

Before the Special Education Due Process Hearing Officer

In the Matter of the Due Process,)

Hearing for B.B.)

and)

Case No. 24DP305-002

USD 305 SALINA and CENTRAL KANSAS)

COOPERATIVE IN EDUCATION ("CKCIE"))

_____)

Pursuant to K.S.A. 72-2252 et seq.

NOTICE OF HEARING OFFICER'S DECISION

NOW on this 8th day of November, 2024, this matter comes before the Special Education Due Process Hearing Officer for decision.¹

The Hearing Officer has determined that the Districts have failed to meet their burden of proof that B.B. should be exited from occupational therapy services as these services are necessary for B.B. to achieve FAPE.

Further, the Hearing Officer has determined that the Parents have met their burden of proof establishing that B.B.'s IEPs are not reasonably calculated to allow him to make progress in light of his circumstances.

I. SUMMARY OF PROCEDURAL BACKGROUND:

The following represents significant dates in the procedural history in this matter:

1. On September 14, 2023, the Districts filed a Due Process Complaint² for the purpose of seeking to exit B.B. from Occupational Therapy (OT) services because he no longer had an educational need for OT services.
2. On October 5, 2023, the Districts received a Due Process Complaint³ ("Parents' Complaint") from the Parents alleging two issues:
 - a. Inadequate IEP not reasonably calculated to enable B.B. to make progress appropriate in light of his circumstances, in violation of state and federal education law, thereby depriving B.B. of FAPE; and
 - b. The current IEP incorrectly finds that B.B. does not have need of special education related services in "Adaptive Behavior/Daily Living."
3. On November 20, 2023, the Hearing Officer conducted a Pre-Hearing Conference

¹ B.B. will be referenced herein collectively as "Parents;" U.S.D. 305 Salina and U.S.D. 305 Salina and CKCIE will be referenced herein collectively as "Districts."

² "Districts' Complaint"

³ "Parents' Complaint"

wherein the parties agreed that the Complaints would be consolidated. For good cause shown, the parties' joint motion to extend the 45-day deadline was approved by the Hearing Officer. The parties further discussed discovery issues, scheduling conferences, disclosure of witnesses and expert witnesses, disclosure and exchange of exhibits, hearing date and hearing location.

4. On January 4, 2024, the Hearing Officer conducted a Status Conference. During the Status Conference the parties discussed revising the due date for discovery requests, due process hearing structure, the possible inclusion of an additional legal issue and hearing location. A Status Conference Order was issued.
5. On March 7, 8, 28, 29, April 11, May 23 and May 24, 2024, due process hearings were conducted in person in Salina, Kansas.
6. On June 20, 2024, the Hearing Officer issued a Scheduling Order based upon the parties' agreement on a due process briefing schedule.
7. On July 2, 2024, the Hearing Officer issued an Amended Scheduling Order based upon the parties' joint motion to extend current deadlines due to uncontrollable court reporter delay.
8. On August 20, 2024, the Hearing issued a Second Amended Scheduling Order based upon the parties' joint motion to extend current briefing deadlines.
9. On September 5, 2024, the Hearing Officer issued a Decision and Third-Amended Scheduling Order.
10. On October 31, 2024, the parties presented oral arguments to the Hearing Officer. At the conclusion of the oral arguments, the matter is considered to be ripe for decision.

II. FINDINGS OF FACT, WITNESS AND KEY PROFESSIONAL WITNESS BACKGROUND INFORMATION:

A. B.B. BACKGROUND:

2. B.B. is a twelve-year-old student of the Districts who recently completed fifth grade at Heusner Elementary School in Salina, Kansas. (See Ex. 1038).
3. An exceptional child with the exceptionality of autism spectrum disorder, B.B. has received special education and related services from the Districts since 2015, when he was three years old. (See Ex. 1).
4. B.B. has attended Districts schools since before kindergarten. (Tr. Vol. 5 at 1086, ln. 21; 1087, 10).
5. B.B. was diagnosed with autism at age four. (Tr. Vol. 5 at 1086, ln. 10-20).
6. B.B. started to receive special education services from the Districts at age four. (Tr. Vol. 5 at 1087, ln. 2-9).
7. B.B. was held back and repeated his kindergarten year. (Tr. Vol. 2 at 322, ln. 11-21; see also Ex. 9 at Bates Label USD000478).
8. B.B. has received school-based occupational therapy services from the Districts for the past seven years. (Tr. Vol. 1 at 121, ln. 2-8).

B. NIKKI GOERTZEN BACKGROUND AND TESTIMONY:

9. Ms. Goertzen is employed by the Learning Cooperative of North Central Kansas as an Occupational Therapist and a Structural Specialist. (Tr., Vol. 1, at 6, ln. 13-18.) As a Structural Specialist, Ms. Goertzen has taken an extra role in educating the staff within her cooperative on structured teaching, working with kids that need that visual support and physical support to become more independent in their educational environment. This includes the kind of supports that would be used to support students with autism and students with low intellectual disability. (Id. at 6, ln. 21 – 7, ln. 5.) For the past three (3) years, Ms. Goertzen has done a three (3) week training on structured teaching for employees within her cooperative. (Id. at 18, ln. 2 – 19, ln. 5.)
10. Ms. Goertzen holds a B.A. degree in Biology and a Master's Degree in Occupational Therapy. She is licensed as an occupational therapist with the Kansas State Board of Healing Arts. (Tr., Vol. 1, at 7, ln. 6-13.) 11.
11. Ms. Goertzen has worked as an occupational therapist for 25 years, all of which have been in various educational agencies. (Tr., Vol. 1, at 7, ln. 14 – 8, ln. 3.)
12. Ms. Goertzen was asked to perform an outside evaluation of B.B. The outside evaluation was completed on January 11, 2023. (Tr., Vol. 1, at 8, ln. 4-12.) Ms. Goertzen's evaluation report was incorporated into the Evaluation/Eligibility Team Report, dated 1/25/23. (Id. at 8, ln. 18 - 9, ln. 4; Dist. Ex. 1038 at 13.) Ms. Goertzen also attended the IEP meeting on 1/25/23. (Tr., Vol. 1, at 9, ln. 5-7.) During the IEP meeting, Ms. Goertzen shared that she had looked at B.B.'s arm and hand strength, as well as doing some special things such as motor planning. Specifically, Ms. Goertzen shared that B.B.:
...was able to do both what we call grounded and ungrounded fine motor actions and repeat them back to me even up to a sequence of three in a row. He did a great job of showing me some dexterity with finger touching and as well as sequencing both sides of his body and crossing midline. We also did some object manipulation with a racquetball size ball and he was successful in maintaining his visual focus, showing me his eye/hand coordination as well as the motor planning it took for him to do that. Then I went on to looking directly at his hands and he showed me functional hand movement to store five coins in the palm of his hands and then to translate one at a time to a pincer grasp which requires you to maintain the storage of the other coins that are still in the hand and he did that without dropping any coins, so that told me that he has what we call motoric separation of both sides of his hands, they can operate individually. I also looked at how he was managing classroom tools and as well as fasteners. He did well with manipulating a binder clip, with manipulating a paper clip to use it appropriately. He did well with zipper, with buttons, button on jeans and then also doing a plastic buckle and he really did well screwing and unscrewing lids and he was even using that verbal rehearsal of righty tighty to remind himself. We did do shoe tying and just with the brief redirection and re-instruction he demonstrated the rest of the shoe tying sequence after a little bit of practice. He just needed that recollection. I also looked at what he did with some other tools like a screwdriver and he took to that quickly without any problem. He

has a functional pencil grasp and appropriate pencil pressure. When I looked at how he could do with in-hand pencil rotation, he could do both complex rotation which is turning the pencil over from lead to eraser without having to use his other hand so he could just do it in one hand. He has great positioning of his paper and use of his non-dominant hand. He demonstrated letter writing for me from memory and he could sequence the alphabet. He only omitted one letter and that was F. His letters were recognizable. He does have some bottom/up letter formation, but when he is verbally prompted to check his letters and their orientation to the baseline, he could recognize the errors and he then would erase and correct the errors. He wrote numerals easily recognizable and adequate spacing when it comes to double-digit numbers. (Tr., Vol. 1, at 10, ln. 4 – 12, ln. 10.)

After cueing such as asking if all the letters were on the line, B.B. was able to recognize and independently correct errors in his writing. (Id. at 12, ln. 11 – 13, ln. 12.) Ms. Goertzen noticed that B.B. would write very big if he was given paper with no lines, but he was able to write appropriately when provided with lined paper that provided him with the visual cues needed. (Id. at 13, ln. 16-22.) During a cut and paste exercise, B.B. was able to manage the scissors and scissor orientation well with minimal deviation from the line. Likewise, he was able to manage the glue stick, the paper he was using, the paper that was being discarded, and none of the materials fell on the floor. (Id. at 13, ln. 22 – 14, ln. 8.) With respect to technology, B.B. demonstrated a hunt and peck style with his right hand, but he does use his left hand for the shift key. B.B. demonstrated appropriate knowledge of left and right directionality. B.B. demonstrated visual discrimination and inference, as well as visual analysis. (Id. at 14, ln. 11-17.) B.B. also demonstrated good working memory and was able to sit appropriately during the course of the observation. However, Ms. Goertzen did have to frequently redirect B.B. because he would begin tasks before she had finished providing auditory instructions. B.B. was easily distracted from his tasks. B.B. responded well to positive praise and reinforcement. (Id. at 14, ln. 17 – 15, ln. 13.)

13. Ms. Goertzen was an unfamiliar person to B.B. and he was distracted by wanting to talk to her about unrelated matters. B.B. would go back to his tasks once he was redirected, but he did require frequent redirection. (Tr., Vol. 1, at 15, ln. 14 – 16, ln. 11.)
14. In addition to the formal evaluation, Ms. Goertzen observed B.B. in the classroom setting and discussed the classroom teacher's observations of B.B. with the teacher. (Tr., Vol. 1, at 16, ln. 13-23.)
15. As a result of the formal evaluations and the informal observations and discussions with the classroom teacher, Ms. Goertzen recommended that B.B. did not require direct occupational therapy because he did not require specially designed instruction. Rather, Ms. Goertzen recommended that his needs should be met through classroom accommodations and modifications by the classroom teacher. (Tr., Vol. 1, at 17, ln. 3-18.)
16. Ms. Goertzen testified regarding the difference between the medical model of

OT and the school model of OT. Specifically, with respect to the school model of providing OT services, Ms. Goertzen testified that occupational therapists must comply with state and federal education laws (such as IDEA), as well as providing services in a manner consistent with the requirements of the Kansas State Department of Education (KSDE). (Tr., Vol. 1, at 19, ln. 10-16.) When providing OT services in an educational setting, the occupational therapists:

...have to have the student making progress toward their IEP goal and so, first of all, they have to qualify for special education and then we look at would related services benefit the student in making progress to their special education goals, then we have to consider, okay, how are those needs going to be met. Is it through accommodations, is it through modifications, is it through consultative services, is it through supplementary aids and services. We have to think about that first because we are governed also through the IDEA and the Kansas Department of Education to provide services in the least restrictive environment. We have to justify why we are pulling them out away from their peers and how that could hinder their performance. So then if we go in to looking at direct services, it's a multidisciplinary team approach. We look at how we can best support the staff in the services that we provide, what are the unique needs of that individual and how do we apply -- how do we implement that specially designed instruction so that they continue to make progress toward their special education goals. (Id. at 19, ln. 17 – 20, ln. 17.)

17. Ms. Goertzen acknowledged that there are different types of special education (i.e., specially designed instruction), including special education services provided by a teacher, related services, supplementary aids and services, modifications and accommodations. (Tr., Vol. 1, at 20, ln. 18 – 21, ln. 4.) With respect to related services like occupational therapy, Ms. Goertzen testified that they go through the following process to determine whether the student is eligible for occupational therapy:

So first we need to recognize why aren't they making progress in that gen ed setting and would specially designed instruction allow them to make progress, so they look at that, the educational need, and then since occupational therapy is a related service, we can't stand alone, they have to be receiving special education services so it's a multidisciplinary team. So if the special education teacher doesn't feel like they are making progress by what they're doing, then they bring a related service in to see what specially designed instruction needs to occur to support them to make progress towards that special education goal. (Id. at 21, ln. 10-24.)

18. Ms. Goertzen reviewed the Joint Statement on Interprofessional Collaborative Goals in School-Based Practice (Districts Ex. 1076) which was jointly issued by the national organizations for the occupational therapists, the physical therapists, and the speech language therapists. Ms. Goertzen testified that the Joint Statement emphasizes that collaboration is a key component of IDEA and that collaborative goals can be written to address the student's individual needs. (Id. at 22, ln. 17 – 23, ln. 14.) The Joint Statement specifically clarifies that the IDEA does not require each service provider to write a discipline-specific goal on

- the IEP. (Id. at 24, ln. 6-17.)
19. When determining whether a student qualifies for a related service (such as occupational therapy), Ms. Goertzen testified that she has to *...evaluate and observe and collaborate to understand if it's just – if the student would benefit from my knowledge base of being an occupational therapist and working with the student doing specially designed instruction with ongoing evaluation, implementing strategies that would enhance the student's performance and progress the student's performance or is the child just needing practice which means remediation. That [remediation] is not specially designed instruction.* (Tr., Vol. 1, at 26, ln. 23 – 27, ln. 8.)
 20. Ms. Goertzen testified that: *Specially designed instruction incorporates what I see in the child's performance and the ongoing professional observation of what's going on in all the components and how they fit together and then I tailor it according to what I see occurring with the child, so it's not doing the same task over and over and over in the same way. It's figuring out which way works the best and how to progress and acquire a skill.* (Id. at 27, ln. 19 – 28, ln. 3.)
 21. When providing specially designed instruction, Ms. Goertzen testified that they are working on acquiring a new skill, not remediation. (Id. at 28, ln. 4-9.)
 22. During her evaluation of B.B., Ms. Goertzen informally assessed his handwriting legibility using components of the ETCH (Evaluation Tool of Children's Handwriting). (Tr., Vol. 1, at 49, ln. 2-8.) This was referenced in her report when she discussed asking B.B. to write his first and last name, demonstrating letter writing by memory, upper case and lower case letters to sequence the alphabet, writing numerals, doing near point copying test, and then the results giving the breakdown of legibility, the letter size differentiation, spacing between and within words, and baseline orientation. (Id. at 49, ln. 12-22.)
 23. Ms. Goertzen reviewed the 2/9/21 Evaluation Report (Parent Ex. 9; Dist. Ex. 1005) and testified that B.B. had a full-scale IQ of 73, which indicates that B.B. has a cognitive delay. (Tr., Vol. 1, at 83, ln. 11 – 84, ln. 4.) B.B. also scored in the very low range for the visual spatial score, in the 3rd percentile rank for adaptive behavior composites, and the 4th percentile rank for daily living skills. Ms. Goertzen testified that all of these low scores would be consistent with a cognitive delay. (Id. at 84, ln. 5-19.) Ms. Goertzen testified that B.B. was "at his capacity for functional performance according to his cognitive IQ." (Id. at 85, ln. 3-6.)
 24. Ms. Goertzen testified that the services of an OT are required to provide direct or consultation (indirect) services to a student. (Tr., Vol. 1, at 88, ln. 6 – 89, ln. 20.) However, an OT is not required to provide services if the student only needs modifications and accommodations that can be provided by the classroom teacher, which would be considered the least restrictive environment. (Id. at 90, ln. 9-23.)
 25. Ms. Goertzen reviewed a report from the Districts' occupational therapist

- Kristen Prophet on December 20, 2022, before conducting the outside evaluation of B.B. but did not review other materials. (Tr. Vol. 1 at 34, In. 19-25; 35, 1-3; 35, 21-25; 36, 13-16).
26. This report from Ms. Prophet, which Ms. Goertzen reviewed before her evaluation of B.B., clearly indicated in its first line that Ms. Prophet and the Districts wished to reduce or eliminate occupational therapy services for B.B. (Tr. Vol. 1 at 36, In 2-6).
27. Ms. Goertzen failed to request any other documents from the Districts before doing her evaluation of B.B. (Tr. Vol 1 at 36, In. 17-20).
28. Ms. Goertzen testified, when she is doing an outside evaluation of a student based on current performance, it is not necessary for her to review all of the past IEPs. Likewise, it is not necessary for her to review the current therapist's current service logs because she would not want to allow that to impact her judgment. (Tr., Vol 1., at 90, In. 25 – 91, In. 10.)
29. The Districts failed to furnish Ms. Goertzen the most recent triennial special education evaluation of B.B. that was completed in February 2021. (Tr. Vol. 1 at 37, In. 17-24).
30. Ms. Goertzen testified that, as a school-based OT, she primarily works in the following areas:
Fine motor which includes eye/hand coordination and hand manipulation, visual perceptual skills and sensory integration as well as looking at those other areas of activities of daily living that impede access to their educational environment. (Tr., Vol. 1, at 91, In. 16-21.)
31. Executive functioning is not an area that is within the sole domain of the OT. It is a multidisciplinary area that requires a team approach. (Id. at 92, In. 1-8.)
32. Although Kristin Prophet came into the room for part of the evaluation, she did not interfere with the evaluation. Rather, Ms. Prophet merely observed the evaluation and answered Ms. Goertzen's questions at the end of the evaluation. (Tr., Vol. 1, at 92, In. 9-24.)
33. Ms. Goertzen testified that other students, even general education students the same age as B.B. require prompts. (Tr., Vol. 1, at 93, In. 9-16.) Prompts are something that can be provided by the classroom teacher and Ms. Goertzen observed the classroom teacher providing prompts to other students, as well as B.B., while she was observing in the classroom. (Id. at 93, In. 17 – 94, In. 3.)
34. Ms. Goertzen was shown additional samples of B.B.'s handwriting by the classroom teacher while she was in the classroom for the observations. Ms. Goertzen's determination that B.B.'s handwriting was legible was based upon her professional judgment. (Tr., Vol. 1, at 95, In. 8-16.)
35. Ms. Goertzen does not believe B.B.'s need for prompts is driven by his motor planning or motor functioning. Rather, she believes it could be due to his attention span, sensory issues, anxiety, or to reassure his auditory processing. (Tr., Vol. 1, at 103, In. 10-18.)
36. Ms. Goertzen was not compensated for her evaluation. (Tr. Vol. 1 at 30, In. 25;

- 31, ln. 1-2).
37. Ms. Goertzen did not speak to Ms. Prophet until the day that she conducted the evaluation. (Tr. Vol 1 at 31, ln. 23-25; 32, ln. 1-2).
38. Ms. Goertzen recalls that Ms. Prophet emailed her an evaluation report regarding B.B. (Tr. Vol 1, at 33, ln. 2-5).
39. Ms. Goertzen acknowledged that the report indicated that Ms. Prophet wished to reduce or eliminate services for B.B. and that she did review the evaluation report from Ms. Prophet before she conducted her own evaluation. (Tr. Vol. 1 at 36, ln. 2-5; ln. 13-16).
40. Ms. Goertzen acknowledged that she was not informed by anyone with the Districts that, less than two years earlier, B.B.'s visual-spatial knowledge abilities as measured by the VSI were at approximately the first percentile. (Tr. Vol. 1 at 38, ln. 12-18).
41. Ms. Goertzen acknowledged that she was not informed by the Districts that, less than two years earlier, B.B.'s daily living skills were assessed by the school to be in the fourth percentile rank. (Tr. Vol. 1 at 39, ln. 2-9).
42. Ms. Goertzen acknowledged that she was not informed by the Districts that in B.B.'s most recent evaluation, his adaptive functioning score was in the fifth percentile and that his use of gross and fine motor skills in daily life, his motor skills standard score for school is 67, percentile rank is 1 and in the very low range. (Tr. Vol. 1 at 39, ln. 18-25; 40, ln. 1-5).
43. The Districts failed to furnish to Ms. Goertzen any of the service logs from any of the District's occupational therapists that had worked with B.B. (Tr. Vol. 1 at 40, ln. 6-13).
44. Ms. Goertzen acknowledged that Ms. Prophet's occupational therapy report indicated that B.B.'s printing skills had plateaued in February of 2021. (Tr. Vol. 1 at 40, ln. 18-21).
45. The Districts only provided Ms. Goertzen with pre-selected handwriting samples from B.B. on the day of her evaluation, with those samples chosen by B.B.s' special education teacher Ms. Koerperich. (Tr. Vol. 1 at 42, ln. 14; 54, ln. 9-25).
46. Ms. Goertzen never asked Ms. Koerperich how and why she chose the two handwriting samples that were furnished to Ms. Goertzen. (Tr. Vol. 1 at 55, ln. 1-5).
47. Ms. Goertzen confirmed that B.B.'s printing skills had plateaued in February 2021 while he was in the third grade and that B.B. was in the 4th grade when she conducted her evaluation. (Tr. Vol. 1 at 41, ln. 13-21; 42, ln. 10-13).
48. Ms. Goertzen testified that after she had completed her evaluation of B.B., when she spoke with B.B.s' special education teacher Ms. Koerperich, that Ms. Koerperich stated that a scribe was being provided for longer writing assignments for B.B. to enable him to focus on composing his thoughts and then B.B. copies those words and thoughts onto modified writing paper, but that Ms. Goertzen never asked how frequently that occurred, nor was Ms. Goertzen aware that B.B.s' then-valid IEP offered the scribe accommodation for B.B. if needed to write more than just a single word. (Tr. Vol. 1 at 55, ln. 13; 56,

- 18; see also Ex. 55 at USD000681-82).
49. Ms. Goertzen later testified that a scribe is recommended when the student can't have two executive functioning skills going at the same time, so if his handwriting does not have the automaticity or speed it needs, and if there is a longer writing assignment which causes fatigue which makes handwriting become poorer, the scribe steps in and does the handwriting for the student. (Tr. Vol. 1 at 94, ln. 4-95, 95,7).
 50. Ms. Goertzen agrees that it could be a measure of a student's functional performance how many prompts and redirections that student needs in order to initiate and complete a task. (Tr. Vol. 1 at 46, ln. 2-6).
 51. Ms. Goertzen denies that her evaluation was focused solely or primarily on whether B.B. had manual strength and dexterity to write or to do handwriting stating: "No. It also included motor planning and processing which that's a part of sensory integration. It included his attention span which is influenced by sensory integration. It also included participation with me with my materials which is another part of sensory integration, so that's information that I am referring to when I talk about professional observation." (Tr., Vol. 1 at 47, ln. 22-25; 48, ln. 1-9).
 52. Ms. Goertzen testified that, with respect to the legibility of B.B.'s handwriting, that she informally conducted the evaluation tool of children's handwriting (ETCH) stating: "...I commented on him writing his first and last name, demonstrating letter writing from memory, upper case and lower-case letters to sequence the alphabet. Also, him writing his numerals doing a near point copying test and there's the results, five words with 18 letters and then it gives the breakdown of legibility, letter size differentiation, spacing between and within words and adequate baseline orientation." (Tr., Vol. 1 at 49, ln. 1-22).
 53. Ms. Goertzen testified that B.B. uses a functional R lateral tripod grasp pattern of a pencil that is not mature but a functional writing grip. (Tr., Vol. 1 at 51, ln. 7-25).
 54. Ms. Goertzen's report under the handwriting/tool use section references a bottom-up letter formation requiring queuing and redirection to successfully complete the assignment and write what he was requested to write. (Tr., Vol. 1 at 52, ln. 1-16).
 55. During Ms. Goertzen's evaluation of B.B., she noted that B.B. has "some bottom/up letter formation," and needed to be verbally prompted to check his letters and their orientation to baseline to correct them. (Tr. Vol. 1 at 12, ln. 2-8).
 56. Ms. Goertzen testified that bottom/up letter formation means writing the letter at the bottom at working one's way up, and that is "not the formation that is most efficient because we write top/down." (Tr. Vol. 1 at 59, ln. 15; 60, 3).
 57. Ms. Goertzen failed to record how many letters B.B. wrote "bottom/up" during her evaluation, even though Ms. Goertzen knew she was there to evaluate, in part, B.B.'s handwriting and she knew that Ms. Prophet had worked on proper letter formation with B.B. during school-based occupational therapy sessions.

- (Tr. Vol. 1 at 60, ln. 4-7; 60, 16; 61, 1)
58. Ms. Goertzen testified that she did not mention anything relating to the speed of B.B.s' handwriting in her report regarding her evaluation of B.B. (Tr. Vol. 1 at 61, ln. 2-7).
 59. Ms. Goertzen testified that B.B. was only able to recognize and correct his writing errors after her cueing. (Tr. Vol. 1 at 12, ln. 11-16).
 60. Ms. Goertzen confirmed that she "did really notice" that if B.B. was given paper with no lines on it, "he would write big," but if she gave him lined papers that "had cues on it," he could write appropriately on the lines. (Tr. Vol. 1 at 13, ln. 16-22).
 61. Ms. Goertzen later testified that if B.B. was given a blank piece of paper, he would write to fill the page. (Tr. Vol. 1 at 81, ln. 10-14).
 62. Ms. Goertzen confirmed that B.B. frequently would begin tasks during her evaluation before she had completed providing directions, which interfered with what she wanted done because he did not know exactly everything she had said; she further noted that B.B. was easily distracted and she needed to redirect him to concentrate on his fine motor tasks so that he didn't have a divided brain and that all his executive functioning could go into that fine motor task. (Tr. Vol. 1 at 14, ln. 23-25; 15, 1-13, 78, 4-8; see also Ex. 124).
 63. Ms. Goertzen testified that during her evaluation, even after she had redirected B.B. back to the task at hand, he would want to engage in conversation that was irrelevant to what he was doing, so she needed to provide him frequent redirection. (Tr. Vol. 1 at 15, ln. 14-25; 16, 1).
 64. Ms. Goertzen testified that the need for B.B. to receive frequent prompts could be driven by a need to "reassure his auditory processing" or it could be "his attention span" or it could possibly be if "he's having sensory issues or a level of anxiety." (Tr. Vol. 1 at 103, ln. 13-18).
 65. Ms. Goertzen further testified that she wrote: "during the assessment, he was easily distracted and talking about many different things that were coming to his mind, sometimes verbal queuing/gestures were required for redirection to concentrate on fine motor tasks. Frequently he needed verbal cueing to wait until all of the instructions were provided before he touched the materials...and he needed numerous prompts and reminders to do what you were asking him to do." (Tr., Vol. 1 at 53, ln. 13-25; 54, ln. 1-4).
 66. Ms. Goertzen also included in her report: "Following a conversation with the resource room teacher, they are providing B.B. with modified writing paper. A handwriting sample was provided for me to assess. B.B. handwriting was legible and spacing between and within words was appropriate. The resource room teacher commented that [the] scribe is being provided for longer assignments to enable B.B. to focus on composing his thoughts and then B.B. copies those words and thoughts onto modified writing paper. (Tr., Vol. 1 at 54, ln. 9-25).
 67. Ms. Goertzen stated that it was her objective view that B.B.'s handwriting was legible. (Tr., Vol. 1 at 55, ln. 6-9).
 68. Ms. Goertzen acknowledged that B.B.'s demonstration of bottom/up letter

formation is not the formation that is most efficient because we write top/down. (Tr., Vol. 1 at 59, In.. 11-20).

69. Ms. Goertzen acknowledged that there was one accommodation that was recommended in the IEP that was taken out. She believes that a parent requested that a specific paper that would visually cue B.B. on letter size was rejected. (Tr., Vol. 1 at 63, In. 6-17).
70. Ms. Goertzen stated that her assessment did not address the need for very frequent prompts and reminders to complete activities or the need for close monitoring in areas where safety is concerned. (Tr., Vol. 1 at 66, In. 14-23).
71. Ms. Goertzen agrees that automatically writing with correct size and spacing is a task for an Occupational Therapist. (Tr., Vol. 1 at 80, In. 19-25; 81, In. 1-4).
72. Ms. Goertzen acknowledged that B.B. was still needing reminders and prompts to have correct sizing and spacing in his handwriting at the time of her evaluation. (Tr., Vol. at 81, In. 5-9).
73. Ms. Goertzen acknowledged that if B.B. were given a blank piece of paper, he would write to fill the page. She further acknowledged that Occupational Therapists routinely work with autistic clients on addressing sensory and sensory processing issues. (Tr., Vol. 1 at 81, In. 11-24).
74. Ms. Goertzen agreed that B.B.'s overall full-scale IQ was a standard score of 73 which is in the low range compared to same-age peers, thereby indicating a cognitive delay. (Tr., Vol. 83 at In. 23-25; 84, In. 1-4).
75. Ms. Goertzen agreed that B.B.'s adaptive behavior composites at 72 with a percentile rank of three and that his daily living skills standard score is 74, percentage rank of four. These scores combined would be consistent with cognitive delay and that the individual is not achieving to potential. (Tr., Vol. 84 at In. 5-25).
76. Ms. Goertzen stated that when she evaluates a student in a school setting, her recommendation is based on several things:
....First off, for the student to have access to their educational needs, what does that look like. First of all, can it be met through accommodations and modifications. Then I look at is it through supplementary aids and services because I am obligated by the IDEA and the Kansas State Department of Education to look at the least restrictive environment. Does it look like consultation, and then if I say – you know, whatever I say yes to, then I look at do they need ongoing evaluation and strategies in order to support the special education goals and making progress, and if I say yes to that then that's direct services and its specially designed instruction to help facilitate the learning that needs to take place. (Tr., Vol. 1 at 87, In. 8-25; 88, In. 1-5).
77. Ms. Goertzen responded to a question on what are the primary areas that you as an Occupational Therapist should be working on? Ms. Goertzen replied: "Fine motor which includes eye/hand coordination and hand manipulation, visual perceptual skills and sensory integration as well as looking at those other areas of activities of daily living that impede access to their educational environment." (Tr., Vol. 1 at 91, In. 16-21).

78. The Districts failed to provide Ms. Goertzen with a February 2021 Prior Written Notice in which the Districts wrote in the section detailing occupational therapy that "B.B.s;" fine motor development continues to advance. He requires significant prompts to complete written work in the classroom with legible quality. Specialized instruction is recommended to reduce required prompts[.]" (Tr. Vol. 1 at 44:13-45:11; Ex. 10 at USD000317).
79. The Districts never told Ms. Goertzen that it had been doing work prior to January 2023 to reduce the number of required prompts to initiate and complete any tasks. (Tr. Vol. 1 at 45, ln. 12-16).
80. Ms. Goertzen agreed that the number of prompts and redirections from staff that it takes for an exceptional student to initiate and complete a task is a measure of a student's functional performance. (Tr. Vol. 1 at 46, ln. 2-6).
81. Ms. Goertzen testified that occupational therapy services would be required if "the student would benefit from my knowledge base of being an occupational therapist and working with the student doing specially designed instruction with ongoing evaluation, implementing strategies that would enhance the student's performance and progress the student's performance." (Tr. Vol. 1 at 26, ln. 25; 27, 1-6).
82. Ms. Goertzen testified that the role of a school occupational therapist is to observe all the components of a child's performance, and tailor her involvement to what she sees occurring with the child, so it's not doing the same task over and over in the same way, but instead, figuring out which way works the best and how to progress and acquire a skill. (Tr. Vol. 1 at 27, ln. 19-25; 28, 1-3).
83. Ms. Goertzen testified that working with clients on adaptive functioning and daily living skills is "part of our practice" as occupational therapists. (Tr. Vol. 1 at 38, ln. 19-25; 39, 1).
84. During her evaluation, Ms. Goertzen failed to evaluate whether B.B. needed occupational therapy to address his need for very frequent prompts and reminders to complete activities, a need which was expressly referenced in the IEP that was valid for B.B. at the time of Ms. Goertzen's evaluation of B.B. (Tr. Vol. 1 at 65, ln. 14-25; 66, 1-18; see also Ex. 34 at USD000194).
85. Ms. Goertzen was asked to read into the record a statement from the American Occupational Therapy Association (AOTA): "Occupational therapy practice addresses the physical, cognitive, psychosocial, sensory-perceptual and other aspects of clients' performance in a variety of contexts to support their engagement in occupations that affect physical and mental health, well-being, and quality of life." (Tr., Vol. at 107, ln. 4-25; 108, ln. 1-4).
86. Ms. Goertzen testified that AOTA standard of practice for Occupational Therapists is different between school-based practice and medical practice. (Tr., Vol. 1 at 113, ln. 8-25; 114, ln. 1-8).
87. Ms. Goertzen's occupational therapy report stated the reason for evaluation: "the family and the IEP Team are in disagreement about the appropriate level of OT services. An additional evaluation provided by an OT (not working for the

- school district) was requested by the family to assist with service decisions. (Districts Exh. 1038).
88. Ms. Goertzen attended the IEP meeting for B.B. on January 25, 2023, and spoke at length there; she stated writing upper case and lower-case letters is an executive functioning skill as it involves thinking “how do I sequence the alphabet and write at the same time.” (Tr. Vol. 1 at 74, ln. 22-24; 76, 5-14; see also Ex. 124).
89. At the January 2023 IEP team meeting, Ms. Goertzen stated that B.B. possesses the skills for the foundations to be a hand-writer and he’s forming letters and that is what she was focused on in her evaluation. (Tr. Vol. 1 at 80; ln. 4-12; see also Ex. 124).
90. Ms. Goertzen testified that automatically writing with correct sizing and spacing is another task that an occupational therapist could work on with a client, and this was shown by Ms. Prophet previously doing this work with B.B. (Tr. Vol. 1 at 80; ln. 23-25; 81, 1-4).
91. During her evaluation, Ms. Goertzen failed to evaluate whether B.B. needed occupational therapy to address the need for close monitoring in areas where safety is a concern, a need which was expressly referenced in the IEP that was valid for B.B. at the time of Ms. Goertzen’s evaluation of B.B. (Tr. Vol. 1 at 66, ln. 19-23; see also Ex. 34 at USD000194).
92. During her evaluation, Ms. Goertzen did not do any particular assessment or test regarding B.B.s’ sensory processing, even though she later testified at the hearing that the primary areas that she as an occupational therapist would be working on would be “fine motor which includes eye/hand coordination and hand manipulation, visual perceptual skills and sensory integration, as well as looking at those other areas of activities of daily living that impede access to their educational environment.” (Tr. Vol. 1 at 47, ln. 16-21; 91, 11-21).
93. Ms. Goertzen testified that even though she had said at the January 2023 IEP team meeting that she had pored over B.B.s’ situation and could not think of any school-based OT services that could be provided to B.B., that she nonetheless did not reference any sensory or sensory processing issues when she made that comment, while further admitting that school-based occupational therapists do indeed routinely work with autistic clients on addressing sensory and sensory processing issues. (Tr. Vol. 1 at 81, ln. 15-24).
94. Ms. Goertzen testified that even during her evaluation, in which she found that B.B. did not need further occupational therapy services at school, that B.B. incorrectly formed some letters, improperly oriented his letters to the lines on the paper and required cueing and redirection from Ms. Goertzen to be able to successfully complete the assessments and write what she wanted him to write. (Tr. Vol. 1 at 52, ln. 1-16).
95. Ms. Goertzen testified during her evaluation of B.B., when asking him to complete far-point copying, which would be copying text from a dry-erase board three to five feet away, that B.B. was only able to correctly orient 13 out of 18

- letters to baseline. (Tr. Vol. 1 at 52, ln. 17-25; 53, 1-12; see also Ex. 55 at USD000681).
96. During her evaluation of B.B., in which she found that B.B.s' handwriting was legible and that he did not need ongoing school-based occupational therapy services, Ms. Goertzen only asked B.B. to write his first and last name, numerals 1-10, upper and lower case letters of the alphabet, and ten words split between near- and far-point rote copying of text she had written out for him. (Tr. Vol. 1 at 58, 18-25; 59, 1-14; see also Ex. 55 at USD000680).
97. Despite recording in her report that B.B. was easily distracted and required cueing and gestures to be redirected to complete the tasks of her evaluation and testifying that B.B. needed numerous prompts and reminders to do what she had asked him to do during the evaluation, Ms. Goertzen did not keep track of how many prompts and reminders B.B. actually needed during the evaluation. (Tr. Vol. 1 at 53, ln. 13-25; 54, 1-8; see also Ex. 55 at USD000681).
98. Even though Ms. Goertzen concluded in her report that B.B. did not need ongoing school-based occupational therapy and that the factors that are hindering B.B.s' performance can be met through classroom accommodations and modifications, she did not ask what training B.B.s' classroom teachers had to address and meet his needs. (Tr. Vol. 1 at 73, ln. 14-25; 74, 1-20).
99. Despite this comment, Ms. Goertzen later testified that when considering whether a student needs occupational therapy services at school, she must "consider the personnel [the student] is working with, you know, what is their level of awareness." (Tr. Vol. 1 at 88, 6-20).
100. Ms. Goertzen's report's summary and conclusions are as follows:
Re-evaluation was completed to determine if OT services are needed for [B.B.] to be able to continue his progress in the general education curriculum. While evaluating fine motor skills, other areas were also assessed as part of the evaluation. Intelligence was reviewed from the previous evaluation and is indicated to be in the low range with a FSIQ of 73. This indicates that overall learning will be slower for [B.B.] and he will need a modified curriculum as he continues through school. Academic skills of reading, written language and math area also within this same range at this time. Adaptive behavior skills are also within this range, with these skills reported lower in the home than at school. [B.B.] has previously been diagnosed with autism and continues to be eligible for special education services under this eligibility category. Continuing speech-language services is recommended at this time to target language skills including social language.
The IEP Team should consider decreasing or exiting OT services as [B.B.'s] needs can be met through accommodations which can be delivered by special education and regular education staff without specialized OT instruction. (Districts Exh. 1038).

C. KRISTIN PROPHET OCCUPATIONAL THERAPIST BACKGROUND AND TESTIMONY:

101. Ms. Prophet has been a school-based OT with CKCIE for 22 years. (Tr., Vol. 1 at 118, ln. 23 – 119, ln. 4.) Prior to that, Ms. Prophet had worked in a hospital setting in both acute care and inpatient rehab and had also worked in an inpatient psychiatric adolescent facility. (Id. at 119, ln. 9-12.) Ms. Prophet has also done PRN work during the summers when she is not on contract as a school-based OT. (Id. at 119, ln. 13-14.) Ms. Prophet holds degrees in both kinesiology and occupational therapy. (Id. at 119, ln. 15-22.) Ms. Prophet holds national certification through NBCOT and professional licensure as an occupational therapist through the Kansas State Department of Health and Environment (KDHE), although she must also comply with the requirements of KSDE. (Id. at 120, ln. 2-15.)
102. Ms. Prophet has been the OT that has served B.B. for the last 7 years at Heusner Elementary. (Tr., Vol. 1, at 121, ln. 6-9.) Ms. Prophet described B.B.'s disabilities and progress during that time as follows:
- B.B. is a student that I began working with when he was five and I've worked with him all through his elementary education career. He's a student who has a diagnosis of autism and receives special education services. He is also a student with a developmental delay and with cognitive and academic delays that go along with that. When we first started working together, B.B. had a really hard time with all variety of motor skills, motor planning especially, it took a lot of help to get him even to sit on carpet for rug time, to maintain his position in a chair. We worked a lot on fine motor skills and hand manipulation skills, body awareness skills, handwriting, printing, hand washing, all sorts of the daily living activities that happen in school. Throughout the years, he's made tremendous progress. He is now a student that participates very well in his educational environment. He does do all of his academics in the special education classroom and has para assistance in specials in his regular education classroom. He is somebody who does have a tendency to kind of rush through things that he is not super interested in and would like to finish quickly. He is a student who because of his cognitive abilities does require repetition of instruction, more frequent prompts than other kids. He is a student now whose fine motor skills are to the point where he's able to participate. He does still have some issues. His penmanship is certainly something that I think everyone would love for him to do a more consistent job with, however, he has the hand skills to do it and with prompts to, hey, check your work there, Buddy, he is able to recognize and make corrections. He is a boy who is a joy to work with. I will miss him very much when I no longer get to see him on a regular basis. He always wants to do a good job. He is always excited to see me. We're friends. Ms. Kristin, Ms. Kristin, let me tell you what I've done since the last time I've talked to you. He works hard. He has a great sense of humor and loves to tell jokes. He is an all around good kid that has potential to go far in life and I am super excited for him to be independent and successful. And I will miss him, but the fact of the matter is he doesn't -- he doesn't need me any more and that's one of*

the hard things about being an occupational therapist is you work so hard to work yourself out of seeing the kids that you get so used to seeing.

(Tr., Vol. 1, at 121, ln. 12 – 123, ln. 16). When asked what she meant by saying that B.B. no longer needs her, Ms. Prophet testified that:

when I look at a school day, he's able to perform all the motor functions that he needs to participate. There are no longer physical barriers to his access and participation in his classes. The things that he does require, accommodations, prompts and continued practice, are able to be delivered by classroom staff, and since I'm a related service provider, they should be delivered by classroom staff. When I go in to do my push-in therapy sessions with him during written language time, he is doing what all his classmates are doing. He doesn't require any additional prompts beyond what his peers in the special education classroom are needing from the teacher. Frequently I will sit with him during written language and he will not even need a prompt from me or the teacher for the 23 minutes that we're together. He has the placement that he needs. He has the accommodations that he needs to be successful and anything that he needs to continue to work on does not require the specialized skill or instruction of an occupational therapist to provide. (Id. at 123, ln. 19 – 124, ln. 18.)

103. In fact, Ms. Prophet testified regarding her concern that her presence in the classroom is actually becoming a distraction for B.B.
- When I come in [the classroom], like I said, B.B. and I are good buddies, he's always very excited to see me and I feel as if it is actually a distraction when I enter the classroom because he is always wanting to, like I said, Ms. Kristin, let me tell you a joke, this is what just happened and has to be redirected back to the task that his peers are doing. He's participating. He is doing the work with the other children with the teacher instruction. He does require occasional cues to bump the lines when he's writing, but overall his writing is very legible, as legible as his peers. It's becoming -- his peers are noticing that I'm coming in and sitting with him. One of his classmates said to me the other day, I'm familiar with her because I worked with her when she was younger, Ms. Kristin, why are you still coming in here for B.B., and I just said, well, you know, everybody gets different supports and has different plans, and she said, well, he's able to do what all the rest of us are able to do and B.B. said, well, she's my friend and I said we are friends and then his classmate said, well, we're friends, too, she's still my friends whether I work with her or not. He's really doing what his special education peers were doing, the kids that he works with during that written language time, without my intervention. In fact, a lot of times I provide my minutes of service, but I can't even mark it down as billable time because what I'm doing I don't consider to be specialized OT instruction.*
- (Tr., Vol. 1, at 125, ln. 12 – 126, ln. 21.)

104. When Ms. Prophet stated that she cannot mark it as billable time, she means that her time cannot be billed to Medicaid. However, Ms. Prophet testified that “even if he were not a Medicaid student under my license, I don't know that coming in and sitting with a student while he participates in a classroom lesson

with minimal to no cueing from me would be considered occupational therapy at this point and that's all that he's requiring." (Id. at 126, In. 22 – 127, In. 6.)

