NOTICE OF HEARING OFFICER'S DECISION
KANSAS DEPARTMENT OF EDUCATION
FILE #18DP___-002

CHILD'S NAME:	C.S.
PARENT(S) NAMES:	K.P. C.S. _____ (Referred to as Mrs. P. and Mr. S. for confidentiality)
PARENT'S COUNSEL:	PETER JOHN ORSI, II 200 West Douglas, Suite 1010A Wichita, KS 67202
SCHOOL DISTRICT:	USD___, and _____KANSAS COOPERATIVE IN EDUCATION
DISTRICT'S COUNSEL:	SARAH J. LOQUIST 1317 SW Pembroke Topeka, KS 66604
HEARING OFFICER:	JAMES G. BEASLEY 601 Birkdale Dr. Wichita, KS 67230
DATE:	May 21, 2019

CASE HISTORY AND PROCEDURAL STATUS

On February 20, 2018, U.S.D. ____ _____ and _____ Kansas Cooperative in Education (hereinafter referred to as District) filed a Notice to Parents of C.S., a request for Due Process Hearing which was received by the Parents. That case was designated as 18DP____-001. On February 23, 2018, the present Hearing Officer was requested by the District without objection of the parents, to preside over the Due Process Hearing and proceedings. Subsequently, the Parents filed a Notice of Counter Request for Due Process Hearing on March 2, 2018. That case was designated as 18DP____-002. On April 9, 2018, the District filed a Motion to Dismiss Case Number 18DP____-001 after the parties were able to reach agreement on the terms under which their Due Process Notice was filed which the parties agreed to a reevaluation that would be conducted and the manner in which the school would be allowed to contact the student's medical doctors. The Motion to Dismiss Case Number 18DP____-001 was sustained. The Parent's Notice of Request for Due Process Hearing, Case Number 18DP____-002 remained to be resolved.

Subsequently, the following procedural events have occurred:

1. On May 16, 2018, a Scheduling Conference was held by telephone. Discovery dates and parameters of discovery, filing motions, and scheduling a Status Conference were established and a Due Process Hearing was set for July 9, 2018. Subsequently, due to excessive issues regarding discovery and for good cause shown, an Order of Continuance was entered, another Scheduling Conference was set for July 10, 2018, and a Due Process Hearing was set for September 10, 2018. At the request of the parties, another Order of Continuance was granted and a third Scheduling Conference was held on September 6, 2018, and a Due Process Hearing was set for October 22, 2018.

2. On October 1, 2018, the District filed a Motion in Limine Regarding IDEA Statute of Limitations alleging the actions that forms the basis of the Parent's complaint occurred prior to two years of the filing date. The Parents argued that the actions of which they complain was of a continuing process and the last act of the continuing process occurred within the limitation period. The Hearing Officer ruled that the evidence of events that occurred prior to the two year limitation could be offered as a historical background, but only the events that occurred within the two years would be considered for a remedy, if one is to be determined.

3. The Due Process Hearing commenced on October 22, 2018 and was held at the Administrative Center of U.S.D. ____ in_____, Kansas. The hearing was continued and heard on October 23, 24, and 25; December 10, 11, 12, and 13, 2018, again at the District Administrative Center. The Parents were present at all hearings with counsel, Mr. Peter John Orsi, II, Attorney at Law. The District was represented by Ms. Sarah Loquist, Attorney at Law.

4. It was determined that the Parents would bear the burden of proof and proceed first with their evidence.

5. At the conclusion of the evidence, the Hearing Officer requested counsel prepare and offer Proposed Findings of Fact and Conclusions of Law. The Hearing was very lengthy, taking over eight days and concluding with eight Transcript Volumes. There were six witnesses for the Parents and 10 witnesses for the District.

ISSUES TO BE RESOLVED

Issue 1: Did the District provide C.S. with a FAPE during the 2016-2017 and 2017-2018 school years?

Issue 2: If FAPE was not provided, what is the appropriate remedy?

HEALTH CHRONOLOGY AND EDUCATIONAL BACKGROUND

On August 19, 2005, when C.S. was age 4 years and 7 days old, he was diagnosed at the University of Kansas Medical Center by Dr. C.D. Johnson, M.D. to be on the autism spectrum. Dr. Johnson noted that during his evaluation, it was very difficult to direct C.S.'s attention, his affects were neutral during the evaluation, and while he was verbal, he did not use a great deal of speech. Dr. Johnson further noted that C.S. was of normal to high intelligence. Shortly after the diagnosis of autism, the Districts identified C.S. as a child with exceptionalities for special education and an Individualized Education Plan was established. C.S. attended the District for his entire education until present. In the fall of 2016, C.S. was diagnosed with rheumatic fever and Sydeham's chorea (a movement disorder) by Dr. S. Shah in Wichita, Kansas. At the same time, C.S. was diagnosed with obsessive-compulsive disorder (OCD) and a tic disorder. During the summer of 2018, C.S. was diagnosed with autoimmune encephalitis at Children's Mercy Hospital in Kansas City, Kansas. Additional medical and educational information is presented in the following Findings of Fact.

TESTIMONY OF WITNESSES

A. Ms. P

1. Ms. P is the mother of C.S. (Tr., Vol. 1, at 16, ln. 11-12.) Ms. P testified that C.S. is a minimally verbal, severely autistic 17-year-old young man whose receptive communication is clearly intact, but whose expressive skills are not functioning very well. (Tr., Vol. 1, at 16.) If she were to ask C.S. to follow some type of an instruction such as, "C.S. go over and turn the light switch on and off," he would be able to do that. (Tr., Vol. 1, at 45.) However, C.S. lacks reciprocity in a back-and-forth conversation. He cannot express emotions, or thoughts. She believes that he understands and feels, just as most all of us do, he simply cannot express it. (Tr., Vol. 1, at 45.)

2. C.S. has several medical diagnoses. (Tr., Vol. 1, at 18.) C.S. has autism that was diagnosed at KU Med in 2005 at the age of 4 1/2. (Tr., Vol. 1, at 18.) In the fall of 2016, Dr. Subhash Shah diagnosed C.S. with rheumatic fever and Sydenham's chorea. (Tr., Vol. 1, at 18.) Sydenham's chorea is a movement disorder caused from

streptococcus which manifested by hand flapping, intense hyperactivity, wormlike movement and head movement. (Tr., Vol. 1, at 18.) C.S. has also been diagnosed with obsessive-compulsive disorder (OCD). (Tr., Vol. 1, at 18.) Because of the OCD, C.S. will have highly intrusive thoughts, or will touch things repeatedly--it creates a tremendous amount of anxiety. He has a severe amount of anxiety. He bites himself, he hits his head, he picks at himself. He jumps and bounces often and will tend to be hyperactive. (Tr., Vol. 1, at 19.) He engages in self-stimulatory behavior and rubs his cheeks. (Tr., Vol. 1, at 20.)

3. During the summer of 2018, C.S. was diagnosed with autoimmune encephalitis at Children's Mercy Hospital. (*Id*. at 19, ln. 5-11.)

4. C.S. has been hospitalized due to behaviors six times in 2018. (Tr., Vol. 1, at 19.) Despite the medical treatment C.S. has received, and despite multiple medical interventions, C.S. has continued to regress and his autism has become more and more severe. (Tr., Vol. 1, at 17.)

5. As noted above, Ms. P is the mother of C.S. (Tr., Vol. 1, at 16, ln. 11-12.) When C.S. was at Wesley in July 2018, his doctors inquired whether the parents were seeking a residential placement due to his aggressive behaviors, his OCD, and the nature of his severe autism. (*Id*. at 16, ln. 24 – 17, ln. 6.)

6. When asked why in 2017 she asked the District to place C.S. in an out of district residential school, Ms. P stated as follows. (Tr., Vol. 1, at 22.) She is a registered nurse, working on becoming a nurse practitioner, and Mr. S, C.S.'s father also has a medical background. (Tr., Vol. 1, at 23.) In 2017, they had been treating C.S's medical condition repetitively and in different manners; it isn't unusual for parents in their situation to seek a variety of different medical interventions and treatments, but C.S. continued to decline. (Tr., Vol. 1, at 22.) She and Mr. S believed that when you have a behavior you try to rule out a medical cause, and that's what she did in C.S.'s case. (Tr., Vol. 1, at 22.) She tried to rule out a medical cause but nothing they have done medically has made anything better. (Tr., Vol. 1, at 23.) C.S.'s doctors at Wesley and Children's Mercy have given the opinion that the source of C.S.'s behavior issues is his severe autism. It's not related to the encephalopathy. She and Mr. S wanted C.S.'s behavior to be the result of a medical condition because that could be cured while Autism is a lifelong condition. (Tr., Vol. 1, at 23.) After C.S.'s physicians sat down with her, and every single one of them looked her in the eye and said, "K___, he requires a residential, intensive program because, even if you clear up this medical issue, he needs education, he needs cognitive therapy, behavioral therapy, and this will take years." And when C.S. was in four-point restraints in a Posey bed at Children's Mercy and at Wesley Medical Center -- two different medical facilities, two different treating physicians, and they're all saying the same thing. Yes, we would have liked a magic pill. However, we know that to help C.S. become functional, it's going to be an intensive residential facility that can help him communicate, can help him with therapies. We are not seeking medical care whatsoever. We have taken care of that very much over the last five years and, incredibly, over the last year. (Tr., Vol. 1, at 24 Q.)

7. She is asking the hearing officer to award C.S. compensatory educational services, not medical services. (Tr., Vol. 1, at 25.) C.S. has been in the district his entire educational career and she feels that she has had a very good rapport with the district. (Tr., Vol. 1, at 25.) It feels after they sought legal counsel that that relationship may have become a little more convoluted, but she has a deep respect for this school district, for these teachers and therapists, but they simply do not have the resources and the ability to provide C.S. with an appropriate education. (Tr., Vol. 1, at 26.)

8. C.S. has been manifesting OCD behaviors, including touching things repeatedly and rubbing his cheeks raw, severe aggressive behaviors, self-injurious behaviors (such as biting himself, hitting his head, and picking at himself), and self-stimulatory behaviors. (Tr., Vol. 1, at 19, ln. 15 – 20, ln. 8.) Ms. P testified that the same behaviors the parents were seeing at home were also occurring at school. (*Id.* at 21, ln. 18-20.)

9. In 2016, she was not aware that the law requires that special needs student like C.S.be re-evaluated every three years. (Tr., Vol. 1, at 28.) She does not recall any actual meetings to address the need at any time to re-evaluate C.S. prior to requesting placement outside the district. (Tr., Vol. 1, at 27.) She never asked for a reevaluation and the district never brought up the need for a reevaluation. (Tr., Vol. 1, at 28.) She does not ever recall the IEP team bringing up, offering, suggesting any **r**e-evaluations in any area for C.S. prior to her asking for out of district placement. (Tr., Vol. 1, at 36.)

10. She does not recall the discussion at IEP meetings of any need to gather data in order to address C.S.'s evolving educational needs. (Tr., Vol. 1, at 28.) As early as 2013, when C.S's OCD was manifesting itself, she questioned if they needed more systematic data to track behaviors. (Tr., Vol. 1, at 28.) But prior to requesting out-of-district placement, the only method of collecting data the district implemented was a daily log containing tally marks for behavior which was then sent home with C.S. For example, "C.S. pulled staff's hair. C.S. pulled his pants up and down in an OCD-like behavior," or "C.S touched the microwave 20 times in a row," very basic -- very basic comments, essentially. (Tr., Vol. 1, at 28.)

11. Ms. P testified that the parents requested the placement at Heartspring in 2017 because they had been treating C.S.'s medical condition with a variety of different medical interventions and he continued to decline. (Tr., Vol. 1, at 22, ln. 6-13.) Ms. P claimed that she was asking for compensatory educational services, not medical services, because she now believes the behaviors are caused by C.S.'s autism. (*Id.* at 23, ln. 9 – 25, ln. 3.)

12. She does not recall receiving any in-depth progress reports that were linked to C.S IEP goals, other than at IEP meetings. (Tr., Vol. 1, at 38.) She did receive general emails from C.S.'s teachers, JB and LL. (Tr., Vol. 1, at 38.) Prior to the due process request being filed she received e-mails from JB, C.S.'s teacher freshman, sophomore, junior year very infrequently. (Tr., Vol. 1, at 39.) Prior to her request

for out-of-district placement and the filing of due process the only progress reports that she received were at the IEP meetings. (Tr., Vol. 1, at 40.) She does not recall any discussion of her need to receive progress reports along with C.S.'s report card. (Tr., Vol. 1, at 40.) C.S. had an F in health modification for several months, and that was never explained to her. All they would send home were the grades as a one-page grade report. (Tr., Vol. 1, at 40.) When she would inquire, she wouldn't really receive much of an answer. (Tr., Vol. 1, at 40.) The e-mails from LL do not include progress reports on academic subjects, they includes C.S.'s daily logs and daily agenda for what he does every day in school and there's brief mention on how C.S. may be feeling or of any behaviors C.S. maybe manifesting they're not tracked, they're just mentioned. [sic] (Tr., Vol. 1, at 44.)

13. As far back as H Elementary School, as far back as 2nd grade and every IEP meeting, she has been requesting assistive technology for C.S. because given his receptive skills are intact and his inability to expressively communicate she has always believed that he would be able to communicate through some type of a device whether that be a computer, or a keyboard. (Tr., Vol. 1, at 45, 46.) The District never gave a response. (Tr., Vol. 1, at 46.) She hired Cassandra Ramos, a technology consultant through OCCK in _____ to do a tech consult on C.S. (Tr., Vol. 1, at 46.) She evaluated C.S on a variety of different computer programs, specifically on an iPad. (Tr., Vol. 1, at 46.)

14. When C.S. was in approximately 7th grade, there was a physician who had a charity that awards iPads to children through a grant. Tr. Vol. 1, at 46.) C.S.'s teacher at the time, ML, gave her the application for the grant for the iPad. (Tr., Vol. 1, at 46.) C.S. was award an I-Pad and it was used for approximately a semester and then they were told it could not be used at school any further because of it was a private iPad, and bringing in private computers from home was against the district's policy. [sic] (Tr., Vol. 1, at 48.) Four years later in 2016/2017 the District provided C.S. an iPad after they had again asked for one again in January of 2017. (Tr., Vol. 1, at 48.) The iPad was not produced until May of 2017. (Tr., Vol. 1, at 48.) It was not utilized much during the extended school year and it's been used, to her understanding, sporadically. (Tr., Vol. 1, at 48.) C.S. receives the majority of his instruction from paras who have not been trained in the iPad's programs. (Tr., Vol. 1, at 49.)

15. Ms. P stated that the iPad was used at school for one semester, but then could no longer be used because it was against the district's policy to allow private computers to be used at school. (*Id.* at 47, ln. 21 – 48, ln. 9.) Ms. P claimed that she requested the district provide a school-issued iPad at that time, but the district did not do so. (*Id.* at 48, ln. 10-14.)

16. Ms. P did not believe that the IEPs for C.S. during the 2016-2017 and 2017-2018 school years contained appropriately ambitious goals for C.S. (Tr., Vol. 1, at 42, ln. 19-22.) Ms. P claimed that she did not know the name of the curriculum being used with C.S., even though she had asked for it. (*Id.* at 42, ln. 23 – 43, ln. 2.)

17. Ms. P believes that C.S.'s "receptive communication is intact. His expressive lacks." (Tr., Vol. 1, at 44, ln. 24-25.) By that, she means that C.S. is able to understand and respond to what he is told, but he is unable to express his thoughts and feelings. (*Id.* at 45, ln. 1-12.)

18. The district uses the _____ Kansas Cooperative Education Coop (_____) to provide C.S. with services. (Tr., Vol. 1, at 29.) One of the things they set forth in their handbook is that they have an autism specialist on staff for consultation purposes. (Tr., Vol. 1, at 29.) C.S. had an autism specialist present at his IEPs when he started grade school in 2005 and up to 2010. (Tr., Vol. 1, at 29.) When C.S. moved into middle school there was no autism consultant at this meeting. (Tr., Vol. 1, at 29.) She questioned the lack of an autism specialist to ML, C.S. lead teacher in 6th,7th and 8th grade. (Tr., Vol. 1, at 30.) She mentioned it as well to JB when C.S. started high school. (Tr., Vol. 1, at 30.) She never saw any of the consultants at prior IEP meetings, and couldn't even tell you their names. (Tr., Vol. 1, at 30.) After many years of nonparticipation there was an autism specialist present at the January 2017 meeting to decide whether or not to place C.S. out-of-district. (Tr., Vol. 1, at 31.) There were many people at that meeting that she had never seen at an IEP meeting, like many. (Tr., Vol. 1, at 31.)

19. Ms. P testified that she again requested an iPad for C.S. in January 2017 and the District indicated that they would provide an assistive device. Ms. P claimed the iPad was not provided until May 2017, that it was not used much during extended school year (ESY), and that it had been used sporadically since then. (Tr., Vol. 1, at 48, ln. 15-25.) Ms. P does not believe the paras have been trained in the use of the iPad, and she believes a majority of his instruction is done by the paras. (*Id.* at 49, ln. 1-4.)

20. C.S.'s behavior is affecting his ability to get an education. (Tr., Vol. 1, at 86.) C.S.'s inability to verbally express himself causes his frustration level to rise, which exacerbates his anxiety, then it exacerbates his chorea, and then it becomes a downward spiral for him and he becomes aggressive -- he speaks with his fists. (Tr., Vol. 1, at 86.) C.S. has had a behavior plan starting in 2014. (Tr., Vol. 1, at 86.) His behaviors were well documented in IEPs as far as back as 2012. (Tr., Vol. 1, at 86.) She has not had any input into the development of C.S.'s behavior plans and does not know if an autism specialist participated in the development of those behavior plans. (Tr., Vol. 1, at 86, 87.) There is no material difference between the 2014, 2015, 2016 or 2017 behavior plans. (Tr., Vol. 1, at 86, 87, 88, 89 and 90.) The November 17, 2015, behavior plan says, "School: South Middle School; Grade:9/10th." C.S. would not have been at South Middle School then, he would have been in high school, so that's not accurate. (Tr., Vol. 1, at 87.)

21. Ms. P believes that C.S. behavior impedes his ability to get an education and that his behavior plan has not changed since 2014 to the present event though his behaviors have changed since 2014. (Tr., Vol. 1, at 90.) C.S.'s behaviors have increased in intensity and frequency at least threefold if not more. (Tr., Vol. 1, at 90.) He has become increasingly more physically aggressive, more self-harming

behaviors, a significant increase in OCD behavior, significant increase in tick behavior, significant increase in anxiety and a significant increase in self-stimulatory behaviors. [sic] (Tr., Vol. 1, at 90,91.) Yet behavior plan has not changed in response to his increased behaviors. (Tr., Vol. 1, at 91.)

22. When C.S. started at the _____ school district he was in the general education classroom. (Tr., Vol. 1, at 91.) Grade school is when he was more mainstreamed. And due to C.S's inability to express, to communicate, they put him in a self-contained classroom in BB's classroom in H. Elementary. Approximately 3rd grade they moved him to C_____ to finish grade school, 3rd, 4th and 5th in response to his inability to communicate. (Tr., Vol. 1, at 91, 92.)

23. C.S.'s school environment been changed in response to changes in his behaviors. (Tr., Vol. 1, at 92.) C.S. was, in JB's classroom in the beginning of freshman year fall 2015. (Tr., Vol. 1, at 92.) The District has steadily decreased the amount of students that C.S. is working alongside with. (Tr., Vol. 1, at 92.) C.S. is still in a self-contained classroom but, due to his behaviors, it's often difficult for him to even go to the outside activities even within the school building such as lunch and PE. (Tr., Vol. 1, at 92.) C.S. has to stay within the self-contained classroom, and it has progressed to where he is often in the safe room. (Tr., Vol. 1, at 93.) She is not aware of C.S. attacking students, but there have been multiple attacks on the teachers and staff including bus staff. (Tr., Vol. 1, at 93.) The attacks began in middle school with hair pulling, pushing and attempting to bite. (Tr., Vol. 1, at 93.) In the 2016 to 2017 school years there have been multiple bus incidents. (Tr., Vol. 1, at 94.) C.S. has evolved from being able to sit on the bus with just one aide that monitors the bus to now being one on one. (Tr., Vol. 1, at 94.) In the last year and a half C S, the principal, has even accompanied C.S. home. (Tr., Vol. 1, at 94.) As of spring 2018, C.S.is now unable to ride the bus home. (Tr., Vol. 1, at 94.) He is one on one in a van with a para, an aide, and then a driver. (Tr., Vol. 1, at 94.)

24. Ms. P testified that she raised the issue of communication and its importance for C.S. at the January 2017 IEP meeting and stated that staff need to be trained on an assistive communication device. She does not believe this was ever addressed by the Districts and does not believe C.S. has ever received a technology consult. Ms. P believes that C.S. becomes aggressive due to his inability to communicate verbally. (Tr., Vol. 1, at 85, ln. 3 – 86, ln. 10.)

25. Because of C.S.'s behaviors, the school customarily takes him out of school before the other students. (Tr., Vol. 1, at 95.) C.S. is dismissed approximately 10 to 15 minutes early every school day. (Tr., Vol. 1, at. 95.) Since freshman year in high school C.S. is systemically not being provided ten minutes worth of educational service every day. (Tr., Vol. 1, at 95.)

26. She has repeatedly expressed to the District her concern for the safety of their staff and for the safety of C.S. (Tr., Vol. 1, at 95.) She held a conference with them this fall, because when C.S. was in Children's Mercy twice this summer and Wesley

Medical Center when C.S. was in four-point restraints in a bed, was attacking staff, physicians, herself. (Tr., Vol. 1, at 95.)

27. Ms. P testified that she does not believe an autism consultant had any input into C.S.'s behavior intervention plans because no such consultant reached out to the parents to discuss it and Ms. P does not recall ever giving input into the behavior intervention plan. (Tr., Vol. 1, at 86, ln. 20 – 87, ln. 4.)

28. December 2017 (Christmas Eve) C.S. was at Wesley Medical Center for attacking her so severely in a restaurant that the police were called. Three firemen had to pull him off of her and some fellow patrons. The EMS, firemen and police took him by ambulance to Wesley Medical Center, where they diagnosed him with tantrum behavior – aggression. (Tr., Vol. 1, at 102.) They could not find any medical reason for C.S.'s behavior and did not keep him overnight. (Tr., Vol. 1, at 102.)

29. C.S. has attacked both of his parents, but Ms. P was not aware of any students that he had attacked. She testified that C.S. has attacked school staff members and claims that this started with hair pulling and pushing in middle school. (Tr., Vol. 1, at 93, ln. 8-24.)

30. Ms. P testified that C.S. was hospitalized in March 2017 at _____ Regional Health Center by Dr. Zuccarelli for Sydenham's chorea, aggression, insomnia, and OCD for approximately one week. (Tr., Vol. 1, at 101, ln. 17-22.)

31. As noted above, C.S. was hospitalized again at Wesley Medical Center on December 24, 2017 because of his attack on Ms. P in a restaurant.

32. C.S. was hospitalized again in February 2018 at Wesley Medical Center for one week. He had been transferred to Wesley Medical Center from _____ Regional Health Center after his father took him to the emergency room for attacking his father in the middle of the night. (Tr., Vol. 1, at 102, ln. 14-24.)

33. July 5, 2018, she took C.S. to Dr. El-Nabbout for the follow-up appointment from Children's Mercy. (Tr., Vol. 1, at 105.) C.S. was witnessed attacking Ms. P so severely in the parking lot by Dr. El-Nabbout's nurse practitioner and helped guide C.S. into the building. (Tr., Vol. 1, at 105.) C.S was spitting water onto the iPad, he was face swiping, hitting his head, repetitively requesting to go to the bathroom, and a lot OCD, tic-like behavior. (Tr., Vol. 1, at 105.) Dr. El-Nabbout sent C.S. to the emergency room at Wesley Medical Center for admission. (Tr., Vol. 1, at 105.) C.S. was there for two weeks. (Tr., Vol. 1, at 105.) While there, the very first day before they even got C.S settled into a room, C.S. attacked her and four staff members, pulling out wads of hair. (Tr., Vol. 1, at 105.) Security was able to handcuff C.S. and Dr. Blue gave him Haldol to calm him. (Tr., Vol. 1, at 105.) C.S. had Haldol and three doses of Ativan and once they settled him down security guards put him in four-point restraints again and a Posey bed. (Tr., Vol. 1, at 106.)

