

OAH 60-1300-30163  
MDE 13-008-H  
OAH 60-1300-30239  
MDE 13-009-H

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF EDUCATION

In the Matter of Litchfield Public School  
District 0465-01 (School District),

v.

[Student]

*and*

In the Matter of [Student]

v.

Litchfield Public School District 0465-01.

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER**

This matter came on for hearing before Administrative Law Judge James E. LaFave on June 26, June 27 and June 28, 2013, in Room 200 of the Family Services Building, 114 North Holcombe Avenue, Litchfield, MN 55355. The hearing was held pursuant to a request for a due process hearing filed by the School District and received by the Department of Education on November 13, 2012. Later, on December 10, 2012, Student filed his own request for a due process hearing. These matters were consolidated by an Order dated December 21, 2012.

The hearing record closed on July 22, 2013, upon receipt of the parties' post hearing submissions. Upon a joint motion by the parties, and for good cause shown on the record, an extension was granted and the Administrative Law Judge's determination was due August 21, 2013.

Peter A. Martin, Knutson, Flynn & Deans, P.A., appeared on behalf of the School District. Jason L. Schellack, [Law Center], appeared on behalf of the Student.

## STATEMENT OF THE ISSUES<sup>1</sup>

1. Whether the School District's Individualized Educational Program (IEP) is reasonably calculated to confer educational benefit?
2. Whether the School District failed to revise the IEP to address the Student's lack of progress?
3. Whether the School District failed to meet its obligation to provide transition services to Student?
4. Whether the School District violated procedural requirements with regard to progress reporting?

## SUMMARY OF CONCLUSIONS

The Administrative Law Judge concludes that the School District's Complaint and Student's claim to be reimbursed for the 2013 IEE are **DISMISSED** as moot. Student's complaint is **DISMISSED WITH PREJUDICE**.

## WITNESSES AT HEARING

- [redacted], mother of Student (Parent);
- [redacted], special education teacher;
- [Doctor 1], associate professor of pediatrics and neurology and pediatric neuropsychologist;
- [redacted], English teacher;
- [redacted], special education teacher and Student's case manager;
- [redacted], Principal, Litchfield Middle School, and K-12 school improvement coordinator of the Litchfield School District;
- [Student];

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<sup>1</sup> Originally there were three other issues:

- Whether [Student] "disagreed" with the School District's April 2012, reevaluation report;
- If he did, that the School District's evaluation was appropriate; and
- Whether the School District should have to reimburse Student for the Independent Educational Evaluation (IEE) completed in 2013 (THIRD PREHEARING ORDER, March 6, 2013).

During Opening Statements, Counsel for Student stipulated the School District's April 2012 re-evaluation report was appropriate and stated Student would not be seeking reimbursement for the IEE completed in 2013. (Tr. p. 42- 43.) Those three issues are therefore resolved.

- [redacted], Wright County Special Education Coordinator;
- [redacted], English teacher;
- [Doctor 2], pediatric neuropsychologist; and
- [redacted], director of special education, Meeker and Wright Special Education Co-Op.

Based on the evidence in the hearing record and the proceedings herein, the Administrative Law Judge makes the following:

## FINDINGS OF FACT

### Factual Background

1. [Student] is a [redacted]-year-old boy who will be entering [grade] at Litchfield [redacted].

2. Back in [redacted] grade, the Student's teacher told him he was a cry baby when he wanted his mom and told him your mom is never going to come and get you.<sup>2</sup> The teacher also told the Student Santa would not come to visit him because he was a bad boy.<sup>3</sup>

3. Parent testified [Doctor 3] diagnosed Student with [medical diagnosis 1] in 2008, based on the incident in [redacted] grade.<sup>4</sup>

4. As a result of these remarks in [redacted] grade Student has a fear of teachers.<sup>5</sup> He is afraid they will humiliate him and make fun of him.<sup>6</sup>

5. In October 2004, [Doctor 4], a pediatric neuropsychologist at [Hospital], evaluated Student.<sup>7</sup> [Doctor 4] stated "There are no concerns regarding hyperactivity, impulsive, or acting out behaviors."<sup>8</sup>

6. As part of [Doctor 4]'s evaluation, Parent and Student's [redacted] grade teacher completed the Achenbach Child Behavior Checklist. These questionnaires provide information about perceptions of a child's emotional/behavioral functioning.

