

STATE OF RHODE ISLAND and
DEPARTMENT OF EDUCATION

ADMINISTRATIVE IMPARTIAL
DUE PROCESS HEARING

IN RE: JANE DOE

CASE# LL 17-04

Vs.

SMITHFIELD SCHOOL DISTRICT

POSITIONS OF THE PARTIES

PARENT: The School District failed to provide the Student with a free, appropriate, public education by refusing an out of district placement for the Student at the Northern Rhode Island Collaborative.

DISTRICT: The IEP proposed by the School District on March 10, 2017 provided the Student with a free, appropriate public education.

DECISION

The School District did provide a free, appropriate, public education in the IEP of March 10, 2017.

The Parents' request for reimbursement for tuition at the Northern Rhode Island Collaborative is hereby denied.

TRAVEL OF THE CASE

On March 22, 2017, the Rhode Island Department of Education received a request for an impartial due process hearing signed by a Parent.

On April 24, 2017, the Department of Education appointed this Hearing Officer to conduct a due process hearing and on April 28, 2017, an appointment notification letter was sent to the Parents and the attorney for the School District.

The following dates for hearing were given to the parties:

May 16, 2017
May 18, 2017
May 23, 2017
May 25, 2017

The Parents responded by picking three of the above dates.

On May 10, 2017, a prehearing conference was held at the Hearing Officer office.

On May 11, 2017 the attorney for the School District notified the Hearing Officer that the Parents with their attorney agreed to continue the resolution period to May 26, 2017. They requested that the Hearing Officer hold the case in abeyance until that time. The decision due date was June 5, 2017.

The Hearing Officer had a telephone conference with Mr. Pontarelli of the Department of Education about extending the decision due date to July 5, 2017. The resolution period had expired without resolution and the new decision due date of July 5, 2017 was established.

The parties were notified of the new decision due date on June 5, 2017.

Thereafter, the parties requested and agreed to several extensions of the decision due date. They are as follows:

July 5, 2017 to August 4, 2017
August 4, 2017 to August 25, 2017
August 25, 2017 to September 30, 2017

September 30, 2017 to October 31, 2017
October 31, 2017 to December 31, 2017

The hearings were conducted on the following dates:

June 15, 2017
July 26, 2017
August 9, 2017
August 29, 2017
August 30, 2017
September 12, 2017
September 27, 2017
October 5, 2017
October 11, 2017
October 12, 2017
October 25, 2017
October 26, 2017

The hearing concluded on October 26, 2017 and briefing dates were agreed upon by the parties.

The hearings produced 1600 pages of transcript and 73 exhibits from the School District and 14 exhibits from the Parents.

FACTS

The Student was born on [REDACTED] and lives with Mother, Father, and older sister.

The Student was born in [REDACTED]. The Student was administered an ABR (Auditory Brainstem Response) hearing test and the mother testified that the Student passed. (Vol. VII p. 12 L. 8 to 10)

After moving to Rhode Island, the Student was a subject for Early Intervention. The Mother had speech concerns with the Student and on October 7, 2015, Meeting Street School prepared an Early Intervention Individualized Service Plan. As to the Student's hearing, the plan reported that the family had no concerns with the Student's hearing or vision. The Student was evaluated in her home in the presence of her Mother. They found the Student to have significant development delays in the areas of cognitive, fine motor skills, expressive and receptive

communication. It reported in the areas of vision and hearing that the Student was within normal limits. There were no needs in the following areas: gross motor skills, adaptive skills, and social emotional skills. The needs were found in the following areas: fine motor skills, expressive communication, and receptive communication. What the family felt as the most important concern was speech. The services offered were in the following areas: speech and language, family training and counseling, physical therapy, assistive technology, occupational therapy and FTC education. (π Exh. 12) (π Tab 7)

Another Early Intervention Individualized evaluation was performed on October 28, 2016. (Δ Exh. 13) (Δ Tab 23) (π Exh. 13) (π Tab 6) It was determined that cognitive, expressive communication, vision, family circumstances and social emotional, were all within normal limits. Adaptive skills and gross motor skills had a 1.5 standard deviation. Hearing was determined to have a significant impact on functioning. At the time of the evaluation, the Student was wearing bone conduction hearing aides. The Student was eligible for services that included occupational therapy, speech and language, physical therapy, assistive technology and family training.