34. In September 2018, C.S. was hospitalized again for approximately two weeks ago. (Tr., Vol. 1, at 106.) She received a phone call from the assistant principal that C.S. was attacking staff severely and hitting the back of his head. (Tr., Vol. 1, at 106.) The _____ school district called EMS. (Tr., Vol. 1, at 106.) USD ___ staff graciously stayed with C.S. until it was decided where C.S. would be transferred. (Tr., Vol. 1, at 107.) C.S. was transferred back to Children's Mercy and was there for five days. (Tr., Vol. 1, at 107.) While there Dr. Tyler Allison sat her down and said, "K___, he needs education. He needs intensive residential services. We have treated the medical, and this behavior is not going away. It will take years because C.S's brain is wired that way at this point." (Tr., Vol. 1, at 107.)

35. At the end of June 2018, C.S. was hospitalized for an additional 5 days at Children's Mercy Hospital due to behavior. Again, he had to be restrained due to his aggressive behavior toward medical staff. (Tr., Vol. 1, at 104, ln. 21-25.) He was released July 5, 2018. (*Id.* at 105, ln. 3-4.)

36. Heartspring has reviewed C.S.'s medical records and his education records and have accepted him. (Tr., Vol. 1, at 112.) She is asking for compensatory education from the time C.S. is dismissed from Lakemary, as soon as Heartspring or another appropriate autism residential autism facility has an opening. (Tr., Vol. 1, at 112.) She is not asking for medical care. (Tr., Vol. 1, at 113.) C.S.'s medical doctors, psychiatrists, social workers and therapists are all stating that it is going to take years for C.S. to be able to communicate, for the therapies to work, to help him to express himself, years. (Tr., Vol. 1, at 114.) Heartspring uses ABA therapy. (Tr., Vol. 1, at 114.) Heartspring uses assistive technology. (Tr., Vol. 1, at 114.)

37. Ms. P testified that C.S. was not ever officially diagnosed with PANDAS (pediatric autoimmune neuropsychiatric disorder caused by streptococcus), but there has been speculation that he has that since the fall of 2016 when he was seeing Dr. Zuccarelli. C.S. was supposed to see a specialist in Nebraska about this (Dr. Kobayashi) but was too aggressive to be transported. (Tr., Vol. 1, at 152, ln. 2-25.) Several attempts were made in 2017 to see Dr. Kobayashi, but C.S. was too aggressive to travel that far. (*Id.* at 153, ln. 3-11.)

38. Ms. P has a bachelor's degree in sociology and criminology and a bachelor's degree in nursing. She is currently working on a nurse practitioner program through Georgetown University. It is a distance learning program that contracts with Wichita State University for the medical clinicals. (Tr., Vol. 1, at 154, ln. 2-24.) Currently, Ms. P is licensed as a registered nurse, which means she can administer medications but she cannot prescribe them. (*Id.* at 155, ln. 14 – 156, ln. 2.)

39. Ms. P first moved to Wichita on a part-time basis in April or May of 2017. (Tr., Vol. 1, at 156, ln. 13-15.)

40. Dr. Subhash Shah, pediatric neurologist in Wichita, was the doctor who diagnosed C.S. with rheumatic fever. (Tr., Vol. 1, at 156, ln. 16-25.) C.S. switched to Dr. Zuccarelli when she started working at _____ Pediatric Care in the fall of 2016,

due to location. (*Id.* at 157, ln. 4-17.) Dr. Zuccarelli was treating C.S. for rheumatic encephalopathy and autism. (*Id.* at 158, ln. 4-11.)

41. C.S. was started on Orap (a/k/a pimozide) by Dr. Shah in the summer of 2016 and has been on it intermittently since then. (Tr., Vol. 1, at 160, ln. 3 – 161, ln. 2.) Dr. Zuccarelli did not agree with that medication and switched C.S. to Trileptal, an anticonvulsant medication to address his movement disorder, around March 2017. (*Id.* at 161, ln. 16 – 162, ln. 5.) C.S. was on the Trileptal for a few months. (*Id.* at 163, ln. 1-5.)

42. After that, C.S. was placed on clonazepam (on as-needed basis), a relaxant, and clonidine (has been administered regularly and also on as-needed basis), which can be used for tic disorder and hyperactivity. (Tr., Vol. 1, at 160, ln. 6 – 164, ln. 5.) C.S. has remained on both of these medications; however, one of the doctors from Children's Mercy removed C.S. from the clonidine because he had been on it intermittently for several years with no benefit. (*Id.* at 164, ln. 6-16.) C.S. is still given clonazepam twice a day. (*Id.* at 164, ln. 17-21.)

43. C.S. was given Ativan (a/k/a lorazepam) while at Children's Mercy Hospital in July 2018, but they did not receive a prescription for it because it is a controlled substance. He had also been given Ativan at Wesley Medical Center in December 2017, but they did not request a prescription at that time. (Tr., Vol. 1, at 165, ln. 12 – 166, ln. 7.)

44. C.S. had also been prescribed Risperdal by Dr. El-Nabbout for the first time in February 2018. C.S. remained on that medication until Dr. Unsderfur discontinued it in May 2018 while C.S. was hospitalized at _____ Regional Health Center. (Tr., Vol. 1, at 166, ln.12 – 167, ln. 15.)

45. C.S. also receives a monthly injection of IM Bicillin, an antibiotic given as a prophylactic to prevent a recurrence of the strep throat. (Tr., Vol. 1, at 171, ln. 5-23.)

46. C.S. has also received IVIG (intravenous immunoglobulin) treatments for his autoimmune condition. He received one dose in March 2017 as ordered by Dr. Zuccarelli. She did not continue it after that treatment. However, Dr. El-Nabbout started prescribing routine IVIG treatments, once a month, beginning in February 2018. (Tr., Vol. 1, at 172, ln. 2-25.) The purpose of the IVIG treatments was to prevent C.S.'s immune system from attacking his heart, brain, and joints, but it was "more prescribed for the Sydenham's chorea." Dr. El-Nabbout thought they would see a difference in the Sydenham's chorea after eight treatments. (Tr., Vol. 1, at 173, ln. 7-22.)

47. Ms. P testified that she had been offered her parent rights at IEP meetings and had reviewed them; yet, she was unaware that there was any kind of requirement for a reevaluation to be conducted or waived every three years. (Tr., Vol. 1, at 180, ln. 21 – 181, ln. 17.)

48. Ms. P believes all of C.S.'s instruction is provided by paras, even though she admitted that she has not visited his classroom since he has been in high school. She bases this belief on the fact that the paras fill out C.S.'s daily logs. (Tr., Vol. 1, at 187, ln. 16 – 188, ln. 14.)

49. Ms. P admitted on cross-examination that C.S.'s IEP from November 2016 allowed him to bring his iPad that was purchased with a grant for use at school. (Tr., Vol. 3, at 6, ln. 9 – 7, ln. 7.) She also acknowledged that he was provided with a district Chromebook his freshman year. (*Id.* at 7, ln. 17-20.)

50. The school district filed a due process request immediately before the parents filed their request for a due process hearing in this matter. The school district was seeking a reevaluation and seeking consent to communicate with the medical doctors. The school district's due process request was resolved in a resolution meeting held on March 6, 2018, at which time the parents agreed to give consent for the reevaluation and to give consent for a very limited number of school staff members to communicate with three of C.S.'s doctors. (Tr., Vol. 3, at 11, ln. 25 – 15, ln. 8.) While Ms. P tried to claim that the Medicaid release gave consent for the Districts to communicate with C.S.'s primary care doctor, it became clear after Ms. P reviewed the document that it did not. (*Id.* at 15, ln. 14 – 18, ln. 9.)

51. An IEP amendment was signed by C.S.'s father on January 25, 2017, which included a district-provided iPad for C.S. Ms. P testified that C.S. did not receive the iPad until April or May to her knowledge. (Tr., Vol. 3, at 18, ln. 19 – 19, ln. 7.) However, Ms. P had received an email from C.S.'s special education teacher, JB, on February 1, 2017, which stated, "His new iPad was delivered last week and the communication app is being loaded." (District Ex. CC; Tr., Vol. 3, at 19, ln. 19 – 20, ln. 17.)

52. According to Ms. P, there were no material changes made to the IEP between January 2017 and November 2017. However, there was an IEP amendment that was signed by C.S.'s father on January 25, 2017, which indicated speech services had increased to 20 minutes 5 times per week. (District Ex. X; Tr., Vol. 3, at 61, ln. 13 – 63, ln. 18.) Ms. P testified that she understood only one parent needed to give consent for services to be provided. (*Id.* at 63, ln. 19-21.) Another IEP amendment was signed by both parents on November 10, 2017, which made more additions to the IEP. (District Ex. OO; Tr., Vol. 3, at 63, ln. 22 – 65, ln. 8.)

53. The first time the Parents requested placement at Heartspring was in January 2017. They had just recently held an IEP meeting in November 2016, but the Parents only discussed Heartspring and their concerns regarding C.S.'s behaviors with RC "and a few other people were present" after the meeting "off the record." (Tr., Vol. 3, at 65, ln. 9 – 66, ln. 3.) Ms. P requested the meeting to discuss Heartspring by communicating with the special education teacher, JB, by text message. (District Ex. AAAA; Tr., Vol. 3, at 66, ln. 4 – 67, ln. 2.) In those text messages, Ms. P shared that she would be moving to Wichita for work and grad

school. (District Exhibit AAAA; Tr., Vol. 3, at 67, ln. 18 – 68, ln. 7.) Ms. P also shared with Ms. B in those text messages that Heartspring "is the best school for [C.S.] but very costly." (District Ex. AAAA; Tr., Vol. 3, at 68, ln. 8 – 69, ln. 24.)

54. In July 2017, Ms. P posted to Facebook that ". . .Many of you do not know what his father and I are in the process of accomplishing for him. To get him into the private school and all the opportunities he deserves. When we complete the goal, the sacrifices will be worth it. All for a young boy who has had a tough two years with rheumatic fever. This is the story of parents who must pursue to advocate for and the child the very best. And even better, I will use this experience, this act of love to help many, many others. . . ." (District Ex. BBBB; Tr., Vol. 3, at 162, ln. 1 – 163, ln. 4.) Ms. P admitted that they were in the process of filing for due process at the time she posted that to Facebook, but they had not yet filed the due process request. (Tr., Vol. 3, at 164, ln. 13-20.) 55.Ms. P has never logged into the Skyward system, so she was not aware she could access grades and progress reports through that system if she did not receive them in the mail. (Tr., Vol. 3, at 165, ln. 13-16.) She testified that she had to provide her address "numerous times to the info numbers on multiple occasions to the school district" and sometimes she still did not receive things. (*Id.* at 165, ln. 4-9.)

55. Ms. P testified that, at the point in time when she requested the meeting to discuss Heartspring in January 2017, she and C.S.'s father had reached that point that [C.S.] was attacking me in the vehicle – he had been attacking us but it was – aggressively the behaviors , everything was increasing and we were – as you can see, we were seeking medical care for it but nothing was helping. And we had reached – I say "we," his father and I reached a very emotional decision to seek residential placement for [C.S.] so that he could receive the education and then an IEP could be carried out 24/7 across all environments. (Tr., Vol. 3, at 174, ln. 13-25.)

56. She believes that Heartspring would be a good and appropriate placement for C.S. (Tr., Vol. 1, at 135.) When you send kids to Lakemary or TLC you have that 24-hour-a-day, consistent staffing and routine -- have a chance to learn. (Tr., Vol. 1, at 135.) With these kids consistency is everything. (Tr., Vol. 1, at 136.) She has talked with other case managers about kids that are like C.S. and after about 18 months they come back to their regular school and they don't have those behaviors. (Tr., Vol. 1, at 135.) They say it's like a night-and-day kid. (Tr., Vol. 1, at 135.) They say they never would have believed it could be true, but they're like, "You've got to see it to believe it." (Tr., Vol. 1, at 136.) She believes special ed programs are just like disability service providers. One size doesn't fit all. (Tr., Vol. 1, at 137.) She thinks sometimes you have kids that it doesn't matter what the school tries, it's just not going to work there because they don't have the resources or the staff or whatever. (Tr., Vol. 1, at 138.) It just means they don't have the tools to take care of that kid the way he or she needs to be taken care. (Tr., Vol. 1, at 138.)

B. J.R.C.

1. Ms. C worked as a targeted case manager for Choice Network, a disability services provider, and served as the case manager for C.S. for at least six years. (Tr., Vol.1, 115.)

2. As part of her duties as the case manager, she attended C.S.'s IEP meetings. (TR., Vol. 1, at 118.) She was present at both C.S.'s November 2016 IEP and November 2017 IEP Meetings. (Tr., Vol. 1, at 118.) During the entire time that she attended IEPs for C.S. she does not recall any discussion of C.S. making significant improvements. (Tr., Vol. 1, at 118.)

3. Although Ms. C testified that she believed C.S.'s speech intelligibility had decreased based on the few times she had seen him in passing after school, the report she prepared based upon parental input indicated that his "speech has increased over the last year." This report was also created during a time when C.S.'s rheumatic fever was under better control based upon her text messages with Ms. P. (Tr., Vol. 1, at 129, ln. 16 – 131, ln. 5.)

4. The sentence in her person-centered support plan that says, "C.S.'s speech has increased over the last year," was information she received during a time when C.S.'s rheumatic fever and stuff were under more control When she sees C.S. at the school after school picking her son up he did not have any speech -- it's just kind of grunts and sounds. (Tr., Vol. 1, at 130.)

5. Ms. C further testified that it would be possible for C.S. to be in a residential community placement and still attend school. It is also possible the residential facility might take over the management and administration of his medications. (Tr., Vol. 1, at 132, ln. 24 - 134, ln. 5.)

6. Ms. C would not admit that she had recommended the Heartspring placement to the C.S.'s parents, but she did admit that she had looked into Heartspring for her own son and could not afford it. (Tr., Vol. 1, at 134, ln. 6-23.)

C. DR. LILIAN BLUE

1. Dr. Blue is a board-certified pediatrician with 11 years of experience. She works at Wesley Medical Center as a hospitalist. She only sees children that need hospitalization and does not see patients in the outpatient setting. (Tr., Vol. 2, at 6, ln. 7-14.)

2. She described the attributes of OCD, and of Rheumatic Encephalopathy, and explained that the diagnosing of Rheumatic Encephalopathy is not a universally accepted one, as it is based upon weak data. Then Dr. Blue stressed that in her professional opinion, C.S.'s primary issues are stemming from his Autism. Although there is no cure for Autism, children with Autism can be significantly helped and their issues can be mediated by working effectively on their communication skills. (Tr., Vol. 2, at 18.)

3. Dr. Blue also stated that his inability to understand language and to communicate definitely interfered with his ability to receive an education. "…a huge part of receiving an education is understanding what people are trying to teach us…We felt at Wesley, along with his infectious disease doctor and our neurologist, that this is primarily a severe autism issue. And if we can't communicate with him, and understand what his needs are…it would definitely interfere with him being able to learn." (Tr., Vol. 2, at 31.)

4. She was asked whether she felt he could obtain an education in the public school setting, to which she answered that, even in the medical setting they had difficulty, so she couldn't imagine that in the general population, the teachers and ancillary staff being able to help C.S. She affirmed that the hospital staff considered him to be a threat to himself and others, especially since his behavior flare-ups were so unpredictable. (Tr., Vol. 2, at 32.)

5. Dr. Blue has been one of C.S.'s treating physicians at Wesley Medical Center. She testified that C.S. has a complex history including a primary diagnosis of severe autism with additional diagnoses of OCD, tic disorder, autoimmune encephalitis, rheumatic fever, and PANDAS. She believes his primary diagnosis is severe autism, based upon their assessment at Wesley Medical Center in July 2018. (Tr., Vol. 2, at 6, ln. 18 – 7, ln. 24.)

6. During his hospitalization at Wesley Medical Center, C.S. had to be restrained in Posey bed (a fully enclosed bed from which he could not get out unless it was unzipped from the outside). They also had to give him medication to control his behavior, including lorazepam (used for anxiety and agitation) and Haldol (which is an antipsychotic medication that sedates the patient). Dr. Blue believes C.S. will likely need these medications intermittently on a long-term basis. (Tr., Vol. 2, at 11, ln. 14 – 13, ln. 8.)

7. Under questioning from District's attorney, Dr. Blue testified that in the long run, the changes that C.S.'s parents made in his medications "have not had any effect on his final outcome." (Tr., Vol. 2, at 41.)

8. Dr. Blue was surprised that C.S. had not needed to be restrained at school until after the parents had requested a placement at Heartspring in January 2017. (Tr., Vol. 2, at 42, ln. 5-9.)

9. Dr. Blue testified that autism is not a stagnate condition and it is possible that children's condition can improve over time or become worse over time. Dr. Blue testified that it sounded like his autism had been more mild when C.S. was younger and has now become more severe. (Tr., Vol. 2, at 42, ln. 10 – 43, ln. 9.)

10. Dr. Blue testified that the recommendation for "inpatient psychiatric treatment to stabilize and manage his behavior" in the psych report from Dr. Klaus was a recommendation for medical management, mainly because they wanted a better medication plan. (Tr., Vol. 2, at 51, ln. 1-16.)

11. Dr. Blue has not performed a functional behavior assessment to determine the function of C.S.'s behaviors. (Tr., Vol. 2, at 57, ln. 17-19.)

D. KATRINA OSTMEYER

1. She is a clinical psychologist and a licensed behavior analyst. (Tr., Vol. 2, at 59.) She has a Ph.D. in psychopathology and works with people from a medical model of psychology to treat mental health issues. (Tr., Vol. 2, at 59.) She is a board-certified behavior analyst with specialty training in the science of behavior and treating behavior using the seven dimensions of applied behavior analysis, treating behavior using laws and rules that govern behavior. (Tr., Vol. 2, at 59.) A board-certified behavior analyst or BACB is an international accreditation board for behavior analysts. (Tr., Vol. 2, at 60.) She has degrees from Virginia Tech and Washburn University of Kansas. (Tr., Vol. 2, at 60.) She regularly conducts or attends continuing education seminars. (Tr., Vol. 2, at 60.)

2. A functional behavioral assessment is a process by which you collect data to develop a hypothesis of the function of a behavior. (Tr., Vol. 2, at 63.) From a behavior analytic view all behavior is functional; for example, a person asks for a drink of water to gain access to water because he is thirsty or because he is feeling uncomfortable and so he needs something to say to break the silence, but everything that he does is functional. (Tr., Vol. 2, at 63.) The process of the functional behavior assessment consists of a thorough record review, interview with teachers and caregivers or anybody who's involved in the environment in which the behavior occurs, observation, and sometimes what's called a functional analysis as part of a functional behavior assessment. (Tr., Vol. 2, at 63.) A functional analysis is an experimental manipulation of what happens before and after behavior to develop a much firmer hypothesis of the behavior. (Tr., Vol. 2, at 64.) The general purpose of a functional behavior assessment is to develop a hypothesis of the reason a behavior or certain behaviors are occurring in a setting. (Tr., Vol. 2, at 64.)

3. Autism spectrum disorder is a neural developmental disorder that's considered to be pervasive. It is a lifelong disorder. You can't remediate and remove autism, but you can work with individuals to help improve functioning and improve quality of life. Many people with autism spectrum disorder can live independent lives. It is a disorder that is primarily characterized by deficits in communication, which can range from just a difficulty understanding nuanced communication and underlying meanings all the way to being completely non-vocal, nonverbal, noncommunicative. The behaviors that are commonly associated with autism are often called restricted repetitive behaviors, ranging from rigidity, such as insistence on sameness or a schedule, to the classic autism presentation, including hand flapping or vocalizations or tic-like behaviors. (Tr., Vol. 2, at 70.)

4. The current conceptualization of autism spectrum disorder is that individuals can move up and down those support spectrums. (Tr., Vol. 2, at 74.) At different points

in their life or with different intervention they may require more or less support to be functional and at their optimal level. (Tr., Vol. 2, at 74, 75.)

5. She included Academic History in her report because you need to understand his academic history to know where he has received instruction and what instructions he's received and also what supports he's had. (Tr., Vol. 2, at 75.) Based on both the parents' report and review of IEPs, C.S. has experienced a regression across all areas of functioning since he entered the educational system. When C.S. first entered school, he was a verbal communicator and to some degree he was involved with general education setting. C.S. currently has high levels of problem behavior and he's educated in a specialized setting that is apart from other kids his age. (Tr., Vol. 2, at 76.)

6. C.S.'s regression may, in part, be due to his diagnosis of rheumatic encephalitis as a result of rheumatic fever. Encephalitis or any kind of brain swelling can cause OCD and tic-like behaviors with a regression in skills. (Tr., Vol. 2, at 76.) If the issues are caused by inflammation and that has been resolved, we should see an improvement in functioning, unless those behaviors have become functional in the day-to-day setting. It not uncommon to see OCD and tic-like behaviors continue to persist and require behavioral therapy after encephalitis. (Tr., Vol. 2, at 77.)

7. Based on her review of previous IEPs and C.S.'s history, barriers to C.S.'s education include a history of distractibility in school setting, low social motivation, and language that is primarily driven by request. (Tr., Vol. 2, at 77.)

8. Medical History is important especially in younger ages, because we need to rule out some of those other medical diagnoses when we're looking at autism spectrum disorder. For example, C.S. had PE tubes placed in his ears at age 2, which rules out his lack of social motivation being because he cannot hear. We want to make sure that those things are ruled out prior to giving a diagnosis of autism. (Tr., Vol. 2, at 78.)

9. The fact that C.S. has been assessed for seizure activity and the results were negative, is significant, because if we see regression, we definitely want to rule out seizure activity, especially in adolescents with autism spectrum disorder. (Tr., Vol. 2, at 78, 79.) It is more likely to see seizure activity in autism spectrum disorder, especially when children hit puberty, and that that can be associated with regression of skills. (Tr., Vol. 2, at 78.)

10. In C.S.'s Cognitive and Functional Evaluation, Dr. Ostmeyer used standardized assessments that have been normed on the general population, to compare C.S.'s functioning to other people his age in the United States. Cognitive Ability assesses what C.S. is able to comprehend, as far as his Receptive Language skills. She also tested his Functional skills, or his Daily Living skills, how independent is he in his daily life across settings. (Tr., Vol. 2, at 81, 82.)

11. The Kaufman Assessment Battery for Children (KTEA) is a test of cognitive ability or an IQ test. She also used the Peabody Picture Vocabulary Test, as well as the Vineland III Adaptive Behavior Scales. All three testing tools are regularly accepted and used in her field. (Tr., Vol. 2, at 82.)

12. The Vineland Third Adaptive Behavior Scales is an assessment of current adaptive functioning. (Tr., Vol. 2, at 83.) That's done through parent interview.

13. The Vineland, at C.S.'s age, assesses adaptive functioning and communication, daily living skills and socialization. (Tr., Vol. 2, at 96.) Communication is going to look at language expression, understanding and reading and writing skills. (Tr., Vol. 2, at 96.) Daily living skills are going to look at their ability to engage in personal skills, so personal hygiene, taking care of themselves, domestic skills, taking care of the home, and communicating these skills. (Tr., Vol. 2, at 96.) Being able to engage in the community, such as transporting independently, going and seeing friends. (Tr., Vol. 2, at 96.) Socialization assesses the areas of interpersonal relationships, the ability to have relationships and connections with others; play and leisure skills, the ability to engage himself during downtime; and coping skills, his ability to deal with adversity, essentially. (Tr., Vol. 2, at 97.)

14. This test is a parent interview. In this case it was just C.S.'s father. (Tr., Vol. 2, at 97.) C.S. is on the very end of the bell curve, on the lower range of functioning. (Tr., Vol. 2, at 98.) She has a 95 percent confidence interval, which means that because these assessments are measured with error, there is a 95 percent chance that if she did this assessment again his score for example, on communication would land between "14 to 26," but really 20 is the floor of that assessment. (Tr., Vol. 2, at 98.) The Vineland III has a low, moderately low, average, moderately high and high functioning for area. "Low," means that he has a low level of functioning. (Tr., Vol. 2, at 98.)

15. Her experience and training, the results of C.S.'s Vineland III, her interview with C.S.'s father, and her behavioral observations all corroborate the fact that C.S. scored less than the 1 percentile in communication, daily living skills, socialization, adaptive behavior composite—he is very low functioning. (Tr., Vol. 2, at 98.)

16. She did not attempt any timed component any of the standardized assessments because with using his elbows as she did not believe that was going to be a functional evaluation of his cognitive abilities. (Tr., Vol. 2, at 94.) With these standardized assessments, we can't say, "Oh, try again," or give any indication of correct or incorrect responding outside of teaching items. So, while she thought it's possible for C.S. to respond more accurately on this testing, it's not something that she can do in the testing condition. (Tr., Vol. 2, at 96.)

17. Overall, these scores indicate C.S. is functioning at a developmental age level ranging from one months to three years, ten months. This is just a description to provide more of qualitative picture of where C.S. is functioning. C.S. does have variability in his skill set. Some skills are more developed than others. His ability

to engage himself when he has free time, according to this report, is lower than his ability to engage in domestic skills. (Tr., Vol. 2, at 102.)

18. She compared the test scores she received as of the result of her testing to C.S.'s 2005 KU DDC Interdisciplinary Evaluation (District's Exhibit C). She directed attention to the scores in the table in her report pertaining to C.S.'s communication daily living skills and socialization, (C. S_____ 001492 School Records) which maps onto the KU report, because they also use the Vineland assessment. (Tr., Vol. 2, at 103.) When looking at these scores, keep in mind that the scores are not a raw score of what he's able to do, but are scores normed against the general population. In a bell curve your middle or your mean is 100. One standard deviation over on each side would be a score of 85 on the low end, 115 on the high end. Two standard deviations a score of 70 and 130, and then anything outside those two standard deviations, really, is moving towards that outside tail, representing a relatively small segment of the normed population. Comparing these scores with the responses on the Vineland from KU, she couldn't say whether he has the same skills, different skills or has made progress in his raw abilities. What it does clearly show is that, instead of developing more skills, C.S. has continued to remain in the low or, in the case of daily living skills, moved down from moderately low…he's now below two standard deviations of the mean in daily living skills. C.S. has not continued to progress in these skills, whereas typically developing peers would have. (Tr., Vol. 2, at 104.)

19. After all these years in education C.S. has not progressed. C.S. has, according to these scores, fallen further behind typically developing peers. C.S. has not continued to have skill development that would allow for his standard core to remain the same. In order for his standard score to remain at comparable levels, he would have to have more progression of skills. C.S.'s development has fallen further behind typically developing peers, based on these scores. (Tr., Vol. 2, at 105.)

20. For the Functional Behavior Assessment (FBA), Dr. Ostmeyer conducted a 3-hour observation in his school setting on April 8, 2018 at _____ High South to understand the context in which behavior occurs. (Tr., Vol. 2, at 107.)

21. Antecedent is just what happens immediately before behavior, and consequences are what happened immediately after behavior. They are not the always the cause and effect of that behavior, just what was happening immediately before and after. (Tr., Vol. 2, at 107.)

22. Through an extensive record review, including reviewing past IEPs and medical records, Dr. Ostmeyer compiled a list of "behaviors of interest," consisting of behaviors identified prior to her involvement, plus behaviors she added from her own observations. The behaviors identified for her, which were also in the IEPs and Parent Reports, were the tic and self-stimulatory behavior. (Tr., Vol. 2, at 108.)

23. To analyze behavior, data is collected about both the properties of the behavior and the start and the stop of the behavior to determine Antecedent, Behavior, and Consequence, or ABC, to develop a Hypothesis as to the Function of that behavior. (Tr., Vol. 2, at 110.) What tells us the function of behavior is the consequence, or what happens after. The goal is to see response patterns after the behavior occurs. (Tr., Vol. 2, at 112.)

24. In her classroom observation of the Rubbing, Dr. Ostmeyer saw 27 occurrences of an "increase in intensity under demand conditions". (Tr., Vol. 2, at 112.) Whenever C.S. received instructions to comply with he was in a Demand Condition. She saw that the immediate Consequence of 13 of those 27 occurrences was that the demand was removed (the teacher just stopped making the demand), and C.S. was able to avoid doing the task. For 2 of them, the behavior was simply ignored. For 12 of the 27, the demand was continued. (Tr., Vol. 2, at 113.)

25. Another problem behavior she noted was spinning, which was C.S. making at least one full 360-degree rotation. She saw this three times during the evaluation, and it only occurred when he was transitioning from room to room in a hallway. (Tr., Vol. 2, at 114.) When that spinning happened, the behavior was consistently ignored, and the transition continued uninterrupted. (Tr., Vol.2, at 115.)

26. She saw C.S. elope, or leave the instructional environment, five times, all of which entailed running to a water fountain. (Tr., Vol. 2, at 115.)

27. She saw zero instances of aggression. However, there was an instance in which C.S. stuck his fist on his chin and put pressure on it, and one of the staff informed her that that's a precursor behavior to aggression. She inferred that as a precursor to aggression, if the staff ignore that behavior, and continue to place demands, it is then likely to escalate to an aggressive episode. She also noted that throughout her observations, primarily the "staff" member working with him was a male para she believed was also the swimming coach. (Tr., Vol. 2, at 117.)

28. She saw a lot of attempted instruction, but with his behavior interfering to such a degree, when she is looking at instruction she is looking first as a behavior analyst and is looking for reinforcement of correct responding. (Tr., Vol.2, at 117.) It is later addressed in her recommendations that he would be reinforced more for engaging with the materials for a period rather than for correct responses. (Tr., Vol.2, at 118.)

29. Compliance is following a direction within three seconds of it being given, and Fluency is responding quickly, and Accuracy is responding correctly. C.S. was compliant for 53 percent of the demands that Dr. Ostmeyer observed. During her observation, C.S. had 126 opportunities to follow instructions. However, she noted that compliance with these instructions was inconsistent, as was the staff response to that non-compliance. (Tr., Vol. 2, at 118.) When given a task to do, if C.S. chose the wrong icon, for example, the staff would sometimes just move the right one for him to correct it and show him what to do, other times they would have him correct it, and yet other times, they would just move on. There was no consistency in the

procedures in dealing with lack of fluency and accuracy in his responses. (Tr., Vol. 2, at 121.)

30. She emphasized that “For optimal learning, we need to have consistency. We need to ensure he is giving correct, fluent responses, and getting reinforcement for those correct and fluent responses, in order for him to have really good learning take place.” (Tr., Vol. 2 at 122.)

31. When C.S. erred or engaged in nonresponding behavior, the consequences varied from showing him the correct answer and pointing to it, or hand-over-hand guiding him to the correct answer, or verbally saying, "Oh, that's the frog. You need to match it to the clock,"; basically, anything that is an extra stimulus in the environment that essentially hints at the correct response. (Tr., Vol. 2, at 122.)

32. When he engaged in incorrect responding, and he started to escalate, demands were removed. For example, if he was given a direction such as "Can you go give that paper to so-and-so?", if he didn't do it, they just would move on with their day. This actually reinforced the behavior they were considering problematic. (Tr., Vol. 2, at 123.)

33. Function analysis screening tool, or FAST, is a structured interview with the staff working with him to give us a better idea of antecedents and consequences that typically precede behavior and happen after the behavior of interest. It is an indirect assessment, so it is a report from somebody else, since she was only there for three hours to observe the behavior. (Tr., Vol. 2, at 123-124.)

34. Dr. Ostmeyer did the FAST staff interview for aggressive behaviors only because she did not observe any aggression at all during her functional behavior assessment of C.S. and needed to rely on indirect reports to get any ideas of what need that aggression may serve. Based on that FAST screening tool, she concluded that the aggressive behavior may serve several functions, including access to attention or preferred items, escape for nonpreferred tasks and activities, and pain attenuation, which means it's more of a self-stimulatory. If he's in pain, he's more likely to engage in aggression. (Tr., Vol. 2, at 124.)

35. To further gain an understanding of C.C.’s behavior patterns, Dr. Ostmeyer sought to review his behavior logs which were supposedly maintained by the school. She observed that there was a deficit in their data collecting. They did not have data from February through April of 2018 despite their own report that there were off and on again high levels of problem behavior that interfered with instruction. (Tr., Vol. 2, at 131.) The only records the school provided were data ranging from January 4th, 2018 to February 27, 2018, which, according to the teacher, was the data that she identified as being “more complete”. They explained that they had some new staff, and that data was not very complete from February to April. As a result, her record review of C.S.’s behavior is only a snapshot. (Tr., Vol. 2, at 124.)

36. The primary function of the behaviors based on those data would be escape/avoidance of nonpreferred activities with a secondary function of accessing other activities or settings, so redirection or removal from the primary setting. The school did not provide any of the past behavior intervention plans. (Tr., Vol. 2, at 125,126.)

37. The results of her FBA show that the tic, the rubbing, the spinning in circles, placing his hands in the air, and the finger flicking, at a low level were probably automatic, and may truly be self-stimulatory behaviors. But when they increase in intensity, the most likely function is escape/avoidance or to access automatic reinforcement; it essentially scratches an itch. (Tr., Vol. 2, at 127.)

38. Dr. Ostmeyer's recommendations are her attempt to address deficits in what she observed in C.S.'s environment, in her office, and through her record review and staff interviews. Her recommendations address inconsistent consequences, especially in terms of compliance with instructions. (Tr., Vol. 2, at 128.) A very systematic instructional environment would be beneficial for C.S., given his symptom presentation and issues with motivation and learning. (Tr., Vol. 2, at 129.)

39. Dr. Ostmeyer had several recommendations, grouped into four (4) sections.

40. The first set addresses Assessment, and the first of that set is to do a Functional Behavior Analysis, which takes the hypotheses from the FBA and systematically manipulates the Antecedents and Consequences surrounding a behavior to get a more confident belief as to the function of that behavior. The Functional Behavior Assessment really is more of a hypothesis, whereas the Functional Behavior *Analysis* is a very controlled experiment which gives us much more certainty of the function of the behavior. (Tr., Vol. 2, at 128.) Next, she recommends developing a very structured observation and measurement system to track all behaviors of concern. The school did have some ABC data for the really high intensity behaviors, but the ones really interfering with instruction were the lower level ones, like rubbing and not engaging with others. (Tr., Vol. 2 at 129.) Third, she recommended that per opportunity data be collected on all learning tasks on an ongoing basis and his performance be linked to his educational planning. She observed a lot of engaging with materials just for the sake of engaging with the material for a period of time, rather than for accuracy and fluency in responding. Having that per opportunity data allows staff to see if he is responding accurately and fluently. (Tr., Vol. 2, at 131.) Her fourth recommendation regarding data assessment is that C.S. be re-evaluated for his cognitive functioning once behaviors are under better control because she does not believe that she was able to assess functioning. (Tr., Vol. 2, at 131.)

41. Behaviors do affect a person's ability to access an education and affect a person's ability to be effectively evaluated cognitively. (Tr., Vol. 2, at 131.)

42. Dr. Ostmeyer's second set of recommendations involve Coordination between school, home, and community. When working with children with autism or children with any high needs, she first recommends coordination across all settings, so across home, community and school because changes such as diet, or medication changes or even sleep, in one setting can affect behavior in the others. (Tr., Vol. 2, at 131, 132.)

43. Next, she recommends teaching across settings. Individuals with Autism Spectrum Disorder, especially at the intensity level of C.S., frequently struggle with generalizations and maintenance of skills; systematic instruction across multiple environments, exemplars, and people, can improve both the student's generalization and maintenance of learned behaviors. Especially because of the severity level of C.S.'s behavior, she recommends that coordinated teaching be done across all environments. (Tr., Vol. 2, at 132.)

44. Residential placement of autistic students in a residential school is intended to address that need. (Tr., Vol. 2, at 132.) In a residential setting they are able to have instruction and functional skills taught across all settings. Residential settings can also have a plan and generalization as they are starting to fade from the residential setting back home, if that is a goal. So anytime that a child is discharged from a residential, there is systematic planning -- or should be systematic planning to transition them to a new setting or environment. (Tr., Vol. 2, at 133.)

45. The third set of recommendations involves Instruction Methods, and the first two of those is to do a preference assessment, and then to constantly update it, observing what motivates C.S., and what does not any more. She cited the example of chocolate cake; whereas you may be motivated by it at first, after so many slices, it may lose its appeal. C.S. needs strong motivations to respond quickly and accurately. (Tr., Vol. 2, at 133.) He would much rather just respond randomly and move on with his day and get on to the next thing, so a good, thorough preference assessment needs to be maintained to constantly determine what items/activities motivate C.S. and which can be used systematically to increase fluency and accuracy of responding. (Tr., Vol. 2, at 134.)

46. Her next Instructional recommendation is to move to a trial-based rather than time-based system for determining the number of responses required. For a trial-based system he needs to engage in X number of accurate responses as opposed to engaging in an activity for a certain length of time, regardless of accuracy. (Tr., Vol. 2, at 134.) Saying he needs to have three correct answers before he gets a break or before accessing a preferred item or activity is a trial-based system. A time-based system means he cannot access preferred items or a break until he works for X minutes. With a trial-based system, we can reinforce accurate and fluent responding. With a time-based we're really just reinforcing engaging with the materials, but not *how* he's engaging with the materials. (Tr., Vol. 2, at 135.)

47. Her fourth instructional recommendation is to teach and use a token exchange system. You do have to often teach that those tokens have meaning and value. Then

by teaching C.S. how to use that token exchange system, they could actually increase the amount of responding C.S. is required to do and systematically reinforce correct and fluent responding. (Tr., Vol. 2, at 135.) She did observe that he was reinforced on a time-based system at school. (Tr., Vol. 2, at 136.)

48. Her fifth instructional recommendation.is that all staff working with C.S. be instructed in effective antecedent instructional strategies, to ensure that they always have C.S.'s attention prior to asking him to respond. She did note that he didn't always have eye contact, he wasn't always oriented to the person, didn't always have a quiet voice, wasn't always at neutral, ready to respond posturing before given an instruction, phrasing all instructions as statements rather than questions, and finally, only asking questions when C.S. has access to a communication device or has the skills to answer. (Tr., Vol. 2, at 136.) Throughout her observations, she did not see any AAC device used often if at all, and he did not have ready access to it. (Tr., Vol. 2, at 137.)

49. Applied Behavior Analysis (ABA) teaches that our behavior is dictated by the antecedents and consequences of behaviors. Everything comes back to what happens before the behavior, what the behavior is and what happens after, and all behavior is functional. Doing those things before behavior occurs can greatly increase the chance of success if somebody is ready to respond. (Tr., Vol. 2, at 138.)

50. The evidence for Applied Behavior Analysis (ABA) is most solid and considered evidence-based for children 7 and under. There is a lot of additional evidence that Applied Behavior Analysis is very effective in changing the behavior of all organisms, and it's been used very effectively in the IDD (Intellectual and Developmental Disabilities) populations. ABA has been used since the inception of the field in 1968 with the Baer, Wolf & Risley at KU. They really were working with adults with intellectual and developmental disabilities when that field was founded. It is a gold standard. The reason that she became a behavior analyst is because she does believe that it is the most effective way of changing behavior. (Tr., Vol. 2, at 139.)

51. C.S. has several qualities that could be harnessed with a really effective ABA-structured approach. First of all, he does show social motivation, a behavior that can be reinforced. It can also be extinguished or punished. When he came to see her as this person who has a new environment, and who was talking to him, engaging with him, he frequently looked at her and was attempting to engage with her. She didn't always see that same level of engagement at school. A school is a high demand situation, but there are ways to harness motivation and pair our social responses with other reinforcers to help him be more socially motivated, and that can be done very systemically with procedures and Applied Behavior Analysis. (Tr., Vol. 2, at 140.) C.S. also shows that he can comply with instructions, even novel ones. (Tr., Vol. 2 at 141.)

52. If reinforced for accurate and fluent responding, behavior analysis says behavior is lawful, meaning it is predictably effective. If his positive behavior is truly and

consistently reinforced, his accurate and fluent responding will increase. That is a law just like physics.

53. She saw the school attempt to use ABA techniques. The problem is that any kind of teaching procedure can be done effectively and ineffectively, and what the school was doing was ineffective because they were not reinforcing accurate, fluent responding and they were not systematically getting his attention, and were not treating behaviors functionally. She saw more of getting through the day, rather than harnessing what is known in behavior analysis that's going to work to increase fluent and accurate responding in the absence of problem behavior. (Tr., Vol. 2, at 142.)

54. Her sixth instructional recommendation is having really descriptive prompt procedures tailored specifically to C.S.'s learning style. Individuals with intellectual and developmental disabilities can be taught effectively, but they require very structured teaching, which means everybody is using the same prompting procedures. To change prompts, they need to fade that prompt systematically and in the same way across everybody who works with him. She did not see that type of consistency when she observed him in the school. (Tr., Vol. 2, at 143.)

55. Her seventh instructional recommendation is to prompt compliance across all settings. To increase compliance, individuals need to see that compliance is not a choice, it's a requirement to gain access to desired reinforcement. There are times when C.S. should he be prompted to comply, and he would be able to make that correlation between antecedent, behavior, consequence. (Tr., Vol. 2, at 144.)

56. Dr. Ostmeyer's eighth instructional recommendation involves Positive Practice, which is a consequence that involves repeating a response over and over until it's completed to specified expectations. (Tr., Vol. 2, at 144.)

57. Her ninth instructional recommendation is to use an interspersed, rather mass trial, training. Discrete Trial Training, or DTT, uses either a mass trial approach or an interspersed trial approach. A mass trial approach presents the same task or same type of task over and over and over again. In an interspersed approach, the student cycles through an assortment of tasks, which is more likely to result in more enduring mastery of skills and less regression. (Tr., Vol. 2, at 145, 146.)

58. Instructional recommendation Ten is that all staff are essentially using the same teaching procedures, and that those procedures be implemented to a high degree of fidelity, and that data on fidelity of implementation be collected. This would ensure that all staff working with C.S. would be engaging the same teaching procedures and requiring the same level of response. The Board-Certified Behavior Analyst, or BCBA, does the programming, while a Registered Behavioral Technician, or RBT, who is trained to implement the procedures with 80-90% fidelity (the base level recommendation in the research), carries it out. (Tr., Vol. 2, at 147.)

59. Instructional recommendation Eleven is ensuring that everybody collects data the same way. Dr. Ostmeyer strongly recommends data-based decision making. C.S. is a child that would benefit from a highly structured instructional environment. The limited data provided by the school was in a narrative antecedent behavior consequence form. (Tr., Vol. 2, at 148.) According to the school, it wasn't consistently collected because of staff turnover. This recommendation is for actual data collection on instruction on an ongoing basis, because oftentimes when working with kids at C. S's functional level, it is necessary to have very minute changes to the teaching programs to ensure that he's learning those skills as quickly as possible. (Tr., Vol. 2, at 150.)

60. The last instructional recommendation, number twelve, is to use Differential Reinforcement of Incompatible behaviors, or DRI, with response blocking, for the self-stimulatory behaviors. With a DRI you reinforce the behavior that serves as a replacement. (Tr., Vol. 2, at 151.) When he is rubbing the side of his face and bringing his hands to his face, he would get reinforcement for keeping his hands below his shoulders. (Tr., Vol. 2, at 152.)

61. Dr. Ostmeyer's last set of recommendations address the need for Environmental Modifications.

62. The first is keeping the instructional environment free of taps and water fountains. If access to that is controlled, it can be contingent upon accurate and fluent responding and appropriate behavior. It can be used to teach functional communication reinforcement as well. (Tr., Vol. 2, at 152.)

63. Her second environmental recommendation is that his communication device always be accessible and within his reach, and that staff be trained how to use that communication device in the natural setting. A communication device only as functional if it is accessible. (Tr., Vol. 2, at 152.) She did not observe him using any communication device, or even having access to one throughout her visit to the school. That is significant, because without one, he has no voice. If he cannot communicate, how can he ask for things, or express a need to escape? (Tr., Vol. 2, at 153.)

64. Her third environmental recommendation is to help C.S. see staff as reinforcing and fun. When he came to her office, they engaged in a lot of joint attention, which he responded to very positively. She did not see any sign of this type of non-demand interaction in the school setting. She also did not see any instruction other than a lot of repetitive ID and matching skill work. (Tr., Vol. 2, at 154.)

65. What Dr. Ostmeyer saw in April is not going to be an effective educational environment for C.S. It was not appropriate for his disability. Accurate and fluent responding on materials was not reinforced. (Tr., Vol. 2, at 155.)

66. As to the fact that his behaviors have deteriorated since she observed him, very first thing that she is going to look at is safety. Always do what's safe first and then

work on instruction next. Is C.S. safe, and are other children safe around C.S. in the instructional environment? If his behaviors are resulting in harm to himself, that can lead to lasting change. Even his behaviors of the rubbing were causing harm to himself, and those need to be addressed immediately because his face had scabs which could easily become infected, especially if his hands were not clean, and that could lead to really impactful medical issues. So, can he be safe, and can they reduce the behaviors that we already saw could lead to medical complications in the future? (Tr., Vol. 2, at 157.)

67. The next question is, do they have the resources to educate him effectively? She consults with schools frequently, when they don't have the expertise to do those things, and most school environments across districts don't have that person with the instructional expertise; their role is not the education of child but is strictly behavior intervention plans and FBAs. (Tr., Vol. 2, at 157.)

68. A residential placement is appropriate as long as that residential placement first and foremost meets the needs for C.S.'s safety and that of others, and results in reduction of those behaviors that are a safety risk to himself and others. She repeated that those self-stimulatory behaviors are a safety risk for him. The next thing is to assure that the residential program has that accurate educational piece. The right program at Heartspring would be an appropriate residential placement. (Tr., Vol. 2, at 158.)

69. Dr. Ostmeyer definitely asserts that C.S.'s behavior interferes with his ability to obtain an education. Her observations clearly indicated, across all settings that C.S.'s behaviors interfered with his ability to respond and attend. They need to be remediated as part of that learning program. (Tr., Vol. 2, at 159.)

70. She did conclude by stating that since April 2018, no one from the school district has reached out to her in any way. (Tr., Vol. 2, at 159.)

71. Under questioning from District's counsel, Dr. Ostmeyer said she has not been back to the school to observe C.S., or to see any of the changes the school has implemented since then. She has not seen that the school has put him all alone in his own classroom, or that he now has one teacher and two paras all to himself. (Vol. II, P 160) She clarified that, although the two Vineland tests used, first by KU in 2005, and then the one she used recently, were different editions, they do have, by design, cross-compatibility. She also explained that she did not use the Vineland to interview any of C.S.'s staff because her own observations of the staff at the school accomplished the same thing and did corroborate the reports in both settings. (Tr., Vol. 2, at 162.)

72. Dr. Ostmeyer performed a functional behavior assessment and concluded the function of C.S.'s behavior was automatic, meaning that they were self-stimulatory behaviors; however, when they increased in intensity, she could not tell if the function remained automatic or was to escape/avoidance. (Tr., Vol. 2, at 127, ln. 4-23.)

73. Dr. Ostmeyer testified that C.S. has high levels of problem behaviors and this may be due in part to his diagnosis of rheumatic encephalitis as a result of rheumatic fever. She stated that "with encephalitis or any kind of brain swelling that we can get OCD and tic-like behaviors that is also with a regression in skills. Now, when we're looking at the treatment of that, we should see if it is all due to that inflammation and then – and the issues that are physiological have been resolved, we should see an improvement in functioning unless those behaviors have become functional in the day-to-day setting. It not uncommon for us to see OCD and tic-like behaviors continue to persist and require behavioral therapy after encephalitis." (Tr., Vol. 2, at 76, ln. 20 – 77, ln. 7.)

74. Dr. Ostmeyer testified that the evidence for applied behavior analysis is most solid for children 7 and under. Nonetheless, she believes it is the most effective way to change behavior. (Tr., Vol. 2, at 139, ln. 2-22.)

75. Dr. Ostmeyer had not been back to visit the classroom since she had done the observations for her report in April 2018. (Tr., Vol. 2, at 159, ln. 22-25.) She was not aware whether any of her recommendations had been implemented or whether C.S. was in his own classroom with a teacher and two paras. (Tr., Vol. 2, at 160, ln. 2-10.)

76. Dr. Ostmeyer gave a more recent version of the Vineland than was used for the KU report, so it was not an apples to apples comparison. Likewise, Dr. Ostmeyer admitted the Vineland was based on parent interview and was not a test of C.S.'s skills and abilities. (Tr., Vol. 2, at 161, ln. 3-13.) Dr. Ostmeyer did not give the teacher report version of the Vineland because she did not have that version and she believes her observations corroborated the parent report. (*Id.* at 161, ln. 14-25.)

77. Dr. Ostmeyer has never worked for Heartspring and has never been to Heartspring to tour their program. The only information she has about Heartspring she received second-hand from "colleagues" who work there or that she trained. (Tr., Vol. 2, at 162, ln. 1 – 164, ln. 15.)