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<sup>2</sup> Tr. at 512.

<sup>3</sup> Tr. at 242.

<sup>4</sup> Tr. at 48-49.

<sup>5</sup> Tr. at 454.

<sup>6</sup> Tr. at 512.

<sup>7</sup> Ex. MMMMMM.

<sup>8</sup> *Id.*

Neither Parent nor the [redacted] grade teacher reported any concerns about anxiety or depression.<sup>9</sup>

7. [Doctor 4] again evaluated Student in May of 2007.<sup>10</sup> [Doctor 4] stated compared to his previous assessment Student “remained stable or improved in many areas assessed.”<sup>11</sup>

8. [Doctor 4] evaluated Student for a third time in March of 2012. [Doctor 4] noted “[Student] did not self-report depressive symptoms, such as dysphoric mood, negative affect, feelings of harm or negative self-evaluation.”<sup>12</sup> [Doctor 4] also noted that “When compared to his previous neuropsychological assessment [Student] has shown improvement in rote verbal learning, visual-motor integration, motor planning and organization and abstract memory.”<sup>13</sup>

9. [Doctor 5] diagnosed Student with [medical diagnosis 2] in April of 2009.<sup>14</sup>

### **The 2009-2010 school year**

10. On April 28, 2009, Parent requested a special education evaluation.<sup>15</sup>

11. The School District conducted the evaluation in May of 2009 and the Evaluation Report was dated September 23, 2009.<sup>16</sup>

12. The School District found Student was eligible for special education services under the Other Health Disabilities (OHD) Criteria based on the [medical diagnosis 2] diagnosis.<sup>17</sup>

13. The School District determined that Student did not qualify for special education services under the Emotional/Behavioral Disorder (E/BD) Criteria.<sup>18</sup>

14. The “Special Education Needs” section in the Evaluation Report suggested that Student needed help with organization and homework completion.<sup>19</sup>

15. Parent signed the Evaluation Report indicating she was in agreement with the conclusions.<sup>20</sup>

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<sup>9</sup> *Id.*

<sup>10</sup> Ex. 45

<sup>11</sup> *Id.* at p. 1.

<sup>12</sup> *Id.* at p.4.

<sup>13</sup> *Id.* at p. 5.

<sup>14</sup> Ex. 5.

<sup>15</sup> Ex. 4.

<sup>16</sup> Ex. 8.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

16. An IEP was prepared in October of 2009.<sup>21</sup> The Measureable annual goal was:

[Student] will increase his skills to remain organized, being taught a system that will remind him to record and recheck, going from a level of needing adult assistance to record assignments and verify completion; to a level of using the strategies to record in his assignment book, completing tasks, and turning them in on time in a manner similar to his same age grade level peers.<sup>22</sup>

17. The IEP contained three benchmarks or short term objectives to achieve that goal.<sup>23</sup>

18. Parent signed in writing giving her consent to implement the IEP.<sup>24</sup>

19. During the 2009-2010 school year Student received the following grades:

- [redacted]

### **The 2010-2011 School Year**

20. The IEP Team, including Parent, met on October 6, 2010 to develop a new IEP.<sup>25</sup>

21. The new IEP again contained a goal and benchmarks related to organization and homework completion. The IEP provided that Student would receive special education instruction for one class period five days per week.<sup>26</sup>

22. In March of 2011, Student was falling behind in his work and he was feeling pressure.<sup>27</sup>

23. An IEP Team meeting was held on March 24, 2011.<sup>28</sup>

24. At the IEP Team meeting it was agreed that Student would receive “one-to-one” study time with a paraprofessional in place of his [class].<sup>29</sup>

25. The amendment to the IEP stated in pertinent part: “[Student] will also participate in individualized study time in place of [class] class during the 4<sup>th</sup> quarter of [Grade].”<sup>30</sup>

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<sup>21</sup> Ex. 10.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Ex. 11.