Doctor Roxanne Simons, the Student's physician, referred the Student to Doctor Andrew McGrath, a doctor of Audiology. On October 14, 2016, he examined the Student and provided a report to Dr. Simmons and the Mother. He found that the Student had delayed speech and language as well as some balance problems. Without the hearing aides, auditory thresholds were at a level of a severe hearing loss. With the hearing aides audio thresholds were at the level of a mild hearing loss (π Exh. 1). Also, on October 14, 2016, early intervention services were provided by Donna Rizzo Auditory oral services were to be provided at the Student's home four (4) times a month for 1 hour for six (6) months. (Δ Exh. 4)

On January 20, 2017, doctor McGrath again saw the Student and prepared another report supporting a specialized educational setting for the Student. He mentions that the Student was meeting with difficulty obtaining services through the local school department. (π Exh. 2)

The Student was referred to Renaissance Gym Academy for a preschool level gymnastic program for an observation by M.D. Gallaher-Elmer, School Psychologist. On October 27, 2016 the Student was observed by M.E. Gallaher – Elmer for one (1) hour. There were structured and free choice activities and the structured activities were guided by Early Intervention staff. M.E. Gallaher- Elmer in her written report stated in part that the Student participated in an age appropriate manner, demonstrated good overall gross motor development and balance, as well as social skills. She interacted appropriately with adults and peers, followed directions, responded to both music and storytelling and verbal directions. She did not respond to questions with a verbal answer but used body language. She was not observed singing or talking spontaneously. She imitated speech when prompted. (Δ Exh. 24) (Δ Tab 21)

In August, 2016, the Student's family was then residing in Rhode Island. On August 1, 2016, the Student was seen at Hasbro Children's Hospital for Physical Therapy evaluation. The Parents chief complaint was the Student had coordination difficulty, gross motor delay, poor endurance and weakness. At the time of the evaluation, the Student was 27 months old.

The Gross Motor evaluation concluded:

“The Student scored below average on the gross motor quotient, indicating that the Student is not yet demonstrating age appropriate gross motor skills.” (Δ Exh. 37 p.4)

When performing stationary GM Tasks the Student did so at an age appropriate but her locomotion and object manipulation scores were below average. The evaluation indicated that the Student needed physical therapy services.

On October 28, 2016, the Mother confirmed to Colleen Poyton, early childhood coordinator for the School District, that the Student did well at the Renaissance Gym and at Meeting Street School testing. She indicated that she may have inflated the Student's abilities. (Δ Exh. 25) (Δ Tab 22)

On December 2, 2016, Donna Rizzo, an Auditory Oral Specialist from the Northern Rhode Island Collaborative, presented a report (Spoken Language Summary) concerning the Student. Ms. Rizzo acknowledged that the Student received auditory oral therapy once a week for 60-75 minutes since October 21, 2016. The purpose was to improve everyday communication. The Student's receptive language was approaching age level but data and observation suggest her expressive skills were in the 12-18 month range. The Student had an extensive inventory of words acquired by age two of between 200 and 300. The Student was disadvantaged because of an unidentified hearing loss prior to 24 months. The Student was well below average given the standards reported. The Student was presenting with spoken language skills in the 12-18 month range. (Δ Exh. 10) (Sch. Dist. Tab 30)

On December 2, 2016, the Smithfield School District's team met to determine the Student's eligibility for special education. They had reports concerning psychological observations, hearing – audiological evaluation from Dr. McGrath, educational – Bayley Scale test from Meeting Street School and spoken language summary from Donna Rizzo, NRIC. The team decided that the Student was not eligible for special education services in that the Student did not have a disability. The School Psychologist, M.E. Gallagher – Elmer and the Parents did not agree. (Δ Exh. 2) (Δ Tab 25) (π Exh. 14)

The Team recommended that there be additional testing. (Δ Exh. 32) (Δ Tab 27) A memo from Eileen Crudele, Director of Special Education dated December 5, 2016 to evaluate

the Student in the area of speech and language was sent to Colleen Payton, Anne Marie Maguire, Amanda Claus, and Peg Elmer. (Δ Exh. 33) (Δ Tab 31)

At a team meeting held on December 16, 2016, at the request of the Parent to discuss the need for testing. They extensively discussed the difference between assessments for a two year old and a three year old. Mother was concerned with safety as in falling. The Team including the Mother decided to delay doing further evaluations. The Team had the evaluations from Hasbro and Early Intervention that had conflicting results. (Δ Exh. 36) (Δ Tab 34) (π Exh.4) (π Tab 17)

At the next meeting the Team would discuss potential evaluations.