105. Ms. Prophet then testified about the most recent series of changes that had been proposed regarding OT services.

- 12-14-20 PWN for Evaluation (Dist. Ex. 1003) – This was for a 3-year re-evaluation. (Tr., Vol. 1, at 127, In. 14-21.)
- 2-9-21 Re-Evaluation Eligibility and Team Report (Dist. Ex. 1005); 2-9-21 IEP (Dist. Ex. 1006); 2-9-21 PWN (Dist. Ex. 1007); 2-9-21 Conference Summary (Dist. Ex. 1008) – B.B. continued to receive 30 minutes of OT once a week. He had a separate goal for keyboarding in the motor section at this time.
- 4-22-21 IEP (Dist. Ex. 1009); 4-23-21 Conference Summary (Dist. Ex. 1010) – B.B. continued to have the same goal and continued to have 30 minutes of OT once a week. This was an amendment to add ESY. (Tr., Vol. 1, at 131, In. 24 – 133, In. 3.)
- 5-10-21 Conference Summary (Dist. Ex. 1011) – Conference was held to respond to questions regarding the closing of the autism program at Huesner. (Tr., Vol. 1, at 133, In. 8-20.)
- 2-1-22 IEP (Dist. Ex. 1013); 2-1-22 Conference Summary (Dist. Ex. 1015); 2-1-22 PWN 1 (Dist. Ex. 1014); 2-1-22 PWN 2 (Dist. Ex. 1015) – No individual goal for OT. The needs are being met by accommodations and modifications. Ms. Prophet originally recommended going to 15 minutes of consultation, but the parents did not agree with this. When the paperwork was changed back to try to remove the recommendation, it was erroneously marked as 15 minutes per week of direct services. The time was corrected on the second. (Tr., Vol. 1, at 134, In. 15 – 137, In. 23.)
- 2-7-22 Email Response to Parents from Kristin Prophet (Dist. Ex. 1017) – Responding to parent concerns about reducing OT time, suggesting a time to discuss concerns during upcoming parent-teacher conference and providing handouts regarding pencil grasp and explaining the three components of skills that comprise written language – physical skills, academic skills, and executive functioning. B.B. uses a lateral tripod grasp for his pencil. While not ideal, it is a functional pencil grasp. (Tr., Vol. 1, at 137, In. 25 – 143, In. 15.)
- 2-17-22 Conference Summary (Dist. Ex. 1019) – Discussed additional parent concerns raised in above email. Parents did not want to decrease OT services.
- 3-11-22 IEP Amendment and IEP (Dist. Ex. 1020 – in 2 parts) – Notes that OT recommended change to quarterly consult. Parents did not agree. OT time would remain at 30 minutes a week until an IEP meeting is held to discuss further.
- 3-11-22 PWN (Dist. Ex. 1021 and 1022) – Exhibit 1021 is the PWN for all changes other than OT. Exhibit 1022 is the PWN documenting the changes for OT. The parents refused consent for the OT changes. (Dist. Ex. 1022 at 5.)
- 4-29-22 IEP (Dist. Ex. 1024); 4-29-22 PWN (Dist. Ex. 1025); 4-29-22 Conference Summary (Dist. Ex. 1026) – There was not a separate motor/OT goal. The needs were to be met through accommodations and modifications. (Tr., Vol. 1, at 149, In. 16 – 150, In. 9.) At this point in time, B.B. did not have a need for OT services to complete writing tasks. (Id. at 150, In. 10-13.) Since B.B. was not needing any OT services but parents would not agree to reduce to consult, Ms. Prophet recommended reducing B.B.'s time in service by less than 25% to 23 minutes each week. (Id. at 150, In. 20 – 151, In. 2.) Again, parents refused to consent. (Id. at 151, In. 8 -
- 9-9-22 Notice of Meeting for 9-14-22 (Dist. Ex. 1027) – Parents refused to meet.

- 9-20-22 Notice of Meeting for 10-18-22 (Dist. Ex. 1028) – Parents refused to meet during parent-teacher conference as had previously been discussed because they did not receive 10 days notice.
- 9-26-22 Notice of Meeting for 10-20-22 (Dist. Ex. 1029) – Parents refused to meet.
- 10-7-22 Notice of Meeting for 10-27-22 (Dist. Ex. 1030) – This meeting was held.
- 10-27-22 IEP (Dist. Ex. 1031); 10-27-22 Conference Summary (Dist. Ex. 1032); 10-27-22 PWN (Dist. Ex. 1033) – The team considered discussing OT time in service by another 24 percent, but they did not. Ms. Prophet testified that this was a discussion IEP, and she continued to provide 23 minutes of service per week. (Tr., Vol. 1, at 157, ln. 21 – 158, ln. 7.) During the IEP meeting, Ms. Prophet informed parents that “during push-in sessions, I am providing occasional reminders for penmanship. This is not therapy and can be done by any classroom staff.” (Id. at 159, ln. 12-15.) During this meeting, the parents shared concerns regarding shoe tying and wiping after going to the bathroom. In response, Ms. Prophet provided a social story about wiping and provided a shoe-tying program. (Id. at 163, ln. 25 – 164, ln. 25.)
- 10-31-22 Parent Request for Sensory Profile to be completed (Dist. Ex. 1034)
- 11-3-22 PWN for Evaluation (Dist. Ex. 1035) – Seeking consent to do re-evaluation for the sensory profile requested by parents and additional evaluation in the area of adaptive behavior.
- 11-22-22 Mediation Agreement (Dist. Ex. 1036) – The parties agreed to obtain an outside evaluation of OT for B.B. by a school-based occupational therapist. Nikki Goertzen was the school-based occupational therapist selected to perform the outside evaluation. (Tr., Vol. 1, at 170, ln. 16-23.)
- 1-25-23 Reevaluation Report (Dist. Ex. 1038); 1-25-23 IEP (Dist. Ex. 1039); 1-25-23 Conference Summary (Dist. Ex. 1040); 1-25-23 PWN (Dist. Ex. 1041) – “Both occupational therapists and the school team agree that he does not meet the eligibility criteria for occupational therapy. We would like to exit him from OT.” (Tr., Vol. 1, at 178, ln. 14-17.) Two separate OT evaluations indicated there is not a need for specially designed instruction from an occupational therapist. (Id. at 183, ln. 3-8.)
- 3-3-23 PWN (Dist. Ex. 1042) – Seeks to exit B.B. from OT, but also specifically addresses and denies the shoe tying, toilet hygiene, and penmanship concerns raised by the parents.
- 4-13-23 PWNs (Dist. Ex. 1044) – These resulted from a formal complaint requiring the Districts to address shoe tying in a PWN, even though it had already been addressed in the 1-25-23 reevaluation. (Tr., Vol. 1, at 187, ln. 22 – 190, ln. 17.)
- 5-17-23 Revised IEP (Dist. Ex. 1045); 5-17-23 PWN (Dist. Ex. 1046) – Granted parent request to make certain changes to statements of parent concerns and denied request to add cursive handwriting as a goal.
- 11-14-23 PWN (Dist. Ex. 1047) – Granted parent request that Lakewood Middle School representatives not be present at the upcoming IEP meeting.
- 11-29-23 IEP (Dist. Ex. 1048) – Annual IEP meeting and again propose exiting IEP meeting but nothing changed due to stay-put; 11-29-23 PWN for everything other than OT (Dist. Ex. 1049); 11-29-23 PWN for exit of OT (Dist. Ex. 1050)
- 12-7-23 PWNs 1-7 regarding clarification of para services and parent requests stemming from IEP meeting (Dist. Ex. 1051-1057)
- 12-7-23 RWA Letter offering an IEP meeting to discuss compensatory services for a 5-minute period of time at recess each day that para coverage was missed at the

beginning of the 2023-2024 school year until it was corrected on 11-29-23. (Dist. Ex. 1058)

- 2-19-24 PWN (Dist. Ex. 1078) – granting parent request not to meet with Lakewood middle school team to discuss transition to middle school until after the due process has been resolved.

106. Ms. Prophet also testified regarding the progress reports for B.B., which demonstrated that he had continued to make progress on his OT goals, even when it was addressed collaboratively with written language. (Dist. Ex. 1059-1062.) Likewise, Ms. Prophet also introduced the evidence of the social stories and shoe tying program that she provided to the parents, as well as B.B.'s handwriting samples. (Dist. Ex. 1070-1074.) Ms. Prophet also had short videos demonstrating that B.B. had the ability to open containers, stamp letters, and wash his hands. (Dist. Ex. 1063 – 1066.)
107. Ms. Prophet testified that students with disabilities receive Occupational Therapy so that they can attend and participate in school. (Tr., Vol. 1 at 219, In. 25; 220, 1-2).
108. Ms. Prophet testified that her "role as an OT in the school system is a related service provider and so that means that all of my interventions that I do as an OT have to be directed towards school function and access and participation in school. OT is a very broad profession, it's holistic, it looks at the whole person, but in school we are narrowed to school function." (Tr., Vol. 2, at 227, In. 12-19.)
109. In addition to her normal OT duties, Ms. Prophet is:
the department head for the Occupational Therapy and Physical Therapy Departments here at CKCIE. I am a member of the KSDE TASN autism support team here for CKCIE. As the department head, I am the new therapist mentor any time there's a new therapist that comes to join our building. Over the years, I've also had several instructional positions to staff. I was the MANDT trainer for crisis de-escalation and crisis training for several years. I have done extensive training to teachers and staff and paras on fine motor skills in the classroom, sensory strategies in the classroom. Me and one of the other occupational therapists were a grant recipient where we provided a sensory library to each of the eight elementary schools and instructed staff on the use of sensory strategies in the classroom. I have been a grant recipient in conjunction with one of the preschool teachers where we provided parent instruction on independence with self-care skills and provision of some self-care items, potty seats and utensils and divided plates and such and talked about the importance of play in developing motor skills. Most recently, I worked with the board office to provide a training to all of the Districts preschool teachers as well as the elementary coaches, reading and math coaches on the importance of fine motor skills as a foundation for prewriting skills.
(Tr., Vol. 2, at 228, In. 6 – 229, In. 12.) *As the department head, Ms. Prophet serves as the liaison between administration and coordinators and the therapy staff. She leads department meetings and is the go-to person on processes and procedures. (Id. at 229, In. 13-20.) Ms. Prophet also helps coordinate some of the continuing education*

- training that takes place during staff meetings in her role as department head. (Id. at 229, In. 21 – 230, In. 5.) MANDT is a national certification program for de-escalation strategies and crisis management. Ms. Prophet was trained as a trainer to return to CKCIE and train other staff members. (Id. at 230, In. 9-16.) In addition, as part of her duties, Ms. Prophet regularly trains paras on strategies they can use in classrooms to promote independence with self-care skills and writing neatly. (Id. at 233, In. 7-19.)*
110. Ms. Prophet is familiar with a program called Zones of Regulation. USD 305 was an early adopter of the program and it is used in all of the elementary schools. Zones of Regulation is a concrete way of allowing students to express their emotional state so that staff can help them achieve a ready-to-learn state. For example, green is a ready to learn state, while red means the student is angry, excited, or hyper. (Tr., Vol. 2, at 232, In. 2 – 233, In. 6.)
111. With regard to B.B.'s handwriting samples, Ms. Prophet testified that B.B. has the hand skills to write neatly. Rather, the inconsistency in his handwriting legibility has more to do with how motivated he was to write neatly, whether he is in a hurry to finish, and how hard the academic task was. (Tr., Vol. 2, at 242, In. 2 – 243, In. 1.)
112. Ms. Prophet has not had a separate IEP goal for OT for the last couple of IEPs because she has been working in collaboration with the classroom teacher on the written language goal pursuant to the best practices outlined in the Joint Statement issued by the national organizations of several related services providers (Dist. Ex. 1076). (Tr., Vol. 2, at 243, In. 11 – 245, In. 17.)
113. B.B. had been making progress on all of the goals with which Ms. Prophet collaborated with the classroom teacher until the 11-29-23 IEP meeting. Ms. Prophet testified that they were closing out the goal early (the annual goal normally would have been done in January) so they did not have time to complete the progress monitoring for a full year. (Tr., Vol. 2, at 258, In. 14 – 259, In. 5.)
114. Ms. Prophet testified at length regarding the gains that B.B. had made during the 7 years she had worked with him; however, B.B. now has the motor skills necessary to access his education and does not require the specialized skills of an occupational therapist. (Tr., Vol. 2, at 261, In. 3 – 263, In. 6.) While B.B. may need to work on his penmanship, that is not something that requires an OT. He has the motor skills to write legibly. His classroom teachers can, and do, work on penmanship with all students. (Id.)
115. Ms. Prophet testified at the hearing that over the prior seven years, she had worked with B.B. on body awareness:
We have worked on strengthening, core strengthening, hand strengthening, wrist strengthening, finger strengthening. We have worked on dexterity. We have worked on grasp. We have worked on midline crossing. We have worked on reflex integration. We have worked on printing letters so formation of letters. We've worked on line awareness. We have worked on spacing. We have worked on hand washing. We have worked on fasteners and opening classroom supplies. We have worked on general

manipulation skills. We've worked on scissor skills. We've worked on -- I've provided home programs for shoe tying, and before I provided each of those programs, we reviewed my recommendations and practiced them together in OT before I sent them home. We discussed toilet hygiene together in a similar fashion. B.B. and I discussed it, read him the social story before I sent that home. Our therapy sessions when we were doing pull-out therapy generally consisted of a gross motor strengthening, reflex integration activity followed by a fine motor and hand manipulation dexterity activity followed by specific goal work, whatever the goal was that year." (Tr. Vol. 2 at 259, In., 21; 260, 24).

116. Ms. Prophet is not saying that B.B. would not benefit from OT services to assist him with daily living skills in the home. However, under IDEA, her role is to focus on his educational needs. On the other hand, the daily living skills needed at home would be addressed by an outpatient OT. (Tr., Vol. 2, at 263, In. 10 – 264, In. 6.)
117. While B.B. may require multiple prompts to get back in task on occasion, he does not require any more prompts than other students in the special education classroom. (Tr., Vol. 2, at 276, In. 20-24.) Ms. Prophet has never witnessed B.B. ever having any behavior difficulties and noted that he is a very polite student. (Id. at 276, In. 25 – 277, In. 4.)
118. While Ms. Prophet was recommending exiting B.B. from OT services, any of his teachers who felt they still needed her assistance with him could have requested that he remain on consult services, but none of them did. Likewise, none of the other school staff members on the team disagreed with the recommendation to exit B.B. from O.T. (Tr., Vol. 2, at 281, In. 19 – 282, In. 13.) The outside evaluation completed by Nikki Goertzen was also in agreement with exiting B.B. from OT. (Id. at 282, In. 14 – 283, In. 9.) Ms. Prophet did not know Nikki Goertzen at all prior to her conducting the evaluation of B.B. Ms. Prophet provided a copy of her evaluation so that Ms. Goertzen could do a chart review and have a history. (Id. at 283, In. 22 – 284, In. 4.)
119. Ms. Prophet testified that she feels she is causing B.B. more harm than good when she goes into the classroom for his push-in time because it is a distraction to the group. B.B. is excited to see her and wants to tell her a joke. Likewise, she believes her presence is making B.B. less independent. B.B. frequently looks to her for a prompt when she knows he does not really need one. Ms. Prophet is also concerned that B.B. will not be able to learn to generalize his skills if she is sitting right beside him in the classroom. (Tr., Vol. 2, at 286, In. 2-24.)
120. Ms. Prophet reviewed the outside evaluation in Parent Exhibit 69. While she had no reason to dispute the scores, she did note that the versions given were geared toward different environments. Furthermore, the final report from Parent Exhibit 69 indicated that B.B. "would benefit from skilled outpatient OT services to address visual motor skills, fine motor skills, sensory regulation and feeding." (Tr., Vol. 2, at 291, In. 6-18.) This would fall under the medical model of services and is beyond what school-based occupational therapists are required

to do. (Id. at 291, ln. 19-23.) Skilled outpatient OT services: *can address any sort of delays and they address -- it's directed by a doctor referral typically, billed to the patient directly and is open to all areas of life function, not just school. As a school-based OT, our role is as a related service provider with the teacher providing as much of the instruction and intervention as possible with OT only providing what is specialized to our skill and specialty and then restricted just to school function.* (Tr., Vol. 2, at 291, ln. 23 - 292, ln. 8.)

121. Ms. Prophet also reviewed Parent Exhibit 101, another outside OT evaluation of B.B. (Tr., Vol. 2, at 292, ln. 17-22.) Again, while the overall results were not remarkably different, the testing looked at the home and community environments while the school testing would not. Moreover, when Ms. Prophet compares all of the evaluations, including those she and Ms. Goertzen conducted, all of the evaluations conclude that B.B. has a disability. They all identify that B.B. has a functional grasp of skills and that he has sensory differences consistent with autism. (Id. at 296, ln. 13-18.) All of the evaluations "identify that he is able to print letters but frequently rushes through activities and doesn't maintain consistent line awareness and spacing." (Id. at 296, ln. 18-21.) The standardized testing from the outside evaluations showing B.B. at low levels of motor abilities is consistent with someone with a developmental disability and a developmental delay. (Id. at 296, ln. 22 - 297, ln. 4.) Ms. Prophet testified that she agreed B.B. has a developmental disability and a developmental delay. However, Ms. Prophet testified: *What I'm looking at in my evaluation and what Nikki was looking at in her evaluation were is that delay significant enough to require specialized instruction to access his school, and the answer to that in my evaluation and in Nikki's evaluation for the school-based OT services was, no, it is not. For the private outpatient services, there is no that you meet requirements. If you have a disability, they will provide services and so they have both recommended outpatient services and home programs to address his needs.* (Id. at 297, ln. 4-16.)

In fact, in the summary of Parent Exhibit 101, it states:

Significant developmental delays and sensory processing challenges warranting skilled occupational therapy services. Medically necessary to provide direct intervention, compensatory strategies, modification and parent education. In accordance with a home therapy program, it is anticipated that skills will improve to a more appropriate level. Plan of care is included in the assessment.

(Id. at 297, ln. 20 - 298, ln. 3).

122. Ms. Prophet testified that occupational therapy in the educational setting can extend beyond motor skills and manual dexterity, and can include working to improve mental health results, working to improve behavioral results, improving sensory perception skills, working toward improving self-regulation strategies, and working to improve focus and participation, based on need. (Tr., Vol. 2 at 306, ln. 20-25; 307 1-23).
123. Ms. Prophet testified that "OT's work on a lot of other things other than

- handwriting.” (Tr., Vol. 3 at 512, In. 19-20).
124. Ms. Prophet agreed that the Department of Education regulations define occupational therapy stating: “Occupational therapy (i) means services provided by a qualified occupational therapist; and (ii) includes (A) improving, developing or restoring functions impaired or lost through illness, injury or deprivation. (B) improving ability to perform tasks for independent functioning if functions are impaired or lost. And, (C) preventing through early intervention, initial or further impairment or loss of function.” (Tr., Vol. 2 at 308, In. 14-25; 309, 1-9; see also Exhibit 116 at p.p. 2-3).
125. Ms. Prophet testified that it was her professional opinion that B.B. will receive FAPE without receiving OT services. (Tr., Vol. 2, at 305, In. 2-5.) Ms. Prophet explained her rationale that he would continue to receive FAPE without OT services because:
he is able to participate in all aspects of his school day. He's able to attend specials and regular education and does not require anything specialized from the occupational therapist to do that. He is able to participate in his reading, math, writing academics in the special education classroom without any specialized OT intervention for that. He's doing it. He's doing it and he doesn't need me anymore. (Id. at 305, In. 7-16.)
126. Ms. Prophet testified that: “I am to provide services in the least restrictive environment. If a teacher can provide instruction and accommodation, they are to do it. I only intervene if it requires a specialized skill from a therapist. (Tr. Vol. 3 at 484, In. 10-17).
127. When asked if there was any further occupational therapy work that she could do with B.B., Ms. Prophet responded to state: “I think that anyone could work with an OT always, but as a school-based OT, I am saying that his needs are able to be addressed by his teachers.” (Tr. Vol. 3 at 488, In. 2-8).
128. Ms. Prophet testified that when she used the term “legibility” in B.B.’s IEP’s she was “talking about recognizable quality” of the letters he was forming. (Tr. Vol. 3 at 599, In. 21-23).
129. Ms. Prophet testified that she and the occupational therapy assistant worked with B.B. “on letter formation, line awareness, spacing in the lines, and spacing between the words.” (Tr. Vol. 2 at 427, In. 16-23).
130. Ms. Prophet agreed that whether B.B.’s handwriting was legible or not was based on her own subjective determination and on the subjective determination of the assistant occupational therapist, Ms. Richards, and that there was no other metric to assess legibility. (Tr. Vol. 2 at 314, In., 14; 315, 20; 328, 6-16; 426, 18; 427, 15).
131. Ms. Prophet testified that her “job” is to “make sure B.B. has the hand skills necessary to produce written output in the classroom, and so he does have the hand skills to print legible, he does not always have the penmanship to do that. Penmanship is not the sole responsibility of an occupational therapist.” (Tr. Vol. 2 at 261, In. 20; 262, 1).

132. Ms. Prophet testified that the Districts has not had any motor skills or occupational therapy goals for B.B. since his February 2021 IEP, despite providing him with occupational therapy services since that time. (Tr. Vol. 3 at 526, ln. 23; 527, 5).
133. Ms. Prophet testified that B.B. is able to go to the bathroom independently and that he has the hand skills necessary for legible printing"; she further testified that B.B. can manage his clothing at school. (Tr. Vol. 2 at 261, ln. 14-17; 620, 15-16).
134. Ms. Prophet testified she worked with B.B. on automatically writing with appropriate pencil pressure and on reducing the need for constant prompts and that he now possesses those skills. (Tr. Vol. 3 at 485, ln. 23; 486, 4).
135. Ms. Prophet testified that whether B.B. was handwriting with appropriate pencil control and appropriate pressure was her own determination. (Tr. Vol. 2 at 373, ln. 5-21).
136. Ms. Prophet agreed that, as of the dates of her testimony in this hearing, well after the Districts filed for due process to remove all OT services from B.B., if given unlined paper, B.B. will still write to fill the space he is given. (Tr. Vol. 2 at 478, ln. 25; 479, 4).
137. Ms. Prophet stated that working with B.B. on spatial awareness issues would be part of her occupational therapy services if it interfered with his classroom participation. (Tr. Vol. 3 at 500, ln. 17-21).
138. Ms. Prophet said her role in helping students who have fine motor or visual motor disabilities is to work on the visual motor skills, the foundational motor skills required to be able to copy letters from a model, to be able to accurately look with their eyes and then be able to draw that same form. (Tr. Vol. 3 at 586, ln. 19; 587, 3).
139. Ms. Prophet testified that occupational therapists work on the visual motor task of writing, the ability to accurately copy and form things, using your eyes and your hands together, and that is a skill B.B. has now that he has the motor foundation for that, while penmanship is more of a self-regulation motivation to write neatly. (Tr. Vol. 3 at 602, ln. 20; 603, 5).
140. Ms. Prophet admitted that when she did not provide rote text for B.B. to copy, his writing became "much less decipherable." (Tr. Vol. 2 at 235, ln. 22; 236, 20; see also Ex. 1074)
141. Ms. Prophet testified that B.B. has a "tendency to rush through writing. It is not his favorite thing to work on." (Tr. Vol. 2 at 240, ln. 18-23).
142. Ms. Prophet testified at the hearing that B.B. "obviously has an awareness of lines and spacing and an understanding of the writing rules. He is capable of writing neatly and legibly, but his samples can be inconsistent and that inconsistency is not due to fluctuating motor skills, his motor skills are what his motor skills are. The inconsistency might have to do with how hard the academic task was, how motivated he was to write neatly during that session, how quickly he was writing[.]" (Tr. Vol. 2 at 242, ln. 6-16).

143. Ms. Prophet testified that many factors come into play when a child has trouble with handwriting because writing is very complex, it requires a wide range of physical skills as well as executive functioning skills and academic skills; she further testified that “executive functioning, this is sort of like the motivation piece...You have to be motivated to get it down on paper neatly. You have to maintain the attention and the focus. You have to be able to start your work, keep going and finish your work. You have to regulate your emotions so you don't get frustrated[.]” (Tr. Vol. 3 at 603, ln. 24; 605, 10).
144. Ms. Prophet testified that B.B. “does still need to work on the executive functioning skills with his teacher[.]” (Tr. Vol. 3 at 606; ln. 12-14).
145. Ms. Prophet testified that as of her dates of testimony in this hearing, B.B. was not independent in the special education classroom and was unable to function independently in the classroom, and unable to start and complete his work without constant prompting, including in writing and written language. (Tr. Vol. 3 at 470, ln. 1-8).
146. Ms. Prophet testified that what she was looking at in her evaluation of B.B. was whether there is a developmental delay significant enough to require specialized instruction to access his school through school-based occupational therapy. (Tr. Vol. 2 at 297, ln. 4-11).
147. Ms. Prophet agreed that fluidity and speed of writing can be an occupational therapy issue. (Tr. Vol. 2 at 300, ln. 24; 301, 1).
148. Ms. Prophet agreed that B.B. lacks spatial awareness and that this goes back to his lack of registration, which in turn is connected with B.B.s’ autism diagnosis. (Tr. Vol. 2 at 302, ln. 21-25).
149. Ms. Prophet chose the handwriting samples from B.B. which the Districts introduced into evidence at the hearing and also led him in writing out the samples. (Tr. Vol. 2 at 234, ln. 7; 235, 19; see also Ex. 1074).
150. Ms. Prophet testified that she saw no need for the Districts to keep baseline data regarding how many times B.B. needed to be reminded to write his letters correctly because he was working within the special education group in a very small group with approximately one staff to three students, all of whom need cues, and because general education students also receive cues to do writing assignments, such as “everybody remember start with a capital letter, put a period at the end, please use your most beautiful writing[.]” (Tr. Vol. 2 at 254, ln. 11-25).
151. Ms. Prophet testified that since October 2022 she has not done any testing to see how many sentences B.B. can write without becoming fatigued. (Tr. Vol. 2 at 474, ln. 14-24).
152. Ms. Prophet testified that she felt “strongly” that her sitting next to B.B. in his classroom was making him less independent and that he would frequently look for a prompt from her and that she is concerned about his ability to generalize skills that he has learned from her if she is sitting there with him, and that B.B. is unable to learn generalization of skills if there’s somebody sitting there next to

- him. (Tr. Vol. 2 at 286, ln. 15; 287, 11).
153. Ms. Prophet testified that occupational therapy in the educational setting can extend beyond motor skills and manual dexterity, and can include working to improve mental health results, working to improve behavioral results, improving sensory perception skills, working toward improving self-regulation strategies, and working to improve focus and participation, based on need. (Tr. Vol. 2 at 306, 20--308:2).
154. Ms. Prophet testified that "OTs work on a lot of other things other than handwriting." (Tr. Vol. 2 at 512, ln. 19-20).
155. Ms. Prophet testified that despite being a school-based occupational therapist, she does not work with her student clients on motor habits, and she does not consider it a motor skill and motor habit to consistently write with appropriate pencil pressure, nor does she worry about anything regarding her student clients automatically writing with appropriate pressure when they get out a pencil to write on a piece of paper; later, at her second day of testimony, Ms. Prophet revised her answer to claim she does work with her student clients on their motor habits. (Tr. Vol. 2 at 441, ln. 14-443:4, 474, ln. 5-13).
156. Ms. Prophet testified repeatedly about the alleged restrictions on her practice imposed by IDEA, but she agreed that IDEA's regulatory definition of "occupational therapy" does not restrict occupational therapy services at school to only physical motor skills and manual dexterity. (Tr. Vol. 2 at 308, 7-25; 309, 1-16; see also Ex. 116 at pp. 2-3).
157. Ms. Prophet agreed that occupational therapists can work with students to improve their executive functioning skills, based on need; that one aspect of executive functioning is task initiation and task completion, as well as staying on task and exercising self-control; and that the ultimate goal of any work done by an occupational therapist with a student is to improve the student's independence in performing tasks for independent functioning. (Tr. Vol. 2 at 309, ln. 22-25; 310, 1-16).
158. Ms. Prophet also, in contradictory fashion, testified that occupational therapists focus on physical skills, but that teachers are able to work on executive functioning skills in their classrooms. (Tr. Vol. 1 at 142, ln. 11-19).
159. Ms. Prophet further testified that that B.B.s' "teacher would certainly work on executive functioning as it relates to memory of facts, starting and initiating and completing tasks, following the classroom routine, keeping his materials organized, and then there's a significant number of people within the school setting that work on more social/emotional aspects of executive functioning and interacting with others." (Tr. Vol. 3 at 584, ln. 15-23).
160. Ms. Prophet further testified that her work with B.B. extended beyond only motor skills and manual dexterity, including working with him on self-care skills, daily living skills at school, staying on tasks and maintaining visual attention, visual spatial issues, and sensory processing issues. (Tr. Vol. 2 at 309, ln. 17-25; 325, 13-25; 326, 1; 340, 23-25; 341, 15-25; 342, 1-2)

161. Ms. Prophet testified that if a teacher can provide instruction and accommodation to an exceptional student, then they are to do it, and she only intervenes if the student requires specialized skill from a therapist. (Tr. Vol. 3 at 484, In. 12-15).
162. When asked if there was any further occupational therapy work that she could do with B.B., Ms. Prophet responded to state, "I think that anyone could work with an OT always, but as a school-based OT, I'm saying that his needs are able to be addressed by his teachers." (Tr. Vol. 3 at 488, In. 2-8).
163. Ms. Prophet agreed that for several years, she provided occupational therapy services for B.B. that included focusing on proper letter formation and his handwriting, as well as on writing concepts such as where to place handwriting on lined paper and was also working on improving the legibility of B.B.s' handwriting, including by creating IEP goals for correctly copying letters. (Tr. Vol. 2 at 311:22-312:8, 313:11-314:13, 317:7-17, 324:3-325:2; see also Ex. 3 at USD000031-32).
164. Ms. Prophet testified that when she used the term "legibility" in B.B.s' IEPs, she was "talking about recognizable quality" of the letters he was forming. (Tr. Vol. 3 at 599, In. 21-23).
165. Ms. Prophet further testified that she and the occupational therapy assistant Kelsi Richards worked with B.B. "on letter formation, line awareness, spacing on the lines, and spacing between words." (Tr. Vol. 2 at 427, In. 16-23).
166. Ms. Prophet agreed that whether B.B.s' handwriting was legible or not was based on her own subjective determination and on the subjective determination of the assistant occupational therapist, Ms. Richards, and that there was no other metric to assess legibility. (Tr. Vol. 2 at 314:14-315:20, 328:6-16, 426:18-427:15).
167. Ms. Prophet testified that her "job" is to "make sure B.B. has the hand skills necessary to produce written output in the classroom, and so he does have the hand skills to print legible, he does not always have the penmanship to do that. Penmanship is not the sole responsibility of an occupational therapist." (Tr. Vol. 2 at 261, In. 20-25; 262, 1).
168. Ms. Prophet testified that her view of the disagreement between Parents and the Districts in this matter is the difference between medical and school-based therapy, and that B.B. "perhaps could benefit from medical therapy but he does not require school-based therapy." (Tr. Vol. 1 at 220, In. 6-10).
169. Ms. Prophet admitted in her testimony that there can be an overlap between what medical and school-based occupational therapy services are provided to student clients. (Tr. Vol. 3 at 525, In. 25; 526, 1-10).
170. Ms. Prophet testified that the Districts has not had any motor skills or occupational therapy goals for B.B. since his February 2021 IEP, despite providing him with occupational therapy services since that time. (Tr. Vol. 3 at 526:23-527:5).
171. Ms. Prophet testified that B.B. is able to go to the bathroom independently and

- that he has the hand skills necessary for legible printing”; she further testified that B.B. can manage his clothing at school. (Tr. Vol. 2 at 261, In. 14-17; Vol. 3 at 620, In. 15-16).
172. Ms. Prophet testified she worked with B.B. on automatically writing with appropriate pencil pressure and on reducing the need for constant prompts and that he now possesses those skills. (Tr. Vol. 3 at 485, In. 23-25; 486, 1-4).
173. Ms. Prophet testified that whether B.B. was handwriting with appropriate pencil control and appropriate pressure was her own determination. (Tr., Vol. 2 at 373, In. 5-21).
174. However, Ms. Prophet agreed in her testimony that B.B. cannot automatically apply the correct amount of pencil pressure, and still requires prompts to do this basic handwriting and motor task. (Tr. Vol. 2 at 443, In. 11-14).
175. Ms. Prophet agreed that, as of the dates of her testimony in this hearing, well after the Districts filed for due process to remove all OT services from B.B., if given unlined paper, B.B. will still write to fill the space he is given. (Tr. Vol. 3 at 478, In. 25; 479, 1-4).
176. Ms. Prophet stated that working with B.B. on spatial awareness issues would be part of her occupational therapy services if it interfered with his classroom participation. (Tr. Vol. 3 at 500, In. 17-21).
177. Ms. Prophet said her role in helping students who have fine motor or visual motor disabilities is to work on the visual motor skills, the foundational motor skills required to be able to copy letters from a model, to be able to accurately look with their eyes and then be able to draw that same form. (Tr. Vol. 3 at 586, In. 19-25; 587, 1-3).
178. Ms. Prophet testified that occupational therapists work on the visual motor task of writing, the ability to accurately copy and form things, using your eyes and your hands together, and that is a skill B.B. has now that he has the motor foundation for that, while penmanship is more of a self-regulation motivation to write neatly. (Tr. Vol. 3 at 602, In. 20-25; 603, 1-5).
179. Ms. Prophet admitted that when she did not provide rote text for B.B. to copy, his writing became “much less decipherable.” (Tr. Vol. 2 at 235; 22-25; 236, 1-20; see also Ex. 1074).
180. Ms. Prophet testified that B.B. has a “tendency to rush through writing. It is not his favorite thing to work on.” (Tr. Vol. 2 at 240, In. 18-23).
181. Ms. Prophet testified at the hearing that B.B. “obviously has an awareness of lines and spacing and an understanding of the writing rules. He is capable of writing neatly and legibly, but his samples can be inconsistent and that inconsistency is not due to fluctuating motor skills, his motor skills are what his motor skills are. The inconsistency might have to do with how hard the academic task was, how motivated he was to write neatly during that session, how quickly he was writing[.]” (Tr. Vol. 2 at 242, In. 6-16).
182. Ms. Prophet testified that many factors come into play when a child has trouble with handwriting because writing is very complex, it requires a wide range of

- physical skills as well as executive functioning skills and academic skills; she further testified that “executive functioning, this is sort of like the motivation piece...You have to be motivated to get it down on paper neatly. You have to maintain the attention and the focus. You have to be able to start your work, keep going and finish your work. You have to regulate your emotions so you don't get frustrated[.]” (Tr. Vol. 3 at 603, ln. 24-25; 605, 1-10).
183. Ms. Prophet testified that B.B. “does still need to work on the executive functioning skills with his teacher[.]” (Tr. Vol. 3 at 606, ln. 12-14).
184. Ms. Prophet testified that as of her dates of testimony in this hearing, B.B. was not independent in the special education classroom and was unable to function independently in the classroom, and unable to start and complete his work without constant prompting, including in writing and written language. (Tr. Vol. 3 at 470, ln. 1-8).
185. Ms. Prophet testified that what she was looking at in her evaluation of B.B. was whether there is a developmental delay significant enough to require specialized instruction to access his school through school-based occupational therapy. (Tr. Vol. 2 at 297, ln. 4-11).
186. Ms. Prophet agreed that fluidity and speed of writing can be an occupational therapy issue. (Tr. Vol. 2 at 300, ln. 24-25; 301, 1).
187. Ms. Prophet agreed that B.B. lacks spatial awareness and that this goes back to his lack of registration, which in turn is connected with B.B.s’ autism diagnosis. (Tr. Vol. 2 at 302, ln. 21-25).
188. Ms. Prophet chose the handwriting samples from B.B. which the Districts introduced into evidence at the hearing and also led him in writing out the samples. (Tr. Vol. 2 at 234, ln. 7-25; 235, 1-19; see also Ex. 1074).
189. The Districts never explained how it chose the 13 pages of handwriting samples for B.B. which it introduced into evidence at this hearing. (Tr. Vol. 6 at 1328, ln. 9-13; see also Ex. 1074).
190. Ms. Prophet testified that for the last two IEPs for B.B., she has “been working under the written language goal collaborating with his special education teacher on that[.]” (Tr. Vol. 2 at 245, ln. 4-11).
191. Ms. Prophet testified repeatedly at the hearing that she was providing “input” to B.B.s’ special education teacher from February 2022 onward regarding B.B.s’ progress on his handwriting goal. (Tr. Vol. 2 at 255, ln. 8-20; 256, 25; 257, 1-3).
192. However, on her second day of testimony, Ms. Prophet appeared to backtrack and stated that she did not contribute, either directly or indirectly, to the progress reports relating to B.B.s’ written language goals. (Tr. Vol. 3 at 530, ln. 7-20).
193. Ms. Prophet testified that she saw no need for the Districts to keep baseline data regarding how many times B.B. needed to be reminded to write his letters correctly because he was working within the special education group in a very small group with approximately one staff to three students, all of whom need cues, and because general education students also receive cues to do writing

- assignments, such as “everybody remember start with a capital letter, put a period at the end, please use your most beautiful writing[.]” (Tr. Vol. 2 at 254, In. 11-25).
194. Ms. Prophet testified that since October 2022 she has not done any testing to see how many sentences B.B. can write without becoming fatigued. (Tr. Vol. 3 at 474, In. 14-24).
195. Ms. Prophet confirmed that Kelsi Richards is a certified occupational therapy assistant working for the Districts who was assigned to Heusner Elementary School during B.B.s’ time there and she worked with him from when B.B. was in kindergarten in January 2020 until May 12, 2022, when he was in third grade. (Tr. Vol. 1 at 215, In. 5-12; Vol. 2 at 419, 24-25; 420, 1-4).
196. Ms. Prophet supervised Ms. Richards throughout all relevant time periods, and Ms. Richards was required to discuss her work with students with Ms. Prophet and have her service logs approved by Ms. Prophet. (Tr. Vol. 1 at 215, In. 15-25; Vol. 2 at 420, In. 5-12). 25, 420:5-12.
197. Ms. Prophet agreed that during the January 2020 through May 2022 time period, it was Richards who was primarily working with B.B. one-on-one. (Tr. Vol. 2 at 420, In. 12-20).
198. Ms. Prophet testified further regarding the difference between the school model and the medical model of OT:
So in the school setting, we work in a team-based approach and so there are other service providers that we work with, and so we are working on the things listed here as it relates to performance in school, as it relates to their ability to access and participate in their education, so our scope is more limited than it is in medical model. Also as a related service provider, I am only providing the intervention that requires expertise that only I have that the teachers don't have, that the counselors don't have, that the regular education supports don't have in order for him to access and participate in his school. In medical model, you can treat any impairment no matter how small or how significant and the scope is not limited to school. It can be home, it can be community and it can address any concern. It's not typically a team approach. The occupational therapist would -- we have a very broad scope of practice and so there are many things that an occupational therapist can work on that in the school system are the delineation of another service provider. (Tr., Vol. 3, at 583, In. 5 – 584, In. 4.)
199. Executive functioning is not an issue that an OT would be working on alone in the school setting. (Tr., Vol. 3, 584, In. 10-12.) In the school setting, his teacher and a significant number of other people would all work on executive functioning skills. (Id. at 584, In. 13-23.) At Heusner, executive functioning is addressed in the general education setting by the counselor and the teacher with all of the students. (Id. at 584, In. 24 – 585, In. 8.)
200. Penmanship is the ability to write neatly and has very little to do with motor ability. (Tr., Vol. 3, at 587, In. 13-14.) “Penmanship is the ability to slow down, to think about how to write what you want to write, to do it with neatness and

that's something that teachers work on.” (Id. at 587, ln. 23 – 588, ln. 1.) An OT cannot provide a strengthening exercise to make someone write with good penmanship. (Id. at 588, ln. 3-5.)

- 201. Ms. Prophet testified that B.B.’s parents were aware when he met his goals because progress reports when home every 9 weeks. (Tr., Vol. 3, at 597, ln. 7-12.)
- 202. When Ms. Prophet as an OT talks about legibility, she is referring to recognizable quality, not penmanship. (Tr., Vol. 3, at 599, ln. 21-23.) By 2022 B.B. had met the standard of producing writing that was of recognizable quality. (Id. at 599, ln. 24 – 600, ln. 2.)
- 203. The previous annual IEP was the re-eval IEP done on 1-25-23. (Dist. Ex. 1039.) However, the annual IEP for the 23-24 school year had to be held on 11-29-23 because the parents were not available the entire months of December and January. (Tr., Vol. 3, at 623, ln. 2-4.)

**Ms. Prophet’s Testimony Regarding Her View of Role of
Occupational Therapy in School Setting**

- 204. Ms. Prophet testified that exceptional students receive occupational therapy so that they can attend and participate in school. (Tr. Vol. 1 at 219, ln. 25; 220, 1).
- 205. Ms. Prophet testified that occupational therapy in the educational setting can extend beyond motor skills and manual dexterity, and can include working to improve mental health results, working to improve behavioral results, improving sensory perception skills, working toward improving self-regulation strategies, and working to improve focus and participation, based on need. (Tr. Vol. 2 at 306, ln. 20-25; 308, 1-2).
- 206. Ms. Prophet testified that “OTs work on a lot of other things other than handwriting.” (Tr. Vol. 2 at 512, ln. 19-20).
- 207. Ms. Prophet testified that despite being a school-based occupational therapist, she does not work with her student clients on motor habits, and she does not consider it a motor skill and motor habit to consistently write with appropriate pencil pressure, nor does she worry about anything regarding her student clients automatically writing with appropriate pressure when they get out a pencil to write on a piece of paper; later, at her second day of testimony, Ms. Prophet revised her answer to claim she does work with her student clients on their motor habits. (Tr. Vol. 2 at 441, ln. 14-25; 442, 1-25; 443, 1-4; 474, 5-13).
- 208. Ms. Prophet testified repeatedly about the alleged restrictions on her practice imposed by IDEA, but she agreed that IDEA’s regulatory definition of “occupational therapy” does not restrict occupational therapy services at school to only physical motor skills and manual dexterity. (Tr. Vol. 2 at 308, ln. 7-25; 309, 1-16; see also Ex. 116 at pp. 2-3).
- 209. Ms. Prophet agreed that occupational therapists can work with students to improve their executive functioning skills, based on need; that one aspect of executive functioning is task initiation and task completion, as well as staying on

- task and exercising self-control; and that the ultimate goal of any work done by an occupational therapist with a student is to improve the student's independence in performing tasks for independent functioning. (Tr. Vol. 2 at 309, In. 22-25; 310, 1-16).
210. Ms. Prophet also testified that occupational therapists focus on physical skills, but that teachers are able to work on executive functioning skills in their classrooms. (Tr. Vol. 1 at 142, In. 11-19).
211. Ms. Prophet further testified that that B.B.s' "teacher would certainly work on executive functioning as it relates to memory of facts, starting and initiating and completing tasks, following the classroom routine, keeping his materials organized, and then there's a significant number of people within the school setting that work on more social/emotional aspects of executive functioning and interacting with others." (Tr. Vol. 3 at 584, In. 15-23).

D. MARISSA KOERPERICH SPECIAL EDUCATION TEACHER BACKGROUND AND TESTIMONY

212. Ms. Koerperich's original licensure was in PE, pre-K through 12. When she was hired for the special education teacher position at Heusner Elementary School in the fall of 2021, she obtained a waiver from KSDE to serve as a special education teacher while finishing her course work. She fast-tracked that and completed it in the summer of 2023. (Tr, Vol. 4, at 701, In. 5-22.) Ms. Koerperich started as the teacher for B.B. in January 2022. (Id. at 701, In. 23 – 702, In. 1.) Ms. Koerperich was a licensed teacher, just not in special education, when she started at Heusner. Even so, KSDE considers a waiver to be full licensure. (Tr., Vol. 5, at 948, In. 4-15.)
213. When Ms. Koerperich took over as B.B.'s teacher, he was leaving a classroom that had a lot of students with aggressive behaviors. Ms. Koerperich made her classroom environment more calm by dimming the lights and playing music softly in the background. (Tr., Vol. 5, at 949, In. 14 – 950, In. 3.) Since Ms. Koerperich has been teaching B.B., he has not needed a goal for Adaptive Behavior/Daily Living. (Id. at 951, In. 14-18.)
214. Ms. Koerperich has received specialized training through the District, including training regarding legal issues presented by legal counsel. She also had a mentor assigned that had previously been a special education teacher and was currently the instructional coach for math at Heusner. (Tr., Vol. 5, at 943, In. 3 – 944, In. 20.) Ms. Koerperich also received assistance from other special education teachers in her building, her Special Education Coordinator Mary Gardner, and other members of the IEP team including Kristin Prophet and Alex Johnson – both of whom work with B.B. (Id. at 946, In. 2 – 948, In. 3.)
215. Although counsel for the parents continually asked where the IEP showed that the goal had been met, Ms. Koerperich testified that information regarding whether the goal had been met would be reflected in the progress reports, not the IEP. (Tr., Vol. 4, at 715, In. 23 – 717, In. 9; Id. at 727, In. 7-12; Id. at 808, In. 2-12.)

216. Counsel for the parents questioned Ms. Koerperich at length about the removal of the social emotional goal to reduce the frequency of prompts. Ms. Koerperich's responses demonstrated that the frequency of prompts should not be viewed in black and white terms. For example, B.B. was going from receiving direct prompting to receiving the same prompting that other students would receive while Ms. Koerperich was teaching. Ms. Koerperich recognized that change could result in a need for more frequent prompting until B.B. got used to the change. Being fully integrated into the class was moving forward – not moving backward. (Tr., Vol. 4, at 722, ln. 25 – 724, ln. 15.)
217. Ms. Koerperich started out using stickers to motivate her students to write neatly, but she then switched to using a lot of verbal affirmation and telling B.B. that he was doing a good job. That seemed to work better than giving the sticker. (Tr., Vol. 4 at 747, ln. 9-23.) Ms. Koerperich admitted that without visuals or guidelines B.B. tends to write as big as he wants. (Id. at 748, ln. 22-24.)
218. Although counsel for the parents thought the use of the word "decipher" with respect to the teacher being able to decipher B.B.'s writing was "loaded" and "interesting." Ms. Koerperich testified that she sees B.B.'s writing daily and she is able to recognize it, just as she is for her other students. (Tr., Vol. 4, at 795, ln. 10-22.)
219. Ms. Koerperich testified that the reason she left the accommodation for frequent prompting on B.B.'s IEP was to help him in the general education classroom. (Tr., Vol. 4, at 828, ln. 7-20.)
220. Ms. Koerperich testified that there was never any discussion that it would cost the Districts less money if Kristin Prophet did not have to provide OT services for B.B. (Tr., Vol. 5, at 954, ln. 12-24.)
221. Ms. Koerperich testified that as of 10-27-22 the recommendation was to move B.B. to OT consult. It was only after the reevaluation that they determined B.B. should be exited from OT. (Tr., Vol. 5, at 955, ln. 20 – 956, ln. 8.)
222. With respect to progress on goals, IEPs are supposed to be looking forward and drafting goals based on what can be achieved within the next 12 months. Progress reports are where the progress toward the goals would be maintained. The Yes or No on progress report is simply asking whether progress is adequate to allow the goal to be achieved – not whether the goal has been achieved. (Tr., Vol. 5, at 957, ln. 16 – 961, ln. 16.) When the progress report indicates that it will be measured by teacher observation, that can include any time classroom work is completed as well. (Id. at 962, ln. 4-25.)
223. With respect to Parent Exhibit 1062 (Progress Report from 11-29-23) and the goal that was not met because the annual IEP was held approximately 2 months early, Ms. Koerperich testified that B.B. probably would have met the goal if the annual IEP meeting had been held toward the end of January 2024 when it normally would have been held. (Tr., Vol. 5, at 963, ln. 1 – 966, ln. 20.)
224. Ms. Koerperich testified that it is common for students in grades 2-5, even general education students, to lose focus and need to be prompted at times.

- (Tr., Vol. 5 at 970, In. 16 – 971, In. 15.)
225. In February 2022 the parents raised a concern that they did not believe Ms. Koerperich was providing enough prompts because they did not think she was experienced. (Parent Ex. 24; Tr., Vol. 5, at 971, In. 16 – 972, In. 10.)
226. Ms. Koerperich testified that it does not mean an area is not being worked on if a goal is not on the IEP. They work on areas that are not specifically addressed on the IEP all the time. With respect to executive functioning, the counselor works on that regularly with the general education classes. Specifically, they utilize Zones of Regulation and Conscious Discipline with the general education students. (Tr., Vol. 5, at 972, In. 20 – 978, In. 7.)
227. Ms. Koerperich testified that when writing an IEP they do not have to include the minute details of the plan to reach the goals or the lesson plans to be used to reach the goals. Likewise, teachers do not normally provide copies of lesson plans to parents. Once something becomes an accommodation, it no longer requires specially designed instruction, but rather is intended to assist with specially designed instruction. (Tr., Vol. 5, at 979, In. 21 – 981, In. 2.)
228. Ms. Koerperich testified that the parents never asked to see the data she had for specific goals or progress reports. If they had, she would have made it available. (Tr., Vol. 5, at 981, In. 3-16.)
229. Ms. Koerperich was asked by counsel for the Parents whether the IEP contained a plan for written language and achieving that [written language] goal. Ms. Koerperich responded that it was “a goal, not a plan.” (Tr., Vol. 4 at 837, In. 11-15.) Ms. Koerperich had further testified that “the IEP does not give a direct plan, it gives the goal so we'll do our plans based off of the goal, and so throughout the whole school year, we're working on different ways and different plans to help us reach that goal, but in the IEP we will not state every single plan we are trying to do. (Tr. Vol. 4 at 837, In. 4-10.)
230. With respect to why there was not anything tied to the Kansas Handwriting Curricular Standards under the Written Language portion of the IEP, Ms. Koerperich testified that was because it was a writing goal under the written language portion of the IEP. This means it was focused on his ability to write – not his handwriting. (Tr., Vol. 4, at 842, In. 13-20.)
231. On cross-examination by counsel for the District, Ms. Koerperich testified that the general education curriculum does not work on handwriting in the fourth and fifth grade. Rather they have handwriting packets they can do on their own for cursive handwriting. (Tr., Vol. 5, at 990, In. 15 – 991, In. 2.) Handwriting is not a priority in the general education curriculum. A much greater emphasis is placed on writing, i.e., expressing thoughts in written language. (Id. at 991, In. 3-11.)
232. Ms. Koerperich further testified that they are not required to address every area of the curricular standards in the IEP. (Tr., Vol. 5, at 991, In. 12-14.)
233. Likewise, the Districts is not required to provide progress reports on accommodations in the IEP. Progress reports are only required on the goals. (Tr., Vol. 5, at 991, In. 15-20.) Accommodations in the IEP do not require Specially

- Designed Instruction, but instead are intended to assist in the provision of Specially Designed Instruction. (Id. at 991, ln. 21 – 992, ln. 3.)
234. The written language portion of the IEP does not have the same kind of standardized testing that can be used as a baseline as the reading section of the IEP because there is no state assessment for written language. (Tr., Vol. 5, at 992, ln. 4-6.)
235. Ms. Koerperich testified that it will be more important for B.B. to be able to express himself in writing than it will be to write legibly in the future because he will have access to assistive technology that can address the legibility of his writing. (Tr., Vol 5, at 992, ln. 7-13.) As B.B.'s teacher, his handwriting is legible enough that she can read his writing. (Id. at 992, ln. 14-25.) Although counsel for the Parents referred to this as the "eyeball test," Ms. Koerperich testified that she has had training as to how the letters should look when they are properly formed and she has instructed students on how to properly form the letters. (Id. at 993, ln. 1-11.)
236. Ms. Koerperich testified that, as a teacher, she believes a better indicator of student ability is what is demonstrated through class work over a period of time, instead of a single standardized assessment. Ms. Koerperich noted that there were many reasons why a single test result might not be valid, such as fear when taking tests. (Tr., Vol. 5, at 994, ln. 14 – 995, ln. 5.) With respect to questions Parents' counsel had regarding B.B.'s scores on the Vineland, Ms. Koerperich noted that things such as eye contact and engaging and maintaining social interactions were also related to B.B.'s disability as a student with autism. (Tr., Vol. 5, at 992, ln. 12 – 993, ln. 13.)
237. Issues relating to the legibility of B.B.'s handwriting were concerns raised by the Parents and were placed in the IEP as a result of the Parents raising those concerns. (Tr., Vol. 5, at 995, ln. 14-22.) The Parents raised concerns with the IEP team. The IEP team heard the concerns and many of them were addressed in the IEP. Those issues that were not addressed either did not require specially designed instruction or the rest of the team did not believe the issue was impacting him academically. (Tr., Vol. 5, at 997, ln. 22 – 999, ln. 6.)
238. Ms. Koerperich testified that B.B. did not have a goal for adaptive behavior in the IEP because he did not require specially designed instruction in that area. (Tr., Vol. 5, at 1001, ln. 1-8.)
239. Ms. Koerperich testified that no state standard was referenced for the social emotional area in B.B.'s IEP because he did not require a goal in that area. (Tr., Vol. 5, at 1003, ln. 9-11.)
240. Ms. Koerperich testified that the progress reports include a Yes/No answer to the question as to whether the student is making adequate progress to meet the goal by the end of the IEP year and then includes detail that summarizes the highlights of the progress toward meeting that goal. (Tr., Vol. 5, at 1005, ln. 5 – 1007, ln. 14.)
241. With respect to the progress report given for B.B. on November 29, 2023, (the

date of the next annual IEP meeting), Ms. Koerperich had no choice but to mark that B.B. was not making adequate progress to meet the IEP goals because she was measuring from the time of the last progress report in October and the annual IEP meeting was held approximately two months early due to parent unavailability. (Tr., Vol. 5, at 1008, ln. 25 – 1012, ln. 2.)

242. Ms. Koerperich testified that B.B. attends a social emotional general education class with all of his peers in which they work on improving executive functioning skills. Although this is not part of his IEP, it is a skill for which specific instruction is provided for all students and B.B. always has the accommodations from his IEP available in the general education classroom as well. (Tr., Vol. 5, at 1012, ln. 19 – 1015, ln. 4.)
243. Ms. Koerperich testified that counsel for the Parents did not seem to understand the IEP process because he was repeatedly questioning her about where the step-by-step plan for achieving each goal was if not in the IEP. (Tr., Vol. 5, at 1015, ln. 25 – 1016, ln. 6.) Rather, the IEP provides the current progress of the student, the goals, and the accommodations to be used to help the student achieve the goals. (Id. at 1016, ln. 22 – 1017, ln. 6.)
244. Ms. Koerperich testified that the Districts is required to provide progress reports four times a year. That is what they do. If parents would like additional progress monitoring information, then they should take the initiative to request it from the school. (Tr., Vol. 5, at 1019, ln. 21 at 1020, ln. 7.)
245. Ms. Koerperich was asked to review the statutory components of the IEP, as set forth in K.S.A. 72-3469(c) (previously cited as K.S.A. 72-987). She testified as follows:

Q So that it meets those requirements and the following criteria. Describes unique educational needs of the child and the manner in which those needs are to be met. So describes unique educational needs of the child, is that why we have the present levels of academic performance?

A Yes.

Q I should say academic and functional performance; correct?

A Yes.

Q And the manner in which those needs are to be met. Does that mean the goals?

A Yeah, the goals and also the –

Q Accommodations?

A Yeah. And the way we give -- or how we assess the goals.

Q And also the supplementary aids and services?

A Yes.

Q And is developed, reviewed and revised in accordance with applicable laws and regulations.

A Yes.

Q Is there anything in this definition that says you have to have the equivalent of lesson plans in the IEP that tells you how specially designed instruction is going

to be provided to a student?

....

A There is no description in there.

BY MS. LOQUIST:

Q Do you see anything in this definition that says the word plan?

A No.

Q There's nothing that says plan in the definition. So let's go back to Exhibit 56 and back to this Written Language goal. I'm not going to go back and make you look at all the present levels of performance, but here we've got the Current Performance for Written Language; correct?

A Yes.

Q We have the impact of the exceptionality on progress in the general education curriculum as it affects the written language; correct?

A Yes.

Q And then we have a series of boxes; do you see those?

A Yes.

Q And it says this need will be met by; correct?

A Yes.

Q And what are the options for how it's going to be met?

A General education supports, accommodations and modifications, support for school personnel, supplementary aids and supports, positive behavioral supports and goal.

Q And this particular section is going to be met by a goal; correct?

A Yes.

Q On other IEPs, we've had some sections that were marked as accommodations and modifications, supplementary aids and supports; correct?

A Yes.

Q And not as a goal; correct?

A Yes.

Q So then we have a goal, we have a state standard, we have a baseline and we have the evaluation procedures; correct?

A Yes.

Q Is it your understanding based on the training that you have been provided that this is what is required by the law?

A Yes.

Q As far as the specifics of specially designed instruction, is that contained within lesson plans?

A Yes.

(Tr., Vol. 5, at 1024, ln. 15 – 1028, ln. 10 (argument regarding objection omitted))(emphasis added).

E. MARY GARDNER SPECIAL EDUCATION BACKGROUND AND TESTIMONY:

246. Since obtaining her master's degree in special education in 2001, Mary Gardner

has been employed in special education as a teacher, special education coordinator, and is now moving into a position as Assistant Director of Special Education for the 2024-2025 school year. (Tr., Vol. 5, at 1030, ln. 12 – 1032, ln. 22). Ms. Gardner is currently working on her dissertation for her doctorate. (Id. at 1033, ln. 19 – 1034, ln. 3.) Ms. Gardner also has a master's degree in educational leadership at the building level. (Id.)

247. In Ms. Gardner's role as a special education coordinator, she has reviewed B.B.'s IEP and has worked with his team. Ms. Gardner has also attended several IEP meetings for B.B. (Tr., Vol. 5, at 1034, ln. 13-21.)

248. As a special education coordinator, Ms. Gardner also provides training for staff. Most relevant to the present matter, Ms. Gardner provided a full-day training for CKCIE staff in January 2024 on how to write IEPs, compliance, and file review. (Tr., Vol. 5, at 1039, ln. 3 – 1041, ln. 22.)

249. Based upon her experience and training, Ms. Gardner testified regarding whether the IEP for B.B. met the legal requirements for the State of Kansas and whether a goal must be included in the IEP for a student whose needs in the area can be met through general education:

Q There's been a lot of testimony and questioning regarding whether or not the IEP includes a plan for how B.B. is going to meet his goal and so I've put up here Parent Exhibit 56 and this is the Written Language goal from the January 25th, 2023, IEP just as an example and, again, this starts on Bates stamp number 236, carries over to 237 and the bulk of it's on Page 8 of the electronic document. I'll let you kind of look this over here. There's the Goal, the State Standard, the Baseline and the Evaluation Procedures. Based upon your experience, your training and your knowledge, is that an appropriate goal?

A Yes.

Q Does it meet all four conditions that are required by the state?

A Yes.

Q And I believe you attended this IEP meeting, didn't you, January 25th, 2023?

A Yes.

Q And you would have been in the discussion for this IEP; correct?

A Yes.

Q Is it your understanding based upon your experience and your knowledge that this IEP includes the required provisions from KSDE?

A Yes.

Q Then if you look at the Social Emotional part of this IEP which starts at the bottom of Bates stamp number 239, carries onto 240, it's found on Page 11 of the electronic document, this indicates that B.B. does have needs in the area of social emotional; correct?

A Yes.

Q How does it indicate the needs will be met?

A So it says that the need will be met by general education supports and accommodations and modifications.

Q If a student is able to receive what they need through general education, is there a need to provide that service through special ed?

A So if their needs in that area can be completely met within general education, then there would not be a need for specially designed instruction. They could still need some accommodations and modifications which many times can be provided also by that gen ed teacher or other just general education aids that might be in the classroom.

Q And so if we go down here and we look at the accommodations, is this last one the accommodation that was being referenced?

A Yes, I believe that was referenced as a new accommodation at that IEP.

Q So that's the one for frequent prompts; is that correct? Frequent prompts for task initiation, completion and quality for the duration of the assignment?

A Yes.

Q And that's on Page 12 of the electronic document so it would be on Page 241 Bates stamped. So if the need in the social emotional area is for frequent prompts, is that typically something that can be met just through accommodations without the need for specially designed instruction?

A It can be, yes.

Q And this particular accommodation is one that could be provided in both general ed and special ed; correct?

A Correct. It says all educational settings.

(Tr., Vol. 5, at 1045, ln. 9 – 1048, ln. 5.) (emphasis added.) If something is not in the IEP, that does not mean the Districts staff will fail to address it. Districts staff can address student needs in a variety of ways and not all needs require specially designed instruction. (Id. at 1051, ln. 9 – 1052, ln. 5.)

F. ERICA MOYER SOCIAL WORKER TESTIMONY

250. Erica Moyer is a licensed social worker with a master's degree in social work. She has been a social worker since 2010, and has worked in foster care and for Central Kansas Mental Health and Salina Regional Health Center, as well as in education. Ms. Moyer is the full-time social worker for Heusner Elementary. (Tr., Vol. 7, at 1518, ln. 12 – 1520, ln. 13.) Part of her role as the social worker for Heusner Elementary includes teaching counseling for specific grade levels, working with general education classes on executive skills functioning, and managing the data for executive skills functioning for students. (Id. at 1520, ln. 14 – 1521, ln. 18.) Ms. Moyer has also trained staff members regarding conscious discipline, threat assessment training, and bullying training. (Id. at 1521, ln. 19 – 1522, ln. 12.) Conscious discipline is a discipline program which focuses on ensuring the adults are calm and regulated when dealing with children who are upset. (Id. at 1522, ln. 13 – 1523, ln. 14.)
251. The Heusner Elementary staff received training from Dr. Peg Dawson (author of Smart But Scattered) regarding working on the skills that support executive functioning. They use this training to identify and work on lagging skills. (Tr., Vol.

- 7, at 1523, ln. 15 – 1525, ln. 11.)
252. The Heusner Elementary staff also work with students using Zones of Regulation. There is a book and an entire curriculum to support Zones of Regulation. It uses color coding to help students identify their emotional state. (Id. at 1525, ln. 12 – 1527, ln. 21.)
253. Ms. Moyer worked in B.B.'s general education classroom during closing circles for 30 minutes once every week and also saw B.B.'s grade level for counseling classes every other Friday. (Tr., Vol. 7, at 1528, ln. 18 – 1530, ln. 2.) Because most of the students have had concerns in the areas of Response Inhibition and Emotional Control, those are the areas of executive skills functioning they have focused on the most. (Id. at 1534, ln. 10 – 1535, ln. 1.) Ms. Moyer testified regarding B.B.'s scores and the areas in which he had improved. (Id. at 1531, ln. 12 – 1537, ln. 9.) Ms. Moyer testified that B.B. only flagged for one executive skill in spring of 2023 and that B.B. had improved some of his executive skills over time. (Id. at 1537, ln. 10 – 1538, ln. 11.) In Ms. Moyer's professional opinion, B.B.'s scores regarding executive skills do not demonstrate that he needs individualized support in those areas. (Id. at 1539, ln. 25 – 1540, ln. 21.)
254. Ms. Moyer has never noticed an odor as if B.B. had soiled himself when working with him, nor has any other staff members complained of such an odor to her. (Tr., Vol. 7, at 1540, ln. 22 – 1541, ln. 2.)

G. PARENTS' BACKGROUND AND TESTIMONY

i. Parents' Testimony Regarding Their Observations of B.B.s' Motor Skills, Handwriting, Adaptive Behavior and Sensory Issues

255. B.B.'s mother testified that the Districts' insistence that B.B.s' handwriting is functional or legible is "not 100 percent true." (Tr. Vol. 5, at 1096, ln. 4-11).
256. B.B.'s mother testified that B.B. is still not independent in writing; he is very interested in it, but his handwriting is still very poor. (Tr. Vol. 6, at 1217, ln. 3-16).
257. B.B.'s father testified that he is concerned about B.B.s' handwriting because B.B. has demonstrated that he struggles with spatial awareness, he is often unable to write in a straight line, sometimes his letters are mis-sized, and that he is well behind where he should be for a 12-year-old. (Tr. Vol. 7 at 1558, lin. 4-22).
258. B.B.'s mother testified that B.B. still to this day writes to fill any space he is given. (Tr. Vol. 6 at 1218, ln. 16-23).
259. B.B.'s mother testified that Parents have wanted to move B.B. to writing on regular lined paper instead of the "line dash line" paper that the Districts uses with him, because the line dash line paper is not age appropriate, and Parents want to continue to challenge him to help him gain independence and autonomy that he will need after his educational experience. (Tr. Vol. 6 at 1218, ln. 23-25; 1219, 1-25; 1220, 1-9).
260. B.B.'s mother testified that the work that she sees from B.B., both from school and at home, "are not particularly legible," and the District's own records show that it takes him a significant amount of time to print, i.e., a paper B.B. brought home showed it took B.B. 23 minutes to write both the upper and lower case letters of the alphabet and ten numbers, fifty-two total characters in 23 three minutes, and it took seven cues to do so, and so the District's explanation that there is nothing more that can be done to help B.B. in terms of strengthening or improving his physical ability does not make sense. (Tr. Vol. 5 at 1096, ln. 14-25; 1097, 1-19; see also Ex. 89 at p. 25).
261. B.B.'s mother noted that the paper B.B. brought home showing it took him 23 minutes to write the upper- and lower-case letters of the alphabet and ten numerals, and needing seven prompts to do so, was completed in October 2022 less than three weeks before the Districts once again sought to remove direct OT services from B.B., which was "shocking" to Parents. (Tr. Vol. 6 at 1330, ln. 4-20; see also Ex. 89 at p. 25).
262. B.B.'s mother has continued to witness B.B.s' weakness in his hands, noting that B.B. is unable to open his water bottle that he takes to school; she also observed at an event at school in November 2023 (after the Districts filed for due process) that B.B. was unable to cut a circle on the lines that were given for a craft project, despite the Districts stating repeatedly that he is proficient in scissor skills, and so what she was hearing from the Districts in the numerous IEP team meetings did not align with what she witnessed with her own observation both at home and school. (Tr. Vol. 5 at 1097, ln. 24-25; 1098, 1-25;

- 1099, 1-8).
263. B.B.'s mother testified that B.B. is very clumsy and regularly trips over his own feet and has ran into the wall at their own home in which they have lived for five years because he did not see where he was in space, and so when Parents see B.B. write on unlined paper and even on lined paper, he writes to fill the whole space, and all of this shows his visual spatial issues. (Tr. Vol. 5 at 1099, In. 14-25; 1100, 1-19).
264. B.B.'s mother testified that the District's position that B.B. can hold a pencil in the most basic way and so this means he needs to be exited from occupational therapy services at school does not make sense to her. (Tr. Vol. 5 at 1101, In. 16-25; 1102, 1-11).
265. B.B.'s mother stated that B.B. does not routinely and automatically hold writing instruments at the appropriate place using an appropriate grasp; she testified that when B.B. picks up a writing instrument, he will not automatically grasp it at the bottom, instead holding at the upper third or toward the middle, and that his writing pressure is very light. (Tr. Vol. 6 at 1221, In. 23-25; 1222, 1-14).
266. B.B.'s mother testified that B.B. cannot be independent if he needs routine prompting to start and complete tasks. (Tr. Vol. 6 at 1216, In. 6-9).
267. B.B.'s mother testified that she has not seen any plan in any IEP for B.B. to address his spatial awareness issues nor to improve his handwriting, and that B.B.s' spatial awareness issue has been ignored by the Districts to her knowledge. (Tr. Vol. 6 at 1221, In. 11-22).
268. B.B.'s mother strongly objected to the District's characterization that B.B. has the physical skills to write but not the attention, focus and multiprocessing needs to write independently; B.B.'s mother noted that to her, the District's comments made it sound like "he can do it, he's just really lazy and doesn't want to," and this does not resonate to be true of B.B., who is a hard worker. (Tr. Vol. 5 at 1109, In. 11-20).
269. B.B.'s mother testified that B.B. does not have the physical skills to consistently and independently write. (Tr. Vol. 5 at 1110, In. 2-8).
270. B.B.'s mother testified that she has not seen any plan from the Districts from January 2023 through now regarding improving B.B.s' attention, focus, and multiprocessing issues, which are what the Districts says are the issues that are holding him back in Written Language. (Tr. Vol. 5 at 1110, In. 11-16).
271. Most of the handwriting examples for B.B. which Parents introduced into evidence at the hearing were items that came home from school, and Parents believe the samples they brought to the hearing are an accurate depiction of B.B.s' handwriting for the past two years or so. (Tr. Vol. 6 at 1327, In. 4-16; 1328, 14-18; see also Ex. 89).
272. Most of the handwriting examples for B.B. which Parents introduced into evidence at this hearing showed very poor handwriting by B.B., and clearly demonstrated ongoing problems with B.B. writing to fill the space and with line awareness, letter sizing, pencil pressure, and spacing of letters. (Tr. Vol. 6 at

- 1329, ln. 2-13; 1330, 23-25; 1331, 1-25, 1332, 1-11; see also Ex. 89).
273. Parents have repeatedly expressed concerns to the Districts regarding their son's social and emotional functioning at school, and they have done this because B.B. is socially awkward, he is not at the same age level or emotional level as his same age peers, when on the playground he plays with kids who are first, or second grade and B.B. just finished fifth grade. (Tr. Vol. 67 at 1222, ln. 15-25; 1223, 1-6).
274. B.B.'s mother testified that B.B. is very easily distracted and has a hard time remembering to follow through on multi-step directions without reminders and redirections. (Tr. Vol. 6 at 1224, ln. 4-17).
275. B.B.'s father testified that his son's fine motor skills have lacked for a while, including his improper grasp of eating utensils, which extends to grasping other items including toothbrushes, toothpaste tubes, and that B.B. has significant difficulty with controlling the amount of pressure he uses on things, as well as other fine motor movements such as buttoning a pair of pants. (Tr. Vol. 7 at 1559, ln. 1-25; 1560, 1).
276. B.B.'s father expressed his concern that the motor difficulty and precision issues B.B. demonstrates at home carries over to school. (Tr. Vol. 7 at 1560, ln. 2-23).
277. B.B.'s father testified that the sizing of letters and the placement of them in correct fashion is difficult for B.B.; he does not use the classic tripod grasp and often he grabs the middle of the writing utensil. (Tr. Vol. 7 at 1561, ln. 1-14).
278. B.B.'s father raised the Social Emotional issue and his concerns on that front at multiple IEP team meetings; B.B.'s father testified that his observance of B.B. at school is that B.B. does not have traditional relationships with friends, and that when B.B.'s father asked B.B. who his friends are at school, B.B.'s response is that he doesn't really have any friends, so Social Emotional is an area of concern for B.B.'s father. (Tr. Vol. 7 at 1564, ln. 11-25; 1565, 1-17).
279. B.B.'s mother testified that throughout the past two years of IEP team meetings, she has not felt like she has been treated by the Districts as part of B.B.'s IEP team; when Parents attend meetings, they are presented with information that has been prescribed, pre-written, and told this is what the Districts has decided, with little to no input accepted from Parents. She feels that the Districts has harassed Parents even after Parents told the Districts that its chosen course is not the best path forward for B.B., and even when Parents express that, the Districts states it is going to keep doing this until it gets what it wants. (Tr. Vol. 5 at 1110, ln. 23-25; 1111, 1-25; 1112, 1-18).
280. B.B.'s mother seeks to have the Districts treat her as an equal member of the IEP team, to work with Parents to create a comprehensive plan to make him independent in high school and beyond, and to continue to work on areas that are capable of improvement. (Tr. Vol. 5 at 1112, ln. 1-24; 1113, 1-25; 1114, 1-10).
281. B.B.'s mother testified that she did not seek to be involved in this due process matter; the Districts filed it. (Tr. Vol. 5 at 1087; 22-25; 1088, 1).
282. B.B.'s mother testified that she is motivated to ensure her son has the support

- he needs early in life, including in his education, in order to help him gain independence and be successful as an adult, as she has experienced and observed the difficulties her brother with special needs has encountered in his life. (Tr. Vol. 5 at 1090, In. 21-25; 1091, 1-17).
283. B.B.'s mother testified that B.B.'s handwriting is of intense concern for Parents because writing is something B.B. is interested in and likes to do, so she wishes to work with the Districts to strengthen this as much as possible. (Tr. Vol. 5 at 1093, In. 24-25; 1094, 1-19).
284. B.B.'s mother testified that the District's insistence that B.B.'s handwriting is functional or legible is "not 100 percent true." (Tr. Vol. 5 at 1096, In. 4-11).
285. B.B.'s mother testified that s is still not independent in writing; he is very interested in it, but his handwriting is still very poor. (Tr. Vol. 5 at 1217, In. 3-16.).
286. B.B.'s father testified that he is concerned about B.B.'s handwriting because B.B. has demonstrated that he struggles with spatial awareness, he is often unable to write in a straight line, sometimes his letters are mis-sized, and that he is well behind where he should be for a 12-year-old. (Tr. Vol. 7 at 1558, In. 4-22).
287. B.B.'s mother testified that B.B. still to this day writes to fill any space he is given. (Tr. Vol. 6 at 1218, In.16-23).
288. B.B.'s mother testified that Parents have wanted to move B.B. to writing on regular lined paper instead of the "line dash line" paper that the Districts uses with him, because the line dash line paper is not age appropriate, and Parents want to continue to challenge him to help him gain independence and autonomy that he will need after his educational experience. (Tr. Vol. 6 at 1218 In. 23-25; 1220, 1-9).
289. B.B.'s mother testified that the work that she sees from B.B., both from school and at home, "are not particularly legible," and the District's own records show that it takes him a significant amount of time to print, i.e., a paper B.B. brought home showed it took B.B. 23 minutes to write both the upper and lower case letters of the alphabet and ten numbers, fifty-two total characters in 23 three minutes, and it took seven cues to do so, and so the District's explanation that there is nothing more that can be done to help B.B. in terms of strengthening or improving his physical ability does not make sense. (Tr. Vol. 5 at 1096 In. 14-25; 1097, 1-19; see also Ex. 89 at p. 25).
290. B.B.'s mother noted that the paper B.B. brought home showing it took him 23 minutes to write the upper- and lower-case letters of the alphabet and ten numerals, and needing seven prompts to do so, was completed in October 2022 less than three weeks before the Districts once again sought to remove direct OT services from B.B., which was "shocking" to Parents. (Tr. Vol. 6 at 1330, In. 4-20; see also Ex. 89 at p. 25)
291. B.B.'s mother has continued to witness B.B.'s weakness in his hands, noting that B.B. is unable to open his water bottle that he takes to school; she also observed at an event at school in November 2023 (after the Districts filed for due process) that B.B. was unable to cut a circle on the lines that were given for

- a craft project, despite the Districts stating repeatedly that he is proficient in scissor skills, and so what she was hearing from the Districts in the numerous IEP team meetings did not align with what she witnessed with her own observation both at home and school. (Tr. Vol. 5 at 1097, In. 24-25, 1098, 1-25; 1099, 1-8).
292. B.B.'s mother testified that B.B. is very clumsy and regularly trips over his own feet and has ran into the wall at their own home in which they have lived for five years because he did not see where he was in space, and so when Parents see B.B. write on unlined paper and even on lined paper, he writes to fill the whole space, and all of this shows his visual spatial issues. (Tr. Vol. 5 at 1099, In. 14-25; 1100, 1-19)
293. B.B.'s mother testified that the District's position that B.B. can hold a pencil in the most basic way and so this means he needs to be exited from occupational therapy services at school does not make sense to her. (Tr. Vol. 5 at 1101, In. 16-25; 1102, 1-11).
294. B.B.'s mother stated that B.B. does not routinely and automatically hold writing instruments at the appropriate place using an appropriate grasp; she testified that when B.B. picks up a writing instrument, he will not automatically grasp it at the bottom, instead holding at the upper third or toward the middle, and that his writing pressure is very light. (Tr. Vol. 6 at 1221, In. 23-25; 1222, 1-14).
295. B.B.'s mother testified that B.B. cannot be independent if he needs routine prompting to start and complete tasks. (Tr. Vol. 6 at 1216, In. 6-9).
296. B.B.'s mother testified that she has not seen any plan in any IEP for B.B. to address his spatial awareness issues nor to improve his handwriting, and that B.B.s' spatial awareness issue has been ignored by the Districts to her knowledge. (Tr. Vol. 6 at 1221, In. 11-22).
297. B.B.'s mother strongly objected to the District's characterization that B.B. has the physical skills to write but not the attention, focus and multiprocessing needs to write independently; B.B.'s mother noted that to her, the District's comments made it sound like "he can do it, he's just really lazy and doesn't want to," and this does not resonate to be true of B.B., who is a hard worker. (Tr. Vol. 5 at 1109, In.11-20).
298. B.B.'s mother testified that B.B. does not have the physical skills to consistently and independently write. (Tr. Vol. 5 at. 1110, In. 2-8)
299. B.B.'s mother testified that she has not seen any plan from the Districts from January 2023 through now regarding improving B.B.s' attention, focus, and multiprocessing issues, which are what the Districts says are the issues that are holding him back in Written Language. (Tr. Vol. 5 at 1110, In. 1-16).
300. Parents furnished writing samples from B.B., taken across the last few years, that clearly demonstrate B.B. cannot consistently legibly write, has significant issues with spatial awareness when placing letters on paper as he has little to no line awareness, and is unable to do something as simple as color inside the lines, belying the District's contention that he has the motor skills necessary to

- control his writing utensil at a consistently functional level. See generally Ex. 89.
301. Most of the handwriting examples for B.B. which Parents introduced into evidence at the hearing were items that came home from school, and Parents believe the samples they brought to the hearing are an accurate depiction of B.B.s' handwriting for the past two years or so. (Tr. Vol. 6 at 1327, ln. 4-16; 1328, ln. 4-18; see also Ex. 89).
302. Most of the handwriting examples for B.B. which Parents introduced into evidence at this hearing showed very poor handwriting by B.B., and clearly demonstrated ongoing problems with B.B. writing to fill the space and with line awareness, letter sizing, pencil pressure, and spacing of letters. (Tr. Vol. 6 at 1329, ln. 2-13, 1330, 23-25; 1331, 1-25; 1332, 1-11; see also Ex. 89).
303. B.B.'s mother testified that her son has the same needs and deficits at home that he has at school, so the notion that there is a "wall" between B.B.s' medical needs and his educational needs for occupational therapy is false and misleading. (Tr. Vol. 7 at 1465; ln.17-25, 1466, 1-18).
304. Parents have repeatedly expressed concerns to the Districts regarding their son's social and emotional functioning at school, and they have done this because B.B. is socially awkward, he is not at the same age level or emotional level as his same age peers, when on the playground he plays with kids who are first or second grade and B.B. just finished fifth grade. (Tr. Vol. 6 at 1222, ln.15-25, 1223, 1-6).
305. B.B.'s mother testified that B.B. is very easily distracted and has a hard time remembering to follow through on multi-step directions without reminders and redirections. (Tr. Vol. 6 at 1224, ln. 4-17).
306. Parents introduced into evidence numerous videos of B.B. exhibiting difficulty with motor skills, basic activities of daily living and social emotional issues, including hand washing, B.B. holding his eating utensil at school in an age inappropriate fashion, having sensory issues with eating at school, not having the fine motor skills to tie his shoes, not having the fine motor precision to cut where needed using scissors, and not being able to color in the lines even at the age of 12, when B.B. should be in sixth grade. (Tr. Vol. 6 at 1334, ln. 4-1341, 8; see also Exs. 126, 127, 128, 129, 130, 131, 132, 136).
307. B.B.'s father testified that his son's fine motor skills have lacked for a while, including his improper grasp of eating utensils, which extends to grasping other items including toothbrushes, toothpaste tubes, and that B.B. has significant difficulty with controlling the amount of pressure he uses on things, as well as other fine motor movements such as buttoning a pair of pants. (Tr. Vol. 7 at 1559, ln.1-25; 1560, 1).
308. B.B.'s father expressed his concern that the motor difficulty and precision issues B.B. demonstrates at home carries over to school. (Tr. Vol. 7 at 1560, ln. 2-23).
309. B.B.'s father testified that the sizing of letters and the placement of them in correct fashion is difficult for B.B.; he does not use the classic tripod grasp and often he grabs the middle of the writing utensil. (Tr. Vol. 7 at 1561, ln.1-14).

- 310. B.B.s' father B.B.'s father raised the Social Emotional issue and his concerns on that front at multiple IEP team meetings; B.B.'s father testified that his observance of B.B. at school is that B.B. does not have traditional relationships with friends, and that when B.B.'s father asks B.B. who his friends are at school, B.B.s' response is that he doesn't really have any friends, so Social Emotional is an area of concern for B.B.'s father. (Tr. Vol. 7 at. 1564, In. 11-25; 1565, 1-17).
- 311. B.B.'s mother testified that throughout the past two years of IEP team meetings, she has not felt like she has been treated by the Districts as part of B.B.s' IEP team; when Parents attend meetings, they are presented information that has been prescribed, pre-written, and told this is what the Districts has decided, with little to no input accepted from Parents. She feels that the Districts has harassed Parents even after Parents told the Districts that its chosen course is not the best path forward for B.B., and even when Parents express that, the Districts states it is going to keep doing this until it gets what it wants. (Tr. Vol. 5 at 1110, In. 23-1112,18).
- 312. B.B.'s mother seeks to have the Districts treat her as an equal member of the IEP team, to work with Parents to create a comprehensive plan to make him independent in high school and beyond, and to continue to work on areas that are capable of improvement. (Tr. Vol. 5 at 1112, In. 24-25; 1113, 1-25, 1114, 1-10).
- 313. B.B.'s father also testified that he feels he and his wife have not been treated as equal members of the IEP team. (Tr. Vol. 7 at. 1565, In. 18-20).

ii. Parent's Witness Lindsey Sundquist's' Special Education Background and Testimony

- 314. Lindsey Sandquist testified that she had a unified license which would enable her to teach 0 to 9 and special education up to age 14. However, as discussed during the hearing, her licensure on the KSDE website showed that she is only licensed for birth to kindergarten. (Tr., Vol. 7, at 1494, In. 13-25. See also Ex. A – Printout of Sandquist Licensure.)
- 315. Ms. Sandquist testified that she had an “emphasis in OT.” When asked what this meant, she clarified that she had 12 hours of course work in OT. She never completed a degree in OT. At the time, it was a 5-year program and Ms. Sandquist did not want to spend that much time to complete it. Ms. Sandquist testified that she is aware an OT license now requires a doctorate in OT. Ms. Sandquist acknowledged that she is not a licensed OT. (Tr., Vol. 7, at 1495, In. 21 – 1497, In. 12.)
- 316. Ms. Sandquist testified that she does “private practice special education services” in her home daycare. Ms. Sandquist asserted that it was no different than a parent homeschooling a student. (Tr., Vol. 7, at 1498, In. 2-23.) When asked what basis she had for asserting that she did not need to be accredited as a private school, Ms. Sandquist testified “Nobody in the state of Kansas needs to have accreditation to have a school. What has to happen if they come from an accredited school such as Cornerstone is not an accredited school, the children have to take a placement test when they leave. If the parent hires you

to be the teacher of their child in which we have had this situation, then I am allowed to receive payment from the parent, teach the child as the homeschool. I am not affiliated with homeschool, the parent is, they hire me as the teacher. And then the child if they are truly fully homeschooled, but this doesn't pertain to B.B., then what happens is when they go into an accredited school, they take a test, pass it and the school Districts determines what grade level the child is and that's where they enter them. Cornerstone is an example because they are not an accredited school in Salina, Kansas." (Id. at 1499, In. 12 – 1500, In. 6.) Ms. Sandquist also is not listed as a private school with KSDE and asserted that she does not have to be. (Id. at 1500, In. 7-11.)

317. Ms. Sandquist testified that she has not had any training on IEP writing since 2020 or 2021 and that training was provided by K-State. (Tr., Vol. 7, at 1500, In. 21-25.) She has not written an IEP since 2015, although she "helped" draft one in 2017 or maybe 2020. (Id. at 1500, In. 15-20.)
318. Ms. Sandquist also testified that special education had to provide any services "if it helps" the student – not based on necessity. When asked if she could identify the two prongs to qualify for special education, she could not do so. (Tr., Vol. 7, at 1514, In. 10-25; 1515, 1-25; 1516, 1-25).

iii. Parent's Witness Sharon Kloses' Background and Testimony

319. Sharon Klose only attended one IEP meeting for B.B. in November 2023. (Tr., Vol. 6, at 1173, In. 2-8.) Ms. Klose last had an IEP training in 2016 when she worked for Shawnee Mission School Districts – seven years prior to the November 2023 IEP meeting. (Id. at 1173, In. 9-16.) Ms. Klose admitted that state requirements for IEPs change over time. She admitted that not all students are required to have short-term objectives for their goals in their IEPs. Ms. Klose did not know whether B.B. would have required short-term objectives but admitted that it was required when she worked for Shawnee Mission. (Tr. Vol. 6, at 1173, In. 17-25; 1174, 1-25; 1175, 1-11).
320. Although Ms. Klose gave opinions regarding OT, she is not a licensed OT. (Tr., Vol. 6, at 1177, In. 19-25; 1178, 1).
321. Ms. Klose did not review all of B.B.'s educational records. Ms. Klose has never met B.B., she has never observed B.B. in the school setting, and she has never had any discussions with school staff outside of the one IEP meeting she attended. (Tr., Vol. 6, at 1178, In. 2-25; 1179, 1-15).
322. Although Ms. Klose took issue with the use of terms, such as "simple sentence" in the IEP, Ms. Klose admitted that she did not have an English language background and those were standard terms used in that subject area. (Tr., Vol. 6, at 1179, In. 16-25; 1180, 1-16).
323. Upon review of the Kansas Special Education Process Handbook, Ms. Klose had to admit that the Districts is not required to list the services to be provided in minutes anywhere other than the anticipated services chart, which is provided the KSDE for data collection purposes. (Tr., Vol. 6, at 1182, In. 22-25; 1185, 1-16).

- 324. Although Ms. Klose had testified that there should be a goal if there is a need, she admitted that a need could be addressed through accommodations and modifications instead of a goal. (Tr., Vol. 6, at 1185, ln. 17-25; 1187, 1-3).
- 325. Although Ms. Klose had stated that she believed that many of the details from B.B.'s IEP were cut and paste from other IEPs in the District, she had to admit that she had no factual basis for her statements. (Tr., Vol. 6, at 1187, ln. 5-17).
- 326. Although Ms. Klose had testified on direct that there should have been baseline data for the social emotional section that had no goal, Ms. Klose was forced to admit that it was not required after reviewing the Kansas Special Education Process Handbook. (Tr., Vol. 6, at 1188, ln. 2-25; 1189, 1-11).
- 327. Although Ms. Klose was aware that the Districts had a right to bring a draft IEP to a meeting, she testified that she did not see frequency and duration but only saw predetermination because in her previous Districts they supposedly did not put minutes into a draft IEP. (Tr., Vol. 6, at 1191, ln. 18-25; 1192, 1-24). Ms. Klose was then asked to review each of the goals and was forced to admit that they had frequency, location, and duration. (Id. at 1193, ln. 7-25 – 1196, ln. 7.)

iv. Parents' Witness Tiffany Lees' Background and Testimony

- 328. Parents procured a third opinion regarding B.B.s' occupational therapy needs in the form of an evaluation by Tiffany Lee from Lindsborg, and her evaluation indicated that B.B. has a lack of endurance, lack of strength in the limbs and the core, and that he would benefit from OT services. (Tr. Vol. 6 at 1344, 5-25; 1345, 1; see also Exs. 100 and 101).
- 329. Tiffany Lee of Heartland Pediatric Therapy conducted an initial occupational therapy evaluation of B.B. on January 2, 2024; Ms. Lee made numerous diagnoses, including "other lack of coordination," "Other symptoms and signs involving general sensations and perceptions," "Muscle weakness," and "feeding difficulties." (See Ex. 101 at 1).
- 330. At the time of the evaluation, B.B. was age 11 years 8 months, yet in administering the Bruininks-Oseretsky Test of Motor Proficiency, which assesses "a variety of fine and gross motor skills in individuals aged 4:0 to 21:11," B.B.s' composite score in "Fine Manual Control" placed him at the 4th percentile, in "Manual Coordination" at the 7th percentile, and in "Fine Motor Composite" at the 4th percentile; the subtest scores showed Fine Motor Precision scores at the age equivalent of 5 years 6 months, Fine Motor Integration at the age equivalent of 7 years 9 months, Manual Dexterity at 9 years 2 months, and Upper Limb Coordination at 8 years 2 months; the Notes for this assessment also state that B.B. "Began to fatigue for the Manual Coordination Section requiring frequent rest breaks." (See Ex. 101 at 2).
- 331. The Child Sensory Profile 2 conducted by Ms. Lee for B.B. showed him with significant differences in "Body Position" and "Oral Sensory Processing," and in "Conduct," "Social Emotional," and "Attentional" for "Behavioral." (See Ex. 101 at 3).
- 332. The Roll Evaluation of Activities of Life, which "provides information on the

activities of daily living (ADLs) and independent activities of daily living (IADLs) most common among children aged 2:0 to 18:11" and which "assesses a child's ability to care for themselves at home, school, and in the community," including by measuring "how a child obtains the supplies needed, maintains a safe body position, sequences all the steps required, and problem-solves and makes appropriate and safe choices when completing the activity," is referenced in Ms. Lee's evaluation of B.B.; the "Performance Summary" for both ADLs and IADLs placed B.B. at the zero (0) percentile, and show him with "significant delays in ADLs/IADLs." (See Ex. 101 at 4).

333. In the section of Ms. Lee's evaluation report entitled "Coordination," she finds that B.B.s' "Gross Coordination" is impaired, writing, "Observed climbing, jumping, jumping jacks, monkey bars, and body positions (T, Y, I, X). B.B.s' body was very uncoordinated d/t strength, muscle tone, balance, control, awareness, and praxis skills." (See Ex. 101 at 5).
334. In the section of Ms. Lee's evaluation report entitled "Coordination," she finds that "Fine Coordination" is impaired, writing, "Control, strength, dexterity, and precision impaired. Client provided writing sample with two 6-word sentences R hand tripod grasp. Client did well with letter formation and orientation. However, B.B. had challenges with letter and word spacing, letter size, neatness, and legibility. Handwriting skills considered to be poor. Scored Well Below Average on BOT-2 Fine Motor Precision subtest. Used R hand tripod grasp for FM [fine motor] tasks. Remaining within lines was very challenging for B.B." (See Ex. 101 at 5).
335. In the section of Ms. Lee's evaluation report entitled "Coordination," she finds that B.B.s' "Bilateral Integration" is impaired, writing, "Upper Limb Subtest of BOT-2 indicates Below Average performance. Tasks involved required catching, throwing, and dribbling with one and two hands. Poor timing and coordination of body impacted skills as well." (See Ex. 101 at 5).
336. In the section of Ms. Lee's evaluation report entitled "Coordination," she finds that B.B.s' "Praxis" is impaired, writing, "Appears awkward and clumsy – low recognition of body positioning." (See Ex. 101 at 5).
337. In the section of Ms. Lee's evaluation report entitled "Coordination," she finds that B.B.s' "Visual Motor" is impaired, writing, "Used R hand for scissors. Difficulty cutting on lines. Cut out circle with series of straight cuts." (See Ex. 101 at 5).
338. In the section of Ms. Lee's evaluation report entitled "Motor Performance: Motor Planning," she deemed B.B. "Impaired" in Muscle Tone, Ideation, Motor Control, Motor Planning, and Timing, writing that B.B. is "very uncoordinated and awkward with difficult time planning and copying movements. Poor control of body." (See Ex. 101 at 5).
339. In the section of Ms. Lee's evaluation report entitled "Posture/Positioning: Posture & Alignment," she wrote that "B.B. presents with atypical postural stability and strength. During sitting tasks, he began to slouch fairly quickly or lean back on hands for support." (See Ex. 101 at 6).

340. In the section of Ms. Lee's evaluation report entitled "Vision: Visual Motor," in the area of "Visual Processing/Tracking," she wrote that she was "Unable to fully test Visual Processing. B.B. turned head during multiple trials of tracking. Unsure if he didn't understand how to only track with eyes or if he was unable to complete the task." (See Ex. 101 at 6).

341. In the section of Ms. Lee's evaluation report entitled, "Functional Limitations," she wrote that "B.B.s' primary functional limitations include impairments in sensory processing, fine/gross motor skills, visual motor skills, self-care, feeding, handwriting, and social behaviors that impact his performance at home and within the community. These limitations are preventing B.B. from functioning independently at age appropriate level across environments." (See Ex. 101 at 8).

v. **Parents' Position Relating to Ms. Prophet's Testimony Regarding her View of Her Work with B.B.**

342. Ms. Prophet testified at the hearing that over the prior seven years, she had worked with B.B. on *"body awareness. We have worked on strengthening, core strengthening, hand strengthening, wrist strengthening, finger strengthening. We have worked on dexterity. We have worked on grasp. We have worked on midline crossing. We have worked on reflex integration. We have worked on printing letters so formation of letters. We've worked on line awareness. We have worked on spacing. We have worked on hand washing. We have worked on fasteners and opening classroom supplies. We have worked on general manipulation skills. We've worked on scissor skills. We've worked on -- I've provided home programs for shoe tying, and before I provided each of those programs, we reviewed my recommendations and practiced them together in OT before I sent them home. We discussed toilet hygiene together in a similar fashion. B.B. and I discussed it, read him the social story before I sent that home. Our therapy sessions when we were doing pull-out therapy generally consisted of a gross motor strengthening, reflex integration activity followed by a fine motor and hand manipulation dexterity activity followed by specific goal work, whatever the goal was that year."* (Tr. Vol. 2 at 259, ln. 21-25; 260, 1-24).

343. Ms. Prophet further testified that her work with B.B. extended beyond only motor skills and manual dexterity, including working with him on self-care skills, daily living skills at school, staying on tasks and maintaining visual attention, visual spatial issues, and sensory processing issues. (Tr. Vol. 2 at 309, ln. 1-21, 325, ln. 13-25; 326, 1; 340, 23-25; 341, 15-25; 342, 1-2).

344. Ms. Prophet testified that if a teacher can provide instruction and accommodation to an exceptional student, then they are to do it, and she only intervenes if the student requires specialized skills from a therapist. (Tr. Vol. 3 at 484, ln. 12-15).

345. When asked if there was any further occupational therapy work that she could do with B.B., Ms. Prophet responded to state, "I think that anyone could work with an OT always, but as a school-based OT, I'm saying that his needs are able to be addressed by his teachers." (Tr. Vol. 3 at 488, ln. 2-8).

346. Ms. Prophet agreed that for several years, she provided occupational therapy services for B.B. that included focusing on proper letter formation and his handwriting, as well as on writing concepts such as where to place handwriting on lined paper and was also working on improving the legibility of B.B.s' handwriting, including by creating IEP goals for correctly copying letters. (Tr. Vol. 2 at 311, ln. 22-25; 312, 1-8; 313, 11-25; 314, 1-13; 317, 7-17; 324, 3-25; 325, 1-2; see also Ex. 3 at USD000031-32).
347. Ms. Prophet testified that when she used the term "legibility" in B.B.s' IEPs, she was "talking about recognizable quality" of the letters he was forming. (Tr. Vol. 3 at 599, ln. 21-23).
348. Ms. Prophet further testified that she and the occupational therapy assistant Kelsi Richards worked with B.B. "on letter formation, line awareness, spacing on the lines, and spacing between words." (Tr. Vol. 2 at 427, ln. 16-23).
349. Ms. Prophet agreed that whether B.B.s' handwriting was legible or not was based on her own subjective determination and on the subjective determination of the assistant occupational therapist, Ms. Richards, and that there was no other metric to assess legibility. (Tr. Vol. 2 at 314, ln. 14-25; 315, 1-20; 328, 6-16; 426, 18-25; 427, 1-15).
350. Ms. Prophet testified that her "job" is to "make sure B.B. has the hand skills necessary to produce written output in the classroom, and so he does have the hand skills to print legible, he does not always have the penmanship to do that. Penmanship is not the sole responsibility of an occupational therapist." (Tr. Vol. 2 at 261, 20-25; 262, 1).
351. The Parents maintain that this comment from Ms. Prophet that penmanship is not the "sole" responsibility of occupational therapists clearly concedes that school-based occupational therapists can and do work with students to improve penmanship, something which she herself had worked on with B.B. for years prior.
352. Ms. Prophet testified that her view of the disagreement between Parents and the Districts in this matter is the difference between medical and school-based therapy, and that B.B. "perhaps could benefit from medical therapy but he does not require school-based therapy." (Tr. Vol. 1 at 220, ln. 6-10).
353. Ms. Prophet stated that skilled outpatient occupational therapy services can address any sort of delay and is open to all areas of life function, not just school, but her view is that a school-based occupational therapist's role as a related service provider is to provide what is specialized to her skill and specialty and then restricted just to school functions. (Tr. Vol. 2 at 291, ln. 16-25; 292, 1-8).
354. Ms. Prophet admitted in her testimony that there can be an overlap between what medical and school-based occupational therapy services are provided to student clients. (Tr. Vol. 3 at 525, ln. 25; 526, 1-10).
355. Ms. Prophet testified that the Districts has not had any motor skills or occupational therapy goals for B.B. since his February 2021 IEP, despite providing him with occupational therapy services since that time. (Tr. Vol. 3 at

- 526, ln. 23-25; 527, 1-5).
356. Despite this admission, Ms. Prophet testified that B.B. has met all of the goals that she has ever set forth for him. (Tr. Vol. 2 at 260, ln. 25; 261, 1-3).
357. Ms. Prophet testified that B.B. is able to go to the bathroom independently and that he has the hand skills necessary for legible printing"; she further testified that B.B. can manage his clothing at school. (Tr. Vol. 2 at 261, ln. 14-17; Vol. 3 at 620, ln. 15-16).
358. Ms. Prophet testified she worked with B.B. on automatically writing with appropriate pencil pressure and on reducing the need for constant prompts and that he now possesses those skills. (Tr. Vol. 3 at 485, ln. 23-25; 486, 1-4).
359. Ms. Prophet testified that whether B.B. was handwriting with appropriate pencil control and appropriate pressure was her own determination. (Tr. Vol. 2 at 373, ln. 5-21).
360. However, Ms. Prophet agreed in her testimony that B.B. cannot automatically apply the correct amount of pencil pressure, and still requires prompts to do this basic handwriting and motor task. (Tr. Vol. 2 at 443, ln. 11-14).
361. Ms. Prophet agreed that, as of the dates of her testimony in this hearing, well after the Districts filed for due process to remove all OT services from B.B., if given unlined paper, B.B. will still write to fill the space he is given. (Tr. Vol. 3 at 478, ln. 25; 479, 1-4).
362. Ms. Prophet stated that working with B.B. on spatial awareness issues would be part of her occupational therapy services if it interfered with his classroom participation. (Tr. Vol. 3 at 500, ln. 17-21).
363. Ms. Prophet said her role in helping students who have fine motor or visual motor disabilities is to work on the visual motor skills, the foundational motor skills required to be able to copy letters from a model, to be able to accurately look with their eyes and then be able to draw that same form. (Tr. Vol. 3 at 586, ln. 19-25; 587, 1-3).
364. Ms. Prophet testified that occupational therapists work on the visual motor task of writing, the ability to accurately copy and form things, using your eyes and your hands together, and that is a skill B.B. has now that he has the motor foundation for that, while penmanship is more of a self-regulation motivation to write neatly. (Tr. Vol. 3 at 602, ln. 20-25; 603, 1-5).
365. Ms. Prophet admitted that when she did not provide rote text for B.B. to copy, his writing became "much less decipherable." (Tr. Vol. 2 at 235, 22-25; 236, 1-20; see also Ex. 1074).
366. Ms. Prophet testified that B.B. has a "tendency to rush through writing. It is not his favorite thing to work on." (Tr. Vol. 2 at 240, ln. 18-23).
367. Ms. Prophet testified at the hearing that B.B. "obviously has an awareness of lines and spacing and an understanding of the writing rules. He is capable of writing neatly and legibly but his samples can be inconsistent and that inconsistency is not due to fluctuating motor skills, his motor skills are what his motor skills are. The inconsistency might have to do with how hard the

- academic task was, how motivated he was to write neatly during that session, how quickly he was writing[.]” (Tr. Vol. 2 at 242, ln. 6-16).
368. Ms. Prophet testified that many factors come into play when a child has trouble with handwriting because writing is very complex, it requires a wide range of physical skills as well as executive functioning skills and academic skills; she further testified that “executive functioning, this is sort of like the motivation piece...You have to be motivated to get it down on paper neatly. You have to maintain the attention and the focus. You have to be able to start your work, keep going and finish your work. You have to regulate your emotions so you don't get frustrated[.]” (Tr. Vol. 3 at 603, ln. 24-25; 604, 1-25; 605, 1-10).
369. Ms. Prophet testified that B.B. “does still need to work on the executive functioning skills with his teacher[.]” (Tr. Vol. 3 at 606, ln. 12-14).
370. Ms. Prophet testified that as of her dates of testimony in this hearing, B.B. was not independent in the special education classroom and was unable to function independently in the classroom, and unable to start and complete his work without constant prompting, including in writing and written language. (Tr. Vol. 3 at 470, ln. 1-8).
371. Ms. Prophet testified that what she was looking at in her evaluation of B.B. was whether there is a developmental delay significant enough to require specialized instruction to access his school through school-based occupational therapy. (Tr. Vol. 2 at 297, ln. 4-11).
372. Ms. Prophet agreed that fluidity and speed of writing can be an occupational therapy issue. (Tr. Vol. 2 at 300 ln. 24-25; 301, 1).
373. Ms. Prophet agreed that B.B. lacks spatial awareness and that this goes back to his lack of registration, which in turn is connected with B.B.s’ autism diagnosis. (Tr. Vol. 2 at 302, ln. 21-25).
374. Ms. Prophet chose the handwriting samples from B.B. which the Districts introduced into evidence at the hearing and also led him in writing out the samples. (Tr. Vol. 2 at 234, ln. 7-25; 235, 1-19; see also Ex. 1074).
375. The Districts never explained how it chose the 13 pages of handwriting samples for B.B. which it introduced into evidence at this hearing. (Tr. Vol. 6 at 1328, ln. 9-13; see also Ex. 1074).
376. The Parents contend that the District’s own writing samples from B.B., cherry-picked for this hearing, clearly demonstrate poor handwriting by B.B., including one instance on USD000452 in which B.B. demonstrated very poor handwriting and yet was still graded by the Districts as a 100%--this is a clear indication that the subjective determinations of legibility from Ms. Prophet and Ms. Koerperich are unreliable and biased; moreover, these writing samples show that even in the 2023-24 school year, after the Districts had filed for due process, that B.B. was still unable to differentiate between capital and lower case letters within lines on paper, as the letters appear to be the same size (USD000455-58). See Ex. 1074 at USD000448, 452, 455-59).
377. Ms. Prophet testified that the videos she took of B.B., which were introduced

- into evidence at the hearing, did not include any of the prompts and instructions she gave to B.B. before the videos began; she also testified that the containers she asked B.B. to open in one of the videos were not sealed in the same way that a soda bottle or milk jug would be sealed, such that a cap would have to be broken off to break the seal. (Tr. Vol. 3 at 534, In. 1-19).
378. Ms. Prophet testified that for the last two IEPs for B.B., she has “been working under the written language goal collaborating with his special education teacher on that[.]” (Tr. Vol. 2 at 245, In. 4-11).
379. Ms. Prophet testified repeatedly at the hearing that she was providing “input” to B.B.s’ special education teacher from February 2022 onward regarding B.B.s’ progress on his handwriting goal. (Tr. Vol. 2 at 255, In. 8-20; 256, 25; 275, 1-3).
380. However, at her second day of testimony, Ms. Prophet appeared to backtrack and stated that she did not contribute, either directly or indirectly, to the progress reports relating to B.B.s’ written language goals. (Tr. Vol. 3 at 530, In. 7-20).
381. Ms. Prophet testified that in an earlier IEP from February 2021, she created a motor goal for B.B. and the purpose “was to address some of the inconsistencies with his penmanship.” (Tr. Vol. 2 at 251, In. 13-17; see also Ex. 1059).
382. Ms. Prophet testified that she saw no need for the Districts to keep baseline data regarding how many times B.B. needed to be reminded to write his letters correctly because he was working within the special education group in a very small group with approximately one staff to three students, all of whom need cues, and because general education students also receive cues to do writing assignments, such as “everybody remember start with a capital letter, put a period at the end, please use your most beautiful writing[.]” (Tr. Vol. 2 at 254, In. 11-25).
383. The Parents urge the Hearing Officer to find that Ms. Prophet’s comment and comparison is inapt, as B.B. had specific goals in previous IEPs about reducing the number of prompts he needed to complete his work, and moreover, the hypothetical examples she provided regarding the cues given to a general education classroom did not entail having to remind students how to form letters correctly, as was and is the case for B.B.
384. Ms. Prophet testified that since October 2022 she has not done any testing to see how many sentences B.B. can write without becoming fatigued. (Tr. Vol. 3 at 474, In. 14-24).
385. Ms. Prophet testified that she felt “strongly” that her sitting next to B.B. in his classroom was making him less independent and that he would frequently look for a prompt from her and that she is concerned about his ability to generalize skills that he has learned from her if she is sitting there with him, and that B.B. is unable to learn generalization of skills if there’s somebody sitting there next to him. (Tr. Vol. 2 at 286, In. 15-25; 287, 1-11).
386. Ms. Prophet confirmed that Kelsi Richards is a certified occupational therapy assistant working for the Districts who was assigned to Heusner Elementary School during B.B.s’ time there and she worked with him from when B.B. was in

kindergarten in January 2020 until May 12, 2022, when he was in third grade. (Tr. Vol. 1 at 215, In. 5-12; Vol. 2 at 419, 24-25; 420, 1-4).

387. Ms. Prophet supervised Ms. Richards throughout all relevant time periods, and Ms. Richards was required to discuss her work with students with Ms. Prophet and have her service logs approved by Ms. Prophet. (Tr. Vol. 1 at 215, In. 15-25; Vol. 2 at 420, In. 5-12).

388. Ms. Prophet agreed that during the January 2020 through May 2022 time period, it was Richards who was primarily working with B.B. one-on-one. (Tr. Vol. 2 at 420, In. 12-20).

Service Logs Reflecting the District's Occupational Therapy Work with B.B.

389. Ms. Prophet testified that Ms. Richards created her service logs for each session with B.B. after every treatment session. (Tr. Vol. 2 at 432, In. 7-8).

390. The service logs setting forth the entries of Ms. Richards which reflect her sessions with B.B. contain commentary from Spring 2021 in which Ms. Richards wrote that B.B. required maximum cues to slow down, stay on task, for his keyboarding work, and for his handwriting work. (Tr. Vol. 2 at 421, In. 10-25; 422, 1-4; see also Ex. 1068 at USD000007).

391. Ms. Prophet testified that when the service logs state "max cues," this meant B.B. needed a reminder "every word or so" to slow down or to leave a space, and that "maximum cues" further means cues provided for more than 75% of the task, while moderate or mod cues would be cues for 50% of the task, and minimum cues would be less than 25% of the task being done by B.B. (Tr. Vol. 3 at 600, In. 12-25).

392. The "service logs" prepared by Kelsi Richards, certified occupational therapy assistant for the District, for B.B. from January 2020-May 2022 almost uniformly state in the "Progress Report" column that B.B. was making "minimal improvement" at each of his sessions with Ms. Richards; in fact, only three of the Progress Reports for B.B. as completed by Ms. Richards state that B.B. had "maintained," the other forty-five (45) Progress Reports from Ms. Richards state that B.B. was making only "Minimal Improvement" at his occupational therapy sessions. (See Ex. 36).

393. In fact, the last Progress Report that showed that B.B. had "Maintained" was February 22, 2021; for the entirety of the 2021-22 academic year, the same academic year in which the Districts sought to remove direct OT services from B.B., all of Ms. Richards' Progress Reports for B.B. show that he was making only "Minimal Improvement," even after February 1, 2022, when the Districts first sought to remove direct OT services. (See Ex. 36).

394. Ms. Richards' service log for her session with B.B. on September 30, 2021 indicates that it took B.B. fifteen minutes to type two sentences with maximum cues provided. (Tr. Vol. 2 at 422, In. 9-14; see also Ex. 1068 at USD000005).

395. Ms. Richards' service log for her session with B.B. on October 21, 2021 indicates B.B. only wrote three out of six letters legibly and writing his own name took

- moderate cues. (Tr. Vol. 2 at 422, ln. 19-24; see also Ex. 1068 at USD000005).
396. Ms. Richards' service log for her session with B.B. on October 28, 2021 indicates that B.B. needed maximum cues to stay in the lines during the pencil fun exercise and that he was using a quad grasp on his pencil. (Tr. Vol. 2 at 422, ln. 25; 423, 1-4; see also Ex. 1068 at USD000005).
397. Ms. Richards' service log for her session with B.B. on November 4, 2021 indicates that it took max cues for B.B. to do his writing exercise and that only two of three words he wrote were legible. (Tr. Vol. 2 at 423, ln. 9-12; see also Ex. 1068 at USD000004).
398. Ms. Richards' service log for her session with B.B. on January 6, 2022, indicates that B.B. wrote a three-word sentence from dictation and it took max cues for spacing and moderate cues for line awareness. (Tr. Vol. 2 at 423, ln. 13-19; see also Ex. 1068 at USD000004).
399. Ms. Richards' service log for her session with B.B. on January 13, 2022, states B.B. used a quad grasp on his writing utensil and wrote two three-word sentences with moderate cues for spacing and line awareness. (Tr. Vol. 2 at 423, ln. 19-24; see also Ex. 1068 at USD000004).
400. The "Comments" from the January 13, 2022, service log entry from Ms. Richards states that B.B. needed "max cues to slow down and visually tend to coloring for accuracy" in an exercise involving coloring small objects on paper. (See Ex. 36 at USD000004).
401. Ms. Richards' service log for her session with B.B. on January 27, 2022, indicates that it took moderate cues for B.B. to write slow and tall versus small letters on the writing line and he only wrote 7 out of 14 words legibly; this was only days before the February 1, 2022, IEP team meeting at which the Districts sought to remove direct OT services. (Tr. Vol. 2 at 423, ln. 25; 424, 1-5; see also Ex. 1068 at USD000003).
402. Ms. Prophet agreed that the January 27, 2022, entry from Ms. Richards in which she wrote that B.B. only wrote 7 of 14 words legibly was only five days before Ms. Prophet indicated at the February 1, 2022, IEP team meeting that direct occupational therapy services were no longer needed for B.B. (Tr. Vol. 2 at 424, ln. 6-9).
403. Ms. Prophet agreed she sent an email to Parents on February 7, 2022, in which she stated that B.B. used a tripod pencil grasp and even included a photo of him holding his pencil in that manner, but only three weeks earlier, Ms. Richards had written in her service log that B.B. was using a quad grasp during their occupational therapy session that day. (Tr. Vol. 2 at 424, ln. 17-25; 425, 1-4).
404. Ms. Richards did not attend the April 2022 IEP team meeting for B.B., at which removing direct occupational therapy services was the District's aim. (Tr. Vol. 2 at 425, ln. 5-8).
405. The "Comments" from the April 21, 2022, service log entry from Ms. Richards states that Ms. Richards worked with B.B. on "Far point copy sentences with handwriting check list to increase indep with writing. When going down the

check list corrections were needed for tall letters, go under letters and spacing.” (See Ex. 36 at USD00000002).

406. This entry again confirms that Districts OT providers worked with B.B. on increasing his independence with handwriting, and also that more than two months after the District’s initial effort to remove direct OT services, that B.B. still could not properly form his letters and had ongoing issues with spacing of his letters.
407. The last entry in the service log created by Ms. Richards stated that, as of May 12, 2022—three months after the Districts began its efforts to remove direct OT services from B.B.—that B.B. was only able to find 2/10 objects in an “I spy” activity; that he was able to write only 19 of 26 upper case letters in a legible fashion; that Ms. Richards still had to review the “correct formation with Y, M, N, and J; and that B.B. was only able to write 18/26 lower case letters in legible fashion and Ms. Richards needed to “review a, j, q, v, f, g and o with correct formation and on the line dash line paper correctly.” (See Ex. 36 at USD00000002).
408. For the entirety of the 2021-2022 school year, which was the same school year in which the Districts first sought to remove direct OT services from B.B., each and every entry from Ms. Richards’ service logs reflect that B.B. only made “minimal improvement.” (Tr. Vol. 2 at 430, In. 2-25; 431, 1-4; see also Ex. 1068).
409. Ms. Prophet testified that the service logs compiled by Ms. Richards regarding her work with B.B. were never provided to Parents until this due process hearing. (Tr. Vol. 2 at 432, In. 19-25; 433, 1-2).
410. The “service logs” prepared by Ms. Prophet stretch from January 1, 2020, through December 31, 2023, and the majority of the entries reflect Ms. Prophet’s supervision of Ms. Richards in her work with B.B. (See Ex. 37).
411. These service logs from Ms. Prophet confirm again that the Districts OT personnel worked on improving legibility and spacing of letters with B.B. throughout the relevant time period, and not just improving hand strength.
412. Ms. Prophet agreed that her service logs reflecting her sessions with B.B. contained numerous references to working with B.B. on letter sizing, letter formation, letter legibility, prompts for line awareness—those things are replete in her service logs. (Tr. Vol. 2 at 434, In. 17-24; see also Ex. 1069).
413. There are numerous references in Ms. Prophet’s service logs to Districts OT personnel working to improve the legibility of B.B.s’ handwriting, clearly indicating that the occupational therapists were indeed responsible for improving the quality and readability of B.B.s’ handwriting, and not just manual dexterity and motor skills/strength. (See Ex. 37).
414. The service log entries for both Ms. Richards and Ms. Prophet do not reference any objective standard of what constitutes “legibility” of B.B.s’ handwriting. (See generally Ex. 36 and Ex. 37).
415. The Parents contend that the service log entries from Ms. Prophet reveal that even in late 2021, which is the same year in which Ms. Prophet later wrote and

testified at the hearing that B.B.s' handwriting skills had "plateaued," that B.B. was still having significant problems with writing legibly, including from dictation, meaning handwriting independently without rote copying; for instance, the entry from October 7, 2021 states that B.B. only wrote with 46% legibility when printing a 3 word sentence from dictation, that he needed prompting for word order, and spelling 16 characters per minute, which would be approximately one character every four seconds, yet Ms. Prophet rated this day's progress as "Moderate Improvement," even though B.B. needed numerous prompts; the entry for November 28, 2021 reflects that even when rote copying, B.B. wrote with only 60% legibility in far point rote copying from the board, with only 50% legibility when rote copying a sentence from near point with numerous prompts, and with 54% legibility when writing a sentence from dictation; and the entry from December 9, 2021 states that B.B. copied a sentence from the board with only 61% legibility and wrote 2 sentences from dictation with only 52% legibility. (See Ex. 37 at USD0000022-23; Tr. Vol. 2 at 434, ln. 25; 435, 1-25; 436, 1-8).

416. Ms. Prophet's entry in her own service log for B.B. dated January 20, 2022, was that he had made "Significant Improvement" that day in his session, despite Ms. Prophet writing in the body that B.B. needed multiple prompts to attend to his work, to place punctuation, to maintain spacing within the word and to erase complete, to begin a sentence with a capital letter and to use punctuation at the end of the sentence; moreover, this entry from Ms. Prophet—which came less than two weeks before she and the Districts sought to remove direct occupational therapy services from B.B.—was "sandwiched" by entries from Ms. Richards from January 13 and then January 27, 2022, in which B.B.s' progress was rated by her as "minimal improvement," clearly indicating a discrepancy between Ms. Prophet's progress rating system and Ms. Richards'. (Tr. Vol. 2 at 436, ln. 9-25; 437, 1-25; 438, 1-25, 439, 1-15; see also Exs. 1068 and 1069).
417. The Parents contend that soon after the Districts first sought to remove direct OT services from B.B. at the February 1, 2022, IEP team meeting, as spearheaded by Ms. Prophet, there was a clear discrepancy between her evaluation of B.B.s' progress and that of Ms. Richards, who was working with B.B. directly more regularly then: on March 3, 2022, Ms. Prophet rated B.B. as having "Significant Improvement" in the "Progress Report" column, whereas for Ms. Richards' entry for February 24, 2022, she rated B.B. as showing Minimal Improvement, and on March 24, 2022, she also rated B.B. as showing Minimal Improvement. (Compare Ex. 37 at USD0000021 with Ex. 36 at USD0000003).
418. Ms. Prophet became the sole OT provider for B.B. at school at the start of the 2022-23 school year and the first entry for that school year is remarkable and incredibly telling as to what occurs when B.B. does not have direct occupational therapy services at school.
419. The service logs reflect that B.B. did not have any school-based occupational therapy between May 12, 2022, and August 23, 2022; Ms. Prophet's entry for August 23, 2022, in its Comments section, states as follows:

Worked with B.B. in the classroom. All students were working on reading comprehension worksheets sitting on the floor at the promethean board. They were copying sentences from the board. B.B. 1st page was illegible. He could not read it to me. Letters were on top of each other and letters were all the same size/ not sitting on the lines.

On the next page, he was observed to copy the sentence from the board without ever looking back to his paper. Student was stopped. Writing rules were reviewed: 1) you should be writing so you or your teacher can read it. 2) Letters should sit on the writing lines. 3) Tall letters touch the top and bottom line, short letters sit on the bottom line, but start at the middle. Go under letters start at the middle and go below the line 4) Leave spaces between words.

Lines were highlighted. B.B. was prompted to identify the type of letter before writing it. He did so with 100% accuracy. He required reminders to space between words. He also required prompts to write with the correct pressure. He is able to press hard enough to read it, but without reminders, it was very light.

He also required reminders to attend to the lesson.

(See Ex. 37 at USD0000021).

420. The Parents contend that it is incredible that Ms. Prophet rated B.B.s' progress that day as "Maintained." (See Ex. 37 at USD0000021).

421. Parents maintain that this performance by B.B. occurred more than six months after the Districts had sought to end direct OT services for B.B.; in just three months without direct OT services, even Ms. Prophet's own comments clearly demonstrate B.B. had significantly regressed to the point that his writing was entirely illegible, he could not correctly form letters, had spacing problems, and his writing pressure was improper, and he needed significant work to correct these issues.

422. The Parents maintain that, in short, B.B.s' performance at that session on August 23, 2022, was his first occupational therapy session in three months, and this reflects a clear deterioration in his motor skills, handwriting performance, and automaticity during that time with no occupational therapy services, and that B.B.s' special education teacher had not caught nor resolved these glaring problems. (Tr. Vol. 2 at 441, In. 6-9).

423. The Parents maintain that this August 23, 2022, entry from Ms. Prophet further confirms that she was working with B.B. on more than just motor skills—she was working with B.B. on his actual writing skills.

424. The next entry from Ms. Prophet, dated September 1, 2022, stated in relevant part:

Teacher stated that the class would be working on a written language task in 20 minutes. Upon return, B.B. was seated on the floor with papers resting on dry erase board. The assignment was started yesterday. Task was to write at least 10 sentences about themselves.

Other students had a "bubble organizer" Teacher stated that B.B. had lost his, but that he could just write sentences. Asked B.B. to sit at desk to complete writing. He had written 3 sentences on highlighted paper. Pressure was very light. 2/3 sentences

could be deciphered. B.B. could not read any of them back to therapist. When asked what the 3rd sentence said, B.B. said the sentence starter that his teacher was currently saying out loud " I like to eat" B.B. responded "noodles" Tape was placed on pencil to cue B.B. where to hold it. He was given spelling prompts and wrote the word noodles with legible quality. He then completed 3 sentences with legible quality with prompts to focus on task, to narrow responses to 1 sentence at a time, spelling cues, reminders X4 to scoot fingers down on pencil.

Email sent to teacher with recommendations to have students write at their desks, to chunk assignments into smaller pieces (1 sentence at a time) to check and correct after each sentence and to provide a model if necessary. Reminded teacher of writing accommodations listed in IEP.

(See Ex. 37 at USD000020).

425. The Parents maintain that Ms. Prophet's own comments make clear that B.B. had experienced a clear deterioration in the quality of his writing and staying on-task during a period without direct occupational therapy services; he was still having significant problems with using appropriate pressure when handwriting, with writing legibly, and with holding his pencil at the correct position, with B.B. requiring five reminders in just one session to hold his pencil appropriately; and that B.B.s' special education teacher had not caught nor corrected these glaring problems. (See Ex. 37 at USD000020).
426. The September 8, 2022, entry from Ms. Prophet states that B.B. still required prompting to hold his pencil at the correct position and still needed multiple prompts to check and correct for line awareness, and that his writing was legible when provided with prompts and spelling reminders. (See Ex. 37 at USD000020).
427. Ms. Prophet did not include "Progress Report" ratings for B.B.s' performance on these dates of September 1 and 8, 2022; however, starting on October 13, 2022, Ms. Prophet wrote "Mastered" for B.B. in the Progress Report and from that point forward, when she chose to rate B.B.s' progress, she wrote either Mastered, Significant Improvement, or Maintained. (See Ex. 37).
428. The December 1, 2022, entry from Ms. Prophet notes that she worked with B.B. on correcting the "established motor habit" of incorrectly forming the letter "c." (See Ex. 37 at USD000018).
429. The December 8, 2022, entry from Ms. Prophet states:
Writing activity on wide ruled alternate lined paper. Reviewed writing expectations and how to use paper. Tall letters touch top and bottom lines, short letters half the space- given a visual reminder at beginning of each line, go under letters descend into grey space. Wrote upper case and lower-case alphabet. All letters recognizable. Appropriate line awareness. Some over strikes/ hyper closures indicative of fast pace of writing. (A, H, q) Prompted to slow down. circle stroke letters start at bottom. following instruction, able to copy with magic c approach, but during independent writing reverted to habit. Copied sentence from near point with appropriate line awareness, size, spacing between words. 92% letter legibility. Copied sentence from

the board with appropriate line awareness, size, and spacing between words. 83% letters legible. Cut out picture and glued onto page independently. Composed a sentence from picture prompt. Stated he would write " There is a bear and a penguin" Instead wrote: "there wrar aBear and a Peageig." Spelling errors, case errors, punctuation errors and decreased legibility (72%) made difficulty to read indicating that written language issues rather than pencil control issues impact readability of work.

(See Ex. 37 at USD000018).

430. The Parents maintain this was a curious comment—it seems Ms. Prophet was stating that legibility was only a “written language” issue that was not the province of the occupational therapists at school to correct, despite a litany of treatment logs showing that “legibility” was the very standard by which B.B.s’ progress in occupational therapy had previously been measured, and further, that OT working on upper and lower case errors and punctuation errors by B.B. was not in the province of the school occupational therapists, but the earlier entries from the service logs clearly indicate that the occupational therapists were indeed instructing B.B. on those points.
431. The entry for January 5, 2023, states in relevant part:
Looked at math paper from earlier in the day. Lines very small. B.B.s’ writing was readable, but he gave little attention to line awareness. Provided box boundaries for letter responses and highlighted bottom space of writing lines. B.B. completed with minimal prompting for writing size with much improved legibility. Required prompts to stabilize his paper. Typing activity- Copied a paragraph printed earlier in the day. B.B. could not read 2 of his letters thought an a was a d and an i was an l due to sizing errors on printing page. Corrected print and typed legibly. Given initial cue to use the shift to capitalize. Required prompts for all punctuation
(See Ex. 37 at USD000017).
432. The Parents maintain, in short, B.B. still needed significant prompting for appropriate letter sizing and line awareness, only twenty days before the Districts sought to remove all OT services from this student.
433. The April 6, 2023, service log entry from Ms. Prophet stated:
Working on research assignment. Copying sentences from organizer onto notebook paper. He had already started, but writing was difficult to read. Began another page. Visual cues of x provided on margin of every other line to prompt to skip lines and keep small letters the same size as X. Re-copied the introduction and copied the body onto this page. Held pencil appropriately. Corrected, erased, and fixed several errors spontaneously. Given reminders X 5 for letter size and X3 for spacing between words. All writing was recognizable and sized appropriately. Several letters marked with over strikes of circles. Completed the assignment within the same time frame as his classmates including re-writing the introduction. Other students were divided into groups. One at the paras table and one at the teachers table. Staff were providing B.B.s’ peers with the same reminders to space and write neatly. Again encouraged teacher to have the students skip lines.

(See Ex. 37 at USD000015).

434. The Parents maintain that, even in spite of Ms. Prophet writing in her service log entry for April 6, 2023, that B.B.s' "writing was difficult to read" and that he needed cues to skip lines and keep small letters the same size, and that he needed 5 reminders for letter size and 3 reminders for spacing between words, and that several letters were marked with over strikes of circles," she still rated his "progress" that day as "Mastered," again demonstrating her inflation of B.B.s' performance. (Tr. Vol. 2 at 444, In. 11-14; see also Ex. 1069 at USD000015).
435. The Parents maintain that this entry from Ms. Prophet, more than two months after the Districts sought to end all OT services for B.B., clearly relates that B.B.s' handwriting was difficult to read, and that she had to prompt and provide numerous reminders for letter sizing and spacing between words, and that problems with letter formation persisted, even when B.B. was doing rote copying of text.
436. Ms. Prophet agreed that B.B.s' handwriting was still difficult to read in Spring 2023 and he still needed cues to keep letters the same size. (Tr. Vol. 2 at 443, In. 23-25; 444, 1-10).
437. The August 9, 2023, entry from Ms. Prophet, soon before the Districts filed for due process to remove OT services from B.B., and after B.B. had gone more than three months without school-based OT services, stated as follows in relevant part:
- Writing activity- used alternating line wide ruled paper with legibility checklist at bottom. Held pencil with right hand tripod gras pencil vertical. Stabilized paper with left hand. Wrote name and date within given space. Asked to do his neatest writing and writing rules reviewed. Wrote 26/ 26 letters with legible quality. Recognized and corrected mistakes when prompted to use the check list. Erased and correct C, G, J (was reversed) and R. Minimal cues for complete erasure. Wrote numbers 1-10 with legible quality. Initially made 9 backwards, but fixed without prompts. Wrote 26/26 lower case letters legible. Using checklist, erased and corrected b to make taller, e, and j. Copied a sentence from near point with legible quality. Copied a sentence from far point with legible quality. Composed and wrote 5 word sentence using environment al cues for spelling with legible quality.*
- (See Ex. 37 at USD000014).
438. The Parents maintain that this entry makes clear that B.B. was still writing letters and numbers incorrectly (in reverse) and still needed a checklist to create letters correctly, even when rote copying. It is also unclear how B.B. could be rated as writing all letters and numerals "with legible quality" when the same comments clearly state he was forming letters and numbers incorrectly, a clear contradiction in terms.
439. The September 19, 2023, entry from Ms. Prophet, which was after the Districts filed for due process to remove OT from B.B., notes that she saw B.B. in "Mrs. Pavey's SPED room" and that the special education teacher "characterized B.B. writing as sloppy, but stated she felt it was habit, and he could correct it when

prompted.” (See Ex. 37 at USD0000014).

- 440. The Parents suggest that the Hearing Officer find that Ms. Prophet’s own earlier entry in her service log notes that she can and did work on appropriate “habits” with B.B. in terms of his handwriting, so it is unclear why she could not work with B.B. on independently writing with appropriate quality.
- 441. The October 9, 2023, entry from Ms. Prophet, which was after the Districts filed for due process to remove OT from B.B., notes that B.B. was still having problems with forming the letter “l” and needed prompts to write it correctly and was still doing tracing exercises with Ms. Prophet for letter formation. (See Ex. 37 at USD0000013).
- 442. The entries from the service logs completed by Ms. Prophet from November 7-28, 2023, clearly indicate B.B. still needed direction and prompting to properly form letters; despite this, Ms. Prophet wrote in three of the entries that B.B. did not require “instruction”—it is again unclear why doing this work on prompting and direction on properly forming letters was previously the work of occupational therapy, but the Districts then suddenly decided this was not the role of OT any longer. (See Ex. 37 at USD0000012).
- 443. The Hearing Officer finds that the overall theme from the service logs clearly indicate that B.B. continues to require numerous prompts and redirection to perform basic handwriting tasks.

vi. Parents’ Position Regarding February 1, 2022, IEP Team Meeting and IEP Developed by Districts Bearing Same Date; District’s Efforts to Remove Occupational Therapy Services Begins

- 444. The Notice of Meeting for the February 1, 2022, IEP team meeting, prepared and distributed by the Districts to Parents, does not make any mention that the Districts was planning to seek to eliminate direct occupational therapy services at that meeting; moreover, the “box” labeled “Discuss possible changes in your child’s individualized education program (IEP)” was left unchecked by the District. (See Ex. 17 at USD000520-23).
- 445. B.B.’s mother testified that Parents were “shell shocked” at the February 2022 IEP team meeting after the Districts sought to remove direct occupational therapy services, as no information had been provided to them in advance, they were not given a draft IEP, there was no conversation, and there was no input requested from Parents, there was no lead-up to it and it left Parents shocked. (Tr. Vol. 6 at 1230, ln. 4-18).
- 446. Ms. Prophet agreed that when she sought to remove direct occupational therapy services from B.B. in Spring 2022 that he still had ongoing sensory processing and attention problems. (Tr. Vol. 2 at 381, ln. 2-7).
- 447. Ms. Prophet testified that the Districts did not perform the same motor skills examination on B.B. before it sought to remove direct occupational therapy services from him in February 2022 only one year from when the prior, extremely low motor skills results were recorded. (Tr. Vol. 2 at 379, ln. 22-25;

- 380, 1-25; 381, 1).
448. Ms. Prophet admitted that even as the Districts was trying to remove direct occupational therapy services from B.B. in February 2022 he still had some fine motor concerns. (Tr. Vol. 1 at 144, ln. 13-18; Vol. 2 at 401, ln. 19-25; see also Ex. 24 at USD000569, Ex. 1019).
449. The draft IEP developed by the Districts for B.B. and discussed at the February 1, 2022, IEP team meeting stated that B.B. needed special education in the areas of Motor and Social Emotional; the draft IEP also contained handwritten corrections and marks, including striking through the original language changing OT services for B.B. to 15 minutes per quarter and instead writing that B.B. would receive 15 minutes per week in the special educ. setting, and further modifying the Social Emotional goal for B.B. by way of changing the number of prompts B.B. would be allowed per 25 minutes from 2 or less in the original draft and instead raising that number to 5 prompts or less allowed per 25 minutes. (See Ex. 17 at USD000539-40).
450. The draft IEP developed by the Districts for B.B. and discussed at the February 1, 2022, IEP team meeting set forth four accommodations, including for the first time an accommodation that "Across all educational settings, when the student is given an assignment, quiz, test or activity he will be given the directions in a variety of ways (verbal, written, etc.) with frequent prompts for task initiation and completion for the duration of the assignment, quiz, test or activity or until the assignment, quiz, test or activity has been completed in its entirety." (See Ex. 17 at USD000540-41).
451. The final version of the February 1, 2022, IEP produced by the Districts stated in the Motor/OT section that B.B. at times wrote very quickly with little regard to the details of writing such as spacing and size, that he continued to require frequent reminders to attend to the writing rules, but then states that "it appears that attention and written language issues (speed, focus, composition, spelling, capitalization, and punctuation) impact writing independence more than physical skills"; this section of the IEP continued, stating that "verbal prompts are necessary in order for [B.B.] to complete written work," but that "Direct occupational therapy services are no longer required to address his printing needs. He requires verbal cues which can be provided as an accommodation in the classroom setting." (See Ex. 18 at USD000153-54).
452. Under the heading "Identify impact of exceptionality on progress in general education curriculum" for Motor/OT in the final version of the February 1, 2022, IEP for B.B., the "Impact Statement" from the Districts stated that "B.B. requires additional support and prompts to complete writing tasks in the classroom. OT consultation is recommended to provide support strategies and address any OT related concerns in the classroom." (See Ex. 18 at USD000154).
453. The final version of the February 1, 2022, IEP produced by the Districts stated in the Motor/OT section that B.B.s' needs in this area would be met by "Accommodations and Modifications." (See Ex. 18 at USD000154).

454. The District's own Progress Reports for B.B. indicate that in December 2021, less than two months before the District's first attempt at reducing OT services for B.B., that for B.B.s' OT goal, he was copying sentences from the board with only 61% legibility and writing sentences from dictation with only 52% legibility. (See Ex. 85 at USD000499-500).
455. The final version of the February 1, 2022, IEP produced by the Districts found that B.B. did indeed need special education or related services in the area of Adaptive Behavior/Daily Living, due to the results of the Vineland-3 Adaptive Behavior scales administered in 2021, as well as his need for "very frequent prompts to refocus on the required task or activities. He is not independent in completing activities in the classroom which will interfere with his ability to progress in the general education curriculum. He will need more assistance to complete tasks that others his age are able to do. Functional performance: B.B. will need to be monitored closely in areas where safety is a concern such as streets and unfamiliar environments." (See Ex. 18 at USD000155).
456. Parents contend that despite these statements from the Districts regarding B.B.s' need for special education in the area of Adaptive Behavior/Daily Living, the IEP sets forth no plan (including no goals) to address these issues and instead the Districts merely checked boxes indicating that B.B.s' needs would be met by "Accommodations and Modifications" and "Positive Behavioral Supports." (See Ex. 18 at USD000155).
457. The Written Language goal for B.B. found in the final version of the February 1, 2022, IEP moved the goal of writing a full sentence with correct capitalization and punctuation to Written Language, whereas in prior IEPs for B.B., this kind of goal was found in the Motor/OT section. (See Ex. 18 at USD000158-59).
458. The Baseline data for Written Language in the final version of the February 1, 2022, IEP stated that B.B. "can write the letter correctly, when reminded, 90% of the time"; this directly contradicted the comments from Ms. Prophet in the very same IEP that B.B. "is able to form letter and numbers with recognizable quality from memory." See Ex. 18 at USD000153, 159 (emphasis supplied).
459. The Social Emotional goal for B.B. found in the final version of the February 1, 2022, IEP stated, "When given visual support, B.B. will complete his work with a calm body (i.e., sitting at his desk, safe hands) for 25 minutes with less than 5 prompts"; the baseline data stated that "B.B. is currently requiring many more prompts per task to engage or stay engaged with his work tasks. On average he needs 10 repeated prompts to complete the task at hand in 25 minutes." (See Ex. 18 at USD000161-62).
460. The final version of the February 1, 2022, IEP developed by the Districts set forth accommodations that included lowering difficulty for B.B. whenever he received an independent writing assignment "that requires writing text beyond a single word," as well as the same new accommodation that was found in the draft IEP from that date, stating, "Across all educational settings, when the student is given an assignment, quiz, test or activity he will be given the directions in a

- variety of ways (verbal, written, etc.) with frequent prompts for task initiation and completion for the duration of the assignment, quiz, test or activity or until the assignment, quiz, test or activity has been completed in its entirety." (See Ex. 18 at USD000163).
461. The final version of the February 1, 2022, IEP developed by the Districts entirely omitted any comment in the Parent Concerns section. (See Ex. 18 at USD000165).
462. Ms. Prophet agreed that when the Districts began trying to remove direct OT services from B.B., references to handwriting legibility and correctly forming letters began to move from the Motor/occupational therapy sections of the IEP to the Written Language section of the IEP. (Tr. Vol. 2 at 381, In. 18-25; 382, 1-21).
463. Ms. Prophet agreed that some sections of B.B.s' IEPs, including the February 1, 2022, IEP, relating to his performance in Motor and occupational therapy were identical and copied and pasted from prior IEPs, including even carrying forward a typo from prior IEPs. (Tr. Vol. 2 at 364, In. 17-25; 365, 1-25; 366, 1-9; see also Exs. 12, 17).
464. Ms. Prophet agreed that several accommodations in B.B.s' IEPs were identical across several IEP years, including in the February 2022 IEP. (Tr. Vol. 2 at 361, In. 2-8; 388, 14-20; see also Ex. 5, 12, Ex. 17 at USD000540).
465. Ms. Prophet agreed that starting in February 2022 when the Districts sought to remove direct occupational therapy services for B.B., a new accommodation was added to B.B.s' IEP to provide him with "frequent prompts for task initiation and completion for the duration of the assignment, quiz, test or activity until the assignment, quiz, test or activity has been completed in its entirety." (Tr. Vol. 2 at 388, In. 21-25; 389, 1-19; see also Ex. 17 at USD000540).
466. Marisa Koerperich is a special education teacher at Heusner Elementary and has worked with B.B. since January 2022. (Tr. Vol. 4 at 701, In. 1-7, 23-25; 702, 1).
467. Ms. Koerperich's original degree is in physical education teacher and when she was hired by the Districts to teach special education, she was "put on a waiver" and began taking classes to become a certified special education teacher, completing her special education certification in summer of 2023. (Tr. Vol. 4 at 701, In. 8-22).
468. Ms. Koerperich has been part of helping develop goals and IEPs for B.B. (Tr. Vol. 4 at 702, In. 2-6).
469. Ms. Koerperich agreed that Ms. Prophet, the school occupational therapist, had been working with B.B. on improving the legibility of his handwriting. (Tr. Vol. 4 at 703, In. 3-8).
470. Ms. Koerperich agreed that the February 9, 2021 IEP for B.B. was still "active or valid" when Ms. Koerperich became B.B.s' special education teacher in January 2022. (Tr. Vol. 4 at 701, In. 5-12).
471. Ms. Koerperich was aware that the February 9, 2021 IEP stated that B.B. requires special education and related services for adaptive behavior and daily

- living, and that he needed constant refocusing on the tasks he was working on, that he needed very frequent prompts to refocus on required tasks, that he was not independent in completing activities in the classroom which would interfere with his ability to progress in the general education curriculum. (Tr. Vol. 4 at 710, ln. 13-25; 711, 1-12).
472. Ms. Koerperich testified that the October 2021 Progress Report for B.B. stated that B.B. required significant prompting to complete his work and without prompts, he required additional time to complete because he talked to himself, looked for cues and praise or got off task, and that while Ms. Prophet wrote in the report that B.B.s' motor skills were more than adequate for both printing and keyboarding, when B.B. was asked to write a three word sentence from dictation, he did so with only 46 percent legibility and required each word to be dictated in order to remember the three word sentence. (Tr. Vol. 5 at 921, ln. 15-25; 922, 1-5; see also Ex. 85).
473. Ms. Koerperich stated that when she first began working with B.B., she knew of his goal regarding reducing the prompts he needed to stay on task and she worked on B.B. listening within a certain amount of prompts and she kept track of that. (Tr. Vol. 4 at 712, ln. 7-18; 713, 1-8).
474. Ms. Koerperich admitted that as of February 2022 B.B.s' handwriting was difficult to read. (Tr. Vol. 4 at 713, ln. 9-19).
475. Ms. Koerperich agreed that in February 2022 when the Districts sought to remove direct occupational therapy services from B.B., the plan from the Districts for improving B.B.s' handwriting, as set forth in the Motor section of the IEP, was to furnish B.B. with verbal cues meaning reminders. (Tr. Vol. 4 at 721, ln. 7-25; 722, 1-5).
476. Ms. Koerperich agreed that three of the four accommodations in the February 2022 IEP were identical to accommodations in the prior IEP for B.B. (Tr. Vol. 4 at 733, ln. 7-18).
477. Ms. Koerperich also agreed that B.B. needed the first accommodation in his IEP of lowering difficulty by providing a near point model or multiple choice or keyboarding device for an assignment that required writing text beyond a single word because B.B. was difficult. (Tr. Vol. 4 at 740, ln. 21-25; 741, 1-10; see also Ex. 34 at USD000201-02).
478. Ms. Koerperich admitted that the February 2022 IEP had a new accommodation of providing B.B. frequent prompts for task initiation and completion for the duration of the assignment, quiz, test, or activity, until the assignment, quiz, test or activity has been completed. (Tr. Vol. 4 at 724, ln. 6-24).
479. B.B.'s mother testified that the District's inclusion in B.B.s' IEP of an accommodation for frequent prompting for B.B. to initiate and complete tasks is in contradiction to the Social Emotional goal that was present in his February 2022 IEP regarding reducing the number of prompts he needed to initiate and complete his work; B.B.'s mother stated "it's non-sequitur, it doesn't make sense in the experience we've had in the previous goals in the previous IEPs to now

- shift gears and do a complete 180 and say, well, this was our goal, we're going to help you become more independent and not need us as much to prompt you and now we're going to shift gears and say what we're going to do to help you is prompt you. It feels how can these two things be true or be best for your child at the same time, it doesn't make sense." (Tr. Vol. 6 at 1228, In. 23-25; 1229, 1-12).
480. Ms. Koerperich agreed that removing direct occupational therapy services would inspire B.B. to need more reminders because that "is a big change for him." (Tr. Vol. 4 at 724, In. 2-8).
481. B.B.'s mother testified that Parents were very uncomfortable with the District's communicated intention to place their son's significant handwriting issues solely in the hands of Ms. Koerperich, as was the plan created by the District, who at the start of her time working with B.B. had minimal experience in working with special education students, and this prompted numerous questions from Parents, to which the Districts did not satisfactory answers. (Tr. Vol. 5 at 1089, In. 1-16).
482. Ms. Koerperich agreed that IEPs prior to February 2022 had Social Emotional goals working to reduce the number of prompts B.B. needed, but as of the February 2022 IEP, the new accommodation for him would be frequent prompts. (Tr. Vol. 4 at 724, In. 16-24).
483. Despite this, Ms. Koerperich admitted that the February 2022 IEP stated in the Current Performance in the Adaptive Behavior section that "In the classroom, B.B. needs constant refocusing to the tasks he is working on," and that he needed very frequent prompts to refocus on required tasks or activities, he was not independent in completing activities in the classroom which will interfere with his ability to progress in the general education curriculum, that he will need to be monitored closely in areas where safety is a concern such as streets and unfamiliar environments, and that this was the same verbiage from his prior IEP. (Tr. Vol. 4 at 724, In. 25- 525, 1-25; 726, 1-6).
484. Ms. Koerperich agreed that in the February 2022 IEP's Written Language section, there is no objective standard set forth in the Current Performance description, including anything regarding the amount of time he had to do a certain amount of work or how many sentences he correctly wrote; Ms. Koerperich stated, "No. I was still learning at that time." (Tr. Vol. 4 at 726, In. 22-25; 727, 1-6).
485. Ms. Koerperich agreed that in the Baseline for the Written Language section of the IEP from February 2022 there was no mention of what great sentences B.B. came up with, nor were there any standards applied to judge the legibility of his writing. (Tr. Vol. 4 at 727, In. 23-25; 728, In. 1-2).
486. Ms. Koerperich agreed that the February 2022 IEP for B.B. found a need for special education and related services in the area of Social Emotional and that the Current Performance description noted that B.B. currently required many more prompts per task to engage or stay engaged with his work tasks and that on average, he needed ten repeated prompts to complete the task at hand in 25 minutes, and that B.B. often is blurting out emotionally charged statements

- that do not always fit the current activity or climate of the room. (Tr. Vol. 4 at 728, ln. 16-25; 729, 1-2).
487. Ms. Koerperich agreed that at the time the February 2022 IEP was created, B.B. needed a prompt every 2.5 minutes to do his work; however, the IEP did not disclose what those prompts actually were, nor did the IEP specify who actually gathered the data and when. (Tr. Vol. 4 at 729, ln. 3-24).
488. The District's own Progress Reports for B.B. indicate that in March 2021, B.B. needed an average of 5.4 prompts to complete a 20 minute task, and the Baseline for that year was that he required an average of 24 prompts per day to stay on task, that he needed repeated prompts to complete the task at hand, and that he is "often blurting emotionally charged statements that do not always fit the current activity or climate of the room." (See Ex. 85 at USD000491-92).
489. The District's own Progress Reports for B.B. indicate that in October 2021, the Districts wrote that B.B. was making progress toward his annual goal of reducing prompts adequate to achieve the goal, and that B.B. "does very well getting started on his next activity independently" and that he "is able to focus on his work during this time with a calm body," but no figures on the number of prompts were provided; moreover, the comments for the very next goal in this document, Goal 7 ("B.B. will improve his independence with classroom writing...") states for October 7, 2021 that "B.B. requires additional significant prompting to complete his work. Without prompts, he requires additional time to complete." (See Ex. 85 at USD000499-500).
490. The District's own Progress Reports for B.B. indicate that as of March 22, 2022, B.B. was still requiring 4-10 reminders/prompts within 25 minutes during instruction time and completing tasks, a clear indication he was not meeting the District's own goal for him in Social Emotional. (See Ex. 85 at USD000510).
491. Ms. Koerperich agreed that the February 2022 IEP clearly stated that B.B. was nowhere close to meeting his prior IEP's Social Emotional goal of reducing the amount of prompts he needed to stay on task. (Tr. Vol. 4 at 729, ln. 24-25; 730, 1-17).
492. It is clear that the Districts maintained the Social Emotional goal of reducing prompts in the February 2022 IEP because B.B. had not met his goal in that area from the prior IEP; however, the Districts disregarded this approach in subsequent IEPs, as discussed infra.
493. Ms. Koerperich agreed that the Current Performance comment in the Social Emotional section of the February 2022 IEP regarding B.B. often "blurting out emotionally charged statements that do not always fit the current activity or climate of the room" was identical to the verbiage in the prior year's IEP and the same issue persisted, which was why that verbiage was in the February 2022 IEP; however, Ms. Koerperich admitted that no examples of this nor data was provided regarding this blurting out of inappropriate comments by B.B., including how frequently it occurred, nor does the IEP indicate what B.B. said that was inappropriate. (Tr. Vol. 4 at 730, ln. 18-25; 731, 1-12).

494. Ms. Koerperich agreed that the February 2022 IEP's Social Emotional section did not even address the prior IEP's goal of B.B. engaging in a give and take conversation with at least four times of turn taking between him and another person; this goal was simply ignored in the February 2022 IEP. (Tr. Vol. 4 at 731, ln. 13-25; 732, 1-3).
495. Ms. Prophet agreed that the working draft of the February 2022 IEP originally had a Social Emotional goal of B.B. completing his work with a calm body, for 25 minutes with less than 2 prompts; however, this more ambitious goal was eased at the IEP meeting, such that the new goal was that B.B. would be able to meet this goal if he needed five prompts or less within 25 minutes to complete his work; Ms. Koerperich agreed that this was raising the number of prompts B.B. was allowed to meet this goal because there was "concern that that 2 was too ambitious so it was changed to a 5," and so the new goal was less ambitious and was featured in the final version of the IEP. (Tr. Vol. 4 at 732, ln. 9-25; 733, 1-6; 735, 2-9).
496. The February 1, 2022, Prior Written Notice developed and distributed by the Districts after the IEP team meeting that day stated that it was recommended that OT services for B.B. change to consultation 15 minutes a quarter. (See Ex. 20 at USD000339-40).
497. Within the February 1, 2022, Prior Written Notice developed and distributed by the District, under the heading "Explanation of why the action is proposed or refused," the Districts wrote, "Occupational therapy-B.B.s' motor skills are functional for the school environment. He is capable of legible printing and keyboarding but requires frequent prompting to remember to do so. This level of support can be provided within the classroom"; this is a clear admission by the Districts that B.B. was not independent in correctly and legibly printing. (See Ex. 20 at USD000340).
498. This makes clear the only concern for the Districts was whether, in the subjective opinion of Ms. Prophet, B.B. had what she deemed "functional" printing skills—all other occupational therapy functions and areas in need of addressing for B.B. were entirely ignored in this rush by the Districts to remove direct OT services.
499. Within the February 1, 2022, Prior Written Notice developed and distributed by the District, under the heading "Options considered and why the options were rejected," the Districts wrote, "No special accommodations are rejected because B.B. requires intervention that is beyond the scope of the general education program in attention to tasks. OT: Continue direct services. Rejected as this is not least restrictive. Accommodations such as modified paper, frequent prompts, and use of a keyboard can be provided within the classroom." (See Ex. 20 at USD000340).
500. Within the February 1, 2022, Prior Written Notice developed and distributed by the District, under the heading "Other factors relevant to the proposal or refusal (e.g. LRE, harmful effects)," the Districts wrote, "B.B. will be removed from class

for instructional purposes. He will have greater access to a school adult and may become dependent on an adult for behavior and academics. This will be monitored closely and help B.B. increase independently [sic]"; the same section continued, "It is possible that fine motor skills would decrease without direct OT services. If this were to happen, services could be increased." (See Ex. 20 at USD000340-41).

501. Ms. Koerperich testified that the Prior Written Notice regarding the February 1, 2022, IEP stated that B.B. required special education to stay focused and complete instructions in social emotional, math, reading and writing, and the special education for B.B. to stay focused and complete instructions was the accommodation for increased cueing and reminders. (Tr. Vol. 4 at 736, ln. 18-25; 737, 1-15).
502. Within the February 1, 2022, Prior Written Notice developed and distributed by the District, under the heading "Explanation of why the action is proposed or refused," the Districts wrote that "B.B. is demonstrating excessive blurting and having a hard time staying on task and requires special education to stay focused and complete instructions in social emotional, math, reading, and writing. These skills are delayed and B.B. needs extra support to B.B. can continue through the curriculum." (See Ex. 20 at USD000340).
503. The Conference Summary for the February 1, 2022, IEP team meeting, prepared by the District, states that B.B. "has shown improvement with sensory processing. He benefits from structure and routine...He uses a functional pencil grip. He has worked to learn the size and formation of letters. He has the skills. Does he use them? No. he writes very quickly with little regard for the task. He needs the reminders. What is wrong with this sentence? He does a nice job with keyboarding. He still needs reminders. He has the physical skills for writing and keyboarding. He needs the reminders and OT has put accommodations in the IEP. OT would like to move to consult." (See Ex. 19 at USD000302).
504. No data is referenced in the Conference Summary for the February 1, 2022, IEP team meeting to support the statement that B.B.s' "has shown improvement with sensory processing." (See Ex. 19 at USD000302).
505. The Conference Summary for the February 1, 2022, IEP team meeting states three times in in one paragraph regarding occupational therapy that B.B. "needs reminders" to do basic writing tasks. (See Ex. 19 at USD000302).
506. Later, the Conference Summary for the February 1, 2022, IEP team meeting, prepared by the District, states, "Writing: When someone is with him he does very well. He copies a sentence...Parents asked about what grade level he was assessed. He was assessed at 1st grade for quarter 1 and 2." (See Ex. 19 at USD000302).
507. The Conference Summary for the February 17, 2022, IEP team meeting, at which the Districts again tried to convince Parents to remove direct OT services, stated that B.B. still needed to work on the skills and reminders that will be provided in the classroom, and Ms. Koerperich testified that meant trying to reduce the

number of reminders B.B. needed. (Tr. Vol. 4 at 738, ln. 17-25; 739, 1; see also Ex. 24 at USD000569).

vii. Parents' Position Regarding Aftermath of February 1, 2022, IEP Team Meeting.

- 508. Parents returned the February 1, 2022, Prior Written Notice to the Districts and refused consent for the elimination of direct OT services for B.B. See Ex. 20 at USD000342.
- 509. Parents suggest that they initially objected to moving B.B. from receiving direct occupational therapy services to a consult only model in early 2022 because B.B.s' special education teacher Ms. Koerperich was brand new in teaching special education and, as her testimony during this hearing made clear, she was not equipped at that time to provide appropriate instruction and work with B.B. to improve his handwriting and letter formation; Parents did not simply wish to get their son to the bare minimum commensurate with his IQ and then simply stop advancing. (Tr. Vol. 5 at 1095, ln. 3-25; ;1096, 1-3).
- 510. B.B.'s mother testified that her fears regarding Ms. Koerperich at that time in early 2022 were confirmed during a meeting with her, in which Ms. Koerperich didn't realize that B.B. was forming the letter "O" backwards (i.e., he was writing it in clockwise fashion) and Ms. Koerperich noted that she was not aware there was an optimal way to do that; this concern about whether Ms. Koerperich was equipped at that time to do this letter formation and handwriting improvement was in conjunction with Parents' concerns about B.B.s' handwriting based on their review of his classwork. (Tr. Vol. 6 at 1227, ln. 3-25; 1228, 1-16).
- 511. On February 1, 2022, B.B.'s mother emailed the Districts to state they were not comfortable signing a new IEP that pulls back OT services, because while B.B. had made some improvements, "very basic skills like pencil grip are not automatic for him – at least not in our home environment. It is a constant reminder for him on how to hold items to properly use/manipulate them. He has been behind with many of those basic skills, and he has made such progress. My/our concern is that by having OT as support or consult only, he will regress or not make further progress." (See Ex. 22 at USD000435).
- 512. Later, Ms. Prophet emailed Parents on February 7, 2022, to state that "I am sorry if we did not spend enough time discussing your concerns about OT at the last meeting, but I welcome a more in depth conversation about services," with Ms. Prophet asking to again meet the following week on February 17, 2022, to discuss OT services for B.B. (See Ex. 22 at USD000434).
- 513. On February 7, 2022, as part of her efforts to convince Parents to agree to end direct OT services at school, Ms. Prophet emailed Parents documents, including an article regarding pencil grasp, which included a photo of B.B. holding a pencil with a "fist" type grip; Ms. Prophet also wrote at the top of the article she sent that B.B. had "a lateral tripod grasp with pencil held vertical. It is not the 'ideal' dynamic trypod [sic] grasp, but it is a mature/functional grasp. It is functional for him because it is consistent, comfortable, allows for fine motor movements

- rather than whole arm movements and does not cause pain or fatigue.” (See Ex. 22 at USD000430-34).
514. No evidence was offered by the Districts substantiating that any testing was ever done on B.B. to see if this grasp caused him fatigue, nor how much he could write without becoming fatigued.
515. Ms. Koerperich testified that there were times when B.B.s’ hands got tired of writing and this had been told to her by Ms. Prophet, but Ms. Prophet did not share details on that point. (Tr. Vol. 4 at 767, ln. 22-25; 768, 1-21).
516. Ms. Koerperich further testified that Ms. Prophet never asked Ms. Koerperich to do any kind of evaluation of B.B. to see how much he could print with his hands before he got tired and fatigued. (Tr. Vol. 4 at 768, ln. 22-25; 769, 1).
517. The Districts has never shared with Parents any data regarding any measurement of B.B.s’ ability to write for longer periods of time. (Tr. Vol. 6 at 1326, ln. 24-25; 1327, 1-3).
518. The second document Ms. Prophet sent Parents on February 7, 2022, set forth three columns under the heading “Written Expression”; under Physical Skills, the document stated that “this is the Occupational therapist’s area of expertise,” and included items such as “Visual Processing,” “Strength,” “Dexterity,” “Visual Perception,” and “Visual Motor Skills.” (See Ex. 22 at USD000431).
519. The Parents contend that evidence and testimony at the hearing made clear B.B. has struggled with visual processing, strength, dexterity, visual perception, and visual motor skills throughout the time the Districts has sought to remove OT services from him.
520. Under the subheading “Executive Functioning,” the second document Ms. Prophet sent Parents on February 7, 2022, stated that this was “Brain based cognitive processes. All team members work on these skills. The Occupational therapist may be able to assist by providing recommendations for classroom strategies, accommodations, or supplementary aides,” including for “working memory,” “motivation,” “attention/focus,” “task initiation,” “work endurance,” “task completion,” “regulating emotions,” “self-control/impulse control,” “processing speed,” and “flexible/adaptable thinking.” (See Ex. 22 at USD000431).
521. The Parents contend that evidence presented at the hearing firmly established the Districts was not targeting executive functioning in B.B., even as of November 29, 2023.
522. In response to Ms. Prophet’s February 7, 2022, email, B.B.’s mother responded that B.B. does not grasp a pencil or pen at home in the same way depicted in the photo sent by Ms. Prophet; instead, B.B. grabs a pencil at the top, rather than the bottom. (See Ex. 22 at USD000432).
523. B.B.’s mother testified that almost immediately after Parents declined to agree to the District’s demand to remove direct occupational therapy services from B.B. after the February 1, 2022, IEP team meeting, the Districts insisted on another IEP team meeting to discuss removing direct OT services. (Tr. Vol. 6 at 1235, ln. 20-25; 1236, 1-20; see also Ex. 24).

524. The Districts indeed scheduled another IEP team meeting for February 17, 2022, only sixteen days after the last IEP team meeting. (See Ex. 24 at USD000565-68).
525. Ms. Prophet agreed that the Districts wanted to hold another IEP team meeting quickly after February 1, 2022, in order to again discuss removing direct OT services from B.B., with the next meeting happening on February 17, 2022; Ms. Prophet agreed that there were a lot of meetings scheduled by the Districts regarding the efforts to convince Parents to agree to remove occupational therapy services from B.B., including three within a three month period in early 2022. (Tr. Vol. 2 at 400, ln. 22-25; 401, 1-12; 412, 9-25; 413, 1-17; see also Exs. 24 and 32).
526. B.B.'s father testified that he was told by Ms. Koerperich in February that if he did not sign special education-related documents, possibly relating to the District's efforts to remove direct occupational therapy services from B.B., that Ms. Koerperich would be open to B.B. being put into the general education population, meaning denied special education, which stunned B.B.'s father. (Tr. Vol. 6 at 1561, ln. 19-25; 1562, ln 1-18; 1565, 24-25; 1568, 1-23; 1569, 4-12).
527. The Conference Summary for the February 17, 2022, IEP team meeting called by the Districts to try to convince Parents to agree to eliminate direct OT services included a "Description of Conference Discussion" that began by admitting "B.B. still has some fine motor concerns but as a related service provider he should be in the classroom as much as possible and getting most of the skills while he is in his classroom...He still needs to work on the skills and reminders that will be provided in the classroom." (See Ex. 24 at USD000569).
528. B.B.'s mother confirmed that the commentary that "B.B. still has some fine motor concerns" was stated at the meeting by Districts personnel and that Parents were in agreement with moving from pull-out OT services to in-class OT services for B.B. as a next sequential step, but given that the Districts acknowledged B.B. still had some fine motor concerns, including writing and spatial awareness issues, it did not make sense to seek to remove direct OT services from B.B. (Tr. Vol. 6 at 1236, ln. 23-25; 1237, 1-25; 1238, 1-20; see also Ex. 24 at USD000569).
529. The Conference Summary for the February 17, 2022, IEP team meeting prepared by the Districts makes no mention of B.B.'s sensory needs, including spatial awareness, visual perception, and whether these had any impact on the District's view of whether B.B. needed further OT services. (Tr. Vol. 6 at 1238, ln. 21-25; 1238, 1; see also Ex. 24 at USD000569-70).
530. Parents still refused to consent to remove direct OT services from B.B. after the February 17, 2022, IEP team meeting because it was not in their son's best interests. (Tr. Vol. 6 at 1239, ln. 15-19).
531. Ms. Prophet wrote in February 2022 while trying to remove direct occupational therapy services from B.B., that B.B.'s grasp of writing utensils is consistent across settings in school and that he had a lateral tripod grasp with his pencil held vertical, and that this was not the ideal dynamic tripod grasp but was a

- “mature and functional” grasp, and did not cause him pain and fatigue. (Tr. Vol. 1 at 141, In. 5-15; see also Ex. 1017 at USD000826).
532. Ms. Prophet further testified at the hearing that the pencil grasp used by B.B. is not the ideal grip. (Tr. Vol. 2 at 300, In. 13-14; 372, 11-24; 394, 18-25; 395, 1-5; see also Ex. 22).
533. Ms. Prophet testified that B.B. still uses this non-ideal pencil grasp. (Tr. Vol. 2 at 396, In. 15-17; 400, 9-16; see also Ex. 23).
534. Ms. Prophet agreed B.B. cannot effectively use the ideal “dynamic tripod grasp” that has historically been taught to students. (Tr. Vol. 2 at 398, In. 3-25).
535. When the Districts sought to remove OT services in February 2022 Parents objected and noted that B.B.s’ pencil grasp is not automatic in the home environment, that he needs reminders for how to hold and manipulate items. (Tr. Vol. 1 at 137, In. 25; 138, 1-25; 139, 1-3; see also Ex. 1017).
536. Ms. Prophet claimed that it was not her role to address how B.B. holds his pencil at home, instead claiming that her role “is to make sure he’s able to participate and access his curriculum at school.” (Tr. Vol. 1 at 140, In. 24-25; 141, 1-4).
537. The Parents suggest this view ignores that schoolwork can and will need to be completed by B.B. at his home, and further reflects the lack of consideration by the Districts of the need for automaticity in B.B.s’ writing utensil grasp.
538. The Parents contend that despite Ms. Prophet’s statement at the hearing that what B.B. does at home is not her concern, she nonetheless went out of her way to create several videos of B.B., without Parents’ knowledge, in which she attempted to refute Parents’ claims about B.B.s’ lack of motor skills in activities of daily living at home, including placing stamps on an envelope, opening containers, and washing his hands. (Tr. Vol. 1 at 210, In. 14-25; 213, 1-13; see also Exs. 1063-1066).
539. Ms. Prophet agreed that B.B.’s mother emailed the Districts after the February 2022 IEP team meeting at which the Districts sought to remove direct occupational therapy services, with B.B.’s mother writing that basic skills for B.B. like pencil grip are not automatic for him, that he grabbed writing utensils at the top of the pencil rather than the bottom, that he has to be constantly reminded how to hold items properly and manipulate them, and that by removing direct occupational therapy services, he would regress or not make further progress, and this email led the principal at B.B.s’ school to agree to not change OT services for B.B. in the short-term. (Tr. Vol. 2 at 391, In. 20-25; 392, 1-25; see also Ex. 22).
540. Later, Districts personnel stated in internal emails circa February 2022 regarding the proposal to remove direct OT services, that “there was enough out of whack on our part in trying to explain things to Mom, we felt it was safest to put a hold on things for the moment.” (Tr. Vol. 2 at 405, In. 10-16; see also Ex. 26 at USD0001267).
541. On March 10, 2022, Mary Gardner emailed Lynette Lorensen and Ms. Prophet to note that Principal Munsell had been visiting with B.B.’s mother, that B.B.’s

mother was confused by the new OT service proposal, and that Ms. Munsell and Ms. Gardner had difficulties explaining things to B.B.'s mother, so the OT services would remain the same as set forth in the February 9, 2021 IEP. (See Ex. 25).

542. In subsequent emails in this chain, Ms. Gardner stated that "there was enough out of whack on our part in trying to explain things to mom, that we felt it was safest to put a hold on things for the moment," then stated can still propose to have a meeting with Karen "after we clean things up," then stated "we may want to reconsider how we make the change to make it easier for parents, by perhaps keeping it weekly and decreasing the amount, rather than throwing in the monthly change as well as moving it to every other week; Ms. Lorensen responded to note that she had talked with Ms. Prophet who was "ok with 15 minutes a week, if mom is ok with that," and Ms. Gardner responded to note that the first thing the Districts needed to do was correct the IEP to reflect the true amount of OT services being provided (30 minutes per week) and then suggested that if a change were to still be sought, to make it one that's less than 25% so the Districts can proceed at that time if it needed to do so without Parents' consent without the need for more meetings on the same issue." (See Ex. 26).
543. In a later continuation of this email chain, Ms. Prophet responded to note in part that "if Karen is ok with the change to 15 min so am I...I know Karen is unhappy but I still maintain he needs a decrease in services. I have increased and decreased services over the years and she has never been happy. I believe that she struggles with change, but B.B. receiving weekly pull out OT every year to infinity has never been the intent...change will need to happen sometime. Decreasing by 24% does not require her permission, so that is what I recommended. I prefer the 46 min every 2 weeks rather than 23 min every week because I thought it would ensure that they would be doing some writing while I was in the Sped classroom. I would also be willing to consult more often (monthly instead of quarterly)." (See Ex. 28).
544. The Districts prepared a March 11, 2022, IEP Amendment for B.B. that was virtually identical to the February 1, 2022, IEP it developed, but included a note regarding the attempt to amend the IEP between meetings, referenced the recommendation to eliminate direct OT services, noted that services would remain unchanged until the IEP team meeting, but still omitted all Parent Concerns, despite B.B.'s mother clearly making her concerns known about this proposed change multiple times since February 1, 2022, including multiple times in writing. (See Ex. 29).
545. Ms. Koerperich testified that she completed a quarterly Progress Report for B.B. in March 2022 that stated for his Social Emotional goal, that during instruction time, B.B. on average required four to ten reminders and prompts within 25 minutes, however, Ms. Koerperich was entirely unable to explain when and how these figures were measured and determined; when asked when the

measurements were taken, what was measured, what was said, and whether the Progress Report included any of that information, Ms. Koerperich responded, "Not to detail. It says the date when it was given, and so just kind of based off of that it was in that quarter just the different observations." (Tr. Vol. 5 at 924, In. 24-25; 925, 1-17; see also Ex. 85).

- 546. When pressed that there was no information in the Progress Report about when B.B. was assessed on his Social Emotional goal for the quarter, Ms. Koerperich agreed such information was not in the Progress Report. (Tr. Vol. 5 at 926, In. 22-25; see also Ex. 85).
- 547. Ms. Koerperich testified that occupational therapist Ms. Prophet said that B.B.'s cognitive issues relating to writing would be worked on by his special education teacher, Ms. Koerperich. (Tr. Vol. 4 at 743, In. 3-6).
- 548. Ms. Koerperich testified that as of April 2022 when the Districts stated that B.B. could receive all of his needed support, instruction, modifications, and supplementary aids relating to his demonstrated cognitive issues related to writing via his IEP by his special education teacher, that she was still working on her special education certificate at that time. (Tr. Vol. 4 at 742, In. 14-25; 743, 1-2).

viii. Parents' Position Regarding April 2022 IEP Meeting and Districts' Proposed Unilateral Reduction in OT Services.

- 549. The Districts scheduled another IEP team meeting for April 6, 2022, in its effort to push Parents into agreeing to eliminate direct OT services; the Districts scheduled this IEP team meeting at parent teacher conferences. (See Ex. 32 at USD000577).
- 550. B.B.'s mother testified that the Districts called yet another IEP team meeting on April 29, 2022, to again press Parents to agree to remove direct OT services from B.B., and this was either the third or fourth IEP team meeting called by the Districts on this point in less than three months; B.B.'s mother said the Districts "couldn't take no for an answer." (Tr. Vol. 6 at 1243, In. 20-25; 1244, 1-25; 1245, 1-9).
- 551. B.B.'s mother said the Districts calling these repetitive IEP team meetings made her feel harassed and that her words and input as a member of the IEP team for her son were not be respected and Parents were not being listened to; Parents would say "we are uncomfortable with this and the response would be let's meet again to talk about it. And it was very frustrating because I felt like we had already discussed and we had already said no and why would we need to keep discussing it if the answer was already no. it just felt like completely we were being harassed or maybe an effort was made to just wear us down until we finally said do whatever you want. But...I didn't feel like we were being respected or taken into account." (Tr. Vol. 6 at 1245, In. 10-25; 1246, 1-2).
- 552. On April 6, 2022, prior to the IEP team meeting, Ms. Gardner and Ms. Prophet emailed each other, with Ms. Gardner stating: "Either way, we've got this!" and Ms. Prophet stating: "I appreciate the back up." (See Ex. 33).
- 553. The Parents urge the Hearing Officer to find that this appears to be the District's

- members of the IEP team meeting taking a clear stance against Parents and noting that the decision to reduce services by less than 25% was predetermined before the April 6, 2022, IEP team meeting, meaning Parents' concerns were not to be fully considered at that meeting, nor were Parents truly allowed to be part of the IEP team nor fully participate in the decision-making process for B.B.s' IEP.
554. The Conference Summary for the April 6, 2022, IEP team meeting contains a Description of Conference Discussion that begins by noting the IEP team meeting happened at the parent teacher conference; it then immediately stated that Ms. Prophet recommended changing OT services to consultation, then stating "B.B. still has some fine motor concerns"; it says Ms. Prophet told Parents that change can be hard, but the changes are based on his needs. (See Ex. 32 at USD000580).
555. It was not explained how removing direct OT services was based on B.B.s' needs when he still had "some fine motor concerns" at the time the Districts was trying to effect this reduction in services.
556. The Conference Summary for the April 6, 2022, IEP team meeting omitted that Ms. Prophet told Parents at the meeting that services would be reduced by 25% whether or not Parents agreed; it also omits that B.B.'s mother asked the Districts to set forth in writing in a formal letter documenting and laying out the reasons the OT wished to eliminate OT services, as well as why the Districts wished to reduce services by 25%. (See Ex. 32 at USD000581-82).
557. On April 29, 2022, the Districts sent a Prior Written Notice to Parents setting forth that the Districts was indeed moving forward with a unilateral reduction in OT services by 25% and that the Districts was refusing B.B.'s mother's request for a letter detailing the reasons why the Districts was seeking to eliminate OT services and why the Districts was seeking to reduce services by 25%; the Districts stated in the Prior Written Notice that the "reasons for recommending a change in services from direct to consult are outlined in the motor section and the of the [sic] Prior written notice for ID, change and request for consent documents dated 2/1/22"; however, recall that Ms. Prophet emailed Parents on February 7, 2022, and apologized if the reasoning for the District's efforts to reduce OT services was not adequately explained to Parents. (See Ex. 32 at USD000583-87; Ex. 22 at USD000434).
558. The April 29, 2022, Prior Written Notice stated that B.B. "demonstrates functional motor skills for classroom participation in handwriting instruction and practice. He no longer requires specialized instruction from occupational therapy to meet these needs. He does require modifications and accommodations, and it is recommended that the Occupational therapist provide consultation with classroom and special education teachers to address these needs. B.B. continues to demonstrate cognitive and academic issues related to writing, which are addressed by his teachers as part of his IEP through classroom support, instruction, modifications/accommodations, supplementary aids, and a written language goal. Parents do not give permission to change

- services from direct to consult. Because B.B. is demonstrating appropriate motor skills for the classroom, a reduction in services is proposed.” (See Ex. 32 at USD000585).
559. The Parents contend this comment represented a dramatic shift from the Districts from prior IEPs, where OT worked directly with B.B. on his handwriting, legibility, and other aspects of writing; it also made clear that the only focus by the Districts was on B.B.s’ alleged motor skills to write in the classroom, while ignoring the host of other issues impacting his writing and classroom progress, including his visual and spatial perception issues, which Ms. Prophet herself had admitted was the province of OT to improve; similarly, this Prior Written Notice from the Districts provided Parents with no plan for what the Districts was going to do to improve B.B.s’ executive functioning and independence—Parents were told the teacher would handle that, and that was it.
560. In short, the Parents suggest when the Districts unilaterally reduced direct occupational therapy services for B.B. in April 2022 the Prior Written Notice announcing this change did not mention anything about legibility of his handwriting, nor the school-based occupational therapists’ prior work with B.B. to improve the legibility of his handwriting. (Tr. Vol. 2 at 418, In. 5-16; see also Ex. 35).
561. The Districts sent Parents an Amended IEP for B.B. dated April 29, 2022, that reduced direct OT services by slightly under 25%, to 23 minutes per week; all other aspects of the IEP were identical or virtually identical to the February 1, 2022, IEP that the Districts had created; incredibly, Parent Concerns were still omitted from this Amended IEP, despite Parents making their concerns abundantly clear to the Districts about this change numerous times. (See Ex. 34).
562. B.B.’s mother confirmed that the Districts unilaterally reduced OT services for B.B. by just under 25 percent circa April 29, 2022. (Tr. Vol. 6 at 1248, In. 2-13; see also Ex. 34).
563. The Districts unilaterally reduced direct occupational therapy services from 30 minutes a week to 23 minutes a week in April 2022 in order to circumvent Parents’ lack of consent to removing direct occupational therapy services. (Tr. Vol. 1 at 150, In. 20-25; 151, 1-25; 152, 1-25; 153, 1-25, 154, 1-2; see also Exs. 35, 1024 and 1025).
564. Ms. Prophet testified that as of April 2022 when the Districts was yet again trying to remove direct occupational therapy services, that B.B. did not have a need for therapy in order to be able to complete writing tasks. (Tr. Vol. 1 at 149, In. 16-18; 150, 10-13).
565. B.B.’s mother noted the contradiction between the Districts including an accommodation in B.B.s’ IEP at this time that whenever he was given an independent writing assignment that required writing text beyond a single word, difficulty could be lowered by providing a near point model or multiple choice or keyboarding device for the length of the written assignment, alongside the

District's repetitive efforts to remove direct OT services; B.B.'s mother testified these efforts made no sense if the Districts thought B.B. needed accommodation to write beyond a single word. (Tr. Vol. 6 at 1248, ln. 14-25; 1249, 1-9; see also Ex. 34).

566. The Parent Concern section of the April 29, 2022, IEP Amendment created by the Districts was left blank, even though Parents had expressed concerns about the District's efforts to reduce and eliminate direct OT services for B.B. (Tr. Vol. 6 at 1249, ln. 10-25; 1250, 1-17; see also Ex. 34).

ix. Parents' Position Regarding Start of 2022-2023 School Year

567. B.B.'s mother testified that the Districts concealed from her the regression in handwriting that B.B. experienced over the Summer of 2022 when he went three months without school OT services, such that upon his return to school in Fall 2022 his handwriting was "illegible" and poor pencil pressure, as reflected in the District's own OT service logs, which B.B.'s mother noted that were not provided to her until this due process hearing. (Tr. Vol. 6 at 1252, ln. 11-25; 1253, 1-19; 1271, 20-25; 1272, 1-4; see also Ex. 37 at USD000020-21).
568. In light of the comments in Ms. Prophet's service logs for B.B. from the start of the Fall 2022 term, in which Ms. Prophet commented about B.B.s' handwriting being illegible and his very light pencil pressure, B.B.'s mother testified that she feels Ms. Prophet and Ms. Gardner "were lying" to her when they stated at the October 27, 2022, IEP team meeting, discussed *infra*, that the Districts waited nine weeks at the start of the Fall 2022 semester to make sure something didn't happen over the summer, that B.B. had not regressed, and that the quarter started well. (Tr. Vol. 6 at 1271, ln. 9-19; see also Ex. 37 at USD000020-21).
569. Despite this clear data showing regression by B.B. without OT services over Summer 2022 at the start of the Fall 2022 term the Districts almost immediately once again began requesting IEP team meetings seeking to remove direct OT services from B.B. (Tr. Vol. 6 at 1253, ln. 25; 1254, 1-9; see also Ex. 37 at USD000020-21 and Ex. 38).
570. On September 9, 2022, the Districts produced and sent a Notice of Meeting for an IEP team meeting to take place on September 14, 2022, which was less than the ten days' notice requirement found in state law; the Notice, which was sent home in B.B.s' backpack, stated "Possible IEP amendment to decrease OT services by less than 25% if parents are not in agreement with change," a clear attempt to strongarm Parents into agreeing to what the Districts wanted. (See Ex. 38 at USD000608).
571. B.B.'s mother testified that she was unaware that the Districts was seeking to hold another IEP team meeting at parent teacher conferences on September 14, 2022, and she was very upset that the Districts was yet again seeking to pressure Parents to agree to remove OT services, this time by "hijacking" a parent/teacher conference; B.B.'s mother testified that her feeling was "how many times do we have to say no," and pointed out that the Districts did not

- provide adequate notice for the meeting and B.B.'s mother had no idea what was happening until she walked into the parent-teacher conference. (Tr. Vol. 6 at 1254, ln. 4-25; 1255, 1-19; see also Ex. 38).
572. The untimely notice for the September 14, 2022, IEP team meeting explicitly threatened Parents with another reduction in OT services by less than 25 percent "if parents are not in agreement with change" to consultation services for their son. (Tr. Vol. 6 at 1256, ln. 16-25; 1257, 1-2; see also Ex. 38).
573. After Parents objected to holding an IEP team meeting at the September 14, 2022, parent-teacher conference, the Districts sent out several subsequent Notices of Meetings with new proposed dates; the Parents contend it is noteworthy that the Districts again used the same threatening language in the initial renewed Notice but then apparently thought better of using threatening language in subsequent Notices and phased that out. (See Ex. 39).
574. Ms. Prophet testified that near the start of the 2022-2023 academic year, the Districts attempted to have an IEP team meeting once again regarding occupational therapy services at a parent-teacher conference for B.B., but the Districts did not send out the legally required ten-days' notice and Parents objected to the District's efforts to hold this meeting at the parent-teacher conference. (Tr. Vol. 2 at 449, ln. 15-25; 450, 1-25; 451, 1-2; see also Ex. 40).
575. In September 2022 after the Districts sought to hold an IEP team meeting for B.B. at a parent-teacher conference without giving the requisite ten-days' notice, which Parents refused to waive, Mary Gardner, the Special Education Coordinator at Heusner Elementary, emailed Ms. Prophet, the school principal Ms. Munsell, and B.B.'s special education teacher, Ms. Koerperich, and stated that Parents "really aren't being reasonable in my opinion which is disappointing. It will be a fine line between trying to work with their concerns and still make sure we are doing what is truly best for B.B." (Tr. Vol. 3 at 646, ln. 19-25; 647, 1-25; 648, 1-8; see also Ex. 40 at USD0001809).
576. Parents contend that Ms. Gardner's email clearly sets forth the District's view that it knows what is best for B.B. and that Parents disagreeing with the District's position, despite Parents observing ongoing significant problems with their son's motor skills and handwriting, was somehow "unreasonable," plainly revealing the District's view of Parents as not full members of the IEP team for their own son.
577. This Parents suggest this email from Ms. Gardner was in response to B.B.'s mother's email to Districts personnel objecting to the District's renewed attempt to reduce OT services for B.B. to 10 minutes per month consult; B.B.'s mother stated that Parents were agreeable to the minor change discussed previously, and that if a document were sent home reflecting that minor change, Parents would "gladly sign it," but that B.B.'s mother was dealing with significant health problems, and that B.B.'s IEP was adjusted at the end of the last school year and it was then only nine weeks into the current school year, so making changes seemed premature, and that due to her health situation, she would be unable to meet until late October 2022 and that she would like to see all

- recommendations and explanations of potential changes in writing. (See Ex. 40 at USD001810).
578. Later in this same internal Districts email chain, on September 23, 2022, Ms. Prophet stated in relevant part that she believes that Parents “fully understand what I am recommending and why” and that the family was “attempting to avoid further discussion in an attempt to avoid making a change. B.B. motor skills are functional for classroom participation. He does need consult services to address accommodations. He continues to demonstrate academic written language needs.” (See Ex. 40 at USD001812-13).
579. Ms. Prophet agreed that the Districts sought to hold another meeting with Parents at the start of the 2022-2023 school year in order to again seek to eliminate direct occupational therapy services; Ms. Prophet further agreed that some notices of meetings were sent in this timeframe in which the Districts stated that if Parents did not agree to eliminating direct occupational therapy services then the Districts would again unilaterally reduce services by just less than 25%, for the second time in under four school months. (Tr. Vol. 2 at 446, In. 14-25; 447, 1-21; 448, 2-25; 449, 1-7; see also Exs. 38 and 39).
580. Parents suggest that Ms. Gardner agreed, that despite a lengthy email chain between Districts personnel in September 2022 about seeking to convince Parents to eliminate direct OT services for B.B., in which Ms. Prophet stated that Parents were attempting to avoid further discussion in an attempt to avoid making a change, not once in that exchange did Ms. Prophet make any reference to asking Parents why they did not wish to remove direct occupational therapy services from their son. (Tr. Vol. 3 at 651, In. 7-23; see also Ex. 40).
581. After Parents indicated they were unavailable to meet at the District’s preferred dates and times, the Principal of Heusner Elementary School, Ms. Munsell, emailed parents on September 29, 2022, to state that the Districts was simply going to “plan on going ahead with the meeting. If you would like to request an additional meeting at a later date, we would be happy to accommodate that. We will provide you with the Zoom link in case circumstances change”; B.B.’s mother responded to state that she was “disappointed that you would hold a meeting when we’ve expressly told you we are not available,” and B.B.’s mother then suggested a new date in late October 2022 in response to the threat from the Districts to hold the meeting without Parents. (Tr. Vol. 2 at 453, In. 3-24; see also Ex. 119 at USD001866-67).
582. Before meeting with Parents in October 2022 yet again, the Districts crafted its own proposed amended IEP that sought to eliminate direct occupational therapy services for B.B., without consulting with Parents; some of these changes were made by Ms. Gardner. (Tr. Vol. 3 at 654, In. 1-13; 655, 12-19; see also Ex. 42).
583. After October 27, 2022, was chosen as the next IEP team meeting to discuss the ongoing attempts by the Districts to eliminate direct OT services for B.B., on October 6, 2022, Ms. Prophet emailed Ms. Gardner to discuss that she was

making a Word document with possible changes to the IEP for the upcoming meeting, and further, to note that in B.B.'s mother's email, she had mentioned "wanting to have recommendations and explanations in writing" so Ms. Prophet was wondering if she should send the draft IEP to Parents before the meeting and that she was happy to do so; in response, Ms. Gardner stated that the Districts has "no obligation to send a draft prior to the meeting, and I probably would not since she was so adamant she did not wish to discuss this outside of a meeting," completely ignoring B.B.'s mother's explicit request for all recommendations and explanations to be furnished in writing. (See Ex. 42 at USD0001914-15; Tr. Vol. 3 at 654, ln. 23-25; 655, 1-11; 655, 20-25; 656, 1-25; 657, 1-3).

584. The Parents contend that the Districts threatened to unilaterally reduce direct occupational therapy services by less than 25%, from 23 to 18 minutes per week, again at the October 27, 2022, IEP team meeting that the Districts called in its efforts to remove direct occupational therapy services from B.B. (See Exs. 1032 and 1033).
585. Ms. Koerperich testified that less than two weeks before the October 27, 2022, IEP team meeting the Districts called to insist that direct occupational therapy services be removed from B.B., she completed a quarterly Progress Report for B.B. regarding his Written Language goal on October 14, 2022, and in this, she wrote that it was "not often that he was able to write his letters correctly without needing reminders." (Tr. Vol. 5 at 930, ln. 3-25; 931, 1-9' see also Ex. 85).

x. Parents' Position Regarding October 27, 2022, IEP Team Meeting

586. Another IEP team meeting did ultimately take place on October 27, 2022; Ms. Prophet agreed during her testimony that at this meeting she stated that B.B. needs more prompts than we want him to need and that's something we've been working on the whole time he's been in school; that B.B. needs reminders if you look at where he is cognitively he's somebody that needs help with those executive functioning skills in order to complete tasks at school including writing tasks, and he needs more reminders than most kids; and that Mary Gardner, Districts Special Education Coordinator, stated at this meeting that if Parents went with the District's recommendation of moving to only occupational therapy consultation for B.B. rather than direct services, then she did not foresee that changing again very dramatically because that's a pretty long-term service that the Districts foresaw B.B. needing in terms of consult services, yet the Districts is now in due process seeking to remove all occupational therapy services from B.B. (Tr. Vol. 2 at 454:12-18, 456:5-12, 456:24-457:18, 477:13-478:2, 480:2-12; see also Exs. 43 and 123).
587. During her testimony, Ms. Gardner confirmed that she told Parents at the October 27, 2022, IEP team meeting that if Parents agreed to Ms. Prophet's recommendation of going to a "consult-only" model of occupational therapy services, meaning eliminating direct occupational therapy services, then she did

- not foresee that changing again very dramatically any time soon because that's a pretty long-term service that the Districts foresaw B.B. needing. (Tr. Vol. 3 at 663, ln. 16-25; 664, 1-12; see also Ex. 123).
588. Ms. Gardner confirmed that only three months later, the Districts sought to remove all occupational therapy services from B.B., including any consult-model services. (Tr. Vol. 3 at 664, ln. 18-25; 665, 1-3).
589. Ms. Prophet testified that she stated at the October 27, 2022, IEP team meeting that B.B.s' handwriting was not perfect, that when he did handwriting in rote fashion he did not have to think and spell, that that was not an OT thing, but that his teacher could work on it with him, and that Ms. Prophet's focus was on motor skills because that's the area of specialty that the teachers don't have, but that B.B.s' teacher would be working on the executive functioning skills to think, spell, and write at the same time. (Tr. Vol. 3 at 480, ln. 24-25; 481, 1-17; see also Ex. 123).
590. The Parents contend that despite making that statement, Ms. Prophet testified at the hearing that she did not know what the teacher's training was to work on those executive functioning skills. (Tr. Vol. 3 at 481, ln. 18-23).
591. Ms. Prophet testified that she stated at the October 27, 2022, IEP team meeting that B.B. still did not understand that he should not always write to fit the size of the paper he was given. (Tr. Vol. 479, ln. 12-16; see also Ex. 123).
592. Ms. Prophet testified that she stated at the October 27, 2022, IEP team meeting that the plan to address B.B.s' handwriting, the sizing of his letters, consisted of the accommodations in his IEP, including prompts. (Tr. Vol. 3 at 479, ln. 20-25; 480, 1).
593. Ms. Koerperich testified that at the October 27, 2022, IEP team meeting, that Ms. Prophet stated that providing B.B. reminders was necessary but was not specialized instruction and could be done by anybody, that prompting him and reminding him regarding his writing is not specialized instruction, and that teaching B.B. how to think about what to say and improve his written language is a separate section of the IEP that Ms. Koerperich deals with. (Tr. Vol. 4 at 745, ln. 11-25; 746, 1-15; see also Ex. 123).
594. Ms. Koerperich confirmed that the plan then was for B.B. to receive the same basic instruction in writing as the rest of his peers in her class. (Tr. Vol. 4 at 746, ln. 22-25).
595. Ms. Koerperich further testified that at the October 27, 2022, IEP team meeting, Ms. Prophet told Parents that B.B. does not always have the desire to write neatly, but that is something they will work on in Ms. Koerperich's class. (Tr. Vol. 4 at 747, ln. 1-8; see also Ex. 123).
596. When asked about what training she had to work with students to instill the desire to automatically write neatly, Ms. Koerperich demurred and did not describe her training to do that work; instead, Ms. Koerperich described her approach to seeking to instill the desire to automatically write neatly, including things like motivating the students by offering them stickers and verbal

- affirmation, which she then confirmed was not unique to B.B. and instead was provided to all of her students. (Tr. Vol. 4 at 747, ln. 9-25; 748, 1-2).
597. Ms. Koerperich confirmed that B.B. writes to fill a blank page he is given—“without giving the guidelines or visuals, he will write however big he would like,” with Ms. Koerperich confirming that this problem was a spatial awareness issue for B.B. (Tr. Vol. 4 at 748, ln. 16-24; 750, 18-22).
598. Ms. Koerperich testified that B.B. writing not to fill the space, automatically and on his own and without prompts, is an executive functioning skill. (Tr. Vol. 4 at 750, ln. 23-25, 751, 1-8).
599. When asked what specialized training she has to work on B.B.s’ spatial awareness issues, Ms. Koerperich testified that she had “been working with Kristin [Prophet] and she’s been helping me do some of that background and I have also been doing my own research seeing what I can do to help him”; when further asked what research she had done, Ms. Koerperich responded “a lot of times looking up videos or other teacher recommendations.” (Tr. Vol. 4 at 751, ln. 9-17).
600. Ms. Koerperich testified that B.B. writes very quickly and with little regard to the details of writing such as spacing and size, and issues he has with attention and written language issues, speed, focus, composition, the things that impact his writing independence, were executive functioning and multiprocessing issues, and that at the October 27, 2022, IEP team meeting, Ms. Prophet stated to Parents that Ms. Koerperich would be the one working on those items moving forward; later, Ms. Koerperich again confirmed that Ms. Prophet told Parents at the October 27, 2022, IEP team meeting that Ms. Koerperich would be working with B.B. on the executive functioning skills of thinking, spelling, and writing at the same time. (Tr. Vol. 4 at 752, ln. 1-22; 756, 4-15).
601. When asked what specialized instruction B.B. was receiving for the multiprocessing problems named by Ms. Prophet at the October 27, 2022, IEP team meeting as being the problem for B.B. writing independently, Ms. Koerperich responded that “a lot of it” was using visual paper, that B.B. had issues with capitalization and adding detail to his writing, so now they were practicing putting it on paper and sounding out words and practicing spelling, which is what they’ve been working on. (Tr. Vol. 4 at 752, ln. 23-25; 753, 1-15).
602. Ms. Koerperich testified that there is nothing in the District’s proposed October 27, 2022, IEP that addresses what the Districts is going to do to work on B.B.s’ executive functioning or multiprocessing issues. (Tr. Vol. 4 at 761, ln. 21-25; 762, 1-2; see also Ex. 46).
603. The Parents urge that the Hearing Officer find that the Districts is not offering any specialized instruction for B.B. to address the multiprocessing issues that the Districts itself has repeatedly claimed is the root cause of B.B.s’ problems with handwriting and written language.
604. Ms. Koerperich agreed that as of October 27, 2022, when the Districts had been trying to remove direct OT services from B.B. for eight months, that B.B. could

- not even automatically use his left hand when typing on a keyboard. (Tr. Vol. 4 at 753, ln. 16-25; 754, 1-8).
605. Ms. Koerperich confirmed that B.B. receives the exact same reminders and prompts as everyone else in his group in the special education class; that the prompts he receives are not individual to him; and that B.B. receiving prompts and reminders to initiate and complete his tasks and follow writing rules is not specialized instruction and anyone can do it. (Tr. Vol. 4 at 759, ln. 13-25; 760, 1-25; 716, 1-9).
606. The Parents urge that the Hearing Officer find that this is in contradiction to what Parents were told by Ms. Prophet repeatedly as she sought to remove occupational therapy services from B.B.—that B.B. would continue to receive specialized instruction in written language and that a large part of that specialized instruction would be the prompts from Ms. Koerperich.
607. Ms. Gardner agreed that the Districts did not ask Parents at the October 27, 2022, IEP team meeting why they were not in agreement with the Districts seeking to remove direct occupational therapy services for their son. (Tr. Vol. 3 at 666, ln. 8-25; 667, 1-25; 668, 1-11; see also Ex. 123).
608. The Parents contend as noted supra, Ms. Gardner testified that she stated at the October 27, 2022, IEP team meeting that the Districts waited about nine weeks to make sure something did not happen over the summer with B.B.s' motor skills, that he had not regressed, and the first quarter of that school year started well; however, Ms. Gardner admitted that when she made that assertion, she had not read the entry from Ms. Prophet's service log for B.B. from August 23, 2022, which was the first occupational therapy session B.B. had had in three months and which showed that his writing was illegible, that his letters were on top of each other and all the same size, not sitting on the lines, that he copied a sentence from the board without looking at his paper, that he required reminders to space between words, and that he required prompts to write with the correct pressure because without reminders his pressure was very light. (Tr. Vol. 3 at 669, ln. 15-25; 670, 1-25; 671, 1-12; see also Exs. 37 and 123).
609. The Parents further contend that later, Ms. Gardner testified that when trying to determine whether or there was regression in a student's skills, the Districts will "certainly [] pay attention over summer periods to see if a student maintains their progress when they come back or if they've regressed significantly." (Tr. Vol. 5 at 1058, ln. 9-25; 1059, 1-12).
610. The Parents suggest that despite the clear documented history of B.B.s' regression without occupational therapy over the summer of 2022 and her own testimony regarding the Districts looking to see if a student regresses significantly over a summer break, Ms. Gardner nonetheless testified that she still to this day believes B.B. did not regress over that summer of 2022 without occupational therapy services at school and that he started that quarter well. (Tr. Vol. 4 at 673, ln. 4-9).
611. At that October 27, 2022, IEP team meeting, B.B.'s mother presented samples of

- B.B.s' handwriting and compared them to the samples chosen by Ms. Prophet, and those samples brought by B.B.'s mother showed significantly larger handwriting and B.B.'s mother described B.B.s' handwriting as a "disaster" and still a concern; B.B.'s mother also expressed concerns about the quality of B.B.s' hygiene, including hand washing. (Tr. Vol. 2 at 459, ln. 2-25; 460, 1-11; 460, 17-20; see also Ex. 45).
612. Ms. Gardner agreed that at the October 27, 2022, IEP team meeting, B.B.'s mother brought samples of B.B.s' handwriting and that they showed very poor handwriting by B.B. (Tr. Vol. 3 at 676, ln. 1-13).
613. B.B.'s mother testified that at the October 27, 2022, IEP team meeting, that Ms. Prophet brought samples of B.B.s' handwriting, but did not show nor mention the "illegible handwriting" he had done on August 23, 2022, after a three month break from school OT, as was reflected in her own service log. (Tr. Vol. 6 at 1258, ln. 2-21; see also Ex. 123).
614. B.B.'s mother testified that neither Ms. Prophet nor anyone with the Districts ever gave any objective standard for legibility beyond whether the teacher or occupational therapist could read it, nor did Ms. Prophet ever state whether she had used any standard for judging the legibility of B.B.s' handwriting beyond whether she herself could read it. (Tr. Vol. 6 at 1259, ln. 9-17).
615. B.B.'s mother testified that the October 27, 2022, IEP team meeting, there was significant discussion about B.B.s' adaptive behavior and daily living skills, including proper cleaning after toileting, and the District's assertions that B.B. is indeed proficient and independent in those areas is not accurate, as during that time, B.B. had sizable pieces of fecal matter in his underwear 50 percent of the time, which was not age appropriate. (Tr. Vol. 6 at 1259, ln. 18-25; 1260, 1-25; 1261, 1-21).
616. Parents contend that despite B.B.'s mother raising the toileting issues at the October 27, 2022, IEP team meeting, and despite occupational therapist Ms. Prophet agreeing that B.B.s' toileting issues could be a sensory issue, she only offered to send a social story home with B.B. despite stating that B.B. "is somebody that's going to need help with those executive functioning skills," nor did Ms. Prophet offer to do any occupational therapy with B.B. on that sensory issue or executive functioning deficits that could be causing his toileting problems. (Tr. Vol. 6 at 1259, ln. 18-25; 1260, ln. 1-25; 1261, 1-25; 1262, 1-16).
617. When asked at the October 27, 2022, IEP team meeting if B.B. was having "poop situations" at school, Ms. Prophet replied, "Maybe, I mean, you know, we're not investigating that." (Tr. Vol. 6 at 1263, ln. 5-10).
618. B.B.'s mother testified that when she was told by Ms. Gardner at the October 27, 2022, IEP team meeting that the Districts was going to keep changing and reducing these services every chance we get, this made B.B.'s mother feel harassed. (Tr. Vol. 6 at 1267, ln. 23-25; 1268, 1-6).
619. B.B.'s mother testified that she felt directly lied to when, at the January 25, 2023, IEP team meeting (discussed infra), the Districts stated it was now seeking to

- remove all OT services from B.B., not just direct services, as this came only three months after Ms. Gardner told Parents at the October 27, 2022, IEP team meeting that the Districts did not see the consult model of OT services for B.B. changing for the foreseeable future. (Tr. Vol. 6 at 1270, In. 17-25; 1271, 1-8).
620. B.B.'s mother testified that near the end of the October 27, 2022, IEP team meeting that she asked the Districts to get aggressive with B.B.'s handwriting and to put measurable and trackable goals in his IEP, to be more proactive. (Tr. Vol. 6 at 1272, In. 11-17; see also Ex. 123).
621. Ms. Gardner confirmed in her testimony that during the October 27, 2022, IEP team meeting, B.B.'s mother asked for the Districts to get aggressive with B.B.'s handwriting, to put more measurable and trackable goals in the IEP, to be more proactive, and that B.B.'s writing was a big priority for her, yet from that point forward, the Districts included only a single written language goal for B.B. in his subsequent IEPs. (Tr. Vol. 3 at 673:19-674:12, 1257:13-1258:1; see also Exs. 56, 81, and 123).
622. Ms. Gardner agreed that she stated at the October 27, 2022, IEP team meeting that she told Parents with respect to the OT services that were going to be furnished to B.B. by the District, "we're going to keep changing. We're going to keep reducing that service that he does not need, like that's just the reality of it. But we, as professionals, feel like that's not in his best interest, and we don't want to do anything that could be harmful to him knowingly. So we're going to keep reducing that time every chance we can." (Tr. Vol. 3 at 665, In. 4-13; see also Ex. 123).
623. Ms. Gardner agreed that B.B.'s mother said in response to these comments that she felt she was being harassed by all of these meetings called by the District. (Tr. Vol. 3 at 665, In. 24-25; 666, 1-7; see also Ex. 123).
624. At the October 27, 2022, IEP team meeting, the Districts presented Parents with a prepared draft amended IEP, that was essentially word-for-word identical to the then-functional IEP dated February 1, 2022, including the "Motor" section, which even included typos ("improved" and "accommodation") carried over, indicating no new data had been set forth to support the District's effort; virtually all of the remainder of the draft October 27, 2022, IEP was also identical to the February 1, 2022, IEP, including that the Districts would continue to determine that B.B. does have a need for special education in Adaptive Behavior/Daily Living because of his need for very frequent prompts to refocus on his required tasks, that he was not independent in the classroom which will interfere with his ability to progress in the general education curriculum; determine that B.B. does have a need for special education in Social Emotional—this section still has the same information as the February 1, 2022, IEP and still has a goal regarding reducing prompts for B.B. (See Exh. 45).
625. The only noticeable change in the draft October 27, 2022, IEP draft from the Districts is the inclusion of "Parent Concerns/Considerations" which sets forth Parents' stated wish to not make any IEP changes, along with B.B.'s mother

bringing samples of penmanship from B.B. on unlined cards, with B.B.'s mother noting that B.B.s' "handwriting is a disaster and is still a concern for her," along with B.B.'s mother sharing concerns related to quality of B.B.s' hygiene, including wiping after toileting and handwashing, along with inability to tie his shoes. (See Ex. 45 at USD0000224; Tr. Vol. 2 at 459, In. 2-21).

626. The draft IEP from the October 27, 2022, IEP team meeting did not make any changes to the social/emotional section or goal for B.B. of reducing prompts, nor was this mentioned in the Prior Written Notice that came from that meeting. (Tr. Vol. 3 at 678, In. 10-25; 679, 1-16; see also Exs. 45 and 47).
627. The Parents contend that the Conference Summary for the October 27, 2022, IEP team meeting reflected that Ms. Prophet told Parents that B.B. "skills have progressed to the point he is fully able to participate in his classroom instruction. His skills have not declined since moving from pull out to push in, or since his services changed from 30 minutes a week to 23 minutes a week. During push-in sessions, Kristin is providing occasional reminders for penmanship. This is not therapy and can be done by any classroom staff"; the Conference Summary further states that Ms. Prophet told Parents that if Parents do not agree to consultation that Prophet would "be decreasing OT time by less than 25% so that B.B. would receive 18 minutes of OT services 1 time a week in his special education classroom...This is not a material change. It does not require parent permission, but they will be provided with written notification of the change." (See Ex. 46).
628. The Conference Summary for the October 27, 2022, IEP team meeting further reflected that Ms. Prophet stated B.B. "is not needing OT services to make his writing legible. He can continue to practice and improve his skills. He was observed needing 7 prompts for writing activities which is similar to the rest of his day with other work that he is completing. Written language is being worked on as part of his IEP services; this is separate from OT services." (See Ex. 46).
629. The Conference Summary for the October 27, 2022, IEP team meeting further reflected that Ms. Gardner asked Ms. Prophet and Ms. Koerperich that if a session is missed, if B.B. would have a difficult time, to which both replied that B.B.s' doesn't seem to notice of Ms. Prophet is there or not; the Parents contend this seems to contradict the statement earlier in the Summary that having Ms. Prophet work with B.B. "hinders his independence"; moreover, this comment from Ms. Prophet that B.B. doesn't notice if an OT session is missed simply ignores the very poor results B.B. had at the start of the Fall 2022 term in his first meeting with Ms. Prophet after a three month absence of school-based OT services. (See Ex. 46 and 37).
630. The Conference Summary for the October 27, 2022, IEP team meeting further reflected that Ms. Prophet stated that her role was making "sure" that the student "has the hand strength and skill to make the letters. Sometimes he doesn't take the time to write neatly, but can do so when given the expectation to do so"; this comment does not square with the ongoing problems B.B. had in forming letters,

- as Ms. Prophet's own service logs reflect from this very time period, and moreover, ignores Ms. Prophet's own earlier broader scope of work with B.B. in terms of working to improve the legibility of his handwriting. (See Ex. 46).
631. The Conference Summary for the October 27, 2022, IEP team meeting further reflected that B.B.'s mother asked for ongoing OT services to address B.B.'s spatial issues in the form of his inability to write on smaller lines, as he was using very wide lined paper for writing assignments at that time that was not age appropriate for B.B. (See Ex. 46).
632. The Conference Summary for the October 27, 2022, IEP team meeting further reflected that "it was explained that he has shown that he can write on smaller lined paper," but no data supporting that comment was referenced; moreover, the Conference Summary further noted that B.B.'s mother shared handwriting samples on some cards without lines, but the Districts "explained that this could be expected and an accommodation for him would be to draw lines on anything that he needs to write that does not have lines," but this entirely ignored the underlying visual/spatial perception issue that caused this inability of B.B. to write with appropriate letter sizing. (See Ex. 46).
633. The Conference Summary for the October 27, 2022, IEP team meeting further reflected that B.B.'s mother had questions on the motor section of the IEP, and that Ms. Prophet read through this section and said that the skills are still the same as when they were written in February, but no data is offered to prove that assertion, and as noted above, the draft IEP developed by the Districts for this meeting simply copied and pasted the entire Motor section from the February 1, 2022, IEP. (See Ex. 46)
634. The Conference Summary for the October 27, 2022, IEP team meeting further reflected that B.B.'s mother stated that the information in the IEP is not accurate with regard to where B.B.'s skills truly are, including his ability to wipe himself after toileting, which was confirmed by Lindsey Sandquist, B.B.'s child care provider, and that he does not wash his hands after toileting; the response from Ms. Prophet was only that B.B. has the full range of motion for these tasks and can pullup his pants, he does need more prompts to remember to complete the steps of these tasks but he can do them, and that she will send home a "social story on bathroom skills." (See Ex. 46).
635. The Conference Summary for the October 27, 2022, IEP team meeting further reflected that the Districts reviewed "possible harmful effects" of removing direct OT services, including "the possible decline in his fine motor skills," but that "this has not happened with the level services he is receiving now"; this comment blatantly concealed the significant regression B.B. experienced over the three months he did not receive direct OT services at school from May to August 2022 as reflected in Ms. Prophet's own service logs, which were never shared with Parents until the due process hearing. (See Ex. 46 and 37).
636. The Conference Summary for the October 27, 2022, IEP team meeting further reflected that the Districts told Parents that if they "do not agree, a PWN will be

sent saying that he will receive OT services for 18 minutes a week in the special education classroom. This is a decrease of OT services by 25%," another explicit threat leveled at Parents to agree what the Districts demanded or the Districts would reduce services a second time in only six calendar months. (See Ex. 46).

- 637. The Conference Summary for the October 27, 2022, IEP team meeting further reflected that B.B.'s mother asked why there had been so many meetings with the last year, and Ms. Gardner responded that the team feels professionally B.B. needs to have the consultation level of OT services and that "the plan will be to keep reducing the amount of direct OT services he receives." (See Ex. 46).
- 638. The Conference Summary for the October 27, 2022, IEP team meeting further reflected that B.B.'s mother asked for B.B. to have a goal of neat handwriting.
- 639. At the hearing in this matter, B.B.'s mother read into the record the District's Conference Summary from the October 27, 2022, IEP team meeting, at which the Districts threatened to again unilaterally reduce occupational therapy services for B.B. by less than 25 percent if Parents did not agree to move to a consultation-only model; this threat would have resulted in the second unilateral reduction in services by the Districts in occupational therapy in only three months of school time. (Tr. Vol. 7 at 1396, ln. 4-19; see also Ex. 1032).
- 640. The Districts then prepared and sent to Parents a Prior Written Notice dated October 27, 2022, in which the Districts again sought to move from direct OT services to consultation as a support for school personnel 10 minutes a month and upon staff request"; the District's "explanation of why the action is proposed" was that "B.B. demonstrates functional motor skills for participation in his classroom's writing curriculum. He requires accommodations for written language support and attention/penmanship prompts which are already in place in his IEP and can be provided by classroom staff. He no longer requires direct specialized instruction from a motor therapist." (See Ex. 47).
- 641. The Parents contend that these comments in the Prior Written Notice make clear that the Districts only focused on B.B.s' alleged ability to handwrite, and nothing else, when seeking to remove direct OT services from B.B., and moreover, that the Districts was now holding two conflicting positions at once: B.B. required accommodations for prompts to pay attention and write neatly and this was to be the plan moving forward to address his handwriting issues, while in the very same draft IEP he had a Social Emotional goal of reducing the required number of prompts to initiate and complete his work. (See Ex. 47)

xi. Parents' Position Regarding Aftermath of October 27, 2022, IEP Meeting; Sensory Profile and Re-evaluation of Social, Emotional and Adaptive Behavior by District.

- 642. On October 31, 2022, Parents emailed the Districts to request that a sensory profile be done on B.B., and on November 1, 2022, the Districts responded to agree to do a sensory profile and also asked to include a "more formal assessment to look at his ability to focus in the classroom and social/emotional skills. We could also look at his daily living skills with what he is doing at home

- and at school”; B.B.’s mother responded to note that this “sounds like an extremely productive idea” and agreed to this proposal, while noting that it made sense to table the proposed IEP amendment pending the results of the testing to be done. (See Exs. 48 and 49).
643. During this time period, Parents requested mediation, and the result was a mediation agreement dated November 22, 2022, which called for the Districts to provide an evaluation of B.B. by an outside school-based occupational therapist; the mediation agreement did not make the findings of that evaluation or any recommendation from that outside evaluator binding on Parents. (See Ex. 52).
644. Parents never agreed to be bound by the results of the outside school-based occupational therapist evaluation of B.B. (Tr. Vol. 6 at 1274, In. 8-15).
645. B.B.’s mother testified that the reason she requested the Districts complete a sensory profile on B.B., given the discussion with Ms. Prophet regarding sensory issues potentially being the root of the toileting issues B.B. experienced; on November 1, 2022, Districts psychologist Lynette Lorensen emailed Parents to agree to do the sensory profile and “to include a more formal assessment to look at his ability to focus and attend in the classroom and social/emotional skills. We could also look at his daily living skills with what he is doing at home and at school.” (Tr. Vol. 6 at 1273, In. 12-25; 1274, 1-7; see also Ex. 49).
646. The Districts agreed to conduct a sensory profile on B.B. upon Parents’ request, preparing a Prior Written Notice to seek consent for this testing, noting it would be collecting new data for Social/Emotional Status/Behavioral Status, as well as for Adaptive Behavior, and also conducting a sensory profile. (See Ex. 50)
647. According to Ms. Prophet, a sensory profile is a standardized questionnaire test that looks at sensory differences and makes recommendations for interventions and is completed by an occupational therapist. (Tr. Vol. 1 at 167, In. 23-25; 168, 1-5).
648. In the District’s Prior Written Notice seeking authorization to conduct the evaluation in November 2022 the Districts says it will look at numerous items as part of its evaluation of B.B., including health and motor ability, vision, hearing, social/emotional status/behavioral status (with new information being collected), academic performance, and a sensory profile looking at adaptive behavior; the PWN stated that B.B.’s mother requested a sensory profile and the entire IEP team, including parents, “decided to include additional evaluation for B.B. to review how he best learns and functions within the school setting” and that the “evaluation information will provide information for developing an appropriate educational plan for B.B.” (See Ex. 1035 at USD000661-62).
649. Ms. Gardner agreed that the Districts was examining B.B.’s social emotional skills and ability to focus in the classroom, as well as his daily living skills at home and school, as part of the evaluation process that took place in late 2022 and early 2023. (Tr. Vol. 3 at 680, In. 15-22).
650. Ms. Prophet conducted the sensory profile that was completed on B.B. in January 2023 and did so through teacher report and standardized testing. (Tr. Vol. 2 at 264, In. 2-23; 265, 1-6; Vol. 3 at 489, In. 15-17).

- 651. Parents were not informed who would be completing this sensory profile of B.B., even though Parents were the ones who had requested it, and even though Ms. Prophet had been seeking to remove direct occupational therapy services from B.B. for nearly a year at that point. (Tr. Vol. 3 at 494, ln. 16-21).
- 652. The sensory profile school companion standardized test that Ms. Prophet completed on B.B. measured sensory processing abilities and their effect on a student's functional performance in the classroom and school environment, and is intended to be part of a comprehensive performance assessment; the test involves a teacher questionnaire that has items organized into sensory groups and these items address activities and behaviors that are common in the classroom setting, with the teacher asked to report the frequency with which the behaviors occur, and based on those responses, a standardized score looks at performance patterns. (Tr. Vol. 2 at 266, ln. 13-25; 267, 1-5).

xii. Parents' Position Relating to Certain Service Logs Reflecting the Districts' Occupational Therapy Work with B.B.

- 653. Ms. Prophet confirmed that Kelsi Richards is a certified occupational therapy assistant working for the Districts who was assigned to Heusner Elementary School during B.B.s' time there and she worked with him from when B.B. was in kindergarten in January 2020 until May 12, 2022, when he was in third grade. (Tr. Vol. 1 at 215, ln. 5-12; Vol. 2 at 419, ln. 24; 420, 4).
- 654. Ms. Prophet supervised Ms. Richards throughout all relevant time periods, and Ms. Richards was required to discuss her work with students with Ms. Prophet and have her service logs approved by Ms. Prophet. (Tr. Vol. 1 at 215, ln. 15-25; Vol. 2 at 420, ln. 5-12).
- 655. Ms. Prophet agreed that during the January 2020 through May 2022 time period, it was Richards who was primarily working with B.B. one-on-one. (Tr. Vol. 2 at 420, ln.12-20).
- 656. Ms. Prophet testified that Ms. Richards created her service logs for each session with B.B. after every treatment session. (Tr. Vol. 2 at 432, ln. 7-8).
- 657. The service logs setting forth the entries of Ms. Richards which reflect her sessions with B.B. contain commentary from Spring 2021 in which Ms. Richards wrote that B.B. required maximum cues to slow down, stay on task, for his keyboarding work, and for his handwriting work. (Tr. Vol. 2 at 421, ln. 10; 422, 4; see also Ex. 1068 at USD000007).
- 658. Ms. Prophet testified that when the service logs state "max cues," this meant B.B. needed a reminder "every word or so" to slow down or to leave a space, and that "maximum cues" further means cues provided for more than 75% of the task, while moderate or mod cues would be cues for 50% of the task, and minimum cues would be less than 25% of the task being done by B.B. (Tr. Vol. 34 at 600, ln.12-25).
- 659. The "service logs" prepared by Kelsi Richards, certified occupational therapy assistant for the District, for B.B. from January 2020-May 2022 almost uniformly

state in the "Progress Report" column that B.B. was making "minimal improvement" at each of his sessions with Ms. Richards; in fact, only three of the Progress Reports for B.B. as completed by Ms. Richards state that B.B. had "maintained," the other forty-five (45) Progress Reports from Ms. Richards state that B.B. was making only "Minimal Improvement" at his occupational therapy sessions. (See Ex. 36).

660. The last Progress Report that showed that B.B. had "Maintained" was February 22, 2021; for the entirety of the 2021-22 academic year, the same academic year in which the Districts sought to remove direct OT services from B.B., all of Ms. Richards' Progress Reports for B.B. show that he was making only "Minimal Improvement," even after February 1, 2022, when the Districts first sought to remove direct OT services. (See Ex. 36).
661. Ms. Richards' service log for her session with B.B. on September 30, 2021, indicates that it took B.B. fifteen minutes to type two sentences with maximum cues provided. (Tr. Vol. 2 at 422, ln. 9-14; see also Ex. 1068 at USD000005).
662. Ms. Richards' service log for her session with B.B. on October 21, 2021, indicates B.B. only wrote three out of six letters legibly and writing his own name took moderate cues. (Tr. Vol. 2 at 422, ln.19-24; see also Ex. 1068 at USD000005).
663. Ms. Richards' service log for her session with B.B. on October 28, 2021, indicates that B.B. needed maximum cues to stay in the lines during the pencil fun exercise and that he was using a quad grasp on his pencil. (Tr. Vol. 2 at 422, ln. 25; 423, 4; see also Ex. 1068 at USD000005).
664. Ms. Richards' service log for her session with B.B. on November 4, 2021 indicates that it took max cues for B.B. to do his writing exercise and that only two of three words he wrote were legible. (Tr. Vol. 2 at 423, ln. 9-12; see also Ex. 1068 at USD000004).
665. Ms. Richards' service log for her session with B.B. on January 6, 2022, indicates that B.B. wrote a three-word sentence from dictation and it took max cues for spacing and moderate cues for line awareness. (Tr. Vol. 2 at 423, ln. 13-18; see also Ex. 1068 at USD000004).
666. Ms. Richards' service log for her session with B.B. on January 13, 2022, states B.B. used a quad grasp on his writing utensil and wrote two three-word sentences with moderate cues for spacing and line awareness. (Tr. Vol. 2 at 423, ln. 19-24; see also Ex. 1068 at USD000004).
667. The "Comments" from the January 13, 2022, service log entry from Ms. Richards states that B.B. needed "max cues to slow down and visually tend to coloring for accuracy" in an exercise involving coloring small objects on paper. (See Ex. 36 at USD000004).
668. Ms. Richards' service log for her session with B.B. on January 27, 2022, indicates that it took moderate cues for B.B. to write slow and tall versus small letters on the writing line and he only wrote 7 out of 14 words legibly; this was only days before the February 1, 2022, IEP team meeting at which the Districts sought to remove direct OT services. (Tr. Vol. 2 at 423, ln. 25 - 424, 5; see also Ex. 1068 at

USD0000003.

669. Ms. Prophet agreed that the January 27, 2022, entry from Ms. Richards in which she wrote that B.B. only wrote 7 of 14 words legibly was only five days before Ms. Prophet indicated at the February 1, 2022, IEP team meeting that direct occupational therapy services were no longer needed for B.B. (Tr. Vol. 2 at 424, In. 6-9).
670. Ms. Prophet agreed she sent an email to Parents on February 7, 2022, in which she stated that B.B. used a tripod pencil grasp and even included a photo of him holding his pencil in that manner, but only three weeks earlier, Ms. Richards had written in her service log that B.B. was using a quad grasp during their occupational therapy session that day. (Tr. Vol. 2 at 424, In 17-25; 425, 1-4).
671. Ms. Richards did not attend the April 2022 IEP team meeting for B.B., at which removing direct occupational therapy services was the District's aim. (Tr. Vol. 2 at 425, In. 5-8).
672. The "Comments" from the April 21, 2022, service log entry from Ms. Richards states that Ms. Richards worked with B.B. on "Far point copy sentences with hand writing check list to increase indep with writing. When going down the check list corrections were needed for tall letters, go under letters and spacing." (See Ex. 36 at USD0000002).
673. Parents argue that this entry again confirms that Districts OT providers worked with B.B. on increasing his independence with handwriting, and also that more than two months after the District's initial effort to remove direct OT services, that B.B. still could not properly form his letters and had ongoing issues with spacing of his letters.
674. The last entry in the service log created by Ms. Richards stated that, as of May 12, 2022—three months after the Districts began its efforts to remove direct OT services from B.B.—that B.B. was only able to find 2/10 objects in an "I spy" activity; that he was able to write only 19 of 26 upper case letters in a legible fashion; that Ms. Richards still had to review the "correct formation with Y, M, N, and J; and that B.B. was only able to write 18/26 lower case letters in legible fashion and Ms. Richards needed to "review a, j, q, v, f, g and o with correct formation and on the line dash line paper correctly." (See Ex. 36 at USD0000002).
675. For the entirety of the 2021-2022 school year, which was the same school year in which the Districts first sought to remove direct OT services from B.B., each and every entry from Ms. Richards' service logs reflect that B.B. only made "minimal improvement." (Tr. Vol. 2 at 430, In. 2-25; 431, 1-4; see also Ex. 1068).
676. Ms. Prophet testified that the service logs compiled by Ms. Richards regarding her work with B.B. were never provided to Parents until this due process hearing. (Tr. Vol. 2 at 432, In. 19-25; 433, 1-2).
677. The "service logs" prepared by Ms. Prophet stretch from January 1, 2020, through December 31, 2023, and the majority of the entries reflect Ms. Prophet's supervision of Ms. Richards in her work with B.B. (See Ex. 37).

678. The Parents argue these service logs from Ms. Prophet confirm again that the Districts OT personnel worked on improving legibility and spacing of letters with B.B. throughout the relevant time period, and not just improving hand strength.
679. Ms. Prophet agreed that her service logs reflecting her sessions with B.B. contained numerous references to working with B.B. on letter sizing, letter formation, letter legibility, prompts for line awareness—those things are replete in her service logs. (Tr. Vol. 2 at 434, In. 17-24; see also Ex. 1069).
680. The Parents contend there are numerous references in Ms. Prophet's service logs to Districts OT personnel working to improve the legibility of B.B.s' handwriting, clearly indicating that the occupational therapists were indeed responsible for improving the quality and readability of B.B.s' handwriting, and not just manual dexterity and motor skills/strength. (See Ex. 37).
681. The Parents argue that the service log entries for both Ms. Richards and Ms. Prophet do not reference any objective standard of what constitutes "legibility" of B.B.s' handwriting. (See generally Ex. 36 and Ex. 37).
682. The Parents contend that the service log entries from Ms. Prophet reveal that even in late 2021, which is the same year in which Ms. Prophet later wrote and testified at the hearing that B.B.s' handwriting skills had "plateaued," that B.B. was still having significant problems with writing legibly, including from dictation, meaning handwriting independently without rote copying; for instance, the entry from October 7, 2021 states that B.B. only wrote with 46% legibility when printing a 3 word sentence from dictation, that he needed prompting for word order, and spelling 16 characters per minute, which would be approximately one character every four seconds, yet Ms. Prophet rated this day's progress as "Moderate Improvement," even though B.B. needed numerous prompts; the entry for November 28, 2021 reflects that even when rote copying, B.B. wrote with only 60% legibility in far point rote copying from the board, with only 50% legibility when rote copying a sentence from near point with numerous prompts, and with 54% legibility when writing a sentence from dictation; and the entry from December 9, 2021 states that B.B. copied a sentence from the board with only 61% legibility and wrote 2 sentences from dictation with only 52% legibility. (See Ex. 37 at USD0000022-23; Tr. Vol. 2 at 434, In. 25 - 436, 8).
683. Ms. Prophet's entry in her own service log for B.B. dated January 20, 2022, was that he had made "Significant Improvement" that day in his session, despite Ms. Prophet writing in the body that B.B. needed multiple prompts to attend to his work, to place punctuation, to maintain spacing within the word and to erase complete, to begin a sentence with a capital letter and to use punctuation at the end of the sentence; moreover, this entry from Ms. Prophet—which came less than two weeks before she and the Districts sought to remove direct occupational therapy services from B.B.—was "sandwiched" by entries from Ms. Richards from January 13 and then January 27, 2022, in which B.B.s' progress was rated by her as "minimal improvement," clearly indicating a discrepancy between Ms. Prophet's progress rating system and Ms. Richards'. (Tr. Vol. 2 at

436, ln. 9 - 439, 15; see also Exhibits 1068 and 1069).

684. The Parents contend that soon after the Districts first sought to remove direct OT services from B.B. at the February 1, 2022, IEP team meeting, as spearheaded by Ms. Prophet, there was a clear discrepancy between her evaluation of B.B.'s progress and that of Ms. Richards, who was working with B.B. directly more regularly then: on March 3, 2022, Ms. Prophet rated B.B. as having "Significant Improvement" in the "Progress Report" column, whereas for Ms. Richards' entry for February 24, 2022, she rated B.B. as showing Minimal Improvement, and on March 24, 2022, she also rated B.B. as showing Minimal Improvement. (Compare Ex. 37 at USD0000021 with Ex. 36 at USD0000003),
685. The Parents argue that Ms. Prophet became the sole OT provider for B.B. at school at the start of the 2022-23 school year and the first entry for that school year is remarkable and incredibly telling as to what occurs when B.B. does not have direct occupational therapy services at school.
686. The Parents further suggest that the service logs reflect that B.B. did not have any school-based occupational therapy between May 12, 2022, and August 23, 2022; Ms. Prophet's entry for August 23, 2022, in its Comments section, states as follows:
- Worked with B.B. in the classroom. All students were working on reading comprehension worksheets sitting on the floor at the promethean board. They were copying sentences from the board. B.B. 1st page was illegible. He could not read it to me. Letters were on top of each other and letters were all the same size/ not sitting on the lines.*
- On the next page, he was observed to copy the sentence from the board without ever looking back to his paper. Student was stopped. Writing rules were reviewed: 1) you should be writing so you or your teacher can read it. 2) Letters should sit on the writing lines. 3) Tall letters touch the top and bottom line, short letters sit on the bottom line, but start at the middle. Go under letters start at the middle and go below the line 4) Leave spaces between words.*
- Lines were highlighted. B.B. was prompted to identify the type of letter before writing it. He did so with 100% accuracy. He required reminders to space between words. He also required prompts to write with the correct pressure. He is able to press hard enough to read it, but without reminders, it was very light.*
- He also required reminders to attend to the lesson.*
- (See Ex. 37 at USD0000021).
687. Ms. Prophet rated B.B.'s progress that day as "Maintained." (See Ex. 37 at USD0000021).
688. The Parents argue that this performance by B.B. occurred more than six months after the Districts had sought to end direct OT services for B.B.; in just three months without direct OT services, even Ms. Prophet's own comments clearly demonstrate B.B. had significantly regressed to the point that his writing was entirely illegible, he could not correctly form letters, had spacing problems, and his writing pressure was improper, and he needed significant work to correct

these issues.

689. The Parents suggest that, in short, B.B.s' performance at that session on August 23, 2022, was his first occupational therapy session in three months, and this reflects a clear deterioration in his motor skills, handwriting performance, and automaticity during that time with no occupational therapy services, and that B.B.s' special education teacher had not caught nor resolved these glaring problems. (Tr. Vol. 2 at 441, In. 6-9).

690. The Parents argue that this August 23, 2022, entry from Ms. Prophet further confirms that she was working with B.B. on more than just motor skills—she was working with B.B. on his actual writing skills.

691. The next entry from Ms. Prophet, dated September 1, 2022, stated in relevant part:

Teacher stated that the class would be working on a written language task in 20 minutes. Upon return, B.B. was seated on the floor with papers resting on dry erase board. The assignment was started yesterday. Task was to write at least 10 sentences about themselves. Other students had a "bubble organizer" Teacher stated that B.B. had lost his, but that he could just write sentences. Asked B.B. to sit at desk to complete writing. He had written 3 sentences on highlighted paper. Pressure was very light. 2/3 sentences could be deciphered. B.B. could not read any of them back to therapist. When asked what the 3rd sentence said, B.B. said the sentence starter that his teacher was currently saying out loud " I like to eat" B.B. responded "noodles" Tape was placed on pencil to cue B.B. where to hold it. He was given spelling prompts and wrote the word noodles with legible quality. He then completed 3 sentences with legible quality with prompts to focus on task, to narrow responses to 1 sentence at a time, spelling cues, reminders X4 to scoot fingers down on pencil. Email sent to teacher with recommendations to have students write at their desks, to chunk assignments into smaller pieces (1 sentence at a time) to check and correct after each sentence and to provide a model if necessary. Reminded teacher of writing accommodations listed in IEP.

(See Ex. 37 at USD000020).

692. The Parents further argue that Ms. Prophet's own comments make clear that B.B. had experienced a clear deterioration in the quality of his writing and staying on-task during a period without direct occupational therapy services; he was still having significant problems with using appropriate pressure when handwriting, with writing legibly, and with holding his pencil at the correct position, with B.B. requiring five reminders in just one session to hold his pencil appropriately; and that B.B.s' special education teacher had not caught nor corrected these glaring problems. (See Ex. 37 at USD000020).

693. The September 8, 2022, entry from Ms. Prophet states that B.B. still required prompting to hold his pencil at the correct position and still needed multiple prompts to check and correct for line awareness, and that his writing was legible when provided with prompts and spelling reminders. (See Ex. 37 at USD000020).

694. Ms. Prophet did not include "Progress Report" ratings for B.B.s' performance on these dates of September 1 and 8, 2022; however, starting on October 13, 2022, Ms. Prophet wrote "Mastered" for B.B. in the Progress Report and from that point forward, when she chose to rate B.B.s' progress, she wrote either Mastered, Significant Improvement, or Maintained. (See Ex. 37).
695. The December 1, 2022, entry from Ms. Prophet notes that she worked with B.B. on correcting the "established motor habit" of incorrectly forming the letter "c." (See Ex. 37 at USD0000018).
696. The December 8, 2022, entry from Ms. Prophet states:
Writing activity on wide ruled alternate lined paper. Reviewed writing expectations and how to use paper. Tall letters touch top and bottom lines, short letters half the space--given a visual reminder at beginning of each line, go under letters descend into grey space. Wrote upper case and lower case alphabet. All letters recognizable. Appropriate line awareness. Some over strikes/ hyper closures indicative of fast pace of writing. (A, H, q)
Prompted to slow down. circle stroke letters start at bottom. following instruction, able to copy with magic c approach, but during independent writing reverted to habit. Copied sentence from near point with appropriate line awareness, size, spacing between words. 92% letter legibility. Copied sentence from the board with appropriate line awareness, size, and spacing between words. 83% letters legible. Cut out picture and glued onto page independently. Composed a sentence from picture prompt. Stated he would write "There is a bear and a penguin," Instead wrote: "there wrar aBear and a Peageig." Spelling errors, case errors, punctuation errors and decreased legibility (72%) made difficulty to read indicating that written language issues rather than pencil control issues impact readability of work.
(See Ex. 37 at USD0000018).
697. The Parents argue that this is a curious comment—it seems Ms. Prophet was stating that legibility was only a "written language" issue that was not the province of the occupational therapists at school to correct, despite a litany of treatment logs showing that "legibility" was the very standard by which B.B.s' progress in occupational therapy had previously been measured, and further, that OT working on upper and lower case errors and punctuation errors by B.B. was not in the province of the school occupational therapists, but the earlier entries from the service logs clearly indicate that the occupational therapists were indeed instructing B.B. on those points.
698. The entry for January 5, 2023, states in relevant part:
Looked at math paper from earlier in the day. Lines very small. B.B.s' writing was readable, but he gave little attention to line awareness. Provided box boundaries for letter responses and highlighted bottom space of writing lines. B.B. completed with minimal prompting for writing size with much improved legibility. Required prompts to stabilize his paper. Typing activity- Copied a paragraph printed earlier in the day. B.B. could not read 2 of his letters though an a was a d and an i was an l due to sizing errors on printing page. Corrected print and typed legibly. Given initial cue to

use the shift to capitalize. Required prompts for all punctuation
(See Ex. 37 at USD000017).

699. The Parents argue that, in short, B.B. still needed significant prompting for appropriate letter sizing and line awareness, only twenty days before the Districts sought to remove all OT services from this student.
700. The April 6, 2023, service log entry from Ms. Prophet stated:
Working on research assignment. Copying sentences from organizer onto notebook paper. He had already started, but writing was difficult to read. Began another page. Visual cues of x provided on margin of every other line to prompt to skip lines and keep small letters the same size as X. Re-copied the introduction and copied the body onto this page. Held pencil appropriately. Corrected, erased, and fixed several errors spontaneously. Given reminders X 5 for letter size and X3 for spacing between words. All writing was recognizable and sized appropriately. Several letters marked with over strikes of circles. Completed the assignment within the same time frame as his classmates including re-writing the introduction. Other students were divided into groups. One at the paras table and one at the teachers table. Staff were providing B.B.s' peers with the same reminders to space and write neatly. Again encouraged teacher to have the students skip lines.
(See Ex. 37 at USD000015).
701. The Parents argue that even in spite of Ms. Prophet writing in her service log entry for April 6, 2023, that B.B.s' "writing was difficult to read" and that he needed cues to skip lines and keep small letters the same size, and that he needed 5 reminders for letter size and 3 reminders for spacing between words, and that several letters were marked with over strikes of circles," she still rated his "progress" that day as "Mastered," again demonstrating her inflation of B.B.s' performance. (Tr. Vol. 2 at 444, In. 11-14; see also Ex. 1069 at USD000015).
702. The Parents argue that this entry from Ms. Prophet, more than two months after the Districts sought to end all OT services for B.B., clearly relates that B.B.s' handwriting was difficult to read, and that she had to prompt and provide numerous reminders for letter sizing and spacing between words, and that problems with letter formation persisted, even when B.B. was doing rote copying of text.
703. Ms. Prophet agreed that B.B.s' handwriting was still difficult to read in Spring 2023 and he still needed cues to keep letters the same size. (Tr. Vol. 2 at 443, In. 23-25, 444, 1-10).
704. The Parents argue that the August 9, 2023, entry from Ms. Prophet, soon before the Districts filed for due process to remove OT services from B.B., and after B.B. had gone more than three months without school-based OT services, stated as follows in relevant part:
Writing activity--used alternating line wide ruled paper with legibility checklist at bottom. Held pencil with right hand tripod gras pencil vertical. Stabilized paper with left hand. Wrote name and date within given space. Asked to do his neatest writing and writing rules reviewed. Wrote 26/ 26 letters with legible quality. Recognized and

corrected mistakes when prompted to use the check list. Erased and correct C, G, J (was reversed) and R. Minimal cues for complete erasure. Wrote numbers 1-10 with legible quality. Initially made 9 backwards, but fixed without prompts. Wrote 26/26 lower case letters legible. Using checklist, erased and corrected b to make taller, e, and j. Copied a sentence from near point with legible quality. Copied a sentence from far point with legible quality. Composed and wrote 5 word sentence using environmental cues for spelling with legible quality.
(Ex. 37 at USD0000014).

705. The Parents argue that this entry makes clear that B.B. was still writing letters and numbers incorrectly (in reverse) and still needed a checklist to create letters correctly, even when rote copying. It is also unclear how B.B. could be rated as writing all letters and numerals “with legible quality” when the same comments clearly state he was forming letters and numbers incorrectly, a clear contradiction in terms.
706. The September 19, 2023, entry from Ms. Prophet, which was after the Districts filed for due process to remove OT from B.B., notes that she saw B.B. in “Mrs. Pavey’s SPED room” and that the special education teacher “characterized B.B. writing as sloppy, but stated she felt it was habit and he could correct it when prompted.” (Ex. 37 at USD0000014).
707. The October 9, 2023, entry from Ms. Prophet, which was after the Districts filed for due process to remove OT from B.B., notes that B.B. was still having problems with forming the letter “l” and needed prompts to write it correctly and was still doing tracing exercises with Ms. Prophet for letter formation. (Ex. 37 at USD0000013).
708. The entries from the service logs completed by Ms. Prophet from November 7-28, 2023, clearly indicate B.B. still needed direction and prompting to properly form letters; despite this, Ms. Prophet wrote in three of the entries that B.B. did not require “instruction”—it is again unclear why doing this work on prompting and direction on properly forming letters was previously the work of occupational therapy, but the Districts then suddenly decided this was not the role of OT any longer. (Ex. 37 at USD0000012).
709. The Hearing Officer finds that the service logs reveal that B.B. continues to need numerous prompts to do basic handwriting tasks, nor is there a plan or goal in the Service Logs to reduce or eliminate the number of prompts. The Hearing Officer further finds that the Progress Report supervised by Ms. Prophet demonstrated only De minimis progress for B.B.

III. ADDITIONAL ISSUES PRESENTED

A. Background:

The Districts have filed a Motion to Strike certain claims by the Parents not previously included in the Parents’ Due Process Complaint.

On October 5, 2023, the Districts received a Due Process Complaint from the Parents

alleging two issues:

1. Inadequate IEP not reasonably calculated to enable B.B. to make progress appropriate in light of his circumstances, in violation of state and federal education law, thereby depriving B.B. of FAPE; and,
2. The current IEP incorrectly finds that B.B. does not have need of special education services in “adaptive behavior/daily living.”

The Districts seek to strike two new claims the Parents have submitted in this matter:

First, that Parents were impeded in their opportunity to participate in the decision-making process for B.B.’s IEPs by not treating Parents as full members of the IEP team, harassing Parents, and not listening to the Parents’ concerns regarding data; and

Second, what the District’s brief characterizes as “allegations tied to an offer to meet and determine whether compensatory education was owed for a few minutes of paraeducator support time that was missed each day from the beginning of the school year on August 11, 2023, through November 28, 2023.” See Dist. Brief, at pp. 1-2.

The Hearing Officer has set out below the entirety of the arguments submitted by the Parents and the Districts.

B. Parents’ Arguments and Authorities:

The Parents address both claims in turn:

Parents raised the issue of the Districts impeding Parents’ opportunity to participate in the decision-making process for B.B.’s IEPs, harassing Parents, and not listening to Parents’ concerns regarding data, at each step of this process, including at the due process hearing, during which the District’s counsel never objected to this subject and in fact questioned witnesses regarding same, thus waiving any objection the Districts may have had to this issue being explored in this proceeding.

Parents urge the Hearing Officer to review Parents’ submissions at the earliest stages of this proceeding. First, in Parents’ Response to the District’s Due Process Complaint, a copy of which is attached hereto as Exhibit A and which was submitted on September 21, 2023, there are numerous references to Parents objecting to the District’s actions and proposed actions, Parents feeling harassed due to the District’s actions of holding repetitive IEP team meetings and the District’s threat to continue to hold such meetings and reduce services until the Districts got what it wanted (elimination of occupational therapy services for B.B.), and Parents having provided data to the Districts regarding B.B.’s skills which the Districts disregarded.

Similarly, the document entitled “Parents’ Statement of Legal Issues to be Addressed,” attached hereto as Exhibit B and submitted on December 1, 2023, stated that Parents reserved the right to present additional factual allegations, information, and evidence at the hearing in this matter, including evidence and information garnered through the discovery process. This document also notes that the Districts either glossed over, or completely omitted, Parents’ concerns in the two relevant IEPs in question in this matter, from January 2023 and November 2023, and no explanations from the Districts for significant changes made

to B.B.s' IEPs were offered by the Districts to Parents, and that data offered by Parents was ignored by the Districts when it constructed the November 2023 IEP for B.B. (by finding B.B. to have no need for special education in Social Emotional and by ignoring Parents' comments at the November 29, 2023, IEP team meeting regarding B.B.s' inability to properly hold an eating utensil). See Ex. B at ¶¶ 19- 23, 26-29, 31, 33, 43, 46, 58-59.

Most importantly, the issue of Parents being harassed by the District, their educational concerns and data/information about their own son and his performance levels being ignored by the Districts and omitted from IEPs developed by the District, and generally the Districts not treating Parents as full members of the IEP team thereby impeding their opportunity to participate in the decision-making process for their son's IEPs, was raised continuously throughout the hearing in this matter, without objection by the District. See, e.g., Hearing Transcript ("Tr.") Vol. 3, 665:4-666:7, Vol. 5, 1110:17-1114:10, 1162:4-21, 1267:23-1268:7, 1274:16-20, 1283:1-12, 1289:21-1290:8, 1306:9-1307:12, 1311:10-1313:16, 1315:2-1316:15, 1318:22-1319:9, 1319:13-1320:2, 1335:19-1336:13, Vol. 7, 1450:12-1451:1, 1561:19-1563:22, 1565:20 ("Q: Do you feel that you and your wife have been treated as equal members of the IEP team? A: I do not.").

If the Districts felt this was an inappropriate line of inquiry, it had every opportunity to object during the hearing and argue that this issue was not properly before the Hearing Officer, but the Districts not only did not object, it actively adduced evidence on this issue by its examination of witnesses. See, e.g., Tr. Vol. 5, 1057:21-1058:1, 1061:20-1062:2, Vol. 7, 1362:6-1367:16, 1376:23-1377:7, 1415:10-24, 1453:15-1455:10, 1467:23-1471:11, 1565:24-1569:12. If the Districts had any objection to this issue (of Parents being impeded in their opportunity to participate in the decision-making process for B.B.s' IEPs) being explored and considered at the hearing, the Districts waived any such objection by not objecting and indeed, by actively engaging in this discussion and entering evidence into the record on this very point.

As such, even if we assume, *arguendo*, that the Districts was somehow not on notice by the two pleadings from Parents that mentioned these issues (Ex. A and Ex. B), the reality remains that by participating in the inquiry into this issue at the hearing, and not objecting to it being raised, the Districts "agreed otherwise" for this issue to be considered in this proceeding. 20 U.S.C. § 1415(f)(3)(B). Note that the relevant analogous statute in Kansas makes clear that the Districts was required to raise its objections to this issue at the hearing: any due process hearing provided for under the state special education laws shall be conducted in accordance with due process rights including "the right to prohibit the other party from raising, at the due process hearing, any issue that was not raised in the due process complaint notice or in a prehearing conference held prior to the hearing." K.S.A. § 72-3416(b)(6) (emphasis supplied). The due process hearing in this matter occurred months ago. No contemporaneous objection at the hearing to the exploration and putting on evidence relating to this issue was raised by the District, as clearly conceded by the District's instant motion which makes no mention whatsoever of any objection at the hearing to this issue, and indeed, as noted above, the Districts participated in this line of inquiry. As such, the Districts long ago waived any objection it may have had on this point.

Very recent case law from the federal Districts of Kansas is directly on-point and expressly contradicts the District's position: in the matter of *Beer v. USD 512 Shawnee Mission*, No. 21- 2365-DDC-TJJ, 2023 WL 2562416, at *19 (D. Kan. Mar. 17, 2023), the school Districts argued that parents had improperly presented issues at the due process hearing that were not timely disclosed in their due process complaint, and that the hearing officer improperly considered these issues. In response, the parents in that matter argued that the school Districts did not "preserve its objection to their introducing [the relevant] issue because USD 512 never raised an objection during the hearing, despite multiple discussions about [the relevant topic] during testimony," and the parents further argued that the school Districts "opened the door for this issue by questioning its own witnesses about [the relevant topic] and inviting cross-examination on the issue." *Id.* at *20.

The Districts court in *Beer* agreed with the parents' position, stating that "Even though the [parents] first raised the issue, USD 512 questioned its own witness about [the relevant issue]. And the school Districts called [a witness to testify about the issue]. During the hearing, USD 512 participated in this issue by providing testimony and adducing evidence about [the relevant topic in dispute]. And the school districts never objected to the [parents] introducing the issue...Thus the court holds that USD 512 waived its objection to the [parents'] arguments about [the relevant topic in dispute]. The administrative decisions didn't err when they considered that issue." *Id.* at *20-21.

Here, the same principle applies: the Districts never once objected to exploring this issue at the hearing, and indeed, the Districts itself adduced evidence on this very point, questioning witnesses (including its own employees) about whether Parents were allowed to fully participate in the IEP development process, whether Parents' concerns and data were considered by the district, and whether the Districts harassed Parents through calling repetitive IEP team meetings for the purpose of pressuring Parents to acquiesce to the District's wish to remove all OT services from B.B. If the Districts at one time had an argument here that Parents did not raise this issue in their due process complaint and other pre-hearing submissions (an argument Parents dispute, see Ex. A and Ex. B), the Districts nonetheless "waived its objection" to the consideration of this issue at the hearing, as the *Beer* court held.

C. Districts' Arguments and Authorities:

The Districts argue that the Parents did not subsequently seek to amend their Due Process Complaint and further:

In the Parents' Proposed Findings of Facts and Conclusions of Law, the Parents included an additional allegation that the Districts supposedly impeded their opportunity to participate in the decision-making process for B.B.'s IEPs by not treating the parents as full members of the IEP team, harassing the parents, and not listening to the parents' concerns regarding data. Not only is this allegation unsupported by the record, but also is not a part of the two issues raised in the due process complaint or the related facts.

Likewise, parents also seek to raise allegations tied to an offer to meet and determine whether compensatory education was owed for a few minutes of paraeducator support time

that was missed each day from the beginning of the school year on August 11, 2023, through November 28, 2023. (Dist. Ex. 1058 – 12/7/23 RWA Letter.) Instead of meeting with the Districts to address the issue of compensatory education, as was offered in the 12/7/23 RWA Letter (Dist. Ex. 1058), Parents attempt to include this as an additional claim despite not having included it in the due process complaint or seeking to amend the due process complaint. (Tr., Vol.1, at 203, ln. 5-8. (parents have not contacted the Districts to discuss compensatory education after 12/7/23 RWA letter was sent).

Under the IDEA, the parents are barred from raising new issues that were not included in the due process complaint after the hearing to try to make any of their claims stick to the proverbial wall. 20 U.S.C. § 1415(f)(3)(B) (“The party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the notice filed under subsection (b)(7), unless the other party agrees otherwise.”) See also *Patrick G. by and through Stephanie G. v. Harrison Sch. Dist. No. 2*, 40 F.4th 1186, 1205 (10th Cir. 2022) (“Among the requisite procedures, the Parents had to specify in their due process complaint the precise issues for which they sought relief. See 20 U.S.C. § 1415(f)(3)(B). If they failed to raise issues in their complaint, the IDEA provides that they ‘shall not be allowed to raise [new] issues’ in their due process hearing ‘unless the other party agrees otherwise.’ Id. Accordingly, by attempting to raise on appeal an argument that they did not raise in their administrative proceedings, the Parents have failed to satisfy the IDEA’s exhaustion requirement.”). As a result, any proposed findings of facts or conclusions of law related to these additional claims must be stricken due to Parents’ failure to seek amendment of their due process complaint prior to the hearing of this matter.

D. Hearing Officer Decision:

Having carefully reviewed the arguments and authorities provided by the Districts and the Parents, the Hearing Officer has concluded that no contemporaneous objection was made by the Districts when the evidence relating to these issues was submitted. Indeed, the record demonstrates that the Districts obtained additional information relating to these issues through the examination of several of the witnesses. The court in *Beer v. USD 512, Shawnee Mission, No. ,21-2365-DDC-TJJ*, 2033 WL 2562416, at *19 (D.Kan. Mar. 17, 2023), was faced with a similar circumstance whereby the Districts argued that the Parents had improperly presented issues in the due process hearing that were not timely disclosed. Judge Crabtree agreed with the parents’ position in *Beer* stating that “even though the [parents] first raised the issue, USD 512 questioned its own witnesses about [the relevant issue] and the school Districts called one of their witnesses to testify about the issues. In *Beer*, the school Districts never objected to the parents introducing the relevant issues.

After careful review of the relevant case law and the parties’ arguments and authorities, the Parents’ additional issues will be considered. A determination whether compensatory education will be considered due to the loss of para-educator support from August 11, 2023, through November 28, 2023, will be determined in the Decision, as more fully set out below. Similarly, a determination whether the Parents were treated as full members of the IEP team, the Parents were harassed, and the Districts did not listen to the concerns of the Parents, will

also be addressed in the Decision as more fully set out below.

IV. CONCLUSIONS OF LAW

A. LEGAL STANDARDS – DENIAL OF FAPE

1. The Hearing Officer has jurisdiction to decide the issues before him pursuant to K.S.A. 72-9720.
2. The burden of proof and the burden of persuasion lie with the party challenging the IEP. *Schaffer ex. rel. Schaffer v. Weast*, 546 U.S. 49, 56-58 (2005); *Johnson v. Indep. Sch. Dist. No. 4 of Bixby, Tulsa County, Okla.*, 921 F.2d 1022, 1026 (10th Cir.1990).
3. The party seeking relief bears the burden of proving the appropriateness or inappropriateness of the education. *L.E. v. Ramsey Bd. of Educ.*, 435 F.3d 384, 391 (3rd Cir. 2006).
4. In this matter, the Districts and the Parents are individual parties seeking relief and bear the burden of proof individually. The burden of proof lies on the party "presenting an IDEA challenge in behalf of a student." *Miller, ex rel S.M. v. Bd. of Educ.*, 455 F. Supp. 2d 1286, 1305 (D. N. M. 2006).
5. "The IDEA is a comprehensive statute enacted to ensure that all children with disabilities have access to a free and appropriate public education designed to meet their unique needs." *LB. v. Nebo Sch. Dist.*, 379 F.3d 966, 968 (10th Cir. 2004).
6. The Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., establishes a substantive right to a "free appropriate public education" ("FAPE"). *Board of Ed. of Hendrick Hudson Central School Dist., Westchester v. Rowley*, 458 U.S. 176 (1982).
7. "Free appropriate public education" (or "FAPE") means special education and related services that-- (A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State educational agency; (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and (D) are provided in conformity with the individualized education program. 20 U.S.C. §1401(9).
8. A FAPE includes both "special education" and "related services". 20 U.S.C. § 1401 (9). "Special education" is "specially designed instruction...to meet the unique needs of a child with a disability." 20 U.S.C. § 1401.
9. The U.S. Supreme Court expanded this definition in the *Rowley* case (cited below) holding that a Districts satisfied this requirement by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction. Such instruction and services must be provided at public expense, must meet the State's educational standards, must approximate the grade levels used in the State's regular education, and must comport with the child's IEP.

10. In addition, the IEP, and therefore the personalized instruction, should be formulated in accordance with the requirements of the Act and, if the child is being educated in the regular classrooms of the public education system, should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade. Bd. Of Educ. Of the Hendrick Hudson Cent. Sch. Dist. V. Rowley, 458 U.S. 176, 203-04 (1982).
11. The U.S. Supreme Court in Rowley set forth a two-part test to determine whether the Districts has complied with federal special education law: 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? Id. at 206-07.
12. In reviewing such cases to determine whether the above requirements have been met, the U.S. Supreme Court cautioned that the courts must be careful to avoid imposing their view of preferable educational methods upon the States. The primary responsibility for formulating the educational method most suitable to the child's needs was left by the Act to state and local educational agencies in cooperation with the parents or guardian of the child.
13. The U.S. Supreme Court reviewed the standard the Tenth Circuit Court of Appeals had applied to the second prong of the Rowley test and found the Tenth Circuit's de minimis benefit test lacking. Instead, the Supreme Court held that "a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." Endrew F. v. Douglas County Sch. Dist., 137 S. Ct. 988, 999 (2017).
14. The Supreme Court went on to explain that: The "reasonably calculated" qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials....The Act contemplates that this fact intensive exercise will be informed not only by the expertise of school officials, but also by the input of the child's parents or guardians....Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal. (Id. Internal citations omitted.)
15. In Endrew F., the Supreme Court reiterated Rowley's deference to school authorities with respect to educational policy, stating: We will not attempt to elaborate on what "appropriate" progress will look like from case to case. It is in the nature of the Act and the standard we adopted to resist such an effort: The adequacy of a given IEP turns on the unique circumstances of the child for whom it was created. This absence of a bright-line rule, however, should not be mistaken for "an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review." Endrew F., 137 S. Ct. at 1001 (quoting Rowley, 458 U.S., at 206, 102 S. Ct. 3034.)
16. As modified by Endrew F. the two-prong Rowley test is now properly stated as: First, has the school complied with the procedures set forth in the Act? And

- second, has the school offered an IEP reasonably calculated to enable the child to make progress appropriate in light of the child's circumstances? (137 S. Ct. 988, 999, 2017).
17. "Medical services" means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services." K.A.R. 91-40-1(nn).
 18. The duty to offer a FAPE, and to issue an Individualized Educational Plan ("IEP"), resides with a child's home school district, or "local educational agency." 20 U.S.C. § 1414(b) (imposing obligations to create and administer IEPs on local educational agencies); Doe v. E. Lyme Bd. of Educ., 790 F.3d 440, 451 (2d Cir. 2015) ("the duty to offer a FAPE remains with the agency where the child resides; and a FAPE cannot be offered unless an IEP is issued"). "Generally, a 'local educational agency' is synonymous with the local school district." Timothy O. v. Paso Robles Unified Sch. Dist., 822 F.3d 1105, 1110 n.7 (9th Cir. 2016) (citing 20 USC. §1401(19)). The "local institution responsible for complying with the terms of the IDEA is the local school Districts in which the student actually resides." Joshua W. v. Bd. of Educ., No. 971042-JTM, 1997 U.S. Dist. LEXIS 9457, at *7 (D. Kan. June 10, 1997).
 19. The IDEA offers states federal funds to assist in educating children with disabilities. See Arlington Central Sch. Dist. Bd. of Ed. v. Murphy, 548 U.S. 291 (2006). In exchange for the funds, a state pledges to comply with a number of statutory conditions. 20 U.S.C. § 1412(a)(1); 34 C.F.R. 300.17; K.A.R. 91-40-2(b)(1).
 20. A child with a disability, who by reason thereof, needs special education and related services, qualifies for benefits under IDEA. 20 U.S.C. § 1401(3)(A); K.S.A. 72-3404(g), (z); K.A.R. 91-40-1(k). A child with a disability is also known as an "exceptional child" in Kansas. K.A.R. 91-40-1(w).
 21. Autism Spectrum Disorder ("ASD") is a qualifying disability under IDEA. 34 C.F.R. 300.8(a); K.A.R. 91-40-1(f). Kansas regulations define "Autism" as meaning "a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three but not necessarily so, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term shall not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance." K.A.R. 91-40-1(f).
 22. B.B. is a child with the exceptionality of autism spectrum disorder, who by reason thereof, needs special education and related services. Accordingly, B.B. qualifies for benefits under the IDEA. B.B.'s parents resided within the Districts' boundaries at all times relevant to this proceeding. Accordingly, the Districts was obligated to provide a FAPE to B.B.
 23. Under the IDEA, a request for due process hearing must be initiated within 2 years of the date the parent or agency knew or should have known about the

- alleged action that forms the basis of the complaint. 20 U.S.C. §1415(f)(3)(C).
24. The IDEA affords a parent or public agency the ability to submit a complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” 20 U.S.C. § 1415(b)(6)(a). A party must file a complaint within two years of the date they “knew or should have known about the alleged action that forms the basis of the complaint.” *Id.* § 1514(b)(6)(B).
25. Once a due process hearing begins regarding the issues raised in a due process complaint, the IDEA prohibits a complainant from raising new allegations. See 20 U.S.C. § 1415(f)(3)(B) (stating that a “party requesting [a] due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the [due process complaint] notice”). If the complainant has a complaint separate from those raised in their due process complaint, they are required to file a separate due process complaint to address the issue. K.S.A. 72-3415(f)(1).
26. The IDEA and Act prevent a party from raising new issues not identified in their due process complaint to “prevent ‘ [complainants] from sandbagging the school Districts by raising claims after the expiration of the resolution period.” *Beer v. USD 512 Shawnee Mission*, No. 21-2365- DDC-TJJ, 2023 U.S. Dist. LEXIS 45822, at *59-60 (D. Kan. Mar. 17, 2023) (quoting *C.F. v. N.Y.C. Dep’t of Educ.*, 746 F.3d 68, 78 (2d Cir. 2014)).

B. ELIGIBILITY FOR OCCUPATIONAL THERAPY AS A RELATED SERVICE.

27. The term “related services” is defined in general as:

...transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the individualized education program of the child, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.

20 U.S.C. §1401(26)(A)(emphasis added). It does not include “a medical device that is surgically implanted, or the replacement of such device.” 20 U.S.C. §1401(26)(B).

28. The related service of “occupational therapy” is defined as follows:

(6) Occupational therapy—

(i) Means services provided by a qualified occupational therapist; and

(ii) Includes—

(A) Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;

(B) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and

(C) Preventing, through early intervention, initial or further impairment or loss of function. 34 C.F.R. §300.34(c)(6).

29. To find a student eligible for special education and related services, such as occupational therapy, the student must meet both prong 1 – student has a disability and prong 2 – student requires specially designed instruction (i.e., educational need). K.A.R. 91-40-8(a); 20 U.S.C. §1414(a)(1)(C)(i).

Eligibility, by contrast, requires that a student “(1) have a qualifying disability and (2) ‘by reason thereof, need [] special education and related services.’” *Alvin Indep. Sch. Dist. v. A.D. ex rel. Patricia F.*, 503 F.3d 378, 382 (5th Cir. 2007) (quoting 20 U.S.C. §1401(3)(A)).

Lisa M. v. Leander Indep. Sch. Dist., 924 F.3d 205, 215 (2019).

C. INFORMATION THAT MUST BE SET FORTH IN A STUDENT’S IEP:

30. See K.S.A. 72-3469 which provides as follows:

(c) The IEP for each exceptional child shall include:

(1) A statement of the child's present levels of academic achievement and functional performance, including: (A) How the child's disability or giftedness affects the child's involvement and progress in the general education curriculum; (B) for preschool children, as appropriate, how the disability affects

the child's participation in appropriate activities; and (C) for those children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objections;

(2) a statement of measurable annual goals, including academic and functional goals designed to: (A) Meet the child's needs that result from the child's disability or giftedness, to enable the child to be involved in and make progress in the general education or advanced curriculum; and (B) meet each of the child's other educational needs that result from the child's disability or giftedness;

(3) a description of how the child's progress toward meeting the annual goals will be measured and when periodic reports on the progress the child is making toward meeting the annual goals will be provided, such as through the use of quarterly or other periodic reports issued concurrently with general education report cards;

(4) a statement of the special education and related services and supplementary aids, based on peer-reviewed research to the extent practicable, and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child: (A) To advance appropriately toward attaining the annual goals; (B) to be involved in and make progress in the general education curriculum in accordance with provision (1) and to participate in extracurricular and other nonacademic activities; and (C) to be educated and participate with other exceptional and nonexceptional children in the activities described in this paragraph;

(5) an explanation of the extent, if any, to which the child will not participate with nonexceptional children in the regular class and in the activities described in provision (4);

(6)(A) a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on state and district-wide assessments; and (B) if the IEP team determines that the child shall take an alternate assessment on a particular state or district-wide assessment of student achievement or part of such an assessment, a statement of why the child cannot participate in the regular assessment and why the particular alternate assessment selected is appropriate for the child;

(7) the projected date for the beginning of the services and modifications described in provision (4), and the anticipated frequency, location, and duration of those services and modifications;

(8)(A) beginning at age 14, and updated annually, thereafter: (A) Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment and where appropriate, independent living skills; and (B) the transition services, including appropriate courses of study, needed to assist the child in reaching the stated

postsecondary goals; and (C) beginning at age 16, or younger, if determined appropriate by the IEP team, a statement of needed transition services for the child, including, when appropriate, a statement of the interagency responsibilities or any needed linkages; and

(9) beginning at least one year before the child reaches the age of majority under state law, a statement that the child has been informed of the child's rights, if any, that will transfer to the child on reaching the age of majority as provided in K.S.A. 72-3431, and amendments thereto.

Nothing in this section shall be construed to require: (1) That additional information be included in a child's IEP beyond that which is specifically required by this section; and (2) that an IEP team include information under one component of a child's IEP that is already contained under another component of the IEP.

K.S.A. 72-3469(c).

V. DECISION

A. SHOULD B.B. BE EXITED FROM OCCUPATIONAL THERAPY SERVICES?

At the February 1, 2022, IEP Meeting, the District, through its Occupational Therapist, Ms. Prophet, announced a proposal to decrease or eliminate B.B.'s occupational therapy services with the District. During multiple IEP meetings and informal meetings with Districts staff following the Districts' proposal, B.B.'s parents stated several reasons why they believe that a reduction or elimination of occupational therapy services was ill-considered. The Parents' concerns included, but were not limited to: the need for improvements in B.B.'s adaptive behavior and daily living skills; his difficulty with visual perception and spatial awareness; multi-processing issues; lack of social and emotional skills due to B.B.'s inability to maintain friendships; poor hand posture, fatigue and lack of automaticity in handwriting; poor fine motor skills; lack of independence in the classroom; poor executive functioning; the lack of a social and emotional goal of reducing prompts, including the lack of baseline data and the lack of measurable and trackable goals to assess B.B.'s ability to focus in the classroom. B.B.'s parents expressed a particular concern regarding B.B.'s spatial awareness as when he is provided with unlined paper, he would write filling any space that he is given. Additionally, B.B.'s mother presented to the Team samples of B.B.'s handwriting, demonstrating the Parents' view that his handwriting skills were illegible.

As a result of the various issues raised by the Parents, the Parents and the Districts agreed to mediation. At the close of the mediation, the Parents and the Districts arrived at a settlement agreement that an occupational therapy evaluation would be conducted. Ms. Nikki Goertzen was selected by the Districts as the evaluator. Ms. Goertzen is employed by the Learning Cooperative of North Central Kansas as an Occupational Therapist and a Structural Specialist. This was her first opportunity to perform an outside evaluation.

Ms. Goertzen commenced her evaluation by reviewing a report from the District's Occupational Therapist, Kristin Prophet. During her testimony, when she was asked whether it

would be necessary for her to review all of the service logs of Ms. Prophet to do an evaluation of B.B.'s current functioning, Ms. Goertzen responded, "No, because I wouldn't want that to influence my evaluation." This is a perplexing and confusing statement made by Ms. Goertzen. The Occupational Therapist's report, prepared by Ms. Prophet and reviewed by Ms. Goertzen, was clearly provided for the purpose of seeking to exit B.B. from occupational therapy services. The Hearing Officer is left to wonder why it would not have been valuable for Ms. Goertzen to review readily available information such as IEP's, service logs, progress reports or other educational assessments. There is nothing in the record to indicate that the Districts affirmatively offered to provide this information. It appears that, aside from classroom observations, the only additional information that Ms. Goertzen reviewed was in the form of receiving samples of B.B.'s handwriting by the classroom teacher. It does not appear that Ms. Goertzen sought to receive any information from B.B.'s parents regarding occupational issues or obstacles while at home.

Ms. Goertzen was not informed by anyone within the Districts that two years previously, B.B.'s visual-spatial knowledge abilities, as measured by the VSI were at approximately the first percentile. She was not informed by the Districts that less than two years earlier, B.B.'s daily living skills were assessed by the school to be in the fourth percentile range. Ms. Goertzen was not informed by the Districts that B.B.'s most recent evaluation included that his adaptive functioning score was in the fifth percentile and that his gross and fine motor skills were in the 67th percentile rank and is number one in the very low range.

In her testimony, Ms. Goertzen confirmed that B.B.'s overall full-scale IQ was a standard score of 73, which is in the low range compared to same-age peers, indicating cognitive delay. Ms. Goertzen further testified that B.B.'s adaptive behavior composite is at 72 with a percentage rank of three and that his daily living skills standard is 74, a percentage rank of four. These scores would be consistent with B.B.'s cognitive delay.

Ms. Goertzen acknowledged that Ms. Prophet's occupational therapy report indicated that B.B.'s printing skills had plateaued in February of 2021, but did not provide an explanation of what the term "plateaued" meant or whether additional services would be required. When questioned about the number of prompts that B.B. requires in a classroom environment, Ms. Goertzen agreed that it would be a measure of a student's functional performance of how many prompts or redirections the student needs in order to initiate or complete a task. No data was collected.

Had Ms. Goertzen taken the opportunity to review B.B.'s IEP's, she may have noted that B.B. had specific special education goals across multiple IEP's designed to reduce the number of prompts he needed to initiate and complete tasks. Ms. Goertzen testified at the hearing that she was unaware that B.B. had ever had those prior IEP goals, and she failed to evaluate whether B.B. needed OT to address the need for very frequent prompts or reminders to complete activities.

During the January 25, 2023, IEP meeting, Ms. Goertzen indicated that she had looked at B.B.'s arm and hand strength, as well motor planning. Ms. Goertzen's focus appeared to be on B.B.'s grounded and ungrounded fine motor actions, including dexterity examples and

manipulation of zippers, buttons, unscrewing lids and shoelace tying at the IEP meeting. At the meeting, Ms. Goertzen stated “he has great positioning of his paper and use of his non-dominant hand. He demonstrated letter writing for me from memory and he would sequence the alphabet. He only omitted one letter and that was ‘f.’ His letters are recognizable. He does have some bottom/up letter formation, but when he is verbally prompted to check his letters and their orientation to the baseline, he could recognize the errors and would then erase and correct the errors. He wrote numerals easily and recognizably with adequate spacing when it comes to double-digit numbers.” Ms. Goertzen did not mention the number of prompts B.B. required to accomplish writing function, nor was any data collection noted. There was no mention of anything related to the speed of B.B.’s handwriting, but she did testify that B.B. was only able to recognize and correct his writing errors after her cueing. Importantly, Ms. Goertzen testified that if B.B. was given a blank piece of paper, he would write to fill the page. She further stated that her assessment did not address the need for very frequent prompts and reminders to complete activities, or the need for close monitoring in areas where safety is concerned.

Ms. Goertzen did address, in part, B.B.’s sensory perception skills by testifying that B.B. was only able to recognize and correct his writing errors after her cueing. Further, she noted that if B.B. was given paper with no lines on it, “he would write big or fill the page.” If she gave him lined paper, and “had cues on it,” he would write appropriately on the lines. She further acknowledged that occupational therapists routinely work with autistic clients in addressing sensory processing issues.

Ms. Goertzen testified that “fine motor which includes eye/hand coordination and hand manipulation, visual perceptual skills and sensory integration as well as looking at those other areas of activities of daily living that would impede access to [B.B.’s] educational environment.”

Ms. Goertzen testified that while executive functioning is not the sole domain of the occupational therapist, it is something that falls under an occupational therapist’s responsibility. Ms. Goertzen further testified that she primarily works in the following areas:

Fine motor which includes eye/hand coordination and hand manipulation, visual perception skills and sensory integration as well as looking at those other areas of activities of daily living that would impede access to their educational environment.

Similarly, Ms. Prophet testified that occupational therapy in the educational setting can extend beyond motor skills and manual dexterity, and include working to improve mental health results, working to improve behavioral results, improving sensory perception skills, working toward improving self-regulation strategies, and working to improve focus and participation, based on need.

The Hearing Officer finds that the Districts’ witnesses and documents make clear that B.B. has significant ongoing visual perception and sensory integration problems made evident by his inability to properly size letters or writing to fill a blank page.

The Hearing Officer further finds that Ms. Goertzen was unduly influenced by Ms.

Prophet's occupational therapy report with the result that Ms. Goertzen's evaluation was narrowly constructed in her review of B.B.'s fine motor skills. Ms. Goertzen's credibility is negatively impacted by her failure to review B.B.'s past IEP's, progress reports, service logs or other important information relating to B.B.'s exceptionality. Ms. Goertzen's failure to fully examine such issues as visual perception, sensory integration and the need for prompting is reminiscent of the hypothetical police detective who focuses merely on one of a host of suspects (fine motor skills) without a careful examination of other suspects (visual perception, sensory integration and prompting). The Districts has failed to meet its burden of proof to exit B.B. from occupational therapy services under the evaluation performed by Ms. Goertzen. In order to determine the extent and nature of B.B.'s occupational services requirements, the Hearing Officer orders a second, more rigorous occupational therapy evaluation to be conducted.

Finally, the Hearing Officer finds that the evidence and exhibits presented at the hearing fully demonstrate the failure of the Districts to meet its burden of proof to exit B.B. from occupational therapy services.

B. ORDER FOR A SECOND OCCUPATIONAL THERAPY EVALUATION

1. Independent Occupational Therapy Evaluation:

- (a) The Districts shall hire an out-district, highly-qualified occupational therapy evaluator to review B.B.'s current occupational therapy needs and to assist in promoting B.B.'s educational progress. The search for a highly-qualified occupational therapy evaluator shall commence within twenty (20) days of this Decision and Award.
- (b) The occupational therapy evaluator shall have the following qualifications:
 - i. Possess an active, Kansas Certified Special Education Teaching License in Good Standing.
 - ii. Have no less than five (5) years of special education occupational therapy evaluation experience.
 - iii. Have no less than three (3) years of previous experience working in a school setting with students with autism spectrum disorder.
- (c) The Districts shall act in good faith and permit the Parents full participation in the selection process for the outside-Districts occupational therapy evaluator. Following consultation with the Parents, it is the responsibility of the Districts to make the final selection of the occupational therapy evaluator. The Districts shall pay all costs associated with the occupational therapy evaluation.
- (d) The occupational therapy evaluator shall be given the opportunity by the Districts to review any necessary information sought by the evaluator including, but not limited to: relevant IEP documents, service logs, progress reports or other educational assessments.
- (e) The occupational therapist is directed to meet with the Parents in order to give the parents the opportunity to provide information regarding B.B.'s occupational issues and/or obstacles while at home.

- (f) The occupational therapy evaluator is authorized to carefully examine B.B.'s progress regarding fine motor skills and manual dexterity, including susceptibility to fatigue; adaptive behavior and daily living skills; visual perception and spatial awareness; multi-processing issues; perceived lack of social and emotional skills due to B.B.'s inability to maintain friendships; perceived lack of automaticity in handwriting; legibility of handwriting; executive functioning; the perceived lack of his social and emotional goal for reducing prompts; and any other issues deemed appropriate for review by the occupational therapist.
- (g) The occupational therapy evaluator is also authorized to conduct or supervise the development of a new sensory profile for B.B. The sensory profile report shall be attached as an addendum to the occupational therapy report.
- (h) After the evaluations are concluded, the occupational therapy evaluator is directed to provide recommendations to the IEP Team, Parents and the Districts orally, and in writing. The recommendations shall include, but not limited to: recommendations for improving the occupational therapy portion of the IEP, establishing measurable and trackable goals, including data collection and development of baseline data.
- (i) An issue has come before the Hearing Officer regarding missing minutes of para-educational assistance each day between the start of the 2023-2024 school year and November 29, 2023. The occupational therapy evaluator is directed to calculate the number of missing minutes of service and recommend to the Parents, IEP Team and the Districts whether compensatory time should be granted for the missing minutes. The evaluator shall provide his/her recommendation as an amendment to the occupational therapy report
- (j) The evaluator's written and oral evaluations and reports shall be submitted to the Districts, the Parents, and the IEP Team.

C. SHOULD B.B. RECEIVE COMPENSATORY EDUCATION AS A RESULT OF MISSED TIME WITH A PARA-EDUCATOR DURING SCHOOL DAYS BEGINNING ON AUGUST 11, 2023, AND CONTINUING THROUGH NOVEMBER 28, 2023?

The Hearing Officer has authorized the occupational therapy evaluator to calculate the number of missing minutes of service and to recommend to the IEP Team, Districts and Parents, whether compensatory time should be granted for the missing minutes.

D. WERE B.B.'S PARENTS IMPEDED IN THEIR OPPORTUNITY TO PARTICIPATE IN THE DECISION-MAKING PROCESS IN THE MONTHS FOLLOWING THE DISTRICTS' PROPOSAL TO DECREASE OR ELIMINATE B.B.'S OCCUPATIONAL THERAPY SERVICES WITH THE DISTRICTS BEGINNING FEBRUARY 1, 2022?

Following the February 1, 2022, IEP meeting in which the Districts announced a proposed decrease or elimination of B.B.'s occupational therapy services, the Parents

continued to firmly resist the reduction or elimination of occupational therapy services. The Districts continued to press this issue with the Parents. Over the intervening months, the Districts asserted oral and written pressure on the Parents to accept the Districts' proposal. When the Parents did not agree, the Districts reduced occupational therapy services by 25% to 23 minutes per week, without parental consent in April 2022.

At the beginning of the next school year, the Districts continued its attempts to persuade the Parents to accept a reduction or elimination of services. These attempts were, again, firmly declined by the Parents. In the meantime, B.B. continued to receive occupational therapy services, reduced by 25%.

Ultimately, the Districts and the Parents agreed to mediate the matter. The mediation resulted in an agreement that an outside occupational therapy evaluation would be conducted.

The Hearing Officer does not find that the Parents were impeded in their opportunity to participate in the decision-making process in the months following the Districts' proposal to decrease or eliminate B.B.'s occupational therapy services. The parties were clearly at impasse regarding the extent of occupational services to be provided by the Hearing Officer finds no bad faith on the part of either party. Rather, both parties made the right decision and sought to meet and confer through mediation. The result of mediation was an agreement that an outside occupational therapy evaluation would be conducted by a third party.

The Hearing Officer finds that the Parents have failed to meet their burden of proof that they were substantially impeded in their opportunity to participate in the decision-making process in the months following the Districts proposal to decrease or eliminate B.B.'s occupational therapy services.

E. ARE B.B.'S IEP'S NOT REASONABLY CALCULATED TO ALLOW HIM TO MAKE PROGRESS IN LIGHT OF HIS CIRCUMSTANCES?

1. The Parents' statement of legal issues to be addressed brief filed with the Hearing Officer in early December 2023, alleged numerous violations of IDEA and denial of FAPE by the District, including, but not limited to:
 - a. The District's legally insufficient Written Language goals and PLAAFPs in the January 25, 2023, and November 29, 2023, IEPs;
 - b. The District's unlawful actions in the area of Social Emotional in B.B.s' IEPs of first removing and annual goal, and then removing all special education and related services, as set forth in the January 25, 2023, and November 29, 2023, IEPs, respectively;
 - c. The District's unlawful decision to deny special education for B.B. in the area of Adaptive Behavior/Daily Living;
 - d. The District's failure to provide special education/related services to address B.B.s' multiprocessing deficits, which the Districts itself repeatedly told Parents were the root of B.B.s' problems with handwriting/Written Language;

- e. The District's unlawful impeding of Parents' opportunity to participate as full members of their own son's IEP team, causing a clear deprivation of educational benefit and imposing significant harm on B.B.s' family; and
 - f. The District's failure to implement B.B.s' January 2023 IEP at the beginning of the 2023-24 school year, resulting in a deprivation of thousands of minutes of paraeducator support, causing a material failure to implement that IEP.
2. In the Parents' Reply to Districts' Response Brief and Response in Opposition to Districts' Motion to Strike, Parents issued a statement of legal issues to be addressed. The Hearing Officer adopts, by reference, the following arguments set out in the Parents' statement.
3. Parents believe that the existing IEP for B.B. (apparently dated January 25, 2023), as well as the draft IEP proposed by the Districts in approximately April 2023, and the newest iteration of the District's proposed IEP, presented to parents on November 29, 2023, are inadequate for B.B., not reasonably calculated to enable B.B. to make progress appropriate in light of his circumstances, are in violation of federal and state special education law, and therefore the Districts has deprived B.B. of the free appropriate public education (FAPE) to which he is entitled by law.
4. Specifically, the IEP for B.B., as prepared by the District, contains either inadequate or non-existent PLAAFPs, baseline data, measurable annual goals, and/or measures of progress for B.B. in several of the "areas" set forth in the document, in violation of federal and state special education law.
5. The existing IEP for B.B. is apparently dated January 25, 2023.
6. Regarding the area of "Written Language" in the IEP, there is only a single, inadequate goal listed, on page 10 of the IEP, and this goal is in relation to B.B. composing and legibly writing three full sentences with one or more detailed words, on wide-ruled lined paper, with correct capitalization and punctuation, without having the sentences written before him 80% of the time.
7. Per Parents, this lone goal is based on a single 4th grade State Standard (W.4.11), while ignoring the litany of other state standards for 4th graders relating to Writing. Given that the draft IEP was given to Parents only two days before this document is due to District's counsel, Parents reserve the right to amend this document and raise issues with the newest proposed IEP at the due process hearing and/or initiate a new due process complaint regarding this latest proposed IEP. Parents are unclear as to which version of the IEP the Districts considers to be currently in-effect, but assume it is the January 25, 2023, version.
8. Additionally, this Written Language section or area of the IEP does not indicate any standardized measures of progress, instead providing for only "teacher observation," while several of the other areas of the IEP do provide for standardized measures/evaluation procedures.
9. Parents are concerned that if the "teacher" doing this observation, and therefore

- making the judgment regarding whether progress is being made, is inadequately trained to teach the topic (as has been Parents' experience), how can this person correctly assess B.B.'s needs?
10. The IEP provides on page 15 that there will not be any supports for school personnel for B.B.
 11. The newest proposed IEP, furnished to Parents on November 29, 2023, and attached hereto as Exhibit B, maintains the inadequacy of the Written Language section, still containing only a single goal that is virtually identical to the lone goal in the January 2023 IEP, with the only change being that the reference to "wide ruled paper" has now been removed.
 12. Parents believe that Written Language is crucial for B.B.'s future success and ability to navigate as a functioning adult and that the existing Written Language section is legally inadequate and not calculated to provide him with FAPE.
 13. Given that the Districts seeks to remove OT services, it is unacceptable that in both the January 2023 and November 2023 versions of the IEP, there is no specific plan for how to achieve the lone goal, nor more broadly how to achieve better penmanship, nor is there any discussion about how and when the Baseline data in both versions of the IEP was measured and recorded and by whom.
 14. Similarly, the November 2023 IEP sidesteps whether B.B. has achieved the goal listed on his prior IEP, which was that by January 24, 2024, he be able to compose and legibly write three full sentences with one or more details words, with correct capitalization and punctuation, without having it written before him 80% of the time; the November 2023 IEP simply says, "He can write 3 simple sentences independently without a model or it written before him. With support he can add details to his writing but is not independent in this writing skill," which Parents find to be a highly telling comment and clearly speaks to the need for continued intensive support in the area of Written Language and penmanship, the plan for which is entirely lacking in both versions of the IEP.
 15. Parents further note that in both versions of the IEP, under "Supplementary Aids & Services," it states, "Beginning 11/29/2023, whenever given a writing assignment greater than 3 sentence response, across all educational settings, B.B. will have access to use of a keyboarding device until the assignment is completed."
 16. Similarly, Parents note that in both versions of the IEP, under "Accommodations and Modifications," it states, "Whenever given an independent writing assignment that requires writing text beyond three sentences (frequency) in the general education or special education setting (location), difficulty can be lowered by providing a scribe, fill in the blank, or have it written out in front of him to copy for the length of the written assignment (duration)."
 17. Parents believe these comments are a clear indication that there is no real and adequate plan to improve B.B.'s Written Language abilities and penmanship, and further speaks to the need for ongoing OT services, as it appears the

- Districts is conceding that B.B. is incapable of handwriting more than three sentences; it goes without saying that when B.B. is an adult, he will not have a scribe to do his handwriting for him.
18. Similarly, the Social Emotional area/section of the January 2023 IEP, found on pages 12-13, is very brief and legally inadequate. It states that B.B. qualifies for ongoing service but does state that his behavior does not impede his learning.
 19. In the "Current Performance" subsection, presumably the PLAAFP for this area, there is reference to B.B. needing visual and verbal cues to help remind to take his time and to complete his work with nice penmanship and that he gets his math work done 80% of the time "however can be hard to read at times"; there is no commentary at all about B.B.'s social and emotional present level of functioning at school and how that impacts his ability to progress in the curriculum.
 20. The earlier statement that B.B.'s behavior does not impede his learning, when discussing the Impact of Exceptionality on progress in the general education curriculum, the IEP in the very same "Social Emotional" section/area states, in contradictory fashion, that "B.B.'s difficulty with response inhibition and control interferes with his ability to understand and participate with instruction in the general education and special education classrooms without prompting and support."
 21. This Social Emotional section does not contain any PLAAFP regarding "difficulty with response inhibition and control," nor any "baseline data" on this point.
 22. The Social Emotional section of the IEP further merely states that B.B.'s needs will be met by "general education supports; accommodations and modifications," with no details whatsoever furnished in this IEP.
 23. Importantly, despite the IEP even having a prompt for the Districts to provide a "Goal" in this section, no goal is listed at all in Social Emotional, with no discussion regarding assisting B.B. with emotional and social interaction.
 24. Similarly, there is no description of how B.B.'s progress toward meeting any annual goals will be measured in this Social Emotional section.
 25. Similarly, no state standards, including KSDE's "Social, Emotional, And Character Development Model Standards," are set forth at all in this Social Emotional area of the IEP.
 26. Parents also note that they have sought out, and been approved, for the Serious Emotional Disturbance Waiver (SED Waiver) program for B.B. through the State of Kansas, clearly indicating that the District's IEP for B.B. in Social Emotional has been and continues to be woefully inadequate.
 27. The January 2023 IEP briefly discusses Parents' concerns regarding B.B. having friends and not always being fully aware of friendships or transparent with Parents about this topic, which would certainly fall under the ambit of Social Emotional, yet the only commentary from the Districts is that B.B. "does have genuine friendships both in the special education and general education settings and classrooms. The team discussed appropriate ways to address

- comments about autism that may be directed towards B.B.”
28. No further discussion on this important point, nor any goals, are furnished in the IEP.
 29. The District’s proposed November 2023 IEP finds that B.B. does not need special education or related services for Social Emotional. See Exhibit B at p. 15.
 30. No explanation is given for this significant change, nor is there any reference to the language from the January 2023 IEP regarding B.B.’s difficulty with response inhibition and control interfering with his ability to understand and participate with instruction in the general education and special education classrooms without prompting and support.
 31. Parents note that under the Communication section of the November 2023 IEP is commentary about B.B. having difficulty staying on topic and making comments that are irrelevant to the topic during conversations with adults and peers, making the removal of eligibility for special education and related services in Social Emotional even more inappropriate.
 32. The November 2023 IEP makes no reference to B.B. being approved for the Serious Emotional Disturbance Waiver (SED Waiver) program for B.B. through the State of Kansas, a clear indication that Social Emotional special education services are needed.
 33. The November 2023 IEP (along with the January 2023 IEP, as noted above) offers zero commentary on the KSDE’s “Social, Emotional, And Character Development Model Standards” and whether B.B. has been measured against those standards.
 34. The November 2023 IEP also mentions nothing about Parents’ ongoing concerns about B.B.’s interactions with peers, being bullied, and ability to make and maintain friendships.
 35. Removing and/or denying special education and related services in Social Emotional for B.B. denies him FAPE.
 36. Similarly, there are no occupational therapy goals set forth in the IEP; while this issue may fall under the ambit of the pending due process complaint filed by the District, it is worth raising again here, and the lack of any such goals is not only in violation of the law, but also speaks to the fact that such OT services for B.B. are still necessary and appropriate for B.B. to receive, and could be included in either or both of the “Related Services” or “Written Language” sections/areas of the IEP.
 37. Further, the November 2023 IEP provides no baseline data or goals for B.B. in terms of OT.
 38. State and federal law, as well as best practices (as helpfully enumerated in the Kansas Special Education Process Handbook), require that an IEP set forth measurable annual goals for each exceptional child receiving special education and related services, “including academic and functional goals that meet the child’s needs and enable the child to be involved and make progress in the general education curriculum.” (See K.S.A. § 72- 3429(c)(2); Kansas Special

Education Process Handbook, pp. 74, 77-79)

39. To be “written correctly,” measurable annual goals should set forth four components: behavior, criteria, condition, and timeframe. (See Kansas Special Education Process Handbook, pp.77-78).
40. Similarly, “For curricular needs, the IEP team should consider identifying goals from the standards and benchmarks of the local Districts or from the Kansas Extended Standards. To accomplish this, it is necessary that the child's performance be measured against the Districts or state standards, benchmarks, and indicators.” (See Kansas Special Education Process Handbook, pp. 77).
41. Similarly, state and federal law, as well as best practices, require that an IEP set forth PLAAFPs and “baseline data” for each exceptional child receiving special education and related services. (See K.S.A. § 72-3429(c)(1); Kansas Special Education Process Handbook, pp. 74-77).
42. Similarly, state and federal law, as well as best practices, require that an IEP set forth “a description of how the child's progress toward meeting the annual goals will be measured.” (See K.S.A. § 72-3429(c)(3); Kansas Special Education Process Handbook, pp. 79-80).
43. Both versions of the IEP appear to omit any paraeducator support for B.B. Per Parents, B.B. has previously received para support, and we note that such para support was referenced as being necessary for B.B. and apparently included in earlier IEPs, including February 2021 and February 2022, but is absent from the January 2023 and November 2023 iterations, which is a significant and wholly inappropriate change.
44. Parents state they never consented to removing para support from B.B. at any time.
45. Removing para support without Parents’ consent is a violation of the law regarding material changes in services needing parental consent. K.S.A. § 72-3430(b)(6).
46. The November 2023 IEP states that “Support for School Personnel” is unnecessary, but the current training and qualifications of B.B.’s instructors and their ability to effectively provide him FAPE in light of his autism diagnosis is never set forth in the IEP. 34 C.F.R. §§ 300.156(c), 300.207.
47. Neither the January 2023 IEP nor the proposed November 2023 IEP provide any information whatsoever about the duration of special education services each day/week; instead, under “Special Education Services,” the January 2023 IEP simply states that “B.B. will receive all math, reading, and writing instruction for the duration of those instructional times in the special education setting throughout each school day through the IEP year,” and the November 2023 proposed IEP states, “Beginning 11/29/2023, B.B. will receive all math, reading, and writing instructions in the special education setting throughout each school day throughout the IEP year.”
48. The Kansas Special Education Process Handbook states, at pages 108-109, the following: “For data collection purposes KSDE requires that the frequency of the

services and modifications be reported as minutes/days/weeks. This would indicate how many minutes per day, how many days per week, and how many weeks per school year the services would be provided. This information would be determined at the IEP team meeting when decisions are being made about what services will be provided....The amount of services to be provided must be stated in the IEP so that the level of the school's commitment of resources will be clear to parents and other IEP team members. The amount of time to be committed to each of the various services to be provided must be (1) appropriate to the specific service, and (2) stated in the IEP in a manner that is clear to all who are involved in both the development and implementation of the IEP (Federal Register, August 14, 2006, p. 46667). In addition, the IEP team addresses the extent, if any, to which the child will not participate with children without disabilities in the general education curriculum and nonacademic activities."

49. The January 2023 IEP and November 2023 proposed IEP are in plain violation of these requirements.
50. Because no specific information about the amount of time that special education services are being furnished to B.B. each day/week, and no such information has been shared with Parents, it is possible that the Districts is not placing B.B. in the least restrictive environment, as it appears B.B. is only in his general education classroom infrequently. (See K.A.R. § 91-40-1(II); see also L.B. ex rel. K.B. v. Nebo Sch. Dist., 379 F.3d 966, 975-76 (10th Cir. 2004)).
51. Underlying all of the specific standards regarding IEP contents is the requirement that the Districts must furnish FAPE to B.B., and in order to provide FAPE to a disabled child, a school Districts must create and implement "an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances" through an IEP that is "tailored to the unique needs of a particular child." Endrew F. ex rel. Joseph F. v. Douglas County School Dist. RE-1, 580 U.S. 386, 401, 403 (2017).
52. As noted above, the lack of appropriate PLAAFPs, measurable annual goals, the insufficiency of goals for B.B., the lack of specifics as to duration of special education services, the lack of clarity on whether B.B. is receiving para support or not, the appearance that he is not currently receiving para support, and the likelihood that B.B. is not placed in the least restrictive environment, mean that the current and proposed IEPs created by the Districts are not reasonably calculated to enable B.B. to make progress appropriate in light of his circumstances.
53. Both versions of the IEP for B.B. find that, based on the most recent evaluation and ongoing data collection, B.B. does not have the need for special education and related services in the area of "Adaptive Behavior/Daily Living." (See Ex. A, p. 5).
54. In the same section after making this statement, the January 2023 IEP recites that B.B.'s school ratings on the Vineland-3 assessment (meaning completed by

- his teacher(s)) were in the 2nd percentile.
55. The IEP continues, stating, "B.B. will need more guidance in completing everyday tasks than other students his age. He is becoming independent in the school setting and his classroom where he knows the structures and routines. He is less adept in the community setting and may need more monitoring than others his age."
56. Those assessment scores and comments clearly speak to a need for special education and related services in the area of Adaptive Behavior/Daily Living, including occupational therapy services.
57. In the same vein, at an October 2022 IEP team meeting for B.B., Parents were told by B.B.'s special education teacher that B.B. was unable to independently wash his hands after toileting; similarly, the District's occupational therapist working with B.B. stated at this same meeting that it was "normal" for children at age 10 to not be able to tie their shoes or clean themselves properly after toileting, two items with which B.B. has ongoing difficulties.
58. At the November 29, 2023 IEP team meeting, Parents noted that B.B. still does not hold a spoon correctly and this was noted at the school's Thanksgiving meal; it was noted at the meeting that B.B.'s spoon grasp is not considered age-appropriate and it makes him "stick out" from his peers and draws attention to him while eating lunch at school, and potentially could cause him to be bullied.
59. The Districts were unwilling to provide any services regarding this issue.
60. Parents strongly assert that B.B. is unable to progress in the curriculum at school, and ultimately becomes a productive member of society, if he is unable to accomplish basic daily living and adaptive behavior tasks such as those identified above, for which the Districts has wrongly determined he does not need special education or related services, depriving him of FAPE.
61. Federal and state law require "a statement of measurable annual goals, including academic and functional goals, designed to:
- aa. meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and
 - bb. meet each of the child's other educational needs that result from the child's disability. 20 U.S.C. § 1414(d)(1)(A)(i); K.S.A. § 72-3429(c).
62. Federal and state law further require the Districts to include in an IEP Present Levels of Academic and Functional Performance. ((PLAAFPs). 20 U.S.C. § 1414(d)(1)(A)(i); K.S.A. § 72-3429(c)).
63. The IEP must include, at a bare minimum, the child's present levels of educational attainment, the goals for his education, and "objective criteria with which to measure progress toward those goals." (S.C. by & through N.C. v. Chariho Reg'l Sch. Dist., 298 F. Supp. 3d 370, 388 (D.R.I. 2018), see also Helms v. Indep. Sch. Dist. No. 3 of Broken Arrow, Tulsa Cnty., Okl., 750 F.2d 820, 825 (10th Cir. 1984), holding, a disabled "child's progress in school should be measured by objective, if not standardized, standards).

64. For example, the Parents testified that they were repeatedly told that B.B.'s had difficulties with handwriting and with written language or the result of "multi-processing" problems. Nonetheless, a review of the January 2023 and November 2023 IEPs, do not have any commentary regarding the "multi-processing" problem.
65. Kansas Special Education Process Handbook gives lengthy description of what appropriate PLAAFPs, Baseline Data, and Measurable Annual Goals look like, including appropriate Baseline Data and PLAAFPs to develop legally sufficient goals.
66. Another important issue in collecting baseline data is the understanding that any goal written will have the same measurement method as was used in collecting its baseline data. Also, when selecting baseline data it needs to be (a) specific – to the skill/behavior that is being measured, (b) objective – so that others will be able to measure it and get the same results, (c) measurable – it must be something that can be observed, counted, or somehow measured, and (d) able to be collected frequently – when progress reports are sent out the progress of the student toward the goal will have to be reported using the same measurement method as used to collect the baseline data. (Exhibit 112 at pp. 74-75).
67. There are four critical components of a well-written goal:
 - a) Timeframe for completion
 - b) Conditions (manner in which progress toward goal is measured)
 - c) Behavior (clearly identifies performance being monitored)
 - d) Criterion (identifies how much, how often, or to what standards the behavior must occur in order to demonstrate goal has been reached. See Exhibit 112 at pp. 77-78.
68. The Special Education Process Handbook further notes that "[w]ell written measurable annual goals will pass the "Stranger Test." This test involves evaluating the goal to determine if it is written so that a teacher who does not know the child could use it to develop appropriate instructional plans and assess the child's progress." (See Ex. 112 at 78).
69. The Hearing Officer finds that the January 2023 IEP written language section stating: "identify impact of exceptionality on progress in general education curriculum" was cut and pasted from prior IEPs.
70. The "measurable goals" in an IEP must correspond with "a description of specialized instruction and services the child will receive." (Endrew F., 580 U.S. at 401 (citing 20 U.S.C. §1414(d)(1)(A)(i)).
71. The singular "goal" found in the "written language section of the January 25, 2023, IEP" states:

By 1/24/2024: When given wide ruled lined paper, B.B. will compose and legibly write three full sentences with one or more detailed words, with correct capitalization and punctuation, without having it written before him 80% of the time. (Exhibit 56 at USD 237).

72. During the due process hearing, this goal generated several questions: How is legibility measured? What constitutes a full sentence? What constitutes a “detailed word” question? What does “80% of the time” mean? How is it measured?
73. The Hearing Officer finds that the Districts’ personnel could not successfully explain what the goal meant during the hearing.
74. Other courts examining virtually identical goals referencing “80 percent accuracy objective” have found the goal to be in violation of IDEA.
The student’s IEP “cryptically referred to an 80% accuracy objective, without delineating what the [student] was to attain eighty percent accuracy in,” and the hearing officer found that these were “vague, unmeasurable goals” that violated the student’s right to FAPE, a conclusion that the federal Districts court upheld by stating the relevant goals developed by the Districts were “mushy, ambiguous, unquantifiable goals” which were “at odds with IDEA objectives to have [student] progress towards tangible goals and measure his achievement in working towards them. Vague and unmeasurable objectives are the handmaiden of stagnation, as a program cannot possibly confer an educational benefit to [student] if his teachers and parents do not know where they are trying to take [student] and how they will know when he has arrived.” Escambia County Bd. of Educ. v. Benton, 406 F.Supp.2d 1248, 1255-56 (S.D. Ala. 2005).] was to attain eighty percent accuracy in,” and the hearing officer found that these were “vague, unmeasurable goals” that violated the student’s right to FAPE, a conclusion that the federal Districts court upheld by stating the relevant goals developed by the Districts were “mushy, ambiguous, unquantifiable goals” which were “at odds with IDEA objectives to have [student] progress towards tangible goals and measure his achievement in working towards them. Vague and unmeasurable objectives are the handmaiden of stagnation, as a program cannot possibly confer an educational benefit to [student] if his teachers and parents do not know where they are trying to take [student] and how they will know when he has arrived.” Escambia County Bd. of Educ. v. Benton, 406 F.Supp.2d 1248, 1255-56 (S.D. Ala. 2005).
75. The lone Written Language goal the Districts developed for B.B.’s January 25, 2023 IEP is likewise essentially identical to the goal found violative of IDEA in *Evans v. Bd. of Educ. of Rhinebeck Cent. Sch. Dist.*, in which the student would be evaluated on the listed objectives by reference to “teacher observation” and “80% accuracy,” which the Southern Districts of New York found failed to appropriately specify strategies for adequately evaluating the child’s academic progress and determining which teaching methods are effective and which needed to be revised; the court held that these goals and the listed evaluative “method” “did not set forth measurable criteria to assess progress,” and found the school Districts liable for violating IDEA., 930 F. Supp. 83, 97 (S.D.N.Y. 1996).
76. Accordingly, the Hearing Officer accepts the Parents argument that this singular written language goal created by the Districts in the January 25, 2023, IEP, fails the “stranger test,” as it is so vague and so utterly subjective that “a teacher who

does not know the child could use it to develop appropriate instructional plans and access the child's progress." (See Kansas Special Education Handbook; Exh. 112 at 78).

77. The Hearing Officer finds that the January 2023 IEP baseline section is also improper. The baseline states:

When given lined paper, B.B. legibly writes three full sentences with one or more detailed words, with correct capitalization and punctuation, without having it written before him 40% of the time.

In addition to the missing data, it does not state whether the alleged metric of performance was recorded at a single, discrete instance, or over time, and if over time, how the 40% figure was calculated, or whether this was simply the "guesstimate" of the special education teacher; it does not state how legibility was measured; it does not set forth what "full sentence" or "detailed word" means; it does not state who made the determination that B.B. had achieved a 40% success rate; nor does it reference any discrete, actual work that B.B. performed to reach this alleged 40% success rate, and whether it was shared with Parents at any time.

*As in Beer, the PLAAFP the Districts included in the Written Language section of B.B.'s January 25, 2023, IEP omitted completed relevant evaluations, referenced Districts documentation to student's performance issues "and percentages without explaining their origins," or what they meant or how they were calculated with "no indication where the additional information was derived from," and included data in Baseline data without any information regarding "when or how the IEP team had collected that data." (Beer v. USD 512 Shawnee Mission, No. 21-2365-DDC-TJJ, 2023 WL 2562416, at *21-22, 26 (D. Kan. Mar. 17, 2023)).*

78. The Districts failed at both the January 25, 2023 IEP team meeting, and at the hearing in this matter, to offer any explanation for these glaring omissions and problems with the PLAAFPs in this section; recall that Beer held that "the school Districts bears the burden of demonstrating which evaluative materials were reviewed when creating the IEP to ensure its reasonably calculated to meet the unique needs of the child." (Id. at *23).

79. Baseline section in the January 2023 IEP also omits that B.B. did not meet his prior IEP's lone goal in Written Language, yet there was no acknowledgment of this, no real change in the goal for B.B., and certainly no development of any real plan for B.B., beyond the "accommodation" of frequent prompting that the Districts shoehorned into this IEP, in plain contradiction to the multi-year goal of prior IEPs to reduce prompts for B.B.

Feb. 2022 IEP: Goals: Beginning 2/01/222 – 1/31/2023: B.B. will be able to write a full sentence with correct capitalization and punctuation without having it written before him 80% of the time.

Jan. 2023 IEP: When given lined paper, B.B. legibly wrote three full sentences with one or more detailed words, with correct capitalization and punctuation, without having it written before him 40% of the time.

80. The Districts' failure to include that basic Baseline data of whether he met his

prior year's goal, and the failure to change approach to Written Language, plainly means that the Districts failed to design an adequate, individualized IEP for B.B., as was found in Draper in very similar circumstances. (Draper, 480 F. Supp. 2d at 1347).

81. The Hearing Officer finds that the 2023 Progress Reports to be legally insufficient. Ms. Koerperich admitted at hearing that the quarterly Progress Report for B.B.'s Written Language goal dated May 17, 2023, did not directly address whether B.B. had met even the vague goal set by the District. (Tr. Vol. 5 at 937, In. 2-16; see also Ex. 1062 at USD000258).
82. No information provided regarding when and how measured, how percentages were calculated, what three simple sentences he wrote, nothing about legibility, nothing about what constituted simple sentences nor details.
83. Precisely as in Beer, the Districts prepared and sent Progress Reports to Parents that failed to explain nor provide to Parents the underlying data driving the conclusory statements in the Progress Reports, and they further stated that the student was making "adequate progress" toward his goal despite the conclusory commentary in the same reports clearly indicating otherwise. (Beer, 2023 WL 2562416 at *26).
84. The Hearing Officer finds that the November 2023 IEP written language section goal is also unlawful. The goal reads: "B.B. remembers to use correct capitalization 80% and punctuation about 40% of the time. He can write 3 simple sentences independently without a model or it written before him. With support he can add details to his writing but is not independent in this writing skill."
85. Federal Courts examining virtual identical goals found them to be in violation of IDEA:

The student's IEP "cryptically referred to an 80% accuracy objective, without delineating what the [student] was to attain eighty percent accuracy in," and the hearing officer found that these were "vague, unmeasurable goals" that violated the student's right to FAPE, a conclusion that the federal Districts court upheld by stating the relevant goals developed by the Districts were "mushy, ambiguous, unquantifiable goals" which were "at odds with IDEA objectives to have [student] progress towards tangible goals and measure his achievement in working towards them. Vague and unmeasurable objectives are the handmaidens of stagnation, as a program cannot possibly confer an educational benefit to [student] if his teachers and parents do not know where they are trying to take [student] and how they will know when he has arrived." Escambia, 406 F.Supp.2d 1248, 1255-56 (S.D. Ala. 2005).

The lone Written Language goal the Districts developed for B.B.'s November 29, 2023, IEP is likewise essentially identical to the goal found violative of IDEA in Evans v. Bd. of Educ. of Rhinebeck Cent. Sch. Dist., in which the student would be evaluated on the listed objectives by reference to "teacher observation" and "80% accuracy," which the Southern Districts of New York found failed to appropriately specify strategies for adequately evaluating the child's academic progress and determining which teaching

methods are effective and which needed to be revised; the court held that these goals and the listed evaluative “method” “did not set forth measurable criteria to assess progress,” and found the school Districts liable for violating IDEA., 930 F. Supp. 83, 97 (S.D.N.Y. 1996).

85. The Hearing Officer finds that the November 2023 IEP Written Language section contains unlawful baseline/PLAAFPS. The baseline reads:
B.B. remembers to use correct capitalization 80% and punctuation about 40% of the time. He can write 3 simple sentences independently without a model or if written before him. With support he can add details to his writing but is not independent in this writing skill.
86. Districts carried forward same deficiencies from January 2023 IEP: no information regarding when and where this data was collected, how these figures were calculated, whether these calculations were from a longitudinal assessment of B.B.’s handwriting, or from a single discrete instance where his writing was assessed, or whether they were simply a guesstimate from his special education teacher; no information is provided regarding what were the 3 simple sentences B.B. wrote, nor when he wrote them; no information is provided defining “simple sentence” or “detail”; nor is there any information regarding what “support” that B.B. will receive in order to add such “details” to his writing—nothing is mentioned regarding the frequency of such support, and whether this has need has increased, decreased, or stayed the same.
87. Identical to the January 2023 IEP, the Hearing Officer finds the District’s thoroughly insufficient, vague, cryptic, and entirely subjective PLAAFP in the November 2023 IEP in the area of Written Language to be in plain violation of IDEA; the cases cited above, in particular, the very recent Beer opinion from the federal Districts of Kansas in late 2023, offers clear guidance on this precise issue, as the PLAAFPs in our case are virtually indistinguishable from those found severely deficient in Beer.
88. As in Beer, the PLAAFP the Districts included in the Written Language section of B.B.’s November 29, 2023 IEP omitted completed relevant evaluations, referenced Districts documentation to student’s performance issues “and percentages without explaining their origins” or what they meant or how they were calculated with “no indication where the additional information was derived from,” and included data in Baseline data without any information regarding “when or how the IEP team had collected that data.” Beer, 2023 WL 2562416, at *21-22, 26.
89. The violation is substantive because the District’s lone Written Language goal in the November 2023 IEP failed to create an educational program for B.B. in the critical area of Written Language that was reasonably calculated to enable a child to make progress in light of the child’s circumstances—the Districts made essentially no changes to this section of the IEP from the thoroughly deficient January 2023 IEP’s Written Language section, and B.B.’s significantly impeded performance in Written Language since January 2023 clearly demonstrated that

the approach to this area needed to change, as what the Districts was doing simply was not working, and the Districts had this information at the November 29, 2023 IEP team meeting and elected to make essentially no changes to this portion of the IEP. *Endrew F.*, 580 U.S. at 403; see also *Draper*, 480 F. Supp. 2d at 1348 (finding that Districts failed to design student's IEP to meet his individualized needs by failing to review and assess whether he had mastered goals from previous year and failing to revise IEP in certain areas from one year to the next); see also *O'Toole By & Through O'Toole v. Olathe Dist. Sch. Unified Sch. Dist.* No. 233, 144 F.3d 692, 702 (10th Cir. 1998) (Tenth Circuit held that a school Districts is not permitted to ignore the fact that an IEP is clearly failing, nor can it continue to implement year after year, without change, an IEP which fails to confer educational benefits on the student.).

90. Similarly, the District's failures with regard to the Written Language goal and PLAAFPs/Baseline in the November 2023 IEP, clearly constitute a procedural violation that resulted in denial of a FAPE for B.B.: B.B. has been substantively harmed and he lost an educational opportunity due to these failures, as clearly demonstrated by the facts that the Districts simply carried over all of the deficiencies from the prior year's Written Language section yet during that prior year, B.B. (1) came nowhere close to meeting his prior, essentially identical Written Language goal by the close of the previous IEP year in November 2023, as Districts personnel openly admitted at the hearing and as made plain by the District's November 29, 2023 Progress Report, (2) his handwriting as of the last date the prior IEP was "active" (i.e., November 29, 2023) was adjudged by his special education teacher to be at a second-grade level—recall that, at the time that comment was made, B.B. was the age of a sixth-grader, and (3) perhaps most basically, as of November 29, 2023, B.B. was, again, the age of a sixth-grader and could not independently write out three full sentences with any details. 20 U.S.C. § 1415(f)(3)(E)(ii); see also K.S.A. § 72-3416(g)(2); see also *O'Toole*, 144 F.3d at 702; see also *Boutelle*, 2019 WL 2061086, at *9–10.
91. In the "Social Emotional" section of the District's November 29, 2023 IEP, it states that "Based upon the most recent evaluation and ongoing data collection" that B.B. did not need special education or related services in this area, despite the fact that the most recent evaluation of B.B. in this area was completed just ten months earlier and showed deficits in this area, and multiple instances of social emotional issues with B.B. at school had been made known to the Districts in the interim. See Ex. 81 at USD000277.
92. The District's November 29, 2023, IEP offers zero explanation as to why it was now determined that B.B. did not need special education or related services in Social Emotional; no data whatsoever is cited to support this change from the January 25, 2023, IEP, which did find him in need of specialized instruction in Social Emotional. See Ex. 81 at USD000278.
93. Districts both substantively and procedurally violated IDEA in its actions in first omitting any Social Emotional goal in B.B.s' January 25, 2023, IEP, including any

- goal geared toward reducing prompts, and then in unilaterally determining, without any explanation, in November 2023 that B.B. did not need any special education in Social Emotional.
94. B.B.s' circumstances, and the District's history of working to reduce the prompts he needs to start and complete his work, make clear that such an ongoing goal and related data collection on this point is appropriate and necessary; without this, the Districts is not providing an educational program reasonably calculated to enable B.B. to make progress in light of his circumstances.
 95. The Districts failures in this regard have also caused B.B. and his Parents substantive harm, deprived B.B. of FAPE, and caused B.B. to lose the educational opportunity to reduce the number of prompts he needs and grow his independence at school. 20 U.S.C. § 1415(f)(3)(E)(ii); see also K.S.A. § 72-3416(g)(2).
 96. The Districts has failed in this regard precisely as the school districts failed in the cases cited herein: Escambia, Kevin T., Draper, and Beer: the Districts failed to provide Parents "a clear exposition" of B.B. present levels of performance at the January 2023 IEP team meetings when it did not present any data regarding whether he had met his prior IEP goal toward reducing prompts nor discuss anything related to the Social Emotional findings from the Sensory Profile it had just completed on B.B., and then again at the November 2023 IEP team meeting by stating point blank it was not collecting any data on redirects for B.B. and would not do so moving forward; by failing to include a Social Emotional goal in the IEPs despite knowing that B.B. had not met his prior IEP's Social Emotional goal toward reducing prompts and despite the findings of several Critical Items of Maladaptive Behavior in the January 2023 Sensory Profile; and by ignoring its own evaluation data and thereby failing to produce an appropriate Social Emotional goal for B.B.. Beer, 2023 WL 2562416, at *21-23; Draper, 480 F. Supp. 2d at 1348; Kevin T., 2002 WL 433061, at *10-11; Escambia, 406 F.Supp.2d at 1271-74; 20 U.S.C. § 1414(c)(1), (d)(4)(A)(ii); see also 34 CFR §§ 300.304(b), .305(a).
 97. Similar to its elimination of special education in the area of Social Emotional, the Districts simply ignored its own data and voluminous evidence that B.B. needed and needs special education in the area of Adaptive Behavior and Daily Living
 98. Most recent triennial reevaluation in February 2021 found B.B.s' Adaptive Behavior Composite at school in fifth percentile, and Daily Living Skills at school in fourth percentile, per assessment completed by B.B.s' special education teacher.
 99. Prior IEPs, including in February 2022, found B.B. needed special education in area of Adaptive Behavior/Daily Living, due in part to need for "very frequent prompts to refocus on the required task or activities. He is not independent in completing activities in the classroom which will interfere with his ability to progress in the general education curriculum." See Ex. 18 at USD000155
 100. Neither the January 2023 nor the November 2023 IEP have any Motor/OT goals

for B.B., despite the Districts providing OT services to B.B. throughout that time period. See Ex. 56 and Ex. 81.

101. The Hearing Officer finds that the Districts unilaterally, and without discussion, made important modifications to the IEP without the Parents knowledge. When B.B. did not meet the final social/emotional goal towards reducing prompts that was in the February 1, 2022, IEP, without discussion, the Districts unilaterally removed that goal and replaced it with an accommodation for “frequent” prompting. This was a significant modification in the IEP without the Parents knowledge. Multiple previous IEP’s contained a specific goal to reduce the number of prompts that B.B. needed to start and complete tasks. When he did not meet that goal, the Districts unilaterally modified it. Indeed, the Hearing Officer finds the Districts had no plan to address B.B.’s “multi-processing/executive functioning” problems.
102. The Hearing Officer finds that after a careful review of B.B.’s progress reports that the project reports appear to be “subjective” and do not contain baseline data. It appears that, following review of the Districts’ witness’s testimony, that the Districts seek to offer B.B. an educational program providing access to only “De minimis” progress without data to support that B.B. is making any progress at all. In the Matter of Beer v. USD 512, Shawnee Mission, No. 21-2365-DDC-TJJ, 2023, WL 2562416, at *26-27 (D. Kan. Mar. 17, 2023), the court held that the Shawnee County Mission School Districts recorded in its Progress Reports that the student was making progress adequate to achieve the annual goal, but which was contradicted by the actual data showing the student was not progressing toward meeting his annual goals, thus a clear violation of IDEA. In this instance, there is a dearth of supporting data.
103. The Hearing Officer finds that the Districts failed to furnish appropriate occupational therapy goals for B.B. over the last two IEPs. In addition, there is no evidence that B.B.’s parents received baseline data relating to the occupational therapy work performed.
104. Accordingly, the Hearing Officer has determined that the Parents have successfully met their burden of proof establishing that B.B.’s IEPs are not reasonably calculated to allow him to make progress in light of his circumstances.

F. Appeal Information:

Any party may appeal this decision to the State Board of Education, pursuant to K.S.A. 72-3418(b), by filing a written notice of appeal to:

Notice of Appeal
ATTN: Special Education and Title Services
Landon State Office Building
900 SW Jackson Street, Suite 620
Topeka, Kansas 66612-1212

The Notice of Appeal must be filed with Special Education and Title Services, designee of the Commissioner of Education, not later than 30 calendar days after the date of the postmark on the envelope containing this decision. Filing is complete upon receipt of the Notice of Appeal in the office of Special Education and Title Services. Emailed submissions will not be accepted for filing.

Be advised that upon receipt of a Notice of Appeal by either party, Special Education and Title Services will inform both parties of a Designated State Review Officer.

Upon notification, the local education agency shall ensure the official record is transmitted in a timely manner by the Hearing Officer to the Designated State Review Officer.

IT IS SO ORDERED.

November 8, 2024_____

Date Larry Rute, Hearing Officer

CERTIFICATE OF SERVICE

I, Larry R. Rute, do hereby certify that I have provided a true and correct copy of the above and foregoing Notice of Hearing Officer's Decision upon the following parties, via e-mail, and properly addressed to:

Attorney for the District, Attorney for the Parent, KSDE

This 8th day of November, 2024.

Larry R. Rute, Hearing Officer