E. MEGAN SWEAT

1. Ms. Sweat is a school psychologist and is currently the director of the residential clinic at Heartspring. (Tr., Vol. 2, at 174, In. 19-23.) Regarding Dr. Ostmeyer's FBA, Ms. Sweat testified that it was consistent with what Heartspring typically sees for its students. She said Heartspring has a Board-Certified Behavior Analyst overseeing all their Behavior Specialists on staff, which allows them to conduct Functional Behavior Assessments (FBAs) using real-time data, input instantly onto iPads, instead of the staff having to wait until later to record data, relying on their memories. (Tr., Vol. 2, at 176-180.)

2. Reliable and instant data is crucial to developing and maintaining effective Behavior Plans, since "without the data, it's really hard to show if any interventions

are working or not…So we use the data to change interventions, and we use the data to support medication management. We use data to ensure they are in the least restrictive environment for their current needs." At Heartspring, students have a core team as their staff. For a Residential student, this includes a Home coordinator, a therapy assistant, a coach, and a classroom teacher. Each classroom teacher also has a Lead Teacher, as well as a Lead Para, and a Lead Coach. There are other members of the student's team, depending on the related services mandated in their IEP. They also have OTs and PTs, and have their own doctorate level Speech and Language Pathologist, who works with a team of kids who communicate with a system or device**.** (Tr., Vol. 2, at 180.)

3. Each group home has a nurse on staff as well, because they are also the child's primary medical staff at that point, so they can coordinate medical needs across all environments, school, and group home. That nurse attends all meetings, at which medical staff, and psychology staff sit down to look at the behavior data and medication management together. In addition, Heartspring has a pediatric physician as well as a psychiatrist on staff. (Tr., Vol. 2, at 184.)

4. Each student is assigned to a Behavior Specialist also, who constantly re-evaluates the Behavior Plan, writes the specific behavior goals. Once a month at least, the Behavior Specialist observes the student both in the classroom and in the residential environment. (Tr., Vol. 2, at 182.)

5. That is a key aspect of their success, because it allows for treatment integrity**,** assuring that the behavior program is being applied consistently, as written. (Tr., Vol. 2, at 183.)

6. Dr. Ostmeyer's emphasis on the need for intensive coordination of all aspects of any plan for C.S. is one Heartspring is committed to for all its students. It is the strongest reason for sending children to their school. It does help to have them there for school and for residential, so they can be more consistent with programming. (Tr., Vol. 2, at 185.)

7. Applying her recommendation that adaptive living skills, communication skills, and social skills be taught across all functional routines would be done with their Home Management goals and residential program. (Tr., Vol. 2, at 185.)

8. She explained that ABA Applied Behavior Analysis looks at the function of a targeted behavior that the team is seeking to change. It analyzes it in terms of how the team can adjust the environment to successfully replace the behavior. Current research supports this approach. Ms. Sweat addressed Dr. Ostmeyer's other recommendations, for prompts, to be expected to comply with prompts across settings, to have a positive practice being implemented, to have interspersed rather than mass-trial training, and to have staff working with C.S. trained to implement strategies to a specific level of integrity across all environments. She assured the court that "those are all things that we do here at Heartspring, but it is all individualized based upon the student." (Tr., Vol. 2, at 186-187.)

9. Heartspring trains all staff on all of the goals for an IEP, and then they follow up with regular integrity checks, as well as retraining the staff anytime any part of the IEP or the Behavior Plan is updated or changed. (Tr., Vol. 2, at 188.)

10. At weekly student reviews, they analyze the data in terms of progress or not, as well as in terms of med changes, changes to the plan, new students coming into the environment, anything that might be a variable impacting the data, to decide if any changes are necessary. (Tr., Vol. 2, at 189.)

11. She emphasized the importance of a Behavior Plan being fluid…of the inherent need for it to change over time. If the student is not making progress, or is making progress, but not to the level they would expect, then they need to adjust it. If the student is making good progress, they need to raise the demands appropriately. (Tr., Vol. 2, at 191-192.)

12. Regarding Ostmeyer's recommendation that staff interact with C.S. more frequently, and in the absence of demands, Ms. Sweat assured the court that Heartspring follows that for all of its students. (Tr., Vol. 2, at 192.)

13. Ms. Sweat expressed absolute confidence in Heartspring's ability to implement all Dr. Ostmeyer's recommendations. Their group homes each have 8 students, save one newer one which has 12. All students eat together in a dining room, sitting with other students. Even if one student has some behavior issues necessitating being separated, that student still eats in the dining room, but just at a separate table. (Tr., Vol. 2, at 193.)

14. Each classroom also has from 8-10 students in it, and Heartspring has Functional only classrooms, as well as Academic classrooms, "It is just all driven by the student's IEP." (Tr., Vol. 2, at 194.)

15. Heartspring is prepared as well to carry out the IEP of November 2017 . She explained that Heartspring would use the existing IEP while they work with the parents and the school, using data they gather on site, to develop a new IEP. Heartspring would have conducted an evaluation for C.S. as part of its intake process, had he come to them in November of 2017 with no current evaluations in his record. (Tr., Vol. 2, at 195.)

16. Ms. Sweat testified that Heartspring could implement all of the recommendations made in Dr. Ostmeyer's report for C.S. (Tr., Vol. 2, at 193, ln. 3-6.) Ms. Sweat further testified that she had reviewed the November 17, 2016 IEP for C.S. and that Heartspring would be able to provide the goals, accommodations, and services as written in that IEP. (*Id.* at 194, ln. 13 – 196, ln. 11.) Ms. Sweat testified that Heartspring reviewed his file and determined that they could provide services for him. (*Id.* at 197, ln. 5-9.)

17. When Heartspring receives a residential student, they have two doctors on staff who take over the medical management of the student, Dr. Jenkins (psychiatrist) and Dr. Kerschen (developmental pediatrician). (Tr., Vol. 2, at 200, ln. 12-22.) If these two doctors recommend a medication change for behavior and the parents refuse consent, then Heartspring would have to evaluate whether they could keep the student safe without the medication change. (*Id.* at 201, ln. 7-22.) If not, then they would have to "reevaluate with the IEP team to see if Heartspring is the best place for that student." (*Id.* at 201, ln. 23 – 202, ln. 2.)

18. When the residential students are attending the Heartspring day school, the paras are working directly with the students, rather than the teachers. (Tr., Vol. 2, at 200, ln. 5-8.)

F. MR. S

1. Mr. S is the father of C.S. He is employed with Manhattan Via Christ as a registered invasive cardiovascular specialist and has a radiology degree. (Tr., Vol. 3, at 179.) C.S. is his son and has lived with just him for about one and a half to two years. (Tr. Vol. 3, at 179.)

2. C.S.'s medicines have changed quite often. Usually they're as needed, or it can be two times a day, BID, three times a day, TID, or it can be four times a day, QID. He gets C.S. up, gets him dressed, gives him his meds before school. When he gets home after school he takes his meds. That would be for medication that he is taking twice a day. For the three times a day meds, he will take an additional pill at night time. If he has four times a day medication the last pill will be saved for when he doesn't sleep or is up till 3 o'clock in the morning. So he gives him meds at 2:00 in the morning. (Tr., Vol. 3, at 180.) There has never ever been a time that he has manipulated C.S.'s medication to gain adverse effects. That would only hurt him. He believes C.S. has had a rough life already. (Tr., Vol. 3, at 180 – 181.)

3. Heartspring first came up was when C.S. was in Middle School. He looked them up on their website but didn't decide to pursue it then. (Tr., Vol. 3, at 192.) C.S. being more aggressive and lots of behavioral changes happening at home made him change his mind. (Tr., Vol. 3, at 192 and 193.)

4. There was an IEP meeting in January 2017 at which K____ requested placement for C.S.at Heartspring and was discussed. (Tr., Vol. 3, at 193.)

5. He believed the rationale for that placement at that time was for several different reasons. (Tr., Vol. 3, at 193.) He did not recall what those reasons were and would have to look exactly what all she said and does not recall the IEP amendment from that meeting. (Tr., Vol. 3 at 193 and 194.) The district did not agree to placement at Heartspring at that meeting but did agree to make these changes for C.S.. (Tr., Vol. 3, at 194.)

6. Mr. S is primarily responsible for giving C.S. his medication. (Tr., Vol. 3, at 179, ln. 13-16.) If the medication is supposed to be given four times per day, he will give C.S. one pill before school, one after school, one at night, and save one back in case C.S. doesn't sleep or wakes up in the middle of the night. (*Id.* at 180, 4-20.) Mr. S has had times when he discovered the pills he gave C.S. on the floor a day or two later. (*Id.* at 182, ln. 16-18.)

7. Mr. S and the vice principal have ridden the bus with C.S., but he doesn't know if it is because of a report of a C.S. having a bad night or bad weekend. There is another student who is usually accompanied by Mr. S and sometimes the vice principal on a regular basis, not every day but most of the time probably. (Tr., Vol. 3, at 197 and 198.)

8. After the District had a hard time getting paras, C.S.'s grandmother stepped in and C.S. got aggressive with her, she said she was done with picking him up and asked Mr. S for assistance with C.S. and he was able to help her. (Tr., Vol. 3, at 188 and 189.)

9. That the most recent time Mr. S helped the grandmother with picking C.S. up is when Mr. S was coming back from Manhattan and had gotten off at 2:30 p.m. C.S. stayed with her until he got home which was probably an hour. (Tr., Vol. 3, at 189.)
10. He describes C.S. as being taller and stronger than C.S.'s grandmother and that she is unable to handle him very well any more. (Tr., Vol. 3, at 190.)

11. Mr. S decided to pursue placement at Heartspring primarily due to behavioral changes happening at home. (Tr., Vol. 3, at 192, ln. 22 – 193, ln. 4.)

12. Mr. S testified that he receives both the _____ High School South grade cards and the progress reports for C.S. every nine weeks. (Tr., Vol. 3, at 187, ln. 18 – 188, ln. 19.)

13. Mr. S testified that C.S.'s grandmother was helping him by picking up C.S. after school, but C.S. "got her" and that stopped. (Tr., Vol. 3, at 188, ln. 20-25.) C.S.'s grandmother asked C S (principal at South High School) for assistance and he helped her with C.S., including staying with her for approximately an hour until Mr. S got home from work. (*Id.* at 189, ln. 1-19.)

14. Mr. S was not aware that C.S. goes to music and movement and P.E. with general education students every day. (Tr., Vol. 3, at 196, ln. 21-23.)

15. Mr. S is not aware that the school ever refused to send the iPad home for C.S. to use for communication at home. He thought they wanted it left at school. (Tr., Vol. 3, at 196, ln. 24 – 195, ln. 8.)

G. DR. SHELBY EVANS

1. Dr. Evans is a licensed clinical psychologist and a board certified behavior analyst. She currently works at Kansas Behavioral Health. (District Ex. LLL; Tr., Vol. 3, at 72, ln. 21 – 73, ln. 1.) Dr. Evans has a doctoral degree in developmental and child psychology. She completed a track in behavior analysis as part of that clinical degree at the University of Kansas. (Tr., Vol. 3, at 73, ln. 12-16.) She also holds a master's degree in general experimental psychology from the University of Texas at San Antonio, and two bachelor's degrees from Emporia State University – one in psychology and one in communication. (Tr., Vol. 3, at 73, ln. 17-24.) Her licensure is that of a licensed clinical psychologist at the doctoral level in the State of Kansas. (Tr., Vol. 3, at 75, ln. 2-5.)

2. Dr. Evans obtained a master's level license in Kansas in 2002, and also held one in Nebraska. She returned to Kansas for her doctoral level degree in 2007 and received her board certification about the same time her doctoral degree was conferred. She began seeing patients in 2002 under her master's level license. (Tr., Vol. 3, at 74, ln. 3-15.)

3. In her current practice, about half of her patients are intellectually and developmentally disabled individuals. She sees a smattering of regular adults, and the rest are children. Dr. Evans sees children for such issues as parenting issues, behavior issues, anxiety, ADHD, and to provide a primary diagnosis. (Tr., Vol. 3, at 74, ln. 16-24.) About half of her current practice is comprised of individuals with autism. (*Id.* at 75, ln. 1.)

4. Dr. Evans has also been teaching, as well as supervision and training of students, since 2002 until 2017 as adjunct faculty for various universities and colleges, including Wichita State University, Bethel College, Butler County Community College, University of Kansas Medical Center (working with residents training in developmental and behavioral pediatrics). (Tr., Vol. 3, at 75, ln. 6-15.)

5. As part of the FBA, she came out to the school and observed C.S. throughout his day, following his schedule in the classroom and basically followed him everywhere he went, and watched his interactions with staff, tasks that he completed his typical day. She did that two different times. (Tr., Vol. 3, at 77.) She was out there for about a half a day. (Tr., Vol. 3, at 78.) C.S. had one dedicated staff with him most of the time and that individual gave him most of his directives, assisted him with any education tasks, vocational tasks, things like his newspaper route, and basically worked with him throughout the day one on one. (Tr., Vol. 3, at 78.)

6. Dr. Evans has also written a number of publications and given a number of presentations on topics relevant to her testimony, as well as having worked in a number of positions in which she conducted research. (District Ex. LLL; Tr., Vol. 3, at 75, ln. 16 – 76, ln. 4.)

7. In working with children with autism, Dr. Evans does a "fair amount" of functional behavior assessments, a "fair amount" of consultation, and a "fair amount" of parent training to help parents understand ways in which they can help their child change problem behaviors. Some of her consultation work is done with school districts. (Tr., Vol. 3, at 76, ln. 7-18.)

8. Dr. Evans was asked to consult with the Districts regarding C.S. She provided both a behavioral consultation report and a psychological evaluation report, both of which are contained in District Exhibit MMM. (Tr., Vol. 3, at 76, ln. 19 – 77, ln. 13.) As part of this consultation, Dr. Evans conducted functional behavioral analysis, as well as educational testing. For the functional behavioral analysis, Dr. Evans observed in C.S.'s classroom on two different days for half a day each day. (Tr., Vol. 3, at 77, ln. 10-16.)

9. During her observations, Dr. Evans observed that C.S. had one dedicated staff member with him most of the time and that person worked one on one with him. C.S. did receive direct instruction from his teacher. At times when the primary staff member was working with another student or on break, other staff rotated through working with C.S. (Tr., Vol. 3, at 77, ln. 17 – 79, ln. 2.)

10. Dr. Evans observed that C.S. received functional academic training. He worked on vocational tasks, he worked on health (such as identifying parts of the body), and he worked on learning safety and other community signs and their meanings. In her experience, Dr. Evans is frequently called upon to observe in school districts and, as part of those observations, she provides suggestions to school staff members about the manner in which they are providing instruction. In her opinion, the Districts' staff members did very well in providing instruction for C.S. (Tr., Vol. 3, at 79, ln. 3 – 80, ln. 22.)

11. Dr. Evans provided the following examples of ways in which she believed the Districts' staff members worked well with C.S.: they were very responsive; they did not nag; they were not reactive; they gave clear one and two step instructions; they gave C.S. time to process before providing reminders; and they encouraged C.S. to make choices. Dr. Evans believed the staff members did "a good job focusing on the content. Given he's a transitioning student as well, providing some vocational, some life skills, and some basic academic stuff." (Tr., Vol. 3, at 80, ln. 24 – 81, ln. 16.)

12. Dr. Evans also felt that the Districts' staff members did "a very good job" handling C.S's behaviors. (Tr., Vol. 3, at 81, ln. 17-20.) The staff members were not reactive. Dr. Evans did not get the impression that any of the staff disliked C.S. or that they were afraid of him. Instead, staff would give C.S. some space and allow him to work it out, and then remind C.S. what they were working on. (Tr., Vol. 3, at 81, ln. 21 – 82, ln. 1.) Dr. Evans noted that, when it was appropriate, staff would divert C.S. to something else. For example, if he was having difficulty waiting during a transition, the staff would provide a fidget for him (such as flipping a string). When C.S. would

elope to the sink for water, staff would casually come up behind C.S. and redirect him back to his work area. (Tr., Vol. 3, at 82, ln. 2-13.)

13. As part of her consultation, Dr. Evans reviewed behavior data sheets for C.S., his IEP, and the behavior plan. Based upon her observations and the review of records, it was Dr. Evans' opinion that school staff were following C.S.'s behavior plan. (Tr., Vol. 3, at 82, ln. 14 – 83, ln. 1.) Dr. Evans also had some medical records, which were provided to her by the school district. (*Id.* at 83, ln. 21 – 84, ln. 1.)

14. Dr. Evans observed primarily two behaviors for C.S. – putting his hands over his ears and seeking out water. Although C.S. had a history of aggressive behavior, Dr. Evans never witnessed that when she was present. Dr. Evans determined that the hands on ears was a self-stimulatory or habitual behavior and that seeking out water was probably biologic in nature, noting that his medical records indicated a history of polydipsia. (Tr., Vol. 3, at 83, ln. 4-20.)

15. Dr. Evans noted in her report that the Districts' staff members were already doing many of the things you want to see in place for children with autism or intellectual disabilities, including the following: visual schedules, choices throughout the day, consistent clear presentation of demands, one-on-one learning environment, minimal distraction, built-in breaks that weren't contingent on his behavior, waiting an appropriate amount of time for response, and phrasing requests in the form of a positive rather than a negative. (Tr., Vol. 3, at 84, ln. 5-22.)

16. Dr. Evans' first recommendation was that staff members continue to look for other ways to provide sensory feedback for his ears. She noted that staff members had already tried replacing his hands with their own to allow him to work with his own hands. Dr. Evans suggested trying wrestling headgear, ear plugs, or even medical grade compression like what is used for people who have reconstructive surgery. (Tr., Vol. 3, at 84, ln. 23 – 85, ln. 23.)

17. With respect to seeking water, Dr. Evans recommended that staff members block access, either by use of body positioning or putting him in classrooms that do not have access to a working sink. (Tr., Vol. 3, at 85, ln. 24 – 86, ln. 8.)

18. Without ever having seen aggression from C.S., Dr. Evans made some suggestions as to ways in which it could be handled by staff if it did happen. For example, she suggested they make sure they were never removing task demands or decreasing demands on C.S. as a result of the use of aggression or that would teach him to increase the use of aggression to avoid tasks. Dr. Evans also suggesting teaching C.S. some self-calming techniques, including taking deep breaths or asking for a break. She also suggested using his assistive communication device (the iPad) to increase his communication of feelings. (Tr., Vol. 3, at 86, ln. 11 – 87, ln. 16.)

19. Dr. Evans testified that she did see him using his communication device in the classroom and that she had a short conversation with C.S. through the use of the communication device. (Tr., Vol. 3, at 87, ln. 14 – 88, ln. 13.)

20. At the Districts' request, Dr. Evans had returned for a second visit to observe and provide assistance to staff members in the fall of 2018 a few weeks prior to her testimony. (Tr., Vol. 3, at 88, ln. 14 – 24.) Dr. Evans was asked to return by M L, Director of the Cooperative, because there were worsening behavior issues and C.S. was engaging in aggressive behavior. In addition, there was "movement issues beyond his hands on his ears" that were interfering with his education overall. (Tr., Vol. 3, at 92, ln. 3-22.)

21. When Dr. Evans visited in the fall of 2018, C.S. was in a sensory friendly classroom with low lighting and few distractions. He had a teacher and a couple of paras. Work centers were set up in the classroom for him to go through during the course of the day. When she arrived, he was eating breakfast. She stayed for his work schedule through lunch. (Tr., Vol. 3, at 94, ln. 4-22.)

22. Dr. Evans did witness aggressive behavior by C.S. on that visit. However, the type of aggression she saw was not hitting people. The aggression was grabbing people, particularly by the hair, and trying to take them to the ground. The aggression would start as large body movements, such as rocking, rubbing, and jumping. As C.S. became more agitated, he would move toward or run at a staff member. In most instances, the staff members were able to get released from C.S. and were not taken to the ground, and C.S. did not continue to aggress. (Tr., Vol. 3, at 94, ln. 1 – 95, ln. 12.)

23. Dr. Evans determined that the function of these aggressive behaviors appeared to be internal. C.S. engaged in the behaviors equally across demand and no demand conditions, during breaks, during academic tasks, during transitions, and during meals. There were not any environmental triggers for the behaviors. It appeared to Dr. Evans that, as his internal discomfort increased and his behaviors got more intense and agitated, C.S. would lash out at whoever was around him. (Tr., Vol. 3, at 95, ln. 13 – 96, ln. 9.)

24. Dr. Evans testified that most of the way in which the staff was already addressing the behaviors was appropriate. They were keeping a safe distance between themselves and C.S. as he became agitated. They would try to redirect him to the task. They did contingent ignoring, i.e., not talking to him about what he was doing, and they tried not doing things that would escalate him. (Tr., Vol. 3, at 96, ln. 12-20.) Dr. Evans did make an additional suggestion that the staff members try to interrupt the behavior chain early because that sometimes can have more success in preventing the behavior. The teacher indicated they had tried that, but it generally had not been successful. While Dr. Evans was there, the staff members also tried offering him sensory breaks and fidgets to prevent the behavior. Dr. Evans thought the staff members "did remarkably well" handling his behavior. (Tr., Vol. 3, at 96, ln. 21 – 97, ln. 18.) Because these behaviors stem from C.S. internally, it is really just a "guessing game" for staff members to try to figure out how to address the behaviors. (Tr., Vol. 3, at 97, ln. 19 – 99, ln. 20.)

25. Dr. Evans testified it is relatively common for students with autism to have these types of behaviors, which stem from them internally, and that there are medications which can be used to reduce the agitation and irritability. When Dr. Evans observed C.S. she opined that he looked like he had the "feeling that he's coming out of his skin" and that he looked like he was miserable. (Tr., Vol. 3, at 100, ln. 2-16.)

26. Dr. Evans has been part of interdisciplinary teams that have prescribed medications for patients with autism, similar to C.S. As a result of her experience, she was aware that Risperdal and Abilify are FDA approved for treatment of agitation in autism. (Tr., Vol. 3, at 103, ln. 1-12.) Dr. Evans was also aware that Geodon could be used for the same purpose. (*Id.* at 103, ln. 21-24.)

27. During her training, Dr. Evans had courses in psychopharmacy and neurodevelopment in which they discussed the medications, dosages, uses, how they work, the lab work, and follow-up. Dr. Evans testified that a number of states allow psychologists with a Ph.D. similar to hers to prescribe medication for that reason, but Kansas does not allow that unless she also had a master's degree in psychopharmacy. In addition, all of her clinical training has been done as part of interdisciplinary teams with psychiatrists, developmental pediatricians, and other similar medical doctors. (Tr., Vol. 3, at 105, ln. 2-17.)

28. With Risperdal, Abilify, and other similar medications, Dr. Evans testified that the patient typically needs to take the medication as prescribed in order to reach a therapeutic level of medication in the blood. A few medications in that class, such as oral dissolving Zyprexa, can be given in a single dose when someone is acutely agitated. Haldol is also commonly used in a single dose for acute agitation. Risperdal, Abilify, and Seroquel are not usually taken on an as needed basis. (Tr., Vol. 3, at 106, ln. 9-23.) Haldol is not typically prescribed for home use. Dr. Evans could only think of three patients she has had who had a prescription for Haldol on an as needed basis at home. (Tr., Vol. 3, at 107, ln. 7 – 108, ln. 23.)

29. Dr. Evans had experience with psychiatric residential treatment facilities (PRTF). She worked at Heartspring for five or six years on an internship and also worked in the University of Nebraska Medical Center inpatient locked residential treatment center. Dr. Evans testified that a PRTF is generally used with an individual who has had multiple acute placements for 72 hours or more and was unable to remain stabilized at home. The PRTF placement is a medical placement and is used to provide more intensive wrap-around services and then transition the individual back to the home. (Tr., Vol. 3, at 109, ln. 3 – 110, ln. 9.)

30. At Heartspring, Dr. Evans worked as a psychologist and behavior analyst. She did about 1 ½ days per week of outpatient clinics and the rest of her work was in the residential facility at Heartspring. She worked on behavior plans, did educational testing, sat in on IEP meetings, tracked and analyzed all the behavior data, and did all the med/psych consults with the physician staff. (Tr., Vol. 3, at 111, ln. 9 – 112, ln. 5.) Dr. Evans continues to consult for Heartspring. (Tr., Vol. 3, at 112, ln. 9-19.)

31. Dr. Evans testified it is her opinion that the staff members at U.S.D. ___ are capable of providing C.S. with an appropriate education. (Tr., Vol. 3, at 112, ln. 20 – 113, ln. 1.) When asked why she believed that, Dr. Evans testified:
You know, I think I said at his IEP and re-eval meeting that routinely I go to schools and I'm like you guys are doing everything wrong.

I came in here and they're doing about everything right. I mean I had very few things to add with what they were doing and I feel like that they have fairly highly qualified staff. When I asked about some of the training that staff received, many of the paraeducator staff have degrees. They have a real good understanding of what's going on with him and they seem to mesh with him really well. His educational program for a kid who is transition age is perfect. I mean his getting vocational training, he's getting life skills training, he's getting some academic stuff. He's getting the things he needs to transition successfully to a adult facility. [sic] And I work for two adult facilities as a contractor in Wichita and I think they would be delighted to have him. He's a nice kid and he has good skills, and he's had good education. And I think the team should be very pleased with how they've done in working with him. Does he have some difficult issues? He does. I don't want to minimize that, but they were doing much better than I anticipated. (Tr., Vol. 3, at 113, ln. 3 – 114, ln. 6.)

32. Dr. Evans also performed some psychological testing to determine C.S.'s IQ and abilities. She gave C.S. both the nonverbal Stanford-Binet IQ test and the Comprehensive Test of Nonverbal Intelligence (CTONI), 2nd edition. The Stanford-Binet requires the use of manipulatives and C.S. was trying to use his elbows instead of hands. Dr. Evans chose to also give him the CTONI because it only required him to point. (Tr., Vol. 3, at 114, ln. 10 – 115, ln. 14.) Each test placed C.S. in the mild to moderate range of intellectual disability, so she did not feel that there was any significant difference between the two scores. The two test results were also consistent with the parent reports on the Vineland. Putting all of that information together, Dr. Evans testified that C.S. meets the criteria for a diagnosis of intellectual disability. (Tr., Vol. 3, at 115, ln. 15 – 116, ln. 1.) Dr. Evans did not do academic testing with C.S. because she felt it would not go well and would not yield useful information. (*Id.* at 116, ln. 2-8.) C.S. scored a 58 on the CTONI and a 44 on the Stanford-Binet. (*Id.* at 116, ln. 11-13.)

33. As a result of her testing, Dr. Evans recommended that C.S. continued to need intensive special education services, noting that he currently had a one-on-one self-contained program. Dr. Evans also recommended more focus on communication. She noted that he had limited use of the assistive communication device and it was difficult to tell whether he was not motivated to use it or if it was difficult for him to use for motor reasons. (Tr., Vol. 3, at 117, ln. 12-25.) Dr. Evans also made recommendations regarding transition – specifically recommending the TTAP skills assessment be done with C.S. and that everything be lined up with the CDDO. Finally, she included a reminder that C.S. will need to have a guardian upon

turning 18 and recommended that the parents begin that process. (Tr., Vol. 3, at 118, ln. 2-25.)

34. Dr. Evans did not agree that C.S. should be placed residentially simply because the function of his behaviors was internally based. (Tr., Vol. 3, at 135, ln. 23 – 136, ln. 7.) Dr. Evans reviewed the admissions letter from Heartspring and noted that it was a conditional acceptance based upon an initial review. (Tr., Vol. 3, at 138, ln. 6 – 139, ln. 14.)

35. Dr. Evans further testified that simply because Heartspring had conditionally accepted C.S. did not mean that was the best place for him to go. (Tr., Vol. 3, at 154, ln. 7-11.) Dr. Evans was concerned that the individuals served at Heartspring are "really severe." Dr. Evans noted that she "still think[s] the school does a great job." (*Id*. at 154, ln. 19-25.) This makes her concerned what C.S. would learn from the other students at Heartspring that could potentially make his behavior worse. Dr. Evans noted that she "had staff [who] had their fingers bitten off." "Residential placement isn't without risk." (Tr., Vol. 3, at 154, ln. 25 – 155, ln. 24.) At Heartspring, "the peer group are individuals with dangerous behavior. There is a fair amount of seclusion and restraint used for necessary safety. And, as anywhere in life, we can't assure that anybody is safe. I have had students get arms broken while I was there, noses broken. People given concussions. People losing a finger. There – one of the things when you take a bunch of difficult people with hard to manage behavior, there is a risk there." (Tr., Vol. 3, at 159, ln. 24 – 160, ln. 9.)

H. T. D.

1. Ms. D is a certified speech language pathologist. At the time of the hearing, she was employed as a research trainee for the University of Kansas in the language acquisition lab. During the 2017-2018 school year, she had been employed as a speech language pathologist (SLP) with U.S.D. ___ and had held that position since August 2010. (Tr., Vol. 4, at 5, ln. 10-25.)

2. Ms. D obtained her bachelor's degree in speech, language, and hearing from the University of Kansas in 1995, with honors. She worked for the Albuquerque Public Schools in New Mexico where she was a licensed apprentice in speech and language while she worked on her master's degree with the University of New Mexico. Ms. D was one of five in this pilot program. She obtained her master's degree in July 1999 from the University of New Mexico. After that she started a clinical fellow year in New Mexico, but her husband was transferred to Kansas City in October 1999 and she had their first child around the same time so it was not completed. She then started her clinical fellow year with the Leavenworth County Special Education Cooperative in August 2000. Ms. D worked for Leavenworth County for two years in their early childhood program. She then worked for Shawnee Mission Public Schools for two years. She took five years off to raise her children and then started with the _____ Public Schools in 2010. Currently, she is enrolled in a doctoral program at the University of Kansas in child language. She

left her position with the _____ school district to enter the doctoral program. (Tr., Vol. 4, at 6, ln. 1 – 7, ln. 17.)

3. Ms. D obtained her certificate of clinical competency after her clinical fellow year in 2001. She is licensed as a speech-language pathologist in Kansas, and has worked a total of 14 years as a SLP. (Tr., Vol. 4, at 8, ln. 1-20.)

4. C.S. was a student on her caseload when she worked for U.S.D.____. (Tr., Vol. 4, at 8, ln. 21-25.) Ms. D started working with C.S. when he came to high school in 2016. (*Id.* at 9, ln. 1-6.) When C.S. came to her caseload, he was receiving speech services 2 times per week for 20 minutes each time. (*Id.* at 10, ln. 12-15.) Ms. D increased his time in service for speech in January 2017 to 20 minutes, 5 times per week. She made that change because they were introducing an augmentative alternative communication device (the iPad) with a communication app called the Tobii Compass. (The app creates a communication board choices, allowing C.S. to pick from different choices (pictures) on the screen which will then take him to a different page. (*Id.* at 10, ln. 16 – 11, ln. 25.) This amendment was made to the IEP in January 2017. (District Ex. X and AA; Tr., Vol. 4, at 12, ln. 1-18.)

5. When Ms. D started working with C.S., he was minimally verbal. He did not have a communication system in place. C.S. was able to sit at the therapy table and participate in the therapy sessions. He had some days where he was more engaged than others. C.S. was able to transition from the classroom to the therapy room and back well, but did have para support to do so. (Tr., Vol. 4, at 13, ln. 1-24.) During that time period, C.S. had a tendency to keep his hands in his pockets, so he was not using his hands all the time. This would make it difficult for him to make choices during therapy. Ms. D had to spend some time shaping his behavior so that he would keep his hands out and on the table. C.S. was also experiencing some gross motor behaviors – hand waving, some abrupt push backs from the table and then suddenly he would be up against the wall behind very quickly. (Tr., Vol. 4, at 14, ln. 6-22.) At this point in time, these behaviors were happening about once a week during her speech sessions. (*Id.* at 14, ln. 23 – 15, ln. 4.)

6. The behavior plan that Ms. D used with C.S. during the first year she worked with him is set forth in District Exhibit E. It was developed in November 2015. (District Ex. E; Tr., Vol. 4, at 15, ln. 5-9.)

7. Ms. D started seeing more behaviors from C.S. before Christmas break in 2016. C.S. had his hands in his pockets all the time and, if instructed to take them out, he would stick them down the front of his pants. She also began to see more aggressive behavior, which she had not seen before. C.S. would bite the heel of his hand and occasionally he would get in her face, which she took as a sign of frustration. (Tr., Vol. 4, at 19, ln. 2-17.) After spring break, C.S. had some episodes of putting his hands on her forearms or upper arms, which seemed to be an escalation of aggression. (*Id.* at 19, ln. 18-23.)

8. C.S. would have been 15 when he started the hands in the pockets and hands in the pants behavior. This is typically an age when puberty occurs. Based upon her experience working with children with autism and intellectual delays, they sometimes have difficulty dealing appropriately with the onset of puberty. (Tr., Vol. 4, at 20, ln. 6 – 21, ln. 15.) Ms. D responded to this by a verbal prompt to place his hands on the table or take his hands out of his pants. If that didn't work, then she would use a light physical prompt on the forearm or elbow combined with a verbal prompt. She also had pictures of hands that she had placed on the top of the table for students to show them where their hands should be. In addition, she has used social stories with students to try to shape appropriate behavior. (*Id.* at 21, ln. 19 – 22, ln. 10.)

9. Ms. D testified that research shows it takes three to five years for a new skill to be established in a student and that is only with daily immersion. (Tr., Vol. 4, at 22, ln. 11-23.) Typically, students with autism do not develop language skills in the same way as their general education peers. Language is comprised of three areas – linguistics, pragmatics, and social. Linguistics involves how we put words together, how we put sentences together, and how we put sentences together into a conversation. Pragmatics involves tone of voice, nonverbal gestures, and facial expressions. Social involves how we use linguistics and pragmatics to get our needs met. In Ms.D's experience, students with autism seem to struggle the most with the pragmatics area. (Tr., Vol. 4, at 23, ln. 5 – 24, ln. 3.) This is also true of C.S. (*Id.* at 24, ln. 15-16.)

10. Ms. D was in attendance at the November 17, 2016 IEP. The main thing she recalled from this meeting was that C.S.'s mother presented information regarding PANDAS, an autoimmune disorder related to rheumatic fever. She did not recall any discussion about Heartspring at this meeting. (District Ex. Q; Tr., Vol. 4, at 26, ln. 4 – 28, ln. 10.)

11. Ms. D was also in attendance at the January 2017 IEP meeting, which was requested by C.S.'s parents. His parents wanted to discuss a change in placement to Heartspring, although they had not expressed any dissatisfaction with his services during the November 2016 IEP meeting. Ms. D could not explain exactly why the parents wanted C.S. to go to Heartspring, as she was not able to follow their logic. She testified that she recalled Ms. P kept saying "24/365, a lot, in regards to 24 hours a day, 365 days a year." (Tr., Vol. 4, at 35, ln. 9 – 36, ln. 24.)

12. Ms. D testified that the school staff members were open to listening to the parents' concerns, but they were taken aback by the request. In discussing C.S.'s progress, behavior, and opportunities, the staff members felt that C.S. was participating well and fully. Although some concerns were beginning to surface regarding behavior, the staff members were willing and open to addressing those concerns and actively looking for a solution for everyone involved. (Tr., Vol. 4, at 37, ln. 18 – 39, ln. 11.) Ms. D testified that it was unclear what had changed in the past two months since the previous IEP meeting. (*Id.* at 39, ln. 12-15.) Ms. P did make note during the meeting that Heartspring had medical staff. (*Id.* at 39, ln. 16-20.)

13. C.S. was not going to be receiving speech services during the summer of 2017 because he had not shown regression in skills for speech. (District Ex. EE; Tr., Vol. 4, at 43, ln. 19-25.)

14. Ms. D attended the November 10, 2017 annual IEP meeting for C.S. The IEP team had expanded to include the special education director and attorneys, including an attorney for the parents and one for the school district. The staff members from South High attempted to go through the draft of the IEP, but they were unable to get very far because there was an argument over each area. (District Ex. NN and QQ; Tr., Vol. 4, at 44, ln. 2 – 46, ln. 13.) The parents again requested placement at Heartspring. In the parent concerns section, they indicated the request was being made "due to regression." The parents were indicating that C.S. had regressed in all areas. From her perspective as his speech provider, C.S. did not have regression in speech skills. (Tr., Vol. 4, at 46, ln. 17 – 47, ln. 25.)

15. Ms. D reviewed data points per therapy session, as well as over time. Comparing this data provided her with information about emerging skills. (Tr., Vol. 4, at 48, ln. 1-23.) Students acquire skills at different rates. We find that as they begin to use a skill – and this is based on research in speech-language therapy – we find that as their skills are emerging they will show it occasionally, and then – and then sometimes the next – the next day, not at all. An then they'll use it again as they're – what we find is that they're setting a parameter. – they're – they're experimenting with what works and what doesn't work.

    So, it may work in this situation, their attempts at communication may work in this situation. And then they try it again and it does not work. So, they use that to redefine their parameters

    . . .

    So, looking at – looking at the daily data, I can see the peaks and the valleys of this skill is emerging, but we hope to see a steady climb towards the goal percentage. (*Id.* At 48, ln. 25 – 49, ln. 20.)

16. After the November 10, 2017 IEP meeting staff members from South High went to tour Heartspring. Although Ms. D was not one of the staff members who went to Heartspring, those who went shared the information they learned with the others upon their return. (Tr., Vol. 4, at 50, ln. 24 – 51, ln. 9.)

17. Another IEP meeting was held on November 27, 2017. Ms. D attended this meeting, as well. (District Ex. II [audio recordings of November 27, 2017 IEP meeting]; Tr., Vol. 4, at 52, ln. 8-16.) The parents did not believe the draft IEP was acceptable because they believed C.S. had regressed and that South High School was not the appropriate placement for him. (Tr., Vol. 4, at 54, ln. 1-14.) Again, the parents were requesting Heartspring. (Tr., Vol. 4, at 54, ln. 15-16.)

18. In response to the parent request made on November 10, 2017, the Districts provided the parents with a prior written notice (PWN), dated November 21, 2017,

denying the request and holding it open pending the completion of an independent comprehensive evaluation, including an FBA by a third party to be selected by the Cooperative. (District Ex. UU; Tr., Vol. 4, at 55, ln. 1-13.) The PWN further noted that the medical report given to the school staff on November 10, 2017, contained "significant information that requires the team's consideration as part of an overall comprehensive evaluation, which includes the FBA." (District Ex. UU; Tr., Vol. 4, at 55, ln. 13-18.) The PWN indicated that the request for placement at Heartspring was denied due to the need for additional information based upon recent aggressive behaviors and new medical information provided by the parents. (District Ex. UU; Tr., Vol. 4, at 55, ln. 19-25.) The parents declined to sign consent for the evaluation. (District Ex. UU; Tr., Vol. 4, at 56, ln. 10.)

19. The Districts had filed a due process complaint prior to the parents filing the present complaint. The Districts were seeking permission to conduct a reevaluation and consent to communicate with C.S.'s medical doctors. (Tr., Vol. 4, at 56, ln. 21-25.) Ms. D attended the resolution meeting that was held on March 6, 2018, in an attempt to resolve that due process complaint. (*Id.* at 57, ln. 4-7.) During the resolution meeting, the parties discussed having Prairie View conduct the reevaluation, but they were unable to do so within the timeframe the District needed it to be done. (*Id.* at 58, ln. 13-23.) Ms. D conducted the speech portion of the reevaluation. (*Id.* at 58, ln. 24 – 59, ln. 1.) The parents gave consent for the reevaluation to be conducted. (*Id.* at 61, ln. 11-16; District Ex. GGG.) 135. Another IEP meeting was held for C.S. on May 25, 2018, to discuss the results of the reevaluation. (Tr., Vol. 4, at 66, ln. 12-16.) Again, Ms. D was in attendance. Ms. D's report regarding C.S.'s communication skills is contained within District Exhibit KKK. (Tr., Vol. 4, at 61, ln. 20 – 62, ln. 8.) Ms. D summarized her results by stating that C.S.'s speech and language skills are in the extremely low range and that he requires speech-language therapy to improve his communication skills. (*Id.* at 62, ln. 9-14.) Ms. D's results are reflected in the reevaluation report contained within District Exhibit QQQ. (*Id.* at 66, ln. 17 – 67, ln. 1.) Each parent was present for the meeting on May 25, 2018 – Mr. S in person and Ms. P by phone. (*Id.* at 67, ln. 4-9.)

20. Ms. D provided progress reports for C.S. during the 2017-2018 school year. On his communication goal, he was at 65% accuracy in December 2017, 65% accuracy in March 2018, and 70% accuracy in May 2018. (Tr., Vol. 4, at 71, ln. 19 – 72, ln. 13.) C.S. did make progress on his communication goal during that time; however, he did not meet the benchmarks that Ms. D would have liked to have seen him meet in order to ensure that he would meet the goal within one year's time. (*Id.* at 72, ln. 14 – 73, ln. 12.)

21. After January 2017, Ms. D and her para worked primarily with C.S. on the iPad. (Tr., Vol. 4, at 77, ln. 24 – 78, ln. 4.)

22. Ms. D testified that the speech language goal she wrote for C.S. in the November 10, 2017 IEP was appropriately ambitious for him in her opinion as a speech language pathologist and a member of the IEP team. (Tr., Vol. 4, at 79, ln. 14 – 80,

ln. 6.) Based upon the data she had, her experience working with C.S., seeing his proficiency and ability to use the iPad, she felt that he was able to attain 80% accuracy on the goal. (*Id.* at 80, ln. 7-11.)

23. In the assistive technology section of the November 2016 IEP, it states that C.S. would have "access to pictures, icons, direct select items, single switch to activate games on the computer, AbleNet and devices with and without voice output to complete activity throughout his school day." (Tr., Vol. 5, at 40, ln. 7-12.) This means that C.S. had a "full menu of AAC options," – some of which were low tech (pictures, icons, direct select, single switch, AbleNet) and some of which were high tech (devices that have voice output or devices that do not have voice output). (*Id.* at 40, ln. 15-23.)

24. Ms. D had initially recommended a reduction in time for speech services for the November 2016 IEP, but the team did not want to make that change. Thus, the change was not reflected on the PWN for the November 2016 IEP. (District Ex. Q and R; Tr., Vol. 5, at 42, ln. 2 – 44, ln. 8.) Ms. D testified that, in the event of a conflict between the IEP and the PWN, the PWN controlled because it was the document signed by the parents giving consent for the actions listed on it. (Tr., Vol. 5, at 44, ln. 12 – 46, ln. 5.) The reason that Ms. D had recommended the reduction in service time in November 2016 was because C.S. did not seem to be tolerating speech therapy as well, and that was one of the ideas she had to try to maximize the efficiency of the time they used. (*Id.* at 46, ln. 9 – 47, ln. 6.)

25. Ms. D testified that it was not necessary to change the communication goal in the January 2017 IEP because the goal could be utilized with the iPad. (Tr., Vol. 5, at 48, ln. 3-24.)

I. J.B.

1. Ms. B has a master's degree, plus 20 college hours, with an endorsement in P.E., high and low incidence special education. High incidence special education refers to working with students with learning disabilities, as an example. Low incidence is a smaller population of students who have intellectual disabilities, among other disabilities. (Tr., Vol. 5, at 60, ln. 13-24.) Her master's degree was in adaptive special education, K-12. (*Id.* at 61, ln. 1-2.) Ms. B is a special education teacher in a low incidence special education classroom for grades 9-12 at _____ High School. She has held that position for four years. (*Id.* at 61, ln. 7-16.) She has been a special education teacher since 2000. Prior to that time, she worked as a special education paraprofessional. (*Id.* at 61, ln. 17 – 62, ln. 4.)

2. Ms. B first met C.S. as a freshman. At that time, C.S. was vocal enough to tell her his wants and needs. He did have difficulty with food. He would chew his food, regurgitate it into his hand, and then lick it back up again. (Tr., Vol. 5, at 62, ln. 6-11.) C.S. had some vocal tics and would jump up and down a lot in a stationary position. C.S. was also scooting his chair back and forth on a repetitive basis. However, C.S. was able to participate in activities, such as delivering the

newspaper, going on field trips, and going to the mall, the library, and the YMCA. (*Id.* at 62, ln. 12-21.) C.S. talked and would tell you if he wanted something, usually food. (*Id.* at 62, ln. 21-24.) When C.S. talked, it was not in full sentences, it was utterances and had a dictionary of words because he was sometimes difficult to understand. He could say "Dillons" if he wanted a salad from there. He could say "hello" and he could verbally count. (*Id.* at 62, ln. 25 – 63, ln. 11.)

3. During C.S.'s freshman year, he was able to interact with other students. He had one student with whom he liked to sit and work together at the same table. (Tr., Vol. 5, at 63, ln. 12-20.)

4. During his sophomore year, C.S. did not interact as much. He was still able to deliver newspapers and was able to work through rotations. His tics and behaviors were different that year. He stopped regurgitating food. Instead, he rubbed his gums. He no longer jumped up and down, but his sophomore year he liked to gallop. He started doing overhead hand waving. He stopped scooting back and forth in his chair. C.S. was not as expressive his sophomore year. He was not counting and did not really talk. He could be coached to say things, but many times he did not respond, so they did more things by nonverbal prompts or gestures. (Tr., Vol. 5, at 64, ln. 8 – 65, ln. 2.)

5. During his junior year, C.S. would sometimes lick the walls and the glass. He no longer did the overhead hand waving. He started talking a little bit, but it seemed to Ms. B that C.S. was "uncomfortable in his own skin." (Tr., Vol. 5, at 65, ln. 2-8.) C.S. seemed to be more stressed during his junior year. Whereas he had previously been somewhat self-injurious when he became frustrated (*i.e.*, biting the heel of his hand), the junior year he became more aggressive toward others when he was upset. (*Id.* at 65, ln. 8-12.) C.S. started scooting in the chair again during this year and no longer seemed to enjoy going for rides in the car. Ms. B testified that C.S. seemed to be somewhat cyclical in his behaviors. Then, C.S. became obsessed with drinking water. (*Id.* at 65, ln. 14-23.)

6. Ms. B testified that C.S. was more communicative his freshman year. Although he stopped verbalizing his sophomore year, it had started to come back a little bit in his junior year. (Tr., Vol. 5, at 66, ln. 1 – 67, ln. 17.) Ms. B stated that she had to reteach many things with C.S. It would appear that he had learned it, so she would move on to something else, and then it would appear that he lost that skill. (*Id.* at 67, ln. 17 – 68, ln. 6.) Ms. B was trying to keep his anxiety down because that seemed to have increased, particularly around February of 2017. (*Id.* at 67, ln. 24 – 68, ln. 23.) Ms. B concluded that his anxiety was increasing because C.S. could hardly sit down, he no longer wanted to go to the track when he was escalated, and he couldn't focus. Ms. B testified that, one time at the track, C.S. appeared to be looking at shadows and seemed afraid. She thought he was "uncomfortable in his own skin" and concluded that his anxiety was "out of control." (*Id.* at 69, ln. 1-10.)

7. Ms. B testified that she may have carried over the reading goal from the 2014 IEP to the November 2015 IEP and just changed the functional sign words that were

being used with him or increase the number of words he could identify. (Tr., Vol. 5, at 71, ln. 11-22.)

8. Ms. B testified that C.S. was eligible for Extended School Year (ESY) services in the summer of 2016 due to regression of skills that were not completely regained over school breaks. (Tr., Vol. 5, at 74, ln. 8-22.)

9. With respect to the goals she wrote for the November 2015 IEP (reading, math, and writing), Ms. B testified that she believed those goals were appropriately ambitious for C.S. Ms. B believed he could be successful with those goals; however, she also noted that C.S. went through a period of time when he was not talking which made it difficult to work on the math goal which required him to verbally state the amount of money. Likewise, he went through a period of time when he hated the computer keyboard, which made the written goal difficult to work on because it required him to type the information. (Tr., Vol. 5, at 75, ln. 16 – 76, ln. 25.) Ms. B also believed the goals were challenging for C.S. because sometimes he was able to perform the skill required and sometimes he could not. She wanted to ensure that he was making adequate growth and progress and that he did understand what they were doing. (*Id.* at 77, ln. 2-15.)

10. Ms. B has worked with other students with autism, besides C.S., and has experienced similar patterns with them. (Tr., Vol. 5, at 77, ln. 16-20.) She has had other students with repetitive behaviors or OCD tendencies. Many times, she has had to reteach her other students as well in order to allow them to generalize the skill across settings. (*Id.* at 79, ln. 14 – 80, ln. 7.)

11. Ms. B testified that C.S. was making progress in her classroom during his freshman year and that the parents never complained to her regarding the services she was providing to C.S. (Tr., Vol. 5, at 80, ln. 8-15.)

12. Ms. B attended the November 2016 IEP as the special education teacher and person who could interpret evaluation results. (Tr., Vol. 5, at 81, ln. 14 – 83, ln. 1.) No school psychologist was in attendance at the November 2016 IEP meeting. (*Id.* at 83, ln. 4-7.) Ms. B testified that they do not have a school psychologist attend every IEP meeting because other people can sign off as the person to interpret evaluation results, including the special education teacher. (*Id.* at 83, ln. 24 – 84, ln. 9.) When Ms. B wrote her portion of the November 2016 IEP she was relying upon her data and her observations and did not require a school psychologist to interpret her own data. (*Id.* at 86, ln. 15-23.)

13. Ms. B testified that the three goals she wrote for C.S. on the November 2016 were appropriate for him at that time. She was trying to make them harder so that he had something to work toward, but she also thought he could be successful with those goals. Again, the parents did not express any dissatisfaction to her regarding the services for C.S. (Tr., Vol. 5, at 92, ln. 14-23.)

14. Ms. B testified that she was contacted by Ms. P with a request for the January 2017 IEP meeting. At that meeting, Ms. P expressed concern for C.S.'s educational needs and requested a placement at Heartspring in Wichita because Ms. P said it was the least restrictive environment for C.S. and Heartspring had medical personnel there 24 hours a day. (Tr., Vol. 5, at 93, ln. 11 – 94, ln. 16.) Ms. B further testified that school staff members did not feel Heartspring was an appropriate placement at that time. (*Id.* at 94, ln. 17-21.)

15. C.S. started engaging in behaviors that were injurious to other people after the January 2017 meeting. Ms. B believed they started in February 2017. (Tr., Vol. 5, at 100, ln. 20-25.)

16. Ms. B sent an email to Ms. P on February 1, 2017, informing her that C.S.'s iPad was there and the communication app was being loaded. (District Ex. CC; Tr., Vol. 5, at 103, ln. 13 – 104, ln. 4.)

17. C.S. remained eligible for ESY due to regression of skills that were not completely regained within 45 school days for the summer of 2017. (District Ex. EE; Tr., Vol. 5, at 104, ln. 5-18.)

18. Ms. B again wrote goals for the November 10, 2017 IEP meeting. At that meeting, they added accommodations of a wrestling singlet and a weighted vest as a calming strategy, as well as adding that the iPad would be sent home daily and it would be returned fully charged for the next school day. However, the parents continued to request placement at Heartspring. (Tr., Vol. 5, at 106, ln. 15 – 109, ln. 14.) The school agreed that some staff members would go and look at Heartspring and report back to the rest of the team later. (*Id.* at 109, ln. 15-20.) Another IEP meeting was held on November 27, 2017, to discuss the Heartspring request. (*Id.* at 111, ln. 10-13.)

19. Ms. B had not really come to a conclusion as to whether Heartspring was appropriate for C.S. She was leaning toward no because she thought he should stay at home. However, after hearing the report back from the staff who visited Heartspring, she did not believe it would be appropriate for C.S. because it wasn't the least restrictive environment, the other students seemed to be very aggressive, and she worried about his well-being if he were to be placed at Heartspring. (Tr., Vol. 5, at 114, ln. 13 – 115, ln. 7.)

20. Ms. B testified that the District had requested consent to reevaluate C.S. in November of 2017, but the parents had refused consent. At the March 6, 2018 meeting, Ms. B was in attendance when the parents gave consent for the reevaluation. (Tr., Vol. 5, at 115, ln. 16 – 116, ln. 5.)

21. In Ms. B's opinion as C.S.'s special education teacher for three years, the 2015, 2016, and 2017 IEPs were all appropriately ambitious for C.S. (Tr., Vol. 5, at 116, ln. 24.) Ms. B testified that the goals for each of those IEPs were reasonably calculated to enable C.S. to make progress in light of his circumstance.

Furthermore, Ms. B believed C.S. would make adequate progress on those goals. At the end of each school year, including May 2018, C.S. was making progress in her classroom. (*Id.* at 116, ln. 12 – 117, ln. 2.)

22. Although parents' attorney claimed that Parents' Exhibit 9 (signature page from January 25, 2017 IEP) demonstrated that documents were being altered, Ms. B testified that multiple signature pages were passed around on that date. (Tr., Vol. 5, at 138, ln. 3 – 142, ln. 2.)

23. While the IEP does not use the words "cyclical" or "regression," all of the IEPs state that C.S. "requires repetition, structure, and routine to foster skills acquisition and personal independence." (Tr., Vol. 5, at 165, ln. 15 – 167, ln. 4.) C.S.'s need for repetition, structure and routine has not changed the entire time Ms. B has had C.S. as a student, nor is it likely to change given the nature of his disability. (*Id.* at 169, ln. 5-17.)

24. When C.S. first arrived at school, he had breakfast and then they started his routine at 7:45 a.m. (Tr., Vol. 5, at 172, ln. 14-21.) C.S. left her room for the day at 2:40 p.m., the same time as everyone else in her classroom. (*Id.* at 173, ln. 13-17.)

J. E.C.

1. Ms. C holds a B.S. in communications sciences and disorders and a Master's degree in speech-language pathology, both of which were conferred by Wichita State University. (Tr., Vol. 6, at 6, ln. 20-25.) She holds a Certificate of Clinical Competence from ASHA and is licensed as a speech pathologist in Kansas, Colorado, and Washington. (*Id.* at 7, ln. 1-6.) Currently, Ms. C is a SLP with PresenceLearning. She has held that position since the fall of 2016. Prior to that, she worked for four years in the Wichita Public Schools as a SLP. (*Id.* at 7, ln. 8-13.)

2. The _____public schools contracts for services with PresenceLearning for speech services. (Tr., Vol. 6, at 6, ln. 20-25.) Ms. C has provided speech therapy through teletherapy for C.S. from August 22, 2018 to October 16, 2018. (*Id.* at 7, ln. 25 – 8, ln. 6.) She no longer saw C.S. after October 16, 2018, because he was placed at another facility. (*Id.* at 11, ln. 7-11.)

3. Ms. C explained the manner in which they conducted teletherapy, which was set up very much like a video conference but also had a document camera focused on his iPad screen so that she could see what he was doing. C.S. typically had three adults in the room with him – one who was primarily responsible for coordinating the online session and getting the students on the computer with PresenceLearning and the other two were paras who work with C.S. (Tr., Vol. 6, at 8, ln. 7-21.)

4. During her sessions with C.S., Ms. C worked with him on giving a greeting, went through some regular questions to gauge the accuracy of his answers, and then

worked on labeling things such as colors, shapes, food, and body parts. (Tr., Vol. 6, at 8, ln. 24 – 9, ln. 10.) C.S. did well during his sessions with Ms. C. He was doing a better job of using his finger to push buttons instead of his elbows. His accuracy was increasing. He did not need as much support as he had in the beginning, and his verbalizations and word approximations were also increasing. (*Id.* at 9, ln. 13-18.)

5. In addition to waving, C.S. could make a choice between two objects printed on the screen; pointing to one is a gesture that he could do. It was pointed out that on that criteria, C.S. had a 50-percent chance of accuracy just by the fact that there were only two choices. She explained the percentages that are on the progress report were not based on making those choices where he had a 50-percent shot. She did not include those in her data. The familiar questions that were worked on were one metric, and the other metric was greeting. (Tr., Vol. 6, at 42.)

6. In the 20 minutes she spent with C.S., the positive behavior tokens to motivate him in the sessions were videos. She would play the video at the beginning early on to make it a positive experience for C.S. so that he would want to continue and move on. Then she would play it at the end to reward him for participating during the session. (Tr., Vol. 6, at 43.)

7. C.S. received several accommodations during their speech sessions, which included access to a ribbon to manipulate and at different times he wore a weighted vest, weighted waist band, and/or a wrestling singlet under his clothes. (Tr., Vol. 6, at 20, ln. 15-20.)

8. Generally, if there was a behavior during the speech session, it was not harmful. He might jump around the room or wave his arms or rock. There was one time that C.S. started to masturbate and the computer was closed so that she could not see it. There were a couple of times when C.S. hit the para with an open hand, but the para was not injured. Occasionally, C.S. would bite himself. The more serious behaviors happened five or fewer times out of 31 sessions. (Tr., Vol. 6, at 20, ln. 25 – 21, ln. 25.) Beginning September 24. C.S. also started pulling his shirt up over his face from the neck. (*Id.* at 22, ln. 2-7.)

9. Based upon her work with C.S., Ms. C testified that the speech goal from the November 10, 2017 IEP was reasonably calculated to provide C.S. with a free appropriate public education. (Tr., Vol. 6, at 22, ln. 12 – 23, ln. 10.) Ms. C testified that C.S. "was improving his communication and language skills using a variety of modalities. He was making progress in responding to questions about his daily life. He was giving more word approximations as our therapy went on." (*Id.* at 23, ln. 13-17.)

K. L.L.

1. Ms. L currently is a functional special education teacher at South High School. This was her first year in that position. She has been a special education teacher since 2012. However, when she started teaching in 1991, she had class within a class as the general education teacher for every year until she became a special education teacher. "Class within a class" meant that she had students with learning disabilities included in her classroom and she was generally co-teaching with a special education teacher. She has been teaching for 28 years, all of that time has been in the _____ public schools. (Tr., Vol. 6, at 50, ln. 7 – 51, ln. 5.)

2. Ms. L was C.S.'s teacher since August 2018 until he left in October to go to another facility for treatment. (Tr., Vol. 6, at 51, ln. 6-21.) She described his daily schedule and the rewards used with C.S. She also explained the daily logs set forth in District Exhibit WWW. (*Id.* at 51, ln. 22 – 56, ln. 18.) On September 28, 2018, Ms. L had an incident in her classroom involving C.S., which resulted in the need to call 911. C.S. had difficulty leaving home due to his desire to seek water. They tried to do breakfast, but C.S. continued to escalate. His breathing became very rapid and he made multiple attacks toward Ms. L, trying to grab her hair and take her to the ground but was unable to do so. Other staff members intervened, but C.S. continued to remain fixated upon Ms. L. When the ambulance arrived, Ms. L assisted the EMS in getting C.S. onto the gurney. School staff members went to the hospital with C.S. and stayed with him until he was transported to Children's Mercy because the parents were not available. This was the most extreme event with C.S. that Ms. L had seen in the time that she had worked with him. (Tr., Vol. 6, at 56, ln. 22 – 59, ln. 14; District Ex. WWW.)

3. C.S. arrived in Ms. L's classroom at 7:15 a.m., and they immediately started his schedule. General education students started school at 7:45 a.m. Thus, C.S. was starting his school day 30 minutes earlier than the general education students. Ms. L would start getting C.S. ready for dismissal at 2:30 p.m., and the general education students dismissed at 2:40 p.m. (Tr., Vol. 6, at 59, ln. 22 – 60, ln. 14.)

4. Ms. L's behavior logs are contained within District Exhibit VVV. Those logs include the antecedent, the behavior, and the consequence. (Tr., Vol. 6, at 62, ln. 1 – 64, ln. 12.) Ms. L shared that C.S. is fixated on water and that he would often elope to drink out of the faucets. Ms. L and the paras tried to prevent this behavior by using one specific type of small cup with him at all times and always redirecting him to the cup when he wanted a drink. It kept him from obsessing over the water and wanting to just stay with the water. (*Id.* at 65, ln. 9 – 66, ln. 9.)

5. The classroom setting for C.S. had changed in August of 2018. On the first day of school, they tried having three other students in the classroom, but, due to behaviors and C.S. wanting to move around the room and becoming over-stimulated by the other students, it was necessary to remove the other students. Ms. L's classroom always had sensory videos playing for calming purposes and had low lighting. They used visual timers so that C.S. could see, as well as hear, when

his time working on a task would be up. Ms. L believed this classroom was specifically built for C.S. (Tr., Vol. 6, at 66, ln. 13 – 69, ln. 9.)

6. Ms. L emailed the parents every day as long as the internet was working and she was in the building. She attached the daily logs to those emails. The parents never expressed any dissatisfaction with the services she was providing to C.S. (Tr., Vol. 6, at 69, ln. 13 – 71, ln. 13.)

7. During the time C.S. was in her classroom, Ms. L testified that there were days when C.S. was in control of himself, could flow through his routines very independently, and was communicating with them using common familiar words. There were other times when C.S. would start escalating and would engage in OCD behaviors, such as when pulling out a job pack, he would pull it out, push it back in, pull it out, push it back in, and pull it back out and start working on it. He also had behaviors touching the corners of the room with either his hand or the bottom back side of his foot. When he was more extremely escalated, he would scoot in a chair clear across the room and then scoot back, his muscle structure would become rigid and his tongue might be coming out. Other times, he would physically attack staff members. (Tr., Vol. 6, at 71, ln. 14 – 72, ln. 18.)

8. There was a period of time when Ms. L was not seeing any aggressive behaviors and considered putting other students back in with C.S., but his behavior changed before they could set that up. During that time period, C.S. was even able to independently walk the therapy dog around the building without assistance or guidance. That coincided with one of C.S.'s IVIG treatments, which was around August 31, 2018. (Tr., Vol. 6, at 73, ln. 24 – 75, ln. 13.)

9. C.S. would come in and start his morning routine of having breakfast, go through his hygiene routines, cleaning routines, to work on functional and transitional skills that needed to be covered during the day. Then C.S. would start in his rotations that involved independent time. There was direct instruction time he was given for self-directed choices, where items would be presented and he could chose that opportunity for that time span. He had time in the sensory room and they tried to always give him sensory breaks within his structured teaching and the independent station. C.S. would be presented with activities and boxes of tasks to complete, and prior to working on those, he would select a reward to work towards, do a box or two and then get that reward. (Tr., Vol. 6, at 52.)

10. She admitted that C.S. was the most severe student that she had in her 28 year career working with kids on the autism spectrum. (Tr., Vol. 6, at 141.)

11. Regardless of the behavior cycle C.S. was in, he was still able to complete his daily routine and schedule. If the staff members working with him could tell that he was becoming frustrated, they would provide him the opportunity for more frequent sensory breaks. (Tr., Vol. 6, at 77, ln. 4 – 78, ln. 3.)

12. Having worked with C.S., Ms. L testified that his goals were all attainable, although she would make the reading and math goals more applicable to real life situations. That was how she approached the goals in his IEP. Working with him in that manner, Ms. L felt that the goals were appropriate for C.S. and testified that he was making progress toward those goals. She further testified that she believes the three goals upon which she worked with C.S. were reasonably calculated to provide him with a free appropriate public education. (Tr., Vol. 6, at 79, ln. 20 – 83, ln. 2.) On his reading goal, C.S. had made 28% progress toward the goal during the time Ms. L worked with him. Likewise, on his math goal, he was at 84% and should have been able to reach the goal of 90% by the annual IEP. (*Id.* at 83, ln. 3 – 84, ln. 15.)

13. Ms. L testified, based on what she had seen with C.S., that he was not losing enough skills to justify a 365 day placement. When he came back, he was able to continue without significant loss. (Tr., Vol. 6, at 118, ln. 20-24.)

L. S.A.

1. Ms. A holds a bachelor's degree in occupational therapy and is licensed by the State of Kansas as an occupational therapist. She is also registered with the National Board for Certification in Occupational Therapy. (Tr., Vol. 6, at 150, ln. 13-19.) Ms. A has been an occupational therapist since 1998. She is currently employed by the district as an occupational therapist and has held that position since 2003. (*Id.* at 151, ln. 5-11.) Prior to working for the school district, she worked for _____ Regional Health Center. She also does as needed occupational therapy work for nursing homes and home health therapy. (*Id.* at 151, ln. 13-25.)

2. Ms. A started working with C.S. in 2012 when he was in 6th grade. She provides occupational therapy consult services weekly in the classroom with the teacher. (Tr., Vol. 6, at 152, ln. 18-24.) The purpose of the consult services is to ensure that C.S. is getting the sensory interventions needed to help him be in a ready state for learning in the classroom. (*Id.* at 153, ln. 3-5.) When she first started seeing C.S. on consult in middle school, she was providing consult services on a monthly basis. In January 2017, the team increased him to weekly consult services at the parent request. (*Id.* at 154, ln. 5-9.)

3. C.S. had different sensory needs. He was provided with a weighted vest for deep pressure input, for calming purposes. He had access to the sensory room daily and sensory breaks were built into his schedule. C.S. liked to go into the sensory room and gently rock in the swing. He also liked to or a string to wave it around and watch it, which was self-stimulatory but was also calming for him. C.S. also has some issues with his ears, which leads to him putting his hands on his ears. She tried to address this several different ways – noise limiting headphones, swim cap, and staff sometimes would cover his ears for him. (Tr., Vol. 6, at 155, ln. 16 – 157, ln. 8.) C.S. was very functional and could eat while still holding his thumbs in his ears. He could open doors with his elbows, and he could type his pinky fingers while holding his thumbs in his ears. (*Id.* at 157, ln. 9 – 158, ln. 16.)

4. Ms. A performed the TTAP assessment, along with the autism consultant at that time, in November 2014. However, the phone conference to share the results with the parents was not held until September 2015. Ms. A did not remember why it took so long to provide the feedback to the parents, but did recall that there was a change in school psychologists during that time period. (Tr., Vol. 6, at 159, ln. 16 – 161, ln. 13.)

5. Ms. A attended the November 2015 and November 2016 IEP meetings and discussed the occupational therapy services for C.S. She does not recall the parents expressing any concern regarding her services either year. (Tr., Vol. 6, at 161, ln. 18 – 168, ln. 7.) She also attended the January 2017 IEP meeting. (*Id.* at 168, ln. 8-10.) At the January 2017 meeting, the parents were requesting placement at Heartspring and also requested an increase in OT services. Ms. A does not recall why the parents were requesting the increase in OT services, but she agreed to it. (*Id.* at 168, ln. 15-25.) Ms. A did recall that there was discussion about C.S.'s medical needs during this meeting because he had been diagnosed with chorea and a questionable PANDAS diagnosis. (*Id.* at 170, ln. 5-14.) The parents said they were requesting the placement at Heartspring to meet C.S,'s educational and medical needs. (*Id.* at 170, ln. 20-24.)

6. Ms. A did not believe that Heartspring was an appropriate placement for C.S. because he could be appropriately served at _____ with the structure and support he was getting there. (Tr., Vol. 6, at 171, ln. 7-16.)

7. Ms. A also attended the IEP meeting on November 10, 2017. At that meeting, Ms. A did not recommend a change in OT services but did recommend a couple of changes in accommodations. Specifically, Ms. A recommended adding the wrestling singlet and a weighted vest as accommodations in the IEP. (Tr., Vol. 6, at 171, ln. 17 – 173, ln. 16.) The parents were again requesting Heartspring at this meeting. Ms. A did not agree because she felt that his needs could be met at South High School with the structure and support they had in place. (*Id.* at 174, ln. 4 – 175, ln. 18.)

8. Ms. A also attended the November 27, 2017 IEP meeting and recalled that the tone of the meeting was somewhat aggressive. (Tr., Vol. 6, at 176, ln. 16-24.) Ms. A recalled that parents' counsel was frustrated and aggressive toward staff at that meeting. (*Id.* at 177, ln. 1-5.) Ms. A does not recall that anything was resolved as a result of that meeting. (*Id.* at 177, 6-10.)

9. Ms. A completed the OT portion of the revaluation for which consent was signed on March 6, 2018, and prepared a report which is contained in District Exhibit JJJ. (Tr., Vol. 6, at 180, ln. 7-19.) As a result of her reevaluation, C.S. remained eligible for OT consult services and she did not recommend any changes to time in service for him. (*Id.* at 181, ln. 16-25.)

10. With respect to OT services, Ms. A testified that the November 2017 IEP was reasonably calculated to provide C.S. with educational benefits, that her services

were appropriate for him, and that her services would allow him to make progress in light of his unique circumstances. (Tr., Vol. 6, at 184, ln. 24 – 185, ln. 9.)

M. L.T

1. Ms. T has a bachelor's degree in psychology from the University of Kansas, a master's degree in school psychology from Fort Hays State University, and an educational specialist degree from Fort Hays State University. She is licensed by the Kansas State Department of Education as a school psychologist. (Tr., Vol. 7, at 6, ln. 1-9.) Currently, she is employed as a school psychologist by the _____ Kansas Cooperative in Education. She has held that position for 8 years. (*Id.* at 6, ln. 10-17.)

2. Ms. T has known C.S. since his freshman year at South High, but she has not done any evaluations of him. (Tr., Vol. 7, at 6, ln. 21 – 7, ln. 4.) C.S. is on Ms. T's caseload and she serves as a member of his IEP team. She is also a resource for other members of the IEP team if they need assistance. (*Id.* at 7, ln. 5-18.) Ms. T has attended a few IEP meetings for C.S., but not all of them. (*Id.* at 19-22.)

3. As part of her role, Ms. T has reviewed C.S.'s educational records. _____ did not perform the initial evaluation of C.S. that was done by the Emporia public schools before he came to_____. (Tr., Vol. 7, at 7, ln. 23 – 8, ln. 10.) A reevaluation was done when C.S. was in kindergarten. It did not appear that any new testing was done at that time because he had just received the diagnosis from KU Med Center. (*Id.* at 8, ln. 11-18.) In 3rd grade, a reevaluation was done. At that time, they did a cognitive assessment, an adaptive assessment, and an achievement assessment. (*Id.* at 8, ln. 19-23.) In 6th grade, the parents signed a waiver saying that reevaluation was not needed at that time. (*Id.* at 8, ln. 23 – 9, ln. 5.) In 8th grade, an evaluation was done because they performed the TTAP, a transition assessment. (*Id.* at 9, ln. 7-15.) In 11th grade, they completed the reevaluation for which parents signed consent in March 2018 and which included a full cognitive assessment, a FBA, speech, and OT. (*Id.* at 9, ln. 15-18.)

4. Ms. T attended the IEP meeting in November 2015, signing as Lori McGinley (her maiden name); however, she did not attend the November 2016 IEP meeting. (Tr., Vol. 7, at 10, ln. 4 – 12, ln. 5.)

5. Ms. T did attend the January 25, 2017 IEP meeting, although her name was not on the sign-in sheet. (Tr., Vol. 7, at 13, ln. 18 – 14, ln. 2.) Ms. T recalled that Ms. P had requested this meeting to ask for placement at Heartspring. Ms. T testified that the parents felt as though the school was doing all they could do, but C.S. needed more than a traditional school could offer. The parents felt that C.S. needed to have medical staff available at all times and needed the more structure and consistency which could be provided in a setting where he would be 365 days a year for 24 hours a day. Ms. T thought the parents wanted the round the clock access to medical staff due to C.S.'s high medical needs. (*Id.* at 14, ln. 3-23.)

6. Ms. T testified that there had been some changes to C.S.'s medical condition. Ms. P had discussed with the IEP team that C.S. may have PANDAS, but Ms. T was not sure if that had ever been determined. C.S. also had been diagnosed with rheumatic encephalopathy, so they did not believe having a nurse at school was sufficient for him and that he needed more consistent care in a residential setting 24 hours a day, 365 days a year. (Tr., Vol. 7, at 15, ln. 1-14.) Ms. P indicated that he needed residential care because he needed consistency and the same structure every day, rather than transitioning between home and school where there were different expectations. (*Id.* at 15, ln. 15-21.)

7. In response to the parent request for Heartspring in January 2017, the staff members discussed additional things that could be put in place for C.S. They amended the IEP that day to add an iPad with a communication app, increased speech to be 5 days a week, and increased the OT consult services for sensory and self-help skills to 15 minutes once a week. (Tr., Vol. 7, at 16, ln. 5 – 17, ln. 4.) Ms. T testified that the IEP amendment was an indication the team believed there were more things they could try in his current placement before he should be sent to "that extreme of a placement." (*Id.* at 19, ln. 7-19.) At that point in time, Ms. T did not believe Heartspring was an appropriate placement for C.S. because there were more things we could have tried at South High that even were more restrictive environments. We had not done our entire spectrum of services yet to go to that most restrictive environment within our building to warrant going to a restrictive environment, such as Heartspring's that is away from his home school and is away from family at that point. I did not feel as though we had enough data to support putting him in that restrictive of an environment. (*Id.* at 20, ln. 3-13.)

8. Ms. T attended the November 10, 2017 IEP meeting for C.S. (Tr., Vol. 7, at 20, ln. 21 – 21, ln. 7.) At the beginning of this meeting, the parents said they were not going to sign anything. Part of Ms. T's role in this meeting was to offer consent for a reevaluation, partly because the deadline was coming up for a 3 year reevaluation and partly because they had noticed an increase in behaviors that fall. They wanted to ask for consent to conduct a functional behavior assessment. (*Id.* at 22, ln. 5-25.) There are several possible purposes for conducting a reevaluation: (1) to see if the student continues to qualify for special education, (2) to update present levels of performance, and (3) to consider whether any additions or modifications need to be made to the IEP. (*Id.* at 23, ln. 1-12.) With C.S., they specifically wanted to look at the behavior component. (*Id.* at 23, ln. 21-24.)

9. To Ms. T's knowledge, the parents had never requested a reevaluation of C.S. between the time the TTAP was completed in 2015 and the time that the district requested a reevaluation in November 2017. (Tr., Vol. 7, at 23, ln. 25 – 24, ln. 5.) The parents also did not request a reevaluation of C.S. between November 2017 and the time the district obtained consent for a reevaluation in March 2018. (*Id.* at 24, ln. 6-10.)

10. Ms. T testified that she would expect to be contacted by staff members at South High if a student was causing injury to self or others. She was not contacted about

any such behaviors during C.S.'s freshman, sophomore, or junior years. (Tr., Vol. 7, at 26, ln. 2 – 27, ln. 21.)

11. Ms. T also attended the November 27, 2017 IEP meeting for C.S. (Tr., Vol. 7, at 30, ln. 16 – 31, ln. 2.) Ms. T recalled that the district renewed its request for a reevaluation and that there was discussion of having an independent evaluator. They also discussed the staff visit to Heartspring. Ms. T did not recall that any resolution was reached as a result of this meeting. (*Id.* at 31, ln. 16 – 32, ln. 17.)

12. Ms. T does not believe it is necessary for a school psychologist to attend every IEP meeting. A school psychologist usually would only be required if the IEP team was looking at a reevaluation, if there were concerns that might require the expertise of a school psychologist, or if the school psychologist had been specifically requested to be present. (Tr., Vol. 7, at 33, ln. 21 – 34, ln. 6.)

13. Ms. T testified that she had approximately 200 students on her caseload for the 2018-2019 school year and approximately 380 students on her caseload the previous school year. (Tr., Vol. 7, at 69, ln. 1-9.) She would not receive behavior data from every teacher who had a student with behavior issues. Some of those teachers would have gone to one of the behaviors specialists, the autism coach, or the structured learning coach for assistance. C.S. had a behavior specialist on his IEP team who served that function – EW. (*Id.* at 69, ln. 10 – 70, ln. 8.)

14. Ms. T testified that a FBA is not required by law before writing a behavior intervention plan. (Tr., Vol. 7, at 74, ln. 10-21.) Likewise, if a behavior plan is working, there would be no need to change it. (*Id.* at 76, ln. 3-5.) Whether or not changes needed to be made to a behavior intervention plan would be determined by reviewing classroom data or conducting a new FBA, but it is not necessary to conduct a new FBA every time you make changes to a behavior intervention plan. (*Id.* at 76, ln. 8-25.)

N. E.W.

1. Ms. w has an undergraduate degree in psychology with a minor in special education and a master's degree in special education. She is licensed to teach grades K-12 functional adaptive with a dual in autism or classic autism and high functioning autism/Asperger's. She is *currently* working on becoming a board certified behavior analyst (BCBA). She was two classes and the certification test away from completing that. (Tr., Vol. 7, at 79, ln. 21 – 80, ln. 6.)

2. Ms. W is currently the autism consultant for the Cooperative. She has held that position for a year and a half. (Tr., Vol. 7, at 84, ln. 11-14.) She is the autism consultant for South High and has help in C.S.'s classroom. She has known C.S. since August 2017. (*Id.* at 84, ln. 15-22.) Ms. W is a resource for the entire IEP team and has worked with both Ms. B and Ms. L. She provided training for the paras.

She worked with the OT on sensory strategies and worked with the SLP on ABA strategies to teach him speech. Ms. W provided support for all members of the team regarding behavior management. (*Id.* at 85, ln. 10 – 86, ln. 12.)

3. Prior to working for the Cooperative, Ms. W was an autism consultant for the Olathe school district. Before that, she was a self-contained autism classroom teacher in Olathe at the middle school. Prior to that, she worked for the Emporia school district as an autism self-contained classroom teacher for an elementary school. She had previously worked for the Blue Valley school district as an autism self-contained classroom teacher for a middle school. Before that, she taught life skills at Turner Middle School for five years. (Tr., Vol. 7, at 108, ln. 25 – 109, ln. 11.) She has a total of ten years in special education, all of which has been working with students with autism. (*Id.* at 110, ln. 5-10.)

4. Ms. W helped Ms. B set up structured teaching strategies in her classroom, including visual schedules and a routine for his work system. She also tried to help Ms. B problem solve regarding C.S.'s behaviors. Ms. W suggested that they conduct a new functional behavior assessment in November 2017. (Tr., Vol. 7, at 86, ln. 13 – 87, ln. 11.) During the previous school year, she was in Ms. B's classroom at least once every other week, but was there more frequently if they wanted her to come in or if they needed help. (*Id.* at 87, ln. 18 – 88, ln. 2.)

5. Ms. W attended the November 10, 2017 IEP meeting. This was the IEP meeting at which she brought up the request for a FBA. She also recalled that the parents requested placement at Heartspring at this meeting. A second IEP team meeting was scheduled to further discuss the Heartspring request. (Tr., Vol. 7, at 101, ln. 15 – 102, ln. 16.)

6. Ms. W also attended the November 27, 2017 IEP meeting. She recalled that the discussion "got a little heated," but the request for Heartspring was denied. Part of the reason the request was denied was because the district wanted to do a FBA to determine what was going on with C.S.'s behaviors. (Tr., Vol. 7, at 103, ln. 17 – 104, ln. 7.)

7. Ms. W was one of the team members who went to visit Heartspring as a result of the first meeting in November 2017. "after seeing what they had to offer, that it was something that we could easily do within our school setting and to have the right supports put in place within our school setting similar to what they have there without him not being within his general ed population." (Tr., Vol. 7, at 104, ln. 13-24.) Ms. W did not believe Heartspring was an appropriate placement for C.S. Rather, she believed that South High was the least restrictive environment for C.S. (*Id.* at 105, ln. 11-18.)

8. Ms. W testified that those staff members who visited Heartspring shared that information informally with the other district team members. As a result of the visit, they did come up with some additional ideas they could try at South High, like using a body mat. (Tr., Vol. 7, at 105, ln. 19 – 106, ln. 11.) These ideas included

possibly screwing furniture down so that it could not be flipped (but this was not implemented because it was not necessary), using a more 1:1 setting with additional adults to support him, and setting the structures teaching strategy up in a similar way. (*Id.* at 106, ln. 12 – 107, ln. 3.)

9. During the fall of 2018, Ms. W was in the classroom every other week for at least 30 minutes. (Tr., Vol. 7, at 107, ln. 4-18.)

10. Based upon her experience, her work in C.S.'s classroom and her work with the IEP team members, Ms. W believes the least restrictive environment for C.S. is South High. (Tr., Vol. 7, at 110, ln. 11-15.) Ms. W felt that South High was providing everything that an outside agency could provide. (*Id.* at 111, ln. 1-4.)

11. Ms. C testified that C.S.'s teacher had tried to contact the parents regarding an IEP meeting in the fall of 2018, but a meeting date had not been set. (Tr., Vol. 8, at 90, ln. 21 – 91, ln. 3.)

O. B.C.

1. Ms. C holds a bachelor's degree in educational psychology and mental retardation. She holds a master's degree in special education and a master's degree in building leadership. (Tr., Vol. 7, at 178, ln. 14-19.) Ms. C holds both a teaching license and an administrative license. On her teaching license, she has endorsements for mental retardation and adaptive special education, and she is considered highly qualified for math, English, science, and social studies in special education. All of those endorsements are for grades 6-12. The administrative license covers preK-12. (*Id.* at 178, ln. 11 – 179, ln. 18.)

2. Ms. C is currently employed as a special education coordinator with the Cooperative. She has held that position for 6 years. (Tr., Vol. 7, at 179, ln. 19-24.) Prior to that and beginning in January 2001, she was a special education teacher at Southeast of Saline High School. Before that, she worked as a para for a year. She has a total of 18 years in special education. (*Id.* at 180, ln. 1-8.) Ms. C's current position is considered an administrative position. (*Id.* at 180, ln. 9-11.)

3. In Ms. C's current position, she is responsible for five placements in_____. She is responsible for supporting the special education staff, the administrators in the building that need support in special education, getting information that is needed for IEP purposes, and helping support meetings. She also does some staff evaluations and helps supervise all of the special education personnel jointly with the building principals. (Tr., Vol. 7, at 180, ln. 14 – 181, ln. 6.)

4. Ms. C has become familiar with C.S. in her position as coordinator for the past 6 years. (Tr., Vol. 7, at 181, ln. 9-15.) She has attended almost every IEP meeting for C.S. in the past 6 years. (*Id.* at 181, ln. 19 – 182, ln. 6.) Part of her role is to ensure that legal and procedural requirements are met. (*Id.* at 182, ln. 7-12.)

5. Ms. C attended the November 2015 IEP meeting, but did not remember glaring concerns and nothing was listed under parent concerns in that IEP. (Tr., Vol. 7, at 185, ln. 5 – 186, ln. 1.) Ms. C also attended the November 2016 IEP meeting. She did not recall that there were any major concerns from that meeting and all that was listed in the IEP under parent concerns was "Continue the feedback, illness and classroom system tracker," and "Not allergic to penicillin." She did not recall any concerns being raised regarding C.S.'s services at this meeting. (*Id.* at 186, ln. 2-24.)

6. Ms. C attended the January 25, 2017, IEP meeting, at which the parents first requested a placement at Heartspring. This was also the meeting at which they added the iPad with the communication app, increased speech services, and increased OT services. (Tr., Vol. 7, at 187, ln. 5 – 188, ln. 10.) At this meeting, Ms. P spoke for an hour and a half to two hours about Heartspring. (*Id.* at 188, ln. 19 – 189, ln. 1.) According to Ms. P, what the district was offering was good, but what Heartspring could offer was better. Ms. P also informed the rest of the team that C.S. was having difficulty going between two homes and his behaviors were exceeding what they were able to handle, so they wanted to have him in a residential placement. Ms. P also shared that she believed C.S. need to have speech 5 days a week and that C.S. needed medical support within his IEP. This is why the team offered speech 5 days a week, but they could not offer medical services and Heartspring could. (*Id.* at 189, ln. 1-19.) After discussion of the request among the team members, there was not consensus because the parents still wanted Heartspring and the other team members in the room did not feel Heartspring was an appropriate placement for C.S. The rest of the team members felt that the current setting and services were still meeting his needs. (*Id.* at 193, ln. 17 – 194, ln. 20.)
7. Ms. C, along with the rest of the team members, had been informed of multiple medical conditions, which were affecting C.S.'s ability to learn. (Tr., Vol. 7, at 196, ln. 5-14.) C.S. had been diagnosed with rheumatic encephalopathy (inflammation of the brain), which his mother reported was causing some of his tics. (*Id.* at 197, ln. 10-15.) At another time, Ms. P had informed the rest of the IEP team that C.S. had been diagnosed with PANDAS, but at a later meeting she told them there was not a PANDAS diagnosis. (*Id.* at 202, ln. 12-25.) Later, the team was informed that C.S. had also been diagnosed with rhabdomyolysis. (*Id.* at 203, ln. 2-4.)

8. Ms. C was called back to C.S.'s classroom when 911 was called on September 28, 2018. She arrived right after EMS got there. Ms. C asked if she could ride with C.S. to the hospital in the ambulance so that he would have someone familiar with him, and she stayed at the hospital with him the entire time he was at the ER. (Tr., Vol. 8, at 27, ln. 13 – 28, ln. 9.) Once they got the hospital, C.S. was very calm and was able to allow the doctors and nurses to examine him. The doctor had come back and told her that they were going to allow them to go back to school because they did not feel like there was anything more they could do at that point. However, C.S. went to the restroom while they were waiting for a ride back to the school and the hospital staff members were unable to get him back out. C.S. physically attacked the hospital staff members, and they had to give him something in his IV to calm

him. Several hours later, C.S. needed to go to the restroom again. He again had to be restrained in order to be removed from the restroom and physically attacked staff. At this point, the hospital staff gave C.S. a second medication that knocked him out and he slept until they were ready to take him to Children's Mercy. (Tr., Vol. 8, at 29, ln. 18 – 31, ln. 19.) Several other staff members joined her at the hospital with C.S., including Mr. S, Mr. L, Ms. L, and Ms. W. (*Id.* at 31, ln. 20-25.)

9. Based upon her involvement with the IEP team, her years of experience, and her knowledge of C.S., Ms. C testified that the November 10, 2017 IEP was appropriately ambitious for C.S. (Tr., Vol. 8, at 32, ln. 10-14.) The services in his IEP were allowing C.S. to make progress with his goals. When he left to go to Lakemary, C.S. was still making progress on his goals, despite his behaviors. (*Id.* at 32, ln. 21-25.) Ms. C testified that the Districts were not currently receiving any information from Lakemary regarding C.S. and that she had no information as to whether C.S. would be returning to_____. (*Id.* at 33, ln. 1-11.) The parents revoked consent to communicate with Lakemary after the Districts sent records to Lakemary. (*Id.* at 78, ln. 20 – 79, ln. 19.)

10. Ms. C testified that C.S.'s teacher had tried to contact the parents regarding an IEP meeting in the fall of 2018, but a meeting date had not been set. (Tr., Vol. 8, at 90, ln. 21 – 91, ln. 3.)

P. C. S.

1. As a principal of South High, he has concerns about C.S.'s education and well-being as in just generally he has concerns for all of the students under his charge, but for C.S., he thinks the biggest concern is that he has noticed how much his health deteriorated from watching him be a student who is kind of moving throughout the school and interacting with others to one that is not able to do that as much. The learning piece of it, because of the behaviors that are happening, his ability to do the structured tasks aren't able to happen as much due to the escalation of his behaviors. (Tr., Vol. 8, at 101 and 102.)

2. Mr. S holds a bachelor's degree in history education and a master's degree in education administration. He has also completed everything but his dissertation for his Ph.D. He had his dissertation written and was scheduled to defend it in February 2019. His dissertation is an autoethnography of a first year principal during a $45 million construction project. (Tr., Vol. 8, at 94, ln. 1-23.) He is licensed to teach grades 9-12 social studies and has an administrative endorsement to be a building principal and a superintendent. (*Id.* at 95, ln. 7-11.) Currently, he is the principal of _____High School South and was starting his fifth year in that position during the due process hearing. (*Id.* at 95, ln. 20-23.) Prior to that, he was the assistant principal at South High School for one year and an assistant principal at _____South Middle School for six years. Before that, he taught for five years at South High. (*Id.* at 95, ln. 25 – 96, ln. 5.) In addition, Mr. S has taught adjunct

classes for Brown Mackie College and the University of Phoenix in American history, American government, and a business law class. (*Id.* at 96, ln. 9-16.) This was his 17th year in education. (*Id.* at 96, ln. 17-19.)

3. C.S. was able to walk down the hallway, sit at a lunch table and interact with the paras without having any escalated behavior to the point that it would cause C.S. to hit or to do any of the things that warranted some of the ESIs in the record that have been noted. (Tr., Vol. 8, at 102.)

4. As principal, Mr. S oversees approximately 130 staff members that includes the assistant principals, athletic director, teachers, custodians, secretaries, lunch crew, paraeducators, and special educators in the building. It includes any people that come into the building that are vendors. He assigns and delegates supervision duties and evaluation duties. He also enforces board policies and handbook policies, and he oversees the instructional leadership for the staff development of the building. Basically, he is responsible for anything that happens at South High School, including student discipline and special education. (Tr., Vol. 8, at 96, ln. 22 – 97, ln. 15; *id.* at 97, ln. 20-25.) South High has approximately 1,044 students. (*Id.* at 97, ln. 16-17.)

5. He has observed C.S.in the classroom in his role as principal of South High and C.S.'s behaviors are ongoing. C.S. is a boy that is out of control. C.S. is having a hard time focusing on the task because he is either eloping where or being aggressive. In the times that he observed C.S., both when there's an emergency situation and when C.S.'s just in instruction, that's what he has noticed about C.S.'s behavior. Sometimes he looked at C.S. and in his eyes and C.S. would track with him, C.S. would follow him, and then there are times where C.S. would not. (Tr., Vol. 8, at 103 and 104.)

6. Mr. S first met C.S. during his freshman year of high school. (Tr., Vol. 8, at 98, ln. 1-6.) The only thing that really stood out about C.S. at that time was that he breathed really deeply. Other than that, nothing really stood out to him about C.S. He interacted with C.S. at lunchtime in the commons area. (*Id.* at 99, ln. 6 – 100, ln. 3.)

7. The first time he had a telephone conference with the parents regarding C.S. was in November 2017 when C.S. was short-term suspended. (District Ex. KK; Tr., Vol. 8, at 100, ln. 4-24.) This was the only time Mr. S could recall that C.S. was suspended. (Tr., Vol. 8, at 100, ln. 25 – 101, ln. 2.)

8. Mr. S' biggest concern regarding for C.S. is that he has noticed how much his health has deteriorated from watching him be a student who was moving throughout the school and interacting with others to one that is not able to do that as much. (Tr., Vol. 8, at 101, ln. 8-14.) C.S. was not able to do the structured learning tasks as much as he had been due to the escalation of the behaviors. (*Id.* at 101, ln. 16 – 102, ln. 5.) When he was a freshman, C.S. was able to walk down the hallway, sit at a lunch table, and interact with paras without having any escalated behavior. (*Id.* at

102, ln. 7-13.) If you were to tell Mr. S the first time he saw C.S. that he would have had some of the challenges he has had with his behavior, C.S. did not stand out in his mind as a student would have those difficulties. C.S. seemed to be much more calm and in control the first time Mr. S saw him as compared to the last time he saw him. It appeared that C.S. had deteriorated over time. (*Id.* at 102, ln. 15 – 103, ln. 3.)

9. He never had a Code 1 involving C.S. prior to January of 2017. (Tr., Vol. 8, at 110.) After January 2017 the documentation would have been November 7, 2017 when C.S. attacked a teacher and another student in the hallway and that was the first Code 1. (Tr., Vol. 8, at 110.)

10. There were times when C.S. was escalated that Mr. S felt he was able to understand what was being said to him and there were other times that he did not believe C.S. was processing what he was saying or the attempts at redirection. (Tr., Vol. 8, at 103, ln. 12 – 104, ln. 9.) At one point in time, Mr. S spent an entire day with C.S. to try to understand him more. He saw that C.S. was really struggling with the curriculum and the tasks. It was not that C.S. didn't want to do it, but Mr. S believed that C.S. couldn't physically do it because he was unable to focus. (*Id.* at 104, ln. 10 – 105, ln. 5.)

11. Mr. S rode the bus with C.S. for approximately the first two weeks of school this year to help him get off to a good start. He also rode the bus with C.S. on times when he had received a call from C.S.'s father that he had a rough weekend or he received a call from C.S.'s grandmother asking for help. (Tr., Vol. 8, at 105, ln. 8 – 106, ln. 9.) Mr. S described one incident in which C.S.'s grandmother had asked him to wait with her until C.S.'s father got home because she was scared of C.S. Mr. S was concerned that C.S.'s grandmother would not be able to handle him if he became escalated, referencing another incident in which C.S. urinated in the driveway after the bus dropped him off and Mr. S stayed behind to help. (*Id.* at 106, ln. 10 – 109, ln. 5.)

12. Mr. S gave an example of a type of MANDT hold that could be used to free yourself from another person's grip without re-escalating the person. MANDT is a de-escalation and restraint program. Mr. S has to take training in it every year to recertify. It has multiple different techniques that can be used depending upon the situation. The training involves both a written and a physical component. (Tr., Vol. 8, at 117, ln. 22 – 120, ln. 20.)

13. The next time an ESI was used with C.S. was August 15, 2018. In that incident, C.S. attacked Ms. C, pulling her shirt and her hair. One of the paras used a MANDT hold to restrain C.S., and C.S. bit him on the arm while in the hold. (District Ex. DDDD; Tr., Vol. 8, at 124, ln. 1 – 125, ln. 5.) C.S. had another incident on August 24, 2018. In that incident, C.S. was again pulling Ms. L's hair and the para had to restrain him. He then grabbed the para after being released from the hold and had to be restrained by the other para for one minute. (*Id.* at 125, ln. 8-21.) The last ESI for C.S. was on September 25, 2018. (District Ex. UUU; Tr., Vol. 8, at 120, ln. 21 –

121, ln. 3.) In this incident, Mr. S used a 15 second restraint after C.S. pulled Ms. L's hair. After that, C.S. de-escalated. (Tr., Vol. 8, at 121, ln. 4-12.)

14. At the time Mr. S sent out the third ESI notification on September 25, 2018, he did not know that the law had change and that he was no longer required to hold an IEP meeting regarding the ESI. He found that out after he sent the letter, which is the letter still contained language about holding an IEP meeting. (District Ex. UUU; Tr., Vol. 8, at 126, ln. 17 – 128, ln. 11.)

15. Mr. S was also involved the day that 911 was called for C.S. He was not at the school when the incident started, but he and Ms. L drove to the hospital to be with C.S. Mr. S was in contact with his assistant principals who were in the classroom with C.S., and he contacted the Superintendent to let him know why an ambulance was at the high school in case the board office received any calls from concerned parents. He also contacted C.S.'s grandmother because neither parent was available and she was an emergency contact in town. He did not expect her to go to the hospital, but he wanted her to be aware of the situation. Mr. S arrived at the hospital shortly after C.S. attacked hospital staff when they tried to get him out of the restroom. By that time, C.S. was calm and appeared to have been sedated. Mr. S stayed until a gurney came in to take C.S. to Children's Mercy Hospital. Mr. S testified that there was a lot of confusion that day because he was receiving conflicting reports as to what would happen with C.S. and whether one of the parents would be able to come to the hospital. Mr. S felt like he needed to stay so that C.S. had someone he knew and who knew about him to help the hospital staff. (Tr., Vol. 8, at 129, ln. 6 – 136, ln. 16.)

16. When C.S. was escalated, he would be sweating, jumping up and down, and eloping. There were times when Mr. S felt they might need to call an ambulance due to his physical appearance because he would look so pale, but then he would calm back down and they would redirect him. It was not uncommon for him to be jumping up and down so much that he became short of breath and was sweating. (Tr., Vol. 8, at 136, ln. 17 – 137, ln. 12.) In the mornings when the bus would pull up, C.S. would be waiting outside and his father had been hit several times, and C.S. was jumping up and down. Once he was on the bus, C.S. would repeatedly stand up and sit down. Sometimes, he would grab hold of a shirt. Mr. S stated that you could tell from this what kind of day it was going to be. When he got into the classroom, C.S. would push his chair back and forth during breakfast and, at times, his palms would be sweaty. He would "do the four corners that he typically does." Mr. S testified that you could look at C.S. sometimes and see that "he wasn't tracking you." Mr. S gave an example in which he watched C.S. become extremely agitated in music for about 20 minutes and C.S. "wasn't there." Mr. S never saw this before January 2017. (*Id.* at 137, ln. 25 – 139, ln. 8.)

17. Mr. S reviewed the South High nurse's records and noted that Clonazepam had been given to C.S. at school from October 2016 to April 2017, Clonidine was given to him from April 2017 to May 2017, and Pimozide was given to him from October 2017 to December 2017. (Tr., Vol. 8, at 139, ln. 21 – 140, ln. 8.)

18. Mr. S attended the January 25, 2017 IEP meeting for C.S. This was the first meeting at which Heartspring was mentioned. Mr. S recalled that the team did discuss the parent request but they did not reach consensus. As a result, Mr. S was asked to make the decision as the LEA representative, and he determined that C.S. could be served in his placement at South High. (Tr., Vol. 8, at 142, ln. 18 – 143, ln. 18.) Mr. S believes this IEP meeting lasted about two hours. Ms. P's presentation about Heartspring focused on C.S.'s medical records and that Heartspring had medical staff on duty 24 hours a day, 365 days a year, and South High could not provide that. Ms. P also mentioned the residential component to Heartspring because they were struggling with C.S.'s behavior at home. (*Id.* at 143, ln. 19 – 144, ln. – 145, ln. 5.)

19. Mr. S testified that some of C.S.'s most disruptive behaviors seemed to be medically motivated. As an example, C.S. would constantly ask for water and, if it was not provided, he would escalate. As an another example, Mr. S testified that C.S. would repeatedly rub the sides of his ears and jaws, so much so that Mr. S wondered if he was having a problem with his teeth. (Tr., Vol. 8, at 146, ln. 7 – 147, ln. 4.)

20. However, C.S. would also have some really good days, and Mr. S would call the parents to tell them when he had good days. Mr. S described one day that he saw C.S. in the commons area walking the therapy dog. (Tr., Vol. 8, at 147, ln. 5-22.)

21. Mr. S received medical documentation from C.S.'s previous doctor via fax on November 10, 2017. That documentation indicated that the parents had change C.S.'s medications without the doctor's permission or knowledge. Mr. S was trying to figure out at that time whether the medication changes could have caused some of the behavior changes they had seen in C.S. (District Ex. SS; (Tr., Vol. 8, at 148, ln. 3 – 154, ln. 22.)

22. Mr. S attended the November 10, 2017 IEP meeting. He also noted that the parents' attorney announced at the beginning of the meeting that the parents would not be signing anything. They tried to get through the entire IEP, but the parents' counsel and C.S.'s mother kept interrupting them and dominating the discussion. (Tr., Vol. 8, at 155, ln. 3 – 157, ln. 18.) Again, the parents repeated the request for Heartspring and the team discussed the request again. Mr. S still did not feel that there was consensus among the team members, and he felt staff members were hesitant to speak because the meeting felt contentious. (*Id.* at 157, ln. 23 – 159, ln. 2.) From the discussion, he felt like the team needed more information and the district needed to respond within 15 days, so he made the decision to deny the request at that time but hold it open for more information. Mr. S felt doomed one way or the other because they could not meet prior to Thanksgiving (within the 15 day deadline). He would never have expected the response the team received at the next meeting on November 27. (*Id.* at 159, ln. 3 – 162, ln. 7. *See also* District Ex. UU.)

23. Mr. S attended the November 21, 2017 IEP meeting. He was caught off guard by how contentious that meeting became right from the beginning with parents' counsel repeatedly stating that he had been lied to. Parents' counsel was also upset that the district had new counsel representing them at that meeting. Mr. S was trying to calm things down. When they were trying to present information, Mrs. Orsi (parent advocate and wife of parents' counsel) was asking so many questions it felt like an interrogation to Mr. S. Parents' counsel and his clients walked out of the meeting not very long into it, but they finally did come back in. When they returned, the Districts renewed their request for a FBA, but the parents did not consent. Mr. S recalled parents' counsel saying something about going straight to litigation because he did not like being lied to. (Tr., Vol. 8, at 164, ln. 2 – 168, ln. 10.)

24. Mr. S also attended the March 6, 2018 IEP meeting/resolution session, at which the parents signed consent for a reevaluation and gave consent to communicate with some of C.S.'s doctors but limited who could have access to those records. (Tr., Vol. 8, at 169, ln. 9 – 170, ln. 7.) He also attended the IEP meeting to discuss the reevaluation results with the parents on May 25, 2018. He recalled that Mr. S was present in person and Ms. P and parents' counsel were present by phone. Mr. S had to leave before the end of the meeting to care for C.S. (Tr., Vol. 8, at 170, ln. 7 – 171, ln. 13.)

25. Mr. S testified regarding the physical changes that were made to South High to accommodate C.S. They added furniture to one room and removed everything from the wall that might cause distractions. The room adjacent to C.S.'s classroom (which had been a speech room) was made into two safe rooms and a cooling off room. Prior to that South High did not have any safe rooms. None of these changes were in the original design. They started planning these changes with the architect in January 2018. They made one of their other rooms into a sensory room. (Tr., Vol. 8, at 173, ln. 1 – 175, ln. 17.)

26. Mr. S testified they also hired an additional teacher for C.S., LL. She had a few other students at the beginning of the year and then was solely with C.S. They also hired one additional paraeducator for C.S. He had a total of two paras working with him when he went to Lakemary. These changes would not have been made if C.S. was not one of his students. (Tr., Vol. 8, at 176, ln. 2-24.)

27. South High sends out progress reports each quarter and each semester. They are mailed to the address on file for the parent. (Tr., Vol. 8, at 184, ln. 6 – 185, ln. 16.)

28. Based upon his involvement with C.S. and the IEP team and his years of experience, the November 10, 2017 IEP was appropriately ambitious C.S. The programming and structure the school had put together allowed C.S. to make progress when all of his medical needs are met. (Tr., Vol. 8, at 185, ln. 17 – 186, ln. 13.)

29. Mr. S testified that the school was not receiving any information from Lakemary regarding C.S. and that they did not currently have consent to communicate. Likewise, he had no idea when or if C.S. would return to_____. (Tr., Vol. 8, at 186, ln. 14-25.)

CONCLUSIONS OF LAW

1. 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). 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). In this matter, the Parents are the party challenging the IEP.

2. "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).

3. The U.S. Supreme Court expanded this definition in the *Rowley* case (cited below) holding that a district 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. 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).

4. The U.S. Supreme Court in *Rowley* set forth a two-part test to determine whether the district 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. 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.

5. The U.S. Supreme Court recently 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.*, RE-1, ___ U.S. ___, 137 S. Ct. 988, 999 (2017).

6. 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.)

7. 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 give 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.)

8. As set forth above, the standard for FAPE was recently clarified by the U.S. Supreme Court in *Endrew F. v. Douglas County School District RE-1,* ___ U.S. _ _____, 137 S. Ct. 988 (2017). However, it remains a two-prong test very similar to the original *Rowley* test. It could now be stated as follows: First, has the State compiled 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?

9. In considering the testimony and documentary evidence in this matter, it is important to keep in mind the U.S. Supreme Court's reiteration of its policy from *Rowley*: "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).

10. Under the IDEA, parents must file a request for due process hearing 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).

11. Thus, as the IDEA makes clear, the limitations period is not the entire educational career of the child. While I allowed the parents to introduce evidence of events occurring prior to the two years, it was primarily for historical purposes and/or providing medical history, and I so ruled at the time this information was not admitted in response to timely objections by Districts' counsel. I will not consider information beyond the two-year limitation period in considering the merits of this matter.

12. Looking at the limitations period in this matter, the testimony and evidence does demonstrate that C.S. is making progress, albeit likely not as rapidly as the parents would prefer.

DECISION AND CONCLUSION

After a review of the facts and law herein, the Hearing Officer enters the following ruling on the issues:

Issue 1: Did the Districts provide C.S. with a free and appropriate education (FAPE) during the 2016-2017 and 2017-2018 school years?

Issue 2: If FAPE was not provided, what is the appropriate remedy?

Issue 1 raises the issue of FAPE. As noted above, the FAPE definition was expanded in the Supreme Court case designated as *Rowley* (see above) that held a district satisfied the FAPE requirement by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction. The Court established a two-part test to determine whether the district has complied with the 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? The more recent Supreme Court case cited above (*Endrew F.*) expanded the second part of the *Rowley* test to hold that "a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." The Court went on to note the lack of a "bright line" rule to discern the "appropriate progress" and warned the lack of such a rule was not an "invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review".

The witnesses for the Districts, the educators responsible to carry out the law cited above and provide C.S. with a program that affords him "appropriate progress", provided evidence. The following educators testified:

T D, C.S. speech pathologist, testified that C.S. made progress on his communication goal during the 2017-2018 school year, although she noted that he did not meet the all the benchmarks that Ms. D would have liked to have seen him meet in order to ensure that he would meet the goal within one year's time. (Tr., Vol. 4, at 72.)

JB, special education teacher for C.S., testified that in her opinion as C.S.'s special education teacher for three years, the 2016 and 2017 IEP's were all appropriately ambitious for C.S. and that the goals for each of the IEP's for the years she was C.S.'s teacher were reasonably calculated to enable C.S. to make progress in light of his circumstances. She noted that at the end of each of the school years she had C.S. as her student, he was making progress in her classroom. (Tr., Vol. 5 at 116.)

EC, was the speech pathologist for C.S. through teletherapy from August 22, 2018 to October 16, 2018. Ms. C testified that the speech goal from the November 10, 2017 IEP was reasonably calculated to provide C.S. with a free and appropriate education and that he was "improving his communication and language skills using a variety of modalities. He was making progress in responding to questions about his daily life and giving more word approximations as (the) therapy went on." (Tr., Vol. 6, at 23.)

L. L, is a functional special education teacher at C.S.'s school. She was his teacher from August 2018 until October when C.S. left the school to another institution. Ms. L has been a teacher for 28 years. She has had her special education certification for 6 of those years. Ms. L testified that C.S. was the most severe student that she has had in her 28-year career working with children on the autism spectrum. Ms. L testified that the goals set forth in C.S.'s IEP were appropriate and that C.S. was making progress toward those goals. (Tr. Vol 6, at 83).

SA is an occupational therapist (OT) that provided consult services to C.S. Ms. A testified that she had started working with C.S. in 2012 when he was in the 6th grade. Ms. A opined that with respect to OT services that the November 2017 IEP was reasonably calculated to provide C.S. with educational benefits, that her services were appropriate for him, and that her services would allow him to make progress in light of his unique circumstances. (Tr., Vol. 6, at 184.)

EW is the current autism consultant for the Districts. Ms. W consulted and worked with Ms. B, C.S.'s teacher, to set up structured teaching strategies in her classroom. She suggested that a Functional Behavior Analysis (FBA) be undertaken of C.S. and proposed that at the November 10, 2017 IEP meeting. She noted that at that IEP meeting was when the Parents requested placement at Heartspring, a private placement. Ms. W testified that based upon her experience, her work in C.S.'s classroom and her work with the IEP team members, that Heartspring would not be the least restrictive environment and that his present school would be the least restrictive environment and that everything that the private placement could offer was being met at his present placement.

BC is the special education coordinator for the Districts. She has held that position for 6 years. She consulted with C.S.'s teachers for the past 6 years and attended every IEP meeting. Based upon her involvement with C.S., having attended his IEP meetings and her knowledge of C.S. and her years of experience she felt that the goals in the IEP were appropriately ambitious for C.S. and that when C.S. left the District in October, 2018 that he was making progress on his goals, despite his behaviors. (Tr., Vol. 8, at 78.)

CS, is principal of _____ High, C.S.'s school. Mr. S testified that his first encounters with C.S. were mostly normal and that C.S. was able to walk down the hallway, sit at a lunch table and interact with the paras without any escalated behavior problems. Mr. S notes his concerns that since he first became aware of C.S. as a student that his health has deteriorated. He has observed that based upon his involvement with C.S. and the IEP team and his years of experience, the November 10, 2017 IEP was appropriately ambitious for C.S. He believes that the programing and structure the school had put together allowed C.S. to make progress when all of his medical needs are met. (Tr., Vol. 8, at 185.)

The testimony of the Parents, and their witnesses, pointed to C.S.'s behavior as interfering with making educational progress and that he needs the constant 24/7 involvement of the institution such as Heartspring could provide. As noted by Mr. S, C.S. makes progress when his medical needs are met.

As pointed out above, a free and appropriate public education (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 s 1401(9). The U.S. Supreme Court expanded this definition in the *Rowley* case (cited above), holding that a district satisfied this requirement by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction. The issue of support services, or "related services" was discussed in the case of *Jefferson County v. Elizabeth E.,* 707 F. 3rd 1227 (10 Cir). "Related services" means transportation, and such developmental, corrective, and other supportive services (including…psychological services,…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…and medical services, except that such medical services shall be for diagnostic evaluation purposes only) as may be required to assist a child with a disability to benefit from special education. 20 U.S.C. §1401 (29)(A). The Court went on to indicate that the Act's definition of "related services" expressly contemplates that a child is receiving some type of special education. Therefore, a parental placement which does not provide the child with specially designed instruction is not reimbursable even if some services provided at the placement might otherwise be classifiable under the Act's definition of "related services."

The parents of C.S. argue that C.S. cannot receive an education due to his behaviors and that it can only be controlled and his education accomplished at a private institution such as Heartspring which provides education as well as medical interventions. It has not been established, however, that the same cannot be accomplished at his public school by a school nurse timely administering his prescribed medications.

The parents further claim that C.S. was denied a FAPE for a multitude of reasons, many of which go well beyond the two-year statute of limitations. This decision will address the main sub-issues that were raised in the evidence during the course of the hearing. If any sub-issue is not specifically addressed herein, it is deemed denied.

Same or Similar Goals

Parents' primary argument was that some of the reading and math goals appeared to be the same in multiple IEPs or had gone back to a goal from an IEP several years before. The evidence showed that C.S. is a very complex young man with a number of serious medical issues that have a detrimental impact on his behavior and, thus, his ability to learn. There was substantial testimony from Ms. B, Ms. D, and other members of the team that C.S. had a tendency to be somewhat cyclical, both in his behaviors and in his ability to demonstrate skills. This cyclical nature apparently is common in individuals with autism, as Dr. Evans testified. If there was a need to go back and reteach skills due to this cyclical nature, as team members testified, this should be reflected in his IEP.

The testing performed by both Dr. Evans and Dr. Ostmeyer demonstrate that C.S. is not a "high functioning" student with autism. To the contrary, his nonverbal IQ scores demonstrate that C.S. is also intellectually disabled, as Dr. Evans testified. Combining his relatively low cognitive functioning with his complex medical diagnoses, C.S. is not a student who is likely to make huge gains each year, particularly during the time period at issue when it seems that his medical issues were quite intense as indicated by the frequent hospitalizations.

With respect to the IEPs themselves, parents have attempted to show a procedural violation by arguing that a school psychologist must be present for every IEP meeting. While the definition of the IEP team does require that someone who can "interpret the instructional implications of evaluation results" be part of the IEP team, the definition goes on to state that this could include members of the team described in subparagraphs (ii) through (vi) – the special education teacher, the regular education teacher, the LEA representative, or other individuals who have knowledge of the child or special expertise including related services personnel. 20 U.S.C. §1414(d)(1)(B). The Kansas Special Education Process Handbook is consistent with this interpretation. (*See* KSDE Special Education Process Handbook at 63(f)). Thus, I find there was no procedural violation with respect to the IEP meetings where there was no school psychologist present and the special education teacher was serving as the person interpreting the instructional implications of the evaluation results.

In light of the recent Supreme Court case….. did the school "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. RE-1,* ___ U.S. ___, 137 S. Ct. 988, 999 (2017).

Based upon the evidence in this matter, it is clear that C.S.'s unique circumstances include not only his severe autism, but also his serious medical issues – rheumatic fever, rheumatic encephalopathy, autoimmune encephalopathy, and OCD – and the manner in which these manifested. Dr. Evans and Ms. W both testified that the function of much of his behavior was internal. Based upon the testimony from the staff members, it is clear that the severity of the internal forces working upon C.S. were moderated when he was medicated because they could see a definite difference when they knew he had been medicated. Ideally, the school staff and medical doctors should be allowed to work together cooperatively for the benefit of C.S.

Based upon the evidence and testimony presented during the hearing, I find that the IEPs dated November 2016 and November 2017 were appropriately ambitious for C.S. in light of his unique circumstances. No findings of inadequacy of previous IEPs are made in this decision as those are beyond the statute of limitations. The testimony of the Districts' staff members who worked with C.S. was credible and it was clear that they were all very concerned for his well-being. As noted above, the school district is required to provide "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." 20 U.S.C. 1401(26)(A) (from definition of related service). What the parents are seeking in this matter goes well beyond the type of medical services the school district is required to provide.

Procedural Violation on TTAP in 2014/2015

The parents argue that a violation of the IDEA occurred when the TTAP evaluation was not shared within the 60 school day time period for completing evaluations because the testing was done in 2014 and shared with the parents in September 2015. This is well beyond the two-year statute of limitations set forth in the IDEA. In addition, parents have not tied this to any concrete allegation that C.S. was denied FAPE as a result of the failure to timely share the results of the TTAP with the parents. C.S. did have a transition plan in his 2014 IEP, and the information was shared with the parents prior to the next annual IEP meeting. While the act constitutes a procedural violation, no remedial action can be ordered based upon this procedural violation as it is beyond the statute of limitations and the parents have not demonstrated how the delay in sharing the information with them denied C.S. a FAPE. *See Urban by Urban v. Jefferson Cty. Sch. Dist. R-1,* 89 F.3d 720, 727 (10th Cir. 1996)(holding that a procedural violation must rise to the level of a substantive deprivation to amount to a denial of a FAPE); *Erickson v. Albuquerque Pub. Sch.*, 199 F.3d 1116, 1122–23 (10th Cir. 1999)(finding that compensatory education is not an appropriate remedy for a procedural violation).

Failure to Reevaluate

Parental consent is required for a reevaluation. 20 U.S.C. §1414(c)(3); *accord* 34 C.F.R. §300.300(c). Parents also have a right, under certain circumstances, "to obtain an independent educational evaluation of the child." 20 U.S.C. §1415(b)(1); *accord* 34 C.F.R. §300.502. Also, pursuant to 34 C.F.R. §300.300(c)(1)(iii), if the parents refuse to consent to a reevaluation, the "public agency does not violate its obligation under §300.111 and §§300.301 through 300.311 if it declines to pursue the evaluation or reevaluation. *See also* K.A.R. 91-40-27(f)(3) (an agency shall not be in violation of its obligations for identification, evaluation, or reevaluation if the agency declines to pursue an evaluation or reevaluation because a parent has failed to provide consent for the proposed action).

Although it should not have been necessary to do so because most of it was well beyond the two year statute of limitations, Ms. T reviewed the educational records of C.S. and demonstrated through her testimony that C.S. had either been evaluated or the parents had signed a waiver of evaluation each time the three year reevaluation requirement has come up for C.S. Ms. T's testimony was credible and very thorough. There was no procedural or substantive violation with respect to an alleged failure to reevaluate. Furthermore, when the Districts did request consent to reevaluate in November 2017, the parents refused to consent to a reevaluation. The Districts were ultimately forced to file a due process complaint in order to obtain consent for the three year reevaluation that was completed in 2018. The parents cannot deny consent to reevaluate and then claim the Districts denied FAPE. *See Andress v. Cleveland Indep. Sch. Dist.*, 64 F.3d 176, 178 (5th Cir. 1995) (if parents want their child to receive special education under IDEA, they must allow school itself to reevaluate the student and cannot force the school to rely solely on an independent evaluation.) *See also Dubois v. Conn. State Bd. of Ed.*, 727 F.2d 44, 48 (2d Cir. 1984) (school may insist on evaluation by qualified professionals who are satisfactory to the school officials).

Failure to Provide Assistive Technology

The parents allege that they repeatedly requested that the District provide C.S. with assistive technology throughout his educational career. However, nothing was listed in the parent concerns of the IEPs prior to January 2017 regarding assistive technology and, in fact, the IEPs noted that he would have his personal iPad with him. Ms. B testified that he did have his personal iPad with him prior to January 2017 when the parents specifically requested an iPad with a communication app. The testimony was very clear, and was corroborated by an email to the parent, that the iPad was purchased right away and that C.S. had access to it by February 1, 2017. There was no violation with respect to the alleged failure to provide assistive technology.

Alleged Failure to Revise Behavior Intervention Plan

Parents argue that the Districts should have revised the behavior intervention plan for C.S. prior to requesting consent for an evaluation to conduct a FBA in November 2017. The testimony by the District staff members was that they were not seeing severe levels of behavior at school until the incident that led to C.S.'s suspension in November 2017. The testimony from the school staff was that a change a behavior intervention plan would not be warranted if the plan was working. EW testified for the Districts that she requested

a reevaluation for a FBA at both of the November 2017 IEP meetings – very shortly after they started seeing more severe behavior.

Request for Private Placement in a Residential Facility

If parents believe that the school district is not providing a FAPE for their child, they may unilaterally remove the child from the school, enroll the child in a different school, and seek tuition reimbursement for the cost of the alternative placement. *Mary T. v. Sch. Dist. of Phila.,* 575 F.3d 235, 242 (3d Cir.2009) (citing 20 U.S.C. § 1412(a)(10)(C) and *Sch. Comm. of Burlington v. Dep't of Educ.,* 471 U.S. 359, 374, 105 S. Ct. 1996 (1985)). However, parents who change their child's placement without the consent of state or local officials "do so at their own financial risk." *Burlington,* 471 U.S. at 373–74. A court may grant the parents tuition reimbursement only if it finds that the school district failed to provide a FAPE and that the alternative private placement was appropriate. *See Florence Cnty. Sch. Dist. Four v. Carter,* 510 U.S. 7, 15–16, 114 S. Ct. 361, 126 L.Ed.2d 284 (1993); *Mary T.,* 575 F.3d at 242.

Pursuant to IDEA, C.S. is entitled to be placed in the *least restrictive environment*. As set forth in 34 C.F.R. § 300.114(a)(2), this means:

> Each public agency must ensure that—
>
> (i) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and
>
> (ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

The Tenth Circuit follows the *Daniel R.R.* test for determining whether a district has violated the least restrictive environment mandate. *L.B. ex rel. K.B. v. Nebo Sch. Dist.*, 379 F.3d 966, 977 (10th Cir. 2004). The *Daniel R.R.* test has two parts, in which the court: (1) determines whether education in a regular classroom, with the use of supplemental aids and services, can be achieved satisfactorily; and (2) if not, determines if the school district has mainstreamed the child to the maximum extent appropriate. *Daniel R.R. v. Bd. of Educ.*, 874 F.2d 1036, 1048 (5th Cir. 1989).

The first prong of the *Daniel R.R.* test relies upon the following four factors: (1) steps the school district has taken to accommodate the child in the regular classroom, including the consideration of a continuum of placement and support services; (2) comparison of the academic benefits the child will receive in the regular classroom with those she will receive in the special education classroom;

(3) the child's overall educational experience in regular education, including non-academic benefits; and (4) the effect on the regular classroom of the disabled child's presence in that classroom. *Nebo,* at 976 (citing *Daniel R.R. v. Bd. of Educ.*, 874 F.2d 1036, 1048-50 (5th Cir. 1989)).

The second prong of the *Daniel R.R.* test is whether or not the school district has mainstreamed the child to the maximum extent appropriate.

In considering the first prong of the *Daniel R.R.* test, I note that substantial testimony regarding the steps that had been taken to accommodate C.S. at the high school, including the physical changes to the building, the addition of a teacher and another para, and his access to a therapy dog. The remaining factors are not as applicable in this matter as they usually are because C.S. spends most of his day in the special education classroom with his teacher and paras. However, he does have access to general education peers in electives such as P.E. and music and movement. There was no indication that his presence was a negative impact on the other students. Indeed, the staff wanted to keep him at South High with his general education peers.

The second prong is whether the District has mainstreamed the student to the maximum extent appropriate. There was testimony from C.'s teachers and Mr. S about his access to general education peers in his electives and during lunch. While he has had behaviors that have prevented him from joining peers for lunch at times, there have been other times that he was able to be with peers. He would not have the ability to access general education peers at all at Heartspring.

Furthermore, Dr. Evans raised a concern about whether C.S. would actually develop more harmful behaviors from being placed with peers who all have significant behavioral concerns. C.S. would have no positive peer role models in that setting and that is something the hearing officer has considered in reaching this decision.

After a review of the evidence presented, it is held that the Districts have complied with the procedures set forth in the IDEA and the school has offered an IEP that is appropriately ambitious and reasonably calculated to enable C.S. to make appropriate progress in light of his special circumstances. The testimony of the teachers and educational professionals support that C.S. made progress on the goals set forth in the IEP in light of his special circumstances.

Issue 2 regarding private placement at Heartspring. The issue of appropriate remedy is denied in that it is found that he is receiving FAPE in his present school setting.

The Hearing Officer is abundantly aware of the extreme hardship the family has endured insuring their son's education. The efforts made by both parents in the rigors of daily living with their son's exceptionalities are heroic and a wonder to behold. No greater love can be seen than with the efforts Ms. P and Mr. S have made for their son. I would have liked to aid them in their request for private placement, however, this decision is contained within the parameters of the Individuals with Disability Education Act. The Hearing Officer has found that the parents have not established by a preponderance of

evidence that the Districts have not met their burden of providing an IEP that is reasonably calculated to enable C.S. to make progress and receive educational benefit in light of his circumstances.

IT IS SO ORDERED.

Original signed/s/James G. Beasley
James G. Beasley
Special Education Hearing Officer

CERTIFICATE OF SERVICE

The foregoing Due Process Decision was electronically sent on May 20, 2019 to:

Mr. Peter John Orsli, II
pete@orsilaw.com
Attorney for Parents;

Sarah J. Loquist
sarah@loquist.com
Attorney for USD 266, and

Mr. Mark Ward
mward@ksde.org
Kansas State Department of Education
Original sent via facsimile.

Original signed/s/James G. Beasley
James G. Beasley
Special Education Hearing Officer

NOTICE OF APPEAL

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

Attn: Notice of Appeal
Commissioner of Education
900 S.W. Jackson Street, Suite 620
Topeka, Kansas 66612-1212.

The Notice of Appeal must be filed with the Commissioner of Education not later than thirty (30) calendar days after the date of the postmark on the envelope containing this decision. Filing is complete with proof of mailing. Emailed submissions will not be accepted for filing.

Be advised that when receipt of a Notice of Appeal occurs by either party, the Commissioner of Education will inform each party of a Designated State Review Officer. When notified, 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.