On December 19, 2016, the School District's Speech and Language Pathologist, Anne Marie Maguire conclude a speech and language evaluation. She concluded that the Student's speech is characterized by sound substitutions and omission which lead to a decrease in her speech intelligibility. The Student scored within the average range on all language testing. Ms. Maguire recommended that her language development be monitored to ensure that she continues to develop those skills and that they remain within age expected level. (Δ Exh. 1) (Δ Tab 36)

The Team met again on January 27, 2017. The purpose of the meeting to discuss speech and language services. The Team was in agreement that the Student was eligible for speech therapy services under the classifying condition of hearing impairment. The Team agreed that the Student was a fall risk and that she would qualify for PT services through the School District. A diagnostic placement in an intergrated preschool setting was proposed. Such a placement would begin on the Student's third birthday. (Δ Exh. 43) (Δ Tab 45) (Δ Exh. 41) (Δ Exh. 42) (Δ Tab 44) (π Exh. 4) (π Tab 16)

On February 7, 2017, an interactive observation was made at the Anna McCabe Elementary School, an integrated preschool classroom. The Mother and Colleen Poyton were

present for the entire observation. The report was signed by Bobby-Jo Carnevale, the classroom teacher. The observation was made to help the teacher to prepare for the student's first day at school. (Δ Exh. 45) (Δ Tab 48)

On February 17, 2017, the Team met for development of an initial IEP. In attendance were the Mother, Father, A. Maguire, (SLP) and Rizzò (SLP). The Parents raised the following issues: mouth strength, speech sounds, physical therapy, and toileting. The Parents disagreed with the Team's recommendation for a diagnostic setting at Anna McCabe School and that the Student needed a special setting at the NRIC. The Parents suggested that the Student attend McCabe School for three days. The Father opined that the Student urgently needed speech therapy and education for the hearing impaired. (π Exh. 4) (π Tab 15) (Δ Exh. 3) (Δ Tab 53)

On February 22, the Mother sent an e-mail to Eileen Crudele about the Parents concerns and opinions concerning the IEP.

The Parents proposed the following:

1. 3 days at Anna McCabe's Pre-K program.
2. Education/Adaptive Testing to be discussed.
3. OT test results to be provided by Parent.
4. For speech/language the Student needs to increase listening confidence, needs small class size, needs specialists, needs a person experienced with auditory oral and the deaf, needs a speech and language pathologist and teacher of the deaf, and needs speech every day. (Δ Exh. 26) (Δ Tab 57)

On February 23, 2017, a notice of the implementation of the February 17, 2017 IEP was sent to the Parents. The Parents rejected the IEP.

On February 24, 2017, Eileen Crudele, Director of Special Education, had a memorandum of her conversation with the Mother who again presented some of the same concerns as she did the day before by e-mail. (Δ Exh. 65) (Δ Tab 58)

On February 28, 2017, at the request of the School District a classroom observation was

held at the Edgewood Elementary School in the City of Cranston.

The classroom was the NRIC Auditory Oral Preschool and Kindergarten classroom. Observers were Eileen Crudele, Anne Marie Maguire (SLP), Bobby-Jo Carnevale, Preschool Special Educator. Donna Rizzo from NRIC led the observation. The classroom and the activities therein were described in the resulting report which was prepared by Anne Marie Maguire. (Δ Exh. 64)

On February 28, 2017, Eileen Crudele prepared a report of her observations of the meeting to observe the classroom at the Edgewood Elementary School. (Δ Exh. 66) (Δ Tab 60) Bobby-Jo Carnevale prepared a three page report of her observations of the classroom.

The observation was part of the transition process for the Student who was in the process of transitioning from Early Intervention to the School District. (Δ Exh. 46) (Δ Tab 61)

On February 28, 2017, the School district prepared a five page response to the Parents requests. The documents listed the concerns of the Parents and opposite each concern the School district provided a response. (π Exh. 7) (π Tab 18)

On March 2, 2017, Ms. Crudele again provided a memorandum concerning her telephone conference with the Mother concerning her visit to the program at NRIC. According to the report by Ms. Crudele, the Mother again stated her displeasure with Ms. Crudele and the School district. (Δ Exh. 68) (Δ Tab 63)

On or about March 6, 2017, a central registration form was completed by the Parents registering the Student with the School District. It provided enrollment at the Anna McCabe School in Pre-Kindergarten with a start date of April 7, 2017. (Δ Exh. 54) (Δ Tab 64)

On March 10, 2017, an IEP meeting was conducted. The purpose was to review the OT

evaluation results from Hasbro and determine eligibility. In addition, the IEP was to be revised to reflect current recommendations.

Classroom placement was added to the IEP along with OT goals. Ms. Crudele shared that a consultant from the school for the deaf could be added to the IEP. The Parents put forth their recommendations and continued to reject the IEP. The Parents did not believe the Team was listening to their recommendations. The Parent's concern was that the Student needed to "catch up" because of the delay in discovering the hearing disability. They believed that the NRIC program would benefit the Student. (Δ Exh. 57) (Δ Tab 68) (Δ Exh. 27) (Δ Tab 69)

The March 10, 2017 IEP was revised and presented as the final IEP offered to the Parents. (Δ Exh. 28) (Δ Tab 70)

On March 22, 2017, the Father e-mailed Eileen Crudele (Director of Special Education) and Colleen Poyton (Early Childhood Coordinator) with information he wanted included in the Team Meeting Minutes. (π Exh. 5) (π Tab 10)

On March 23, 2017, the Parents sent a letter to Ms. Crudele notifying the School District that they would be unilaterally placing the Student at the NRIC effective April 10, 2017. (π Exh. 8) (π Tab 9)

On March 29, 2017, the Early Intervention Coordinator, Colleen Poyton, at the request of the Parents made an observation of the Northern Rhode Island Collaborative's Auditory Oral Program which was the first setting observed.

The second setting was at the Smithfield district pre-school at Anna M. McCabe Elementary School. The recommendation was that the Anna McCabe program is a high quality, integrated, least restrictive preschool program in the Student's hometown. With the accommodations and modifications laid out in the Student's IEP and the ability to make changes

as the IEP Team deems appropriate, the Anna McCabe Preschool is the recommended placement for the Student. (Δ Exh. 61) (Δ Tab 76)

On March 30, 2017, a notice of mediation was filed for a meeting on April 4, 2017. (Δ Exh. 69) (Δ Tab 77)

On or about April 24, 2017, the School District sent a release of information form to Gina Moura, the constituent's representative for State Representative Charlene Lima. (Δ Exh. 20) (Δ Tab 83)

On May 3, 2017, Ms. Crudele had prepared a memorandum of her conversation with Ms. Gina Moura who was inquiring about the Student's placement. (Δ Exh. 72) (Δ Tab 84)

On June 16, 2017, NRIC provided a report concerning the Student. According to the report, the Student attends to teacher directives, responds well to language models, and becoming aware of classroom rules and routines. The Student was in the program from April, 2017. (Δ Exh. 10)

IEP REVIEW

The initial IEP was prepared by the Team on February 17, 2017. (Δ Exh. 7) (Δ Tab 56) The Team had access to the Meeting Street School report of October 28, 2016, Dr. McGraft's letters of October 14, 2016 and January 20, 2016, the observations of M.D Gallagher at the Renaissance Gym Academy on October 7, 2016, and on October 28, 2016, report from Donna Rizzo from NRIC; the report from Anne Marie Maguire from a Speech and Language evaluation of December 19, 2017 and the observation at Anna McCabe School on February 7, 2017 as reported by Bobby-Jo Carnevale. They also had all Team Minutes up to February 17, 2017.

The Student's needs were identified as follows:

1. Student needs to increase upper, lower and whole body strength and balance to improve her level of independence and safety while ambulating the school environment.
2. The Student needs to improve herself advocacy, listening and phonological awareness skills.

The Short Term Objectives under the annual Academic or Functional goals were all directed to hearing and speech skills. As to the Student's ambulatory skills, the Short Term Goals involved skills needed to maintain speed when walking, ascending and descending stairs, kneeling and transitioning from the floor to standing.

A speech and language pathologist was to provide instruction for .05 hours a day for three days a week and a physical therapist was to provide physical therapy for .05 hours once a week.

Prior to presenting a message listening attention will be established and the Student will face the speaker.

Placement was to be at home or in a general early childhood setting with supplemental placement in any early childhood special education setting for a portion of the school day or week. (Δ Exh. 7) (Δ Tab 56)

On March 10, 2017, another IEP meeting was held. (Δ Exh. 28) (Δ Tab 70) The Team had access to the Hasbro OT evaluation of February 8, 2017 the e-mail of February 22, 2017, from the Mother to Ms. Crudele, the NRIC Auditory Oral Preschool classroom observation of February 28, 2017, and the March 2, 2017 memorandum prepared by Ms. Crudele concerning the telephone conversation with the Mother, and the Team Meeting Minutes consisting of seven pages.

Amendments to the prior IEP were provided in the following areas:

- 1) Education Plan – change IEP year to end on 6-15-17
- 2) Team Meeting – add meeting dates

- 3) Present Levels – add OT strengths and needs
- 4) Areas To Be Addressed – add occupational therapy goals and classroom add PHMD Self Help goal
- 5) Annual Goal – add occupational therapy goals and classroom add PHMD Self Help goal
- 6) SPED – add Special Education placement service
- 7) Related Services – add occupational therapy services
- 8) Supplemental/Modifications – add modifications for classroom and fine motor development
- 9) Educational Environment – amend to reflect placement in an in district integrated preschool

The needs under Present Levels of functioning were amended by adding OT based on testing by Hasbro Children Hospital, the need to improve the Student's grasp, the need to increase her self-help skills, a need in the area of Expressive Language Learning and Pragmatics Learning and the need to increase her social communication with peers.

Information on the Student's strengths was increased. In the area of need for Language Development, the Short Term Objectives remained the same as those in the February 17, 2017 IEP. The Physical Therapy Short Term Objectives remained the same but Short Term Objectives for physical and motor health development were added.

The Student's ability to grasp a pencil, to increase pencil control, and to write were short term benchmarks. Her ability to button and unbutton clothing was also goals.

The Special Education area was extensively amended.

The Student was to participate in a structured program to develop self-help skills and increase language skills within peer relationships for 1.85 hours one hour per week, four times a month. Thereafter, the Student will participate in a structured integrated program for 1.85 hours per week, three times a week for four weeks.

Under related services the Team added to the physical therapy services Those additions included the following: transportation with car seat to and from school (four days per week),

explicit speech and language therapy with a speech pathologist (.05 hours four days per week), and direct occupational therapy by an Occupational Therapist (0.33 hours one day per week).

Supplementary Services and Support for School Personnel provided the following: consultation with an audiologist (as needed), Special Educator to provide case management (1-3 hours per week), physical supports for tasks that require fine motor skills (daily), hearing aid check (daily), social worker to consult with parents (once per trimester), prior to a message listening attention to be established (daily), teacher of the deaf to consult with parents (once a week), Occupational Therapy consultation (once a month), Special educator to consult with Parents (once per trimester).

Placement was in an integrated preschool class with a maximum class size of fifteen students with 50% of the children with disabilities. (Δ Exh. 27) (Δ Tab 69)

A revised final IEP was presented on the March 10, 2017 meeting. (Δ Ex. 28) (Δ Tab 70)

Dr. Andrew McGraft Testified on June 15th 2017 and September 27th, 2017

Dr. McGrath is an audiologist who worked for Woman & Infants Hospital. His focus is on pediatrics and early pediatrics. He has extensive vitae (π Exh. 1) (Tab 3) and was qualified as an expert in the field of audiology. He saw probably thirty cases of auditory arnesia. The Student was tested by Dr. McGraft in an aided condition (wearing the hearing aids) and in an unaided condition (not wearing the hearing aids). He concluded: "What we found with behavioral testing in the unaided condition is the responses were consistent with the severe level of hearing loss that the initial electrophysiological tests had shown. What we found in the aided condition, meaning when she was wearing hearing aids, is that many sounds were corrected to normal, for some there was still a remaining mild hearing deficit. (Vol. I p.22 L.8 to 17)

The doctor explained the function of the BAHA hearing aids. The device is a bone-anchored hearing aid. It encodes airborne sounds into physical vibration. Although not recommended for young children like the Student, the abutment can be surgically implanted into the skull to which the BAH oscillator can be affixed. (Vol. I p. 27 L.1 to 5) For the Student they use a band instead of surgery.

Dr. McGraft stated that his goal when shepherding a little boy or girl from early care intervention into local school district is to make sure they will receive specialized services pertaining to hearing loss. (Vol. I p. 38 L.15 to 19)

The fact that the Student was diagnosed at almost two years old she is at a tremendous disadvantage from a speech and language perspective. (Vol. I p. 39 L.12 to 15) The Doctor felt that the Student with proper management over the next few years could probably thrive in mainstream, typical classroom in her local school. He thought it was crucial to bridge the gap between then and kindergarten has to be addressed by a team of professionals in an Early Intervention program geared specifically toward children with hearing loss. (Vol. 1 p. 40 L.2 to 12) The Doctor would make recommendations to parents as the child with a hearing loss is about to transition to school at three years old. He would advise as to available programs and what type of services are available. (Vol. I p. 43 L. 12 to 22) When asked about the accommodations offered by the School District, he could not specifically recall what the accommodations were going to be. (Vol. I p. 45 L.1 to 2)

The School District cross-examined Dr. McGraft.

The Doctor defined FAPE in the following manner: "a child ought to get accommodations that they need to perform their greatest potential." (Vol. I p. 50 L.15 to 17) As to least restrictive environment he said, "a child ought to be, again, afforded accommodations

that will allow them to excel even though they have physical or intellectual handicaps. (Vol. I p. 51 L. 7 to 11) Dr. McGraft was asked about his letter of January 20, 2017 in which he mentioned that the Student was meeting with difficulty in obtaining services from the School District. (Vol. I p. 53 L.6 to 9) The Doctor obtained information concerning his statement from the Mother and he did not speak to the School District as of January 20, 2017.

On September 27, 2017, the School District continued cross examining Dr. McGrath.

He was asked further questions about the Student's ability to hear with the BAHA. The Doctor said that the Student had normal or close to normal hearing for much speech sounds which was borne out in testing. (Vol. VII p. 136 L. 3 to 5) He further explained that in one test the Student was asked to point to parts of her body which she was able to do with good accuracy. (Vol. VII p. 136 L. 4 to 12) As to placement, the Doctor testified that the Student needed to be placed in a setting that specialized in children with hearing loss and fostering speech and language development with children with nonstandard complicated hearing losses.

(Vol. VII p. 138 L. 22 to 25) (Vol. VII p. 139 L. 1 to 2) He stated that he never viewed the School District's program at Anna McCabe School. (Vol. VII p. 139 L. 3 to 7) The Doctor's recommendation for placement at NRIC was in part based on his knowledge of the NRIC, knowing patients who were students at NRIC, knowing students/patients who did poorly in public schools, and knowing people who worked at NRIC (Vol. VII p. 140 L. 1 to 14)

The Doctor agreed to the following: he had no basis to make a comparison between NRIC program and the School District's program, he did not have the results of the Goldman Fristoe Test, the pre-school language test, one word picture vocabulary test, and the expressive one word vocabulary test. He did not have Mrs. Maguire's speech and language report dated December 6, 2016; he did not know that the early intervention service plan indicated that the

Student's expressive language and receptive language were within normal limits; he did not know that Donna Rizzo reported to the School District that the Student had an extensive inventory of words she understands 268; he did not know that Donna Rizzo reported that the average number of words required by age two is between 200 and 300 words. (Vol. VII p. 142 L.1 to 25, p. 143 L. 1 to 25, p. 144 L.1 to 5) (Vol. VII p. 146 L. 19 to 25, p. 147 L. 22 to 25, p. 148 L.1 to 21)

The Doctor further testified that he did not write in his letter that it was necessary for the Student to be placed at NRIC (Vol. VII p. 151 L. 1 to 8)

On redirect examination the Doctor explained the difference between children with a hearing disability that is diagnosed early and those who are diagnosed with a hearing disability later like the Student. Those diagnosed late need extra help to get them where they need to be for kindergarten. (Vol. VII p. 170 L.24 to 25 and p. 171 L. 1 to 3)

The Doctor felt that with proper management by kindergarten she will be on par with normal – hearing peers. (Vol. VII p. 172 L. 15 to 19)

The Doctor testified that his conversation with Ