
441. [K.B.] kept notes regarding each of her sessions with [Student] (R. Ex. 30) She noted major behavioral incidents that interfered with her ability to complete the activities that she had planned. (T. 2373-2374)
442. [K.B.]’s experience was that as her time with [Student] went on, he would work for longer periods of time without getting up after each reinforcer. (T. 2368)
443. [K.B.] did not see evidence of a schedule being used with [Student] at home, nor did she see particular reinforcers that were being used by his parents. (T. 2368) She also did not see evidence that journaling was being used with [Student] at home. (T. 2368)
444. [K.B.]’s experience was that [Student] was more willing to complete a task when he was able to visually mark the number of items he was required to complete before receiving his reinforcer. (T. 2376)
445. By the last two weeks that [K.B.] worked with [Student], she did not observe him flopping to the floor; hitting her with any force; kicking her or anyone else with any force; or screaming. (T. 2382-2383) She had only heard him scream three or four times during the weeks that she worked with him and then, not at the top of his lungs and for only a short period of time. (T. 2383)
446. [K.B.] never observed [Student] spit or throw things during any of her homebound sessions. (T. 2382)
447. The main behavioral issue that [K.B.] observed with [Student] during homebound was

avoidance; however--in her experience with him--he would typically come back to the table and do work. (T. 2383-2385) [L.S.] also testified that [Student] was more interested during homebound services in academic tasks, and he was not trying to avoid those tasks as he had in the school setting. (T. 3494)

448. [K.B.] saw [Student]'s behaviors decreasing during her time with him providing homebound services; [K.B.] discussed the possibility of [K.B.] providing [Student] educational services in a classroom setting. (T. 2389) [L.S.]--who was confident that [Student] was making "lots of progress" in homebound--also hoped to be part of [Student]'s transition back into a classroom setting. (T. 3496)
449. During that discussion, [K.B.] talked with [K.B.] about working with [Student] in a classroom during the summer with [L.S.] present to help [K.B.] learn behavioral strategies. (T. 2389-2390) [K.B.] and [K.B.] also discussed the possibility of continuing that classroom set-up into the following school year. (T. 2390)
450. [L.S.] was supportive of the plan to recreate [Student]'s homebound program in a classroom setting during the summer, and she was confident that he would have been successful, given his progress during homebound. [L.S.] wanted the program to be implemented with both [K.B.] and [K.C.], with whom [Student] had strong rapport. (T. 3496-3497)
451. Although [K.B.] spoke with [Father] and continued providing educational services during the summer, Petitioners rejected that offer. (T. 3928-3929)

Private Program

452. There is no dispute that the programming that Petitioners provided privately to [Student] after withdrawing him from the Johnston County Schools did not include an academic component.
453. [Father] testified that from May 2 until the end of the school year, [Student]'s "school" was the home school that he and [Mother] had registered with the Department of Public Instruction. (T. 1152) However, there was no evidence of any kind to support a finding that Petitioners provided [Student] with academic services through a home school program.
454. While [Student] began receiving services at Creative Consultants in April--according to [Father]--[Student] was "being assessed." (T. 1152-1153) [Father] himself acknowledged that he and [Mother] "certainly were not turning to Creative Consultants to be our educators." (T. 1153)
455. The evidence shows that the work done with [Student] at Creative Consultants was not on par with [Student]'s demonstrated academic abilities. [K.B.] reviewed some of that work. (R. Ex. 73) The texts that [K.B.] used in working with [Student] were more difficult than the texts that Creative Consultants used, which was on a first grade level. (T. 2391)

456. Creative Consultants also appeared to be working on single-digit subtraction with [Student], while [K.B.] was able to work with him on three-digit subtraction. (T. 2392)
457. In addition, [K.B.] identified some activities on which [Student] worked with Creative Consultants as being on the pre-kindergarten level, including a maze; matching pictures with words; and coloring activities. (T. 2392-2393, 2396) [K.B.] did not do any pre-kindergarten level work with [Student] (T. 2392)
458. Creative Consultants described [Student] drawing a line from a picture of a Thomas Train character to the character's name for four characters as an "academic task." (T. 2410-2411) According to [K.B.], this would not be an academic task at [Student]'s level. (T. 2411)
459. These activities were completed with [Student] during the same timeframe in which he was working with [K.B.].
460. In addition, [K.B.] reviewed documents generated by Creative Consultants that described [Student] flopping on the ground, throwing his shoes, screaming, acting aggressively, and injuring himself. (T. 2398-2399; R. Ex. 68)
461. While [K.B.] saw [Student] flop on the floor once during homebound sessions, she did not observe behaviors as intense as those described in the Creative Consultants summary. (T. 2399)
462. [K.B.] never observed [Student] trying to destroy any toys, as described in a second Creative Consultants report. (T. 2400)
463. While [K.B.] did see [Student] scream occasionally, he always was able to get back on task. (T. 2401) She never saw him scream for 10 minutes, as described in the Creative Consultants summary. (T. 2400-2401) [K.B.] also never observed [Student] engaging in self-injurious behavior or any inappropriate sexual behavior. (T. 2399, 2527)
464. The behavioral incidents described in the Creative Consultants summaries were generally more intensive and longer-lasting than the incidents [K.B.] observed during the same timeframe in the homebound setting. (T. 2413-2414)
465. The individuals who worked with [Student] either were not qualified to provide academic instruction or did not do so. [A.P.]--a behavioral therapist from Creative Consultants--was qualified as an expert in the assessment of autistic children, specifically the Assessment of Basic Language and Learning Skills (ABLLS) and the VB-MAPP. (T. 881) [A.P.] is not a certified teacher. (T. 866) She is not familiar with the Academic Content Standards in North Carolina, and--while she has reviewed the Standard Course of Study--she is not familiar enough with it to "pick particular information." (T. 872) [A.P.] did not testify about [Private]School, the private school in which [Student] ultimately enrolled.
466. E.M.] is [Student]'s tutor at Creative Consultants. (T. 1154) Although she is certified in

special education in the State of North Carolina, [E.M.] testified that she carries out the program that is designed by [A.P.]. (T. 1558) [E.M.] is not involved in designing the program.

467. When asked what her role would be in [Student]'s entry into a private school program, she testified that she only had spoken with [A.P.] about it briefly and that she understood that they would "take another step at the end of the day and increase the rate that he's at school and when he's not at school, he would be with us at the clinic ..." (T. 1560) [E.M.] offered no further testimony about the private schools or what role she would play in integrating [Student] into a private school setting.
468. Although Petitioners testified at the beginning of the hearing that [Student] would be enrolled in a private school program for the 2011-12 school year, there was little testimony about the nature of the private school itself or what role Creative Consultants would play in [Student]'s school setting.
469. [K.B.] and [L.S.] observed [Student] at [Private]School in September 2011. The observation was limited to lunch and recess; there was no academic instruction during the visit. (T. 3511-3512)
470. [E.S.]--[Student]'s former teacher in *** County--testified that [Student] was not able to successfully complete academic work in a larger regular education setting, even when he had an assistant with him. (T. 78-79)
471. There was no testimony from any witness that [Student] could be successful in a regular classroom or that he did not require instruction from a special education teacher. There was no evidence presented that the teachers at [Private]are licensed in special education.
472. While [Student]'s Creative Consultants tutor--E.M.]--is a certified special education teacher, she is not employed by either of the private schools and there was no testimony about whether [E.M.] would play any role in [Student]'s educational services once he began attending [Private] School.
473. There was no testimony about the curriculum being used at [Private] School or how and by whom the curriculum might be modified to address [Student]'s academic needs.
474. Throughout the hearing itself, the school district remained willing to transition [Student] back into a public school setting.
475. In addition to the summer program that the district offered to [Mother] and [Father], [K.B.] offered to continue [Student]'s transition into a classroom with other students after students returned to school in August. [K.B.] hoped to provide late afternoon services in the summer, just as [Student] had received during the period in which he was in homebound, and then gradually increase his instructional time by working backwards into the day. (T. 3927-3929)
476. [K.B.] already had spoken with both [K.B.] and [L.S.] about working with [Student] on

this transition, and both were willing to do so. [K.B.] testified that [Student] either could return to ABC or transfer to East Clayton Elementary, another school in Johnston County with a separate classroom for students with autism. (T. 3926-3927)