<sup>25</sup> Ex. 12; Tr. at p. 127.

<sup>26</sup> Ex. 13.

<sup>27</sup> Tr. at 423.

<sup>28</sup> Ex. 15.

<sup>29</sup> *Id.*

26. Student's math grade went from an "F" in the third quarter to a "B-" in the fourth quarter. His "D" grade in the third quarter of social studies was raised to a "B-." The Student's grades in every subject area improved in the fourth quarter, except for those in which he received "A" grades.<sup>31</sup>

### **The 2011-2012 School Year**

27. An IEP Team meeting was scheduled for October 4, 2011, to develop a new IEP for the Student.<sup>32</sup>

28. In late September of 2011, the School District provided Parent with a proposed IEP dated October 19, 2011.<sup>33</sup> The IEP included transition services.<sup>34</sup>

29. Parent's only objection to the proposed IEP was that it was missing the one-to-one time that the IEP Team included the previous spring.<sup>35</sup>

30. Parent consented to the implementation of the IEP, including the implementation of all transition related information.<sup>36</sup>

31. The School District implemented the IEP dated October 19, 2011.<sup>37</sup>

32. Student was given the Kuder/Navigator Career Assessment.<sup>38</sup> The Assessment tested Student's interest, skills and listed potential occupations.<sup>39</sup> The Assessment was completed on January 26, 2012.

33. The School District conducted the three-year reevaluation during the winter of 2011 and the spring of 2012.<sup>40</sup> As part of the evaluation the BASC-2 was given to Parent and three of the teachers. None of the teachers rated Student as "clinically significant in the areas of anxiety, depression or conduct problems."<sup>41</sup>

34. The Evaluation Report was completed on April 26, 2012.<sup>42</sup>

35. The Evaluation Report included a transitional assessment.<sup>43</sup>

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<sup>30</sup> Ex. 16.

<sup>31</sup> Ex. 1.

<sup>32</sup> Ex. 17.

<sup>33</sup> Tr. at 109.

<sup>34</sup> Ex. 18; Tr. at 109.

<sup>35</sup> Tr. at 113.

<sup>36</sup> Tr. at 114.

<sup>37</sup> Tr. at 113-114.

<sup>38</sup> Ex. 43.

<sup>39</sup> *Id.*

<sup>40</sup> Tr. at 115.

<sup>41</sup> *Id.*

<sup>42</sup> Ex. 25.

<sup>43</sup> Ex. 25 at p. 12.

36. Over the course of the 2011-2012 school year, the IEP Team struggled to come up with a new IEP. Several draft IEPs were discussed but none were agreed to.<sup>44</sup>

37. Student finished [Grade] with mostly average to above-average grades.<sup>45</sup> He also made progress on his IEP goals.<sup>46</sup>

### **The 2012-2013 School Year**

38. The IEP Team met on September 19, 2012 to discuss a new IEP. Parent rejected it.<sup>47</sup>

39. On October 1, 2012, Parent delivered a letter to the School District requesting an IEE.<sup>48</sup>

40. While the School District was evaluating Parent's request, it sent Parent another copy of the recently proposed IEP and offered mediation if Parent did not agree to it.<sup>49</sup> Parent rejected the IEP and refused mediation.<sup>50</sup>

41. The School District rejected Parent's request for an IEE and requested a due process hearing on November 14, 2012.

42. Parent filed a due process hearing request on December 7, 2012.

43. On December 11, 2012, Student took Minnesota's GRAD Writing Composition Test and passed with an above-average score of "4."<sup>51</sup>

44. The School District proposed another IEP on April 8, 2013.<sup>52</sup> Parent rejected it on April 12, 2013, stating that it was "not good enough."<sup>53</sup>

45. Student completed the 2011-2012 school year earning average to above-average grades.<sup>54</sup>

46. Any Conclusions of Law more designated as findings of fact are adopted as such.

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<sup>44</sup> See, Exs. 19, 21, 22, and 27.

<sup>45</sup> Ex. 1.

<sup>46</sup> Ex. 40 at p. 7-8.

<sup>47</sup> Ex. 33.

<sup>48</sup> Ex. 34.

<sup>49</sup> Ex. 36.

<sup>50</sup> Ex. OO.

<sup>51</sup> Ex. 2.

<sup>52</sup> Ex. 39.

<sup>53</sup> Tr. at p. 169.

<sup>54</sup> Ex. 1.

47. Any facts in the Memorandum more properly listed in the findings of fact are adopted as such.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

### CONCLUSIONS OF LAW

1. The Department of Education and the Administrative Law Judge have jurisdiction to consider the School District's and the Student's request for a due process hearing.<sup>55</sup>

2. The parties received proper and timely notice of the time and place of the hearing and the disputed issues. This matter is properly before the Department of Education and the Administrative Law Judge.

3. The decision was not rendered within 45 days from the date on which the Department received the School District's request for hearing or the Parent's request for hearing. Extensions were jointly requested by the parties and granted for good cause shown.

4. At the beginning of the hearing Counsel for Student stipulated the School District's April 2012 reevaluation was appropriate, and that Student would not be seeking reimbursement for the IEE completed in 2013.<sup>56</sup> The School District's complaint and Student's claim for reimbursement of the IEE are therefore moot.

5. The Student is a [redacted]-year-old child with disabilities as defined in Minn. Stat. § 125A.02 and 20 U.S.C. § 1401(3), who is entitled to special education services appropriate to his needs pursuant to the Individuals with Disabilities Act (IDEA), 20 U.S.C. § 1401, *et seq.*, and regulations promulgated thereunder, and Minn. Stat. ch. 125A.

6. The Litchfield Public School District was the district of residence at all times relevant to this proceeding and had the primary responsibility for providing an appropriate program of special education for the Student during that time.

7. The burden of proof is on the Student to demonstrate by a preponderance of the evidence that the School District failed to comply with the law and failed to provide the Student a free appropriate education (FAPE).<sup>57</sup>

8. A program of education offers a FAPE as required by IDEA when the school district complies with the procedures set forth in federal and state law and

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<sup>55</sup> Minn. Stat. §§ 14.50, 125A.091; 20 U.S.C. § 1415 (f); 34 C.F.R. § 300.511.

<sup>56</sup> Tr. at p. 43.

<sup>57</sup> *K.E. v. Indep. Sch. Dist. 15*, \_\_\_ F.Supp.2d \_\_\_, (D. Minn. 2010), *citing West Platte R-II Sch. Dist. v. Wilson*, 439 F.3d 782, 784 (8<sup>th</sup> Cir. 2006); *M.M. v. Special School Dist. No. 1*, 512 F.3d 455, 458-59 (8<sup>th</sup> Cir. 2008); Minn. Stat. § 125A.091, subd. 16.

provides an IEP that is reasonably calculated to provide some educational benefit to the student.<sup>58</sup>

**Issue #1: Whether the School District's IEP is reasonably calculated to confer educational benefit?**

9. An IEP is appropriate under IDEA if it offers instruction and supportive services reasonably calculated to provide some educational benefit to the student.<sup>59</sup> Academic progress is one important factor in determining educational benefit, but not the only criteria.<sup>60</sup> Moreover, a school district must address both a student's academic and emotional needs.<sup>61</sup> A school district may not ignore emotional needs in favor of a more academic program. Conversely, a school district may not ignore academic needs in favor of addressing emotional and behavioral needs.

10. Student challenged the April 8, 2013, proposed IEP solely on the basis that it did not address his alleged emotional and behavioral needs. The facts did not establish Student's emotional and behavioral needs were being ignored.

11. The Student failed to prove by a preponderance of the evidence that the School District's proposed IEP dated April 8, 2013, is not reasonably calculated to confer educational benefit to Student.

**Student's claims that the School District failed to address his alleged emotional and behavior issues are barred by the statute of limitations.**

12. A parent must request a due process hearing within two years of "the date the parent ... knew or should have known about the alleged action that forms the basis of the complaint."<sup>62</sup>

13. The Parent filed her due process hearing complaint on December 7, 2012. Any claims that Parent knew or should have known of prior to December 7, 2010, are barred by the statute of limitations.

14. Student's challenges to the IEPs, including Student's claims the School District failed to properly revise the IEPs, are based on the School District's failure to address Student's alleged emotional and behavioral issues. The record conclusively proves Parent knew of Student's alleged emotional and behavioral needs prior to December 7, 2010. They are, therefore, barred by the statute of limitations.

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<sup>58</sup> *M.M. v. Special School Dist. No. 1*, 512 F.3d 455, 458-59 (8<sup>th</sup> Cir. 2008).

<sup>59</sup> *Bradley v. Arkansas Dept. of Ed.*, 45 IDELR 149, 106 LRP 21288 (8<sup>th</sup> Cir. April 7, 2006) quoting *Gill v. Columbia 93 Sch. Dist.*, 217 F.3d 1027, 1035 (8<sup>th</sup> Cir. 2000).

<sup>60</sup> *Rowley*, 458 U.S. 176, 207, n.28 (1982).

<sup>61</sup> *CJN v. Mpls. Pub. Sch.*, 323 F.3d 630, 638 (8<sup>th</sup> Cir. 2003) (quoting *Indep. Sch. Dist. No. 284 v. A.C.*, 258 F.3d 769, 777 (8<sup>th</sup> Cir. 2001). Unlike A.C., the records show that the Student was progressing academically.

<sup>62</sup> 20 U.S.C. § 1415(f)(3)(C); 34 C.F.R. § 300.511(e).

**Issue #2: Whether the School District failed to revise the IEP to address the Student's lack of progress?**

15. A school district, after reviewing a child's IEP, must revise the IEP as appropriate to address any lack of expected progress toward the annual goals.<sup>63</sup>

16. The School District revised Student's IEP in response to concerns regarding his academic progress.<sup>64</sup>

17. The Student failed to prove by a preponderance of the evidence that the School District violated its obligation to revise the IEP to address the Student's lack of progress.

**Issue #3: Whether the School District failed to meet its obligation to provide transitional services to Student?**

18. By the time Student reaches grade 9 or age 14, whichever comes first, the law requires the IEP Team to address the pupil's need for transition from secondary services to postsecondary education and training, employment, and community living.<sup>65</sup>

19. During Student's ninth grade year, the IEP was revised to address post-secondary education and training, employment and independent living.<sup>66</sup> Also during ninth grade, Student completed a computerized career interest inventory.<sup>67</sup>

20. The Student failed to prove by a preponderance of the evidence that the School District violated its obligation under the law to provide Student with transitional services.

**Issue #4: Whether the School District violated procedural requirements with regard to progress reporting during the 2011-2012 school year?**

21. A student's IEP must state when reports will be made to a parent describing the progress a student is making toward his annual goals.<sup>68</sup>

22. Student's "stay-put" IEP dated October 19, 2011, stated "Progress [reporting] will be made to Parents 4 times per year including annual IEP, at the end of each quarter, and at least as often as the Student's nondisabled peers."<sup>69</sup>

23. The Student failed to prove by a preponderance of the evidence the School District violated its obligations under the law and the IEP to provide parent with progress reports.

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<sup>63</sup> See, 20 U.S.C. § 1414(d)(4)(A).

<sup>64</sup> Ex. 16.

<sup>65</sup> Minn. R. 3525.2900.

<sup>66</sup> See, Ex. 18.

<sup>67</sup> See, Ex. 43.

<sup>68</sup> See, 34 C.F.R. § 300.320, subd. (a)(3)(ii).

<sup>69</sup> Ex. 18.

24. Any Conclusion of Law that might be more appropriately considered a Finding of Fact is hereby adopted as such.

Based upon the Findings of Fact and Conclusions, and for the reasons set forth in the accompanying Memorandum, the Administrative Law Judge makes the following:

### ORDER

IT IS HEREBY ORDERED THAT:

1. In light of the stipulations made on the record by Student's counsel, the School District's due process hearing complaint dated November 13, 2012, is **DISMISSED** as moot.
2. That Student's claim for reimbursement for the 2013 IEE is **DISMISSED** as moot.
3. That Student's complaint is **DISMISSED WITH PREJUDICE**.
4. That the IEP Team will consider [Doctor 1]'s IEE<sup>70</sup> when it prepares Student's IEP for the 2013-2014 school year.

Dated August 21, 2013

s/James E. LaFave  
JAMES E. LAFAVE  
Administrative Law Judge

Reported: Kirby A. Kennedy & Associates  
Three Volumes

### NOTICE

Pursuant to Minn. Stat. § 125A.091, subd. 24, and 34 C.F.R. § 300.516, a party may seek review of this decision in the Minnesota Court of Appeals or in United States District Court, consistent with federal law. A party must appeal to the Minnesota Court of Appeals within 60 days of receiving the hearing officer's decision.

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<sup>70</sup> Ex. MMMMMM.

## MEMORANDUM

**The School District's April 8, 2013, proposed IEP is reasonably calculated to confer educational benefit.<sup>71</sup>**

Student claims the April 8, 2013, proposed IEP is not reasonably calculated to confer educational benefit because it fails to address Student's emotional and behavioral issues.<sup>72</sup> He notes that none of the three annual goals or short term benchmarks specifically addresses those needs.<sup>73</sup>

The School District counters that Student was specifically evaluated for eligibility under the EDB criteria and it was determined he did not qualify.<sup>74</sup> At the time, Parent agreed with that conclusion.<sup>75</sup> Further [Doctor 4] evaluated Student, on Parent's behalf, and he did not find any evidence of significant emotional or behavioral problems.<sup>76</sup> Teacher ratings completed as part of school evaluations consistently indicated few concerns over Student's emotional and behavioral adjustment.<sup>77</sup>

It's important to remember "an IEP is a snapshot, not a retrospective, and we must "take into account what was, and was not, objectively reasonable when the snapshot was taken."<sup>78</sup> While teachers noted some concerns, the IEP contained goals and supports appropriate for someone with [medical diagnosis 2]. Based on the evaluations and the experiences of the teachers, the fact the IEP Team did not specifically address Student's emotional or behavioral issues in the April 8, 2013, proposed IEP was not unreasonable.

To determine whether an IEP is appropriate under the IDEA one must ascertain "whether it offers instruction and supportive services reasonably calculated to provide some educational benefit to the student for whom it is designed."<sup>79</sup>

The April 2013 IEP sets forth three goals. The first addresses Student's challenges in assignment completion and organization.<sup>80</sup> As ADHD and [medical diagnosis 2] affect organization and assignment completion, this is an appropriate goal. [Doctor 1] confirms the intervention was appropriate.<sup>81</sup> The second goal addresses self-advocacy, and the third, goal writing.<sup>82</sup> The IEP also contains transition planning.<sup>83</sup>

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<sup>71</sup> Student only argued the proposed April 8, 2013, was not reasonably calculated to confer educational benefit. See, Student's Memorandum of Law in Support of Student's Due Process Hearing Complaint. (July 22, 2013) at p. 2-11. Only the claims regarding the proposed April 8, 2013, IEP will be discussed.

<sup>72</sup> *Id.* at p.2.

<sup>73</sup> See, Ex. 39.

<sup>74</sup> Ex. 8.

<sup>75</sup> *Id.* at p. 23.

<sup>76</sup> See, Ex. 45; Ex. MMMMMM.

<sup>77</sup> Ex. 49 at p. 17-19.

<sup>78</sup> *K.E. v Indep. Sch. Dist. No. 15*, 647 F.3d 795, 808 (8<sup>th</sup> Cir. 2011).

<sup>79</sup> *Bradley v. Arkansas Dept. of Ed.*, 45 IDELR 149, 106 LRP 21288 (8<sup>th</sup> Cir. April 7, 2006) quoting *Gill v. Columbia 93 Sch. Dist.*, 217 F 3d 1027, 1035 (8<sup>th</sup> Cir. 2000).

<sup>80</sup> Ex. 39 at p. 3.

<sup>81</sup> See, Ex. MMMMMM.

<sup>82</sup> Ex. 39 at p. 4-5.

Student does not challenge the appropriateness of any of these goals or the benchmarks or supports contained in the IEP. The only challenge lies in the claim the IEP does not address — Student’s emotional and behavioral needs. As previously discussed, at the time, the actions taken by the IEP Team were reasonable.

The April 8, 2013, proposed IEP is therefore reasonably calculated to confer some educational benefit to Student.

### **The Statute of Limitations**

In addition, the School District claims that even if the IEP was deficient, Parent knew about the deficiencies more than two years prior to filing the due process hearing complaint, and her claims are therefore barred by the statute of limitations.

The law requires that a parent must request a due process hearing within two years of “the date the parent ... knew or should have known about the alleged action that forms the basis of the complaint.”<sup>84</sup>

Parent filed the due process hearing complaint in this matter on December 7, 2012. Any claim occurring prior to December 7, 2010, is barred by statute.

In an affidavit made in support of Student’s request for a due process hearing, Parent stated “The District made no attempt to revise its educational evaluation to incorporate my concerns, the evaluation does not fully consider all of [Student’s] disability–related needs, or even identify [Student’s] secondary diagnosis.”<sup>85</sup> The secondary diagnosis included Student’s alleged [medical diagnosis 1].<sup>86</sup> Parent admitted she knew these were all in existence since 2009, and that they have gone unaddressed since 2009.<sup>87</sup>

Parent was clear in her testimony that she believed the School District failed to address her son’s emotional and behavioral issues since at least 2009. Those claims were known well before December 7, 2010; they therefore have lapsed and are barred by the statute of limitations.

### **The School District properly revised Student’s IEP**

Student argues his emotional and behavioral difficulties affect his ability to perform in school.<sup>88</sup> He continued that since the IEPs did not properly address his emotional and behavioral issues, the School District did not properly revise his IEP.<sup>89</sup>

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<sup>83</sup> *Id.* at 6-7.

<sup>84</sup> 20 U.S.C. § 1415(f)(3)(C); 34 C.F.R. § 300.511(e).

<sup>85</sup> Ex. 46 at p. 9.

<sup>86</sup> *Id.* Neither [Doctor 1] nor [Doctor 2] believes the facts support a diagnosis of [medical diagnosis 1]. See, Tr. at p. 244 and 577-578.

<sup>87</sup> Tr. at 140.

<sup>88</sup> Student’s Memorandum of Law at p. 11.

<sup>89</sup> *Id.* at 12.

First, as discussed above, the School District had no clear evidence that Student had emotional or behavioral problems that were affecting his education.

Second, also as discussed above, any of Student's claims stemming from emotional and behavioral issues are barred by the statute of limitations.

Finally, the School District did revise the IEP. When, in March of 2011, Student was falling behind in school, an IEP Team meeting was held to discuss the problem. To address the issue, the IEP was amended to give Student "one-to-one" support time in lieu of his [class] class.

The Administrative Law Judge finds the Student failed to prove by a preponderance of the evidence that the School District failed to properly revise the IEP.

### **The School District Properly Provided Transition Services**

Minnesota law requires that in the 9<sup>th</sup> grade a student receive transitional goals and related services.<sup>90</sup> School districts are required to "inform parents of the full range of transitional goals and related services that should be considered."<sup>91</sup>

In this case, the IEP that was agreed to by the Parent and implemented by the School District at the beginning of Student's [Grade] year addressed transition planning.<sup>92</sup> It noted Student's interest in art and video game design and included a self-advocacy goal.<sup>93</sup> In addition, in January of Student's [Grade] year he was given the Kuder/Navigator Career Assessment.<sup>94</sup> It listed Student's skills and interests and suggested compatible occupations.

Student argues that because the transition planning did not specifically prepare him for a career in art or video game design, the transition planning was deficient.

Student's argument ignores the plain language of the statute. The School District was required to inform Parent about the "full range" of options that are available. The Kuder/Navigator Career Assessment was a tool to identify other possible options for Student. The School District cannot be criticized for identifying career choices for which Student has no current interest.

The Administrative Law Judge finds the Student failed to prove by a preponderance of the evidence that the District failed to meet its transitional planning obligation.

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<sup>90</sup> Minn. Stat. § 125A.08(b)(1).

<sup>91</sup> *Id.*

<sup>92</sup> Ex. 18 at p. 7-9.

<sup>93</sup> *Id.*

<sup>94</sup> Ex. 43.

## **The School District Provided Progress Reports to Parent**

Student maintains that the School District failed to provide progress reports to Parent as required by law for the 2011-2012 school year.

The law requires that an IEP describe when progress reports regarding the progress the child is making toward the annual goals will be given to the parents.<sup>95</sup> Student's IEP for the 2011-2012 school year provided "[p]rogress [reporting] will be made to Parents 4 times per year including annual IEP, at the end of each quarter, and at least as often as their nondisabled peers."<sup>96</sup>

Student argues Parent only received two progress reports, February 1, 2012 and April 9, 2012.<sup>97</sup>

The School District counters in addition to the two "written" progress reports, Parent attended IEP Team meetings on October 19, 2011, February 16, 2012 and June 5, 2012, where the Team discussed present levels of performance and the Student's progress towards his goals.

To recover, it must be shown "procedural inadequacies compromised the pupil's right to an appropriate education, seriously hampered the parents' opportunity to participate in the formulation process, or caused a deprivation of educational benefits."<sup>98</sup>

Clearly the purpose of the progress reports is to keep the parent informed. In this case, Parent was actively involved in the education of her son. During the 2011-2012 school year alone, in addition to all other communications, at least 22 e-mails were exchanged between Parent and the School District. The record clearly demonstrated that Parent was fully informed as to the progress of Student and was never deprived of the opportunity to participate in the development of education plans.

The Administrative Law Judge finds the Student failed to prove by a preponderance of the evidence a substantive violation of the School District's obligation to provide progress reports.

## **The April 8, 2013 IEP**

The School District urges the Administrative Law Judge to order implementation of the April 8, 2013, proposed IEP. It argues the goals are appropriate, it provides transition services and accommodations that support and will continue to support Student in the areas of executive functioning, information processing and ADHD-related challenges. Student argues the April 8, 2013 fails to address his emotional and behavioral needs.

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<sup>95</sup> 34 C.F.R. § 300.320, subd. (a)(3)(ii).

<sup>96</sup> Ex. 18.

<sup>97</sup> Tr. at 493; Ex. 40 at p. 7-8.

<sup>98</sup> *Lathrop R-II Sch. Dist. v. Gray*, 611 F.3d 419, 424 (8<sup>th</sup> Cir. 2010).

The School District's argument misses one key point. When revising an IEP, the law requires that the IEP Team must review information provided by the parent.<sup>99</sup> The IEE performed by [Doctor 1] was completed in May of 2013. Obviously, the results were not available to be considered by the IEP Team when it drafted the April 8, 2013 IEP.

Student has provided the School District with an IEE that offers opinions as to Student's emotional and behavioral issues and recommendations for how those issues should be addressed in an IEP. [Doctor 1] noted the relationship between the Student's educational team and his family is strained.<sup>100</sup> That observation is supported by the record and the testimony. He states that a collaborative approach is essential and recommends a Core Team Process.<sup>101</sup>

It is strongly recommended that the parties adopt the Core Team Process suggested by [Doctor 1].

The law requires that the IEP Team consider [Doctor 1]'s IEE in revising Student's IEP. It would, therefore, be inappropriate to Order implementation of the April 8, 2013, proposed IEP. The proper result is for the parties to adopt the Core Team Process and consider [Doctor 1]'s IEE in revising Student's IEP for the upcoming year.

**J. E. L.**

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<sup>99</sup> See, 34 C.F.R. § 300.324(b)(C) and (E).

<sup>100</sup> Ex. TTTTTT at p. 47.

<sup>101</sup> *Id.*