477. Although [K.B.] had a full-time position at [S] Elementary School, [K.B.] testified that she had spoken with the principal at [S] about [K.B.] having flexibility at the end of the day to come to [Student]’s elementary school to work with him. Both the principal and [K.B.] had agreed to this plan. (T. 3927-3928)
478. Given [Student]’s success in the homebound setting with [K.B.] and [L.S.], [K.B.] was confident that [Student] could be transitioned back into a school setting during the 2011-12 academic year, as was [L.S.]. (T. 3497, 3981) [L.S.] had offered to make herself or her partner available to provide support in [Student]’s home. (T. 3498-3499)
479. In addition to having [Student] work with [K.B.] and [L.S.], [K.B.] hired a speech pathologist who had been trained and worked at The Mariposa School. This speech pathologist knew VBA and was comfortable using it in speech language sessions. (T. 3981)
480. [Father] rejected the offer of continued educational services during the summer. (T. 3981; R. Ex. 157) Although [K.B.] made clear to [Father] that the school district’s offer to transition [Student] back into a school setting remained open, Petitioners never have accepted the district’s offer. (R. Ex. 157)

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over this case under Chapters 115C and 150B of the North Carolina General Statutes and the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. §1400 *et seq.* and implementing regulations, 34 C.F.R. Parts 300 and 301. N.C. Gen. Stat. § 115C-109.6(a) controls the issues to be reviewed. To the extent that the Findings of Fact contain conclusions of law, or that the Conclusions of Law are findings of fact, they should be so considered without regard to the given labels.
2. IDEA is the federal statute governing the education of students with disabilities. The federal regulations promulgated under IDEA are codified at 34 C.F.R. Parts 300 and 301.
3. Respondent is a local education agency receiving monies under IDEA, 20 U.S.C. § 1500 *et seq.*
4. The controlling State law for students with disabilities is N.C. Gen. Stat. Section 115C, Article 9 and the corresponding State regulations, including the Policies Governing Services for Children with Disabilities.
5. [Student] is a child with a disability for the purposes of IDEA, 20 U.S.C. §1400 *et seq.* and a child with special needs within the meaning of N.C. Gen. Stat. 115C, Article 9. He

is entitled to a free appropriate public education (“FAPE”) from the LEA in which he is domiciled.

6. Petitioners have the burden of proof in this contested case. *Schaffer v. Weast*, 549 U.S. 49, 57-58. Petitioners have the burden of proof by a preponderance of the evidence. N.C. Gen. Stat. §150B-34(a). Black’s Law Dictionary defines preponderance: “[I]t denotes a superiority of weight or outweighing.” The finder of fact cannot properly act upon the weight of evidence in favor of the one having the onus, unless it overbears, in some degree, the weight upon the other side. North Carolina statutory law states that actions of local boards of education are presumed to be correct and “the burden of proof shall be on the complaining party to show the contrary.” N.C. Gen. Stat. §115C-44(b). Thus, Petitioners--being the complaining party--have the burden of proof to show by a preponderance of evidence that Respondent did not provide [Student] with the opportunity of a free appropriate public education.
7. [Student] is entitled to the preparation and implementation of an Individualized Education Program (“IEP”) as defined in N.C. Gen. Stat. § 115-113(f) and 20 U.S.C. § 1414(d) because he is identified as a child with special needs. IDEA requires an education plan likely to produce progress, not regression or trivial educational advancement. *Hall v. Vance County Bd. of Educ.*, 774 F.2d 629, 636 (4th Cir. 1985).
8. The United States Court of Appeals for the Fourth Circuit has reiterated that reviewing courts owe great deference to the IEP decisions made by the educators involved:

As the Court made clear in *Rowley*, once a procedurally proper IEP has been formulated, a reviewing court should be reluctant indeed to second-guess the judgment of education professionals. Neither the district court nor this court should disturb an IEP simply because we disagree with its content. Rather, we must defer to educators’ decisions as long as an IEP provided the child “the basic floor of opportunity that access to special education and related services provides.” *Tice v. Botetourt County Sch. Bd.*, 908 F.2d 1200, 1207 (4th Cir. 1990)(citation omitted; quoting *Rowley*, 458 U.S. at 201).
9. To prevail on their claims for reimbursement, Petitioners bear the burden of proving that (1) the educational program offered by Respondent is inappropriate **and** (2) the educational program they chose is appropriate. *School Comm. of Burlington v. Department of Educ.*, 471 U.S. 359, 373-374 (1985). “[T]he Act does not require the ‘furnishing of every special service necessary to maximize each handicapped child’s potential.’” *Hartmann v. Loudoun County Bd. of Educ.*, 118 F.3d 996, 101 (4th Cir. 1997) (quoting *Rowley*, 458 U.S. at 199-200, 102 S.Ct. 3034).
10. In *Hendrick Hudson Dist. Bd. of Ed. v. Rowley*, 458 U.S. 176, 206 (1982), the Supreme Court established both a procedural and a substantive test to evaluate a state’s compliance with IDEA. The Court stated that:

First, has the State complied with the procedures set forth in the Act? And second, is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits? If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more.

11. Petitioners assert that [Student] was denied a FAPE throughout the 2010-11 school year.
12. [Student] was a regularly-attending student at ABC Elementary School beginning on August 25, 2010, until his IEP team placed him on homebound on March 29, 2011. Petitioners have not proven by a preponderance of the evidence that the Board denied [Student] a FAPE prior to the March 29, 2011 homebound placement.
13. Petitioners asserted in their petition and during the hearing that [Student] required a verbal behavior analysis program in order to be successful and that the Board's failure to have a VBA program in place from the first day of school caused the significant behavioral issues that [Student] exhibited during the 2010-11 school year.
14. There was, however, substantial evidence presented at the hearing that contradicts Petitioners' claims.
15. First, Petitioners' contentions regarding [Student]'s educational program in *** County were not accurate when compared and weighed against other evidence about that program.
16. [L.S.] did contract as a consultant in *** County; however, the evidence presented at the hearing demonstrated that her involvement in [Student]'s educational program was limited.
17. While [Student] was exposed to some modified VBA strategies in the *** County Schools, he was not placed in a VBA classroom, nor did he have the type of VBA program that [Mother] insisted he needed.
18. Indeed, at the beginning of the 2010-11 school year, Respondent received conflicting information concerning the nature of [Student]'s educational program in *** County. While [Mother] was insisting that [Student] required VBA and that the involvement of [L.S.] was critical, [E.S.]--[Student]'s *** County special education teacher--failed to even mention VBA in her conversations with school system staff. When she was asked directly about the implementation of VBA in [Student]'s program, [E.S.] told two separate school system employees that staff in *** County had not fully implemented [L.S.]'s recommendations but instead did what they believed worked with [Student]
19. Testimony offered at the hearing demonstrated that many of the strategies [L.S.] recommended in *** County were not fully implemented or--if they were tried-- were not followed through.

20. Second, it is clear that there were issues other than [Student]'s educational programming that affected his behavior during the 2010-11 school year, including the significant transitions that [Student] endured prior to the start of school as well as the effects of and changes in his medication regimen.
21. There is no dispute that [Student] endured significant transitions just prior to starting school at ABC Elementary in August 2010. Not only had he and his family moved away from the home in which he had grown up, he also moved twice within one month, first into a home in ___ and then into his family's permanent home in Clayton.
22. While [Mother] testified that [Student] had no response to these changes, that testimony is not supported by the evidence. Testimony during the hearing established that even something as minor as the packing of the Extended School Year classroom left [Student] anxious. In addition, both [L.S.] and [M.L.]--who have extensive experience working with students with autism and specifically with [Student]--testified that he struggled with transitions.
23. In addition, the ___ a home in which [Student] and his family lived when Petitioners first moved from *** County was 45 minutes from ABC Elementary School. Although [N.N.] had suggested that [Student] transition into the school setting gradually and--at one point after [Student] attempted to kick out the car windows--suggested that [Student] remain home until his family moved closer to school, [Mother] was insistent that he attend for a full day, beginning with the first day of school.
24. According to Tracey Vail--who testified on behalf of Petitioners--this long drive to school at the beginning of the year paired "school" with "discomfort" for [Student] and contributed to his behavioral issues.
25. There was substantial evidence presented during the hearing to show that Petitioners were intent on [Student] functioning at grade level. Not only was this concern reflected in [Student]'s *** County IEP, but [Mother] particularly had conveyed her desire to [L.S.] to have [Student] working on grade level. In addition, [Father] had raised this issue in an email to Melissa Hill--the resource teacher at ABC Elementary School--in advance of the October 2010 IEP meeting.
26. [E.S.]--[Student]'s special education teacher in *** County--told [M.Y.] that [Student] was functioning at the late second grade level.
27. However, when [Mother] reviewed the work [Student] had been doing in [E.S.]'s classroom at an IEP meeting in March 2011, [L.S.] was concerned that the tasks described in the data sheets [E.S.] had completed would not be academically challenging for [Student].
28. According to [L.S.], if [Student] were successful in [E.S.]'s classroom because he was being reinforced for low-level academic work, the introduction of more challenging work would lead him to regress behaviorally.

29. Petitioners also contended that in August 2010, Respondent failed to provide [Student] with educational services in the placement identified on [Student]'s *** County IEP.
30. When a student transfers from one school district to another within the same state, the receiving school district--in consultation with the student's parents--must provide the student with FAPE, including *comparable* services, until the receiving school either conducts an evaluation--if deemed necessary--or adopts a new IEP. 34 C.F.R. 300.323(e)(emphasis added).
31. Respondent adopted a Johnston County IEP for [Student] at an IEP meeting held October 11, 2010.
32. There was substantial evidence introduced at the hearing to support a finding that Respondent provided [Student] with comparable services, in consultation with [Student]'s parents. Specifically--while Petitioners contend that [Student] should have been provided services in the resource setting--there is considerable evidence that [Mother] consented to [Student]'s placement for the bulk of his day in the autism classroom.
33. While there were efforts made to provide [Student] with some services in the resource classroom as well, it quickly became clear that [Student]--given his behavioral difficulties--could not remain in the resource classroom.
34. The decision on September 20 to provide [Student] with his services in one classroom, the separate autism class taught by [M.Y.], was made upon the recommendation of [Student]'s parents' hand-picked consultant, [L.S.].
35. Evidence in the record establishes that the staff at ABC Elementary, particularly during the first several months of the school year, were diligent in providing [Student] with classwork that was in the late second grade or early third grade levels.
36. [Student]'s response to academic work often was negative; he engaged in a number of behaviors that the evidence shows were intended to escape from academic demands.
37. Petitioners have failed to demonstrate by a preponderance of the evidence that the school district's partial implementation of a VBA program, rather than these challenges combined with the stresses associated with the significant transitions in his life in August and September 2010, are what led to the significant behavioral difficulties [Student] experienced during the first semester of the 2010-11 school year.
38. Furthermore, notwithstanding the conflicting information that the district was receiving about [Student]'s educational program while he was in *** County, the staff at ABC Elementary School and in the Exceptional Children's program put in place appropriate supports for [Student], based on the limited information available.

39. [N.N.] arranged for a meeting between [Mother] and [Student]'s teachers and service providers prior to the start of the school year so that the individuals who would be working with [Student] could learn about him.
40. At this time, the only record that the school district had in its possession regarding [Student] was the *** IEP, which provided little useful information.
41. [N.N.] arranged for a second teaching assistant to be added on a part-time basis to the autism classroom at ABC. When it became clear that--with the addition of [Student]-- the classroom would need additional support, [N.N.] requested that the part-time position be increased to full-time. That request was granted.
42. [N.N.] initially contacted [L.S.]--Petitioners' hand-picked consultant--in late August and asked her when she would be available for an IEP meeting. The school district scheduled the meeting to allow [L.S.] to attend after observing [Student] in the classroom.
43. [L.S.]'s involvement with [Student] at ABC Elementary--where she was present at least twice a month and sometimes for several days in a row--far outpaced her involvement with [Student] while he was enrolled in *** County Schools, where she only provided input three or four times over the course of a school year.
44. In addition--once [L.S.] contracted with the Johnston County Schools to provide support to [Student]'s educational program--the changes made to his program largely were done through her oversight.
45. In addition to seeking guidance from [L.S.], the district sought input throughout the school year from a number of other sources, including: [C.B.], the district's former autism specialist; [M.L.], a school psychologist and member of the district's autism support team; [M.T.], a behavioral specialist; [T.V.], another expert in VBA who provided training to staff; and [S.S.], a behavioral psychologist and professor at N.C. State University.
46. [K.B.]--the district's director of the Exceptional Children's program beginning in November 2010--closely was involved with overseeing [Student]'s program.
47. There were a number of staff changes at ABC Elementary School during the 2010-11 school year. However, only one of these changes--the transition from interim teacher [M.Y.] to [T.Z.]--was foreseeable.
48. [M.Y.] started the school year early and consulted with [C.B.] --the district's former autism consultant--regarding the structure of her classroom. In addition, [M.Y.] sought out [Student]'s former teacher in *** County in an effort to learn more about him and how to work with him.
49. The evidence shows that [M.Y.] implemented the strategies that [E.S.] provided to her from the first day of school. However, [M.Y.] was confronted with behaviors from

[Student] that were unlike those [E.S.] had observed, including aggression. [Student] also did not consistently respond to reinforcers.

50. The evidence shows that when [M.Y.] was provided with suggestions or recommendations, she tried to implement those recommendations. Those efforts--while appropriate--often were unsuccessful, however.
51. Petitioners contended that [Student] improperly was suspended from school for behavior that was a manifestation of his disability.
52. [Student] was suspended for only nine days during the 2010-11 school year; at least five of those days of suspension were for serious incidents that resulted in injuries to school system staff.
53. IDEA permits a school district to change a student's placement for disciplinary reasons for up to ten school days without requiring a manifestation determination review.
54. In addition, the evidence offered at the hearing supports a finding that the Board used out-of-school suspension as an appropriate tool to address dangerous behaviors and to make adjustments to [Student]'s program, including--when necessary--seeking additional assistance when [Student] was not in the classroom.
55. Petitioners claim that [Student] was denied services provided by a qualified teacher beginning in December 2010, when teaching assistant [K.C.] served as the autism classroom teacher for approximately three school weeks.
56. However, such an allegation cannot form the basis of a due process petition because there is no right of action on behalf of an individual student or a class of students for the failure of a particular employee to be highly qualified. *See* 34 C.F.R. §300.18(f).
57. Even if this allegation could support a claim in a due process petition, the evidence shows that while [K.C.] served as interim teacher the district provided appropriate support to the classroom, including the development of lesson plans by an experienced special education teacher; oversight by a district reading specialist; and a revolving schedule of senior staff members to observe and provide direct support on a regular basis.
58. There is no dispute that [Student]'s behaviors escalated in January 2011. Petitioners acknowledged [Student]'s escalating behavior in their petition, and several school system witnesses, including [K.B.]; [K.C.]; [M.L.]; and [L.S.]; testified that they observed [Student]'s maladaptive behaviors increase both in number and intensity in January 2011.
59. Based on Petitioners' statements to [Student]'s neurologist, [Dr. K.M.]--as well as [Dr. K.M.]'s direct testimony--there was considerable evidence presented at the hearing that in addition to the numerous transitions that [Student] went through during the 2010-11 school year, including moving away from the only home he had ever known; moving to two new homes within a month; and starting at a new school; changes in [Student]'s medication regimen significantly impacted his behavior in the first several months of 2011.

60. In their petition, Petitioners alleged that a neurologist who examined [Student] concluded that [Student]'s behaviors were escalated because of "stress from the continuous disruption at school and a lack of educational program that was readily accessible to him." The evidence introduced at the hearing demonstrated that this contention was not supported by the evidence.
61. [Dr. K.M.], a developmental pediatrician at Raleigh Neurology who saw [Student] in February, April, and August 2011, did not conclude that [Student]'s educational program was inaccessible to him, nor was she aware of the details of that programming. Rather, [Dr. K.M.] testified that children with autism often struggle as the result of transitions and that [Student] had gone through a number of transitions. In addition, she believes that changes to his medication probably contributed as much as 50 percent or more to the changes in his behavior.
62. There is significant evidence provided by [Student]'s doctors that--given the difficulties that [Student] already was experiencing in the classroom--the changes in his medication--rather than any actions on the part of the school district--exacerbated [Student]'s behavioral issues in January, February, and March 2011.
63. Given the significant outside factors impacting [Student] between August 2010 through March 2011--as well as the Respondent's diligence in providing [Student] support during that time period--Petitioners have failed to prove that Respondent denied [Student] a FAPE prior to the March 29, 2011, IEP meeting.
64. Respondent has conceded that there was a procedural violation arising from that IEP meeting, at which [Student]'s IEP team placed him on homebound. Specifically, the Superintendent of the Johnston County Schools, concerned about the increasing intensity of [Student]'s behavior and the possibility of further staff injuries, determined prior to the March 29, 2011, meeting that Respondent was going to place [Student] in a homebound setting.
65. The evidence did not show that all of the members of the IEP team were informed of the Superintendent's position; however, it was shared with the interim principal of ABC Elementary School as well as the Director of Exceptional Children's Services.
66. Although all of the members of the IEP team were polled at the March 29, 2011, meeting--and each member individually expressed support for placing [Student] on homebound--Respondent has conceded that it is not possible to separate the IEP team's decision from the Superintendent's directive. Therefore, Respondent has accepted responsibility for providing [Student] with compensatory services from March 29, 2010, through June 10, 2010, in addition to those services that the school system provided to [Student] on homebound during that time period.
67. Petitioners seek reimbursement for the private services for which they paid--specifically, music therapy and behavioral therapy at Creative Consultants.

68. [Student]'s music therapist testified at the hearing. However, Petitioners did not present any evidence that [Student] required music therapy in order to derive educational benefit. Because Petitioners failed to demonstrate by a preponderance of the evidence that music therapy is required in order for [Student] to receive a free appropriate public education, Petitioners' claim for reimbursement for music therapy is denied. *See Winkelman et al. v. Parma City School Dist.*, 411 F.Supp. 2d 722.
69. In addition, [Father] himself acknowledged that [Student] was not receiving educational services from Creative Consultants. Petitioners offered no evidence that the behavioral therapy provided by Creative Consultants enabled [Student] to receive any educational benefit. The lack of academic instruction in the Creative Consultants program necessarily renders it inappropriate for [Student]
70. The homebound educational program that Respondent provided to [Student] was appropriate, notwithstanding Petitioners' less-than-complete good faith cooperation with Respondent regarding the in-home services being provided. There was substantial evidence at the hearing to support the conclusion that [Student] made educational progress during his homebound instruction.
71. Given the inappropriateness of the Creative Consultants program and the appropriateness of the homebound educational services, Respondent will be obligated under the terms of this decision to offer [Student] additional compensatory education in the form of homebound services in the amount of two hours per day for each school day between March 30, 2011, and June 10, 2011.
72. In addition to seeking a remedy for the deprivation of a FAPE between March 29, 2011, and June 10, 2011, Petitioners sought reimbursement for [Student]'s enrollment in [Private]School for the 2011-12 school year, as well as the cost of Creative Consultants providing support to [Student] at [Private] School.
73. Petitioners produced insufficient evidence in this hearing to support a finding that the program at [Private] School was educationally appropriate for [Student]
74. The record is devoid of any testimony describing the special education services [Student] would receive or the modifications or accommodations that were in place to ensure [Student]'s success in a larger classroom setting.
75. Petitioners also did not put on meaningful testimony about what role Creative Consultants would play in [Student]'s educational program. In fact, the testimony regarding [Student]'s enrollment at [Private] School established that [A.P.], who is not an educator, would be providing support to [Student] at school. There was no testimony about what additional support was offered.
76. Petitioners have failed to meet their burden of proving that their proposed private program was appropriate for [Student]

77. In addition, the evidence established that--based on his success in the homebound program--[Student] was able to begin transition planning and efforts for re-entry to the public school system.
78. [K.B.] testified that Respondent at all times remained and remains willing to create a program for [Student] by which he would begin attending school in the late afternoon and slowly work his way back into the school day, under the supervision of [L.S.] and with the assistance of [K.B.]. The evidence offered at the hearing establishes that this would be an appropriate program for [Student]
79. Petitioners ask the undersigned to declare that IDEA precludes the state's statutory scheme for appeal of this decision. This court's jurisdiction is limited to issues involving the identification, evaluation, or educational placement of a child; or the provision of a free appropriate public education to a child; or a manifestation determination. *See* Gen. Stat. §115C-109.6(a). The undersigned lacks the authority to enter a declaratory judgment overturning the state's statutory scheme.

FINAL DECISION

1. Respondent's motion to strike Petitioners' proposed decision as untimely filed is DENIED.
2. Petitioners had the burden of proof on all issues pending before the Office of Administrative Hearings. Petitioners failed to show that Respondent failed to provide [Student] with a free appropriate public education between August 25, 2010, and March 29, 2011.
3. In addition, while Respondent conceded a procedural violation arising from the March 29, 2011, IEP meeting, and therefore has accepted responsibility for providing [Student] with compensatory services between that date and June 10, 2011, Petitioners' private program during that time period was not appropriate because it failed to include any meaningful academic instruction.
4. Respondent is ordered to provide [Student] with compensatory education in the form of two hours of services for each school day during the period between March 30, 2011, and June 10, 2011.
5. Through IDEA, Congress seeks to improve educational results for children with disabilities and to provide assistance through the Act to ensure equality of opportunity. The Act does not require that states do whatever is necessary to achieve a particular level of education, but calls for an individualized education program reasonably calculated to enable a student to make some progress toward his or her goals. As found in the U.S. Supreme Court case of *Board of Education v. Rowley*, 485 U.S. 176, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982) the individualized education program offered must be appropriate but is not required to be superior to the alternatives.

6. Petitioners failed to prove that the private school program that they have chosen for the 2011-12 school year is educationally appropriate. Respondent has proposed an appropriate program to facilitate [Student]’s re-entry into the public school system. Therefore, Petitioners are entitled to no other relief.

NOTICE

In accordance with the Individuals with Disabilities Education Act (as amended by the Individuals with Disabilities Education Improvement Act of 2004) and North Carolina’s Education of Children with Disabilities laws, the parties have appeal rights.

In accordance with 20 U.S.C. §1415(f), the parents involved in a complaint “shall have an opportunity for an impartial due process hearing, which shall be conducted by the state educational agency or by the local educational agency, as determined by state law or by the state educational agency.” In accordance with 20 U.S.C. §1415(g), “if the hearing required by subsection (f) is conducted by a local educational agency, any party aggrieved by the findings and decision rendered in the hearing may appeal such findings and decision to the state educational agency.” A decision made in a hearing conducted under subsection (f) that does not have the right to an appeal under subsection (g) may bring a civil action in state court or a district court of the United States. *See* 20 U.S.C. §1415(i).

Under North Carolina’s Education of Children with Disabilities laws (N.C.G.S. §§115C-106.1 *et seq.*) and particularly N.C.G.S. §115C-109.9, “any party aggrieved by the findings and decision of a hearing officer under G.S. 115C-109.6 (a contested case hearing)...may appeal the findings and decision within 30 days after receipt of notice of the decision by filing a written notice of appeal with the person designated by the State Board under G.S. 115C-107.2(b)(9) to receive notices.”

Inquiries regarding further notices and time lines should be directed to the Exceptional Children Division of the North Carolina Department of Public Instruction, Raleigh, North Carolina.

IT IS SO ORDERED.

This the 12th day of April, 2012.

Beecher R. Gray
Administrative Law Judge

A copy of the foregoing was mailed to:

Robert C Ekstrand
Ekstrand and Ekstrand LLP
811 Ninth Street
Suite 260
Durham, NC 27705
ATTORNEY FOR PETITIONER

Carolyn A. Waller
Tharrington Smith LLP
PO Box 1151
Raleigh, NC 27602-1151
ATTORNEY FOR RESPONDENT

This the 12th day of April, 2012.

Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714
(919) 431 3000
Fax: (919) 431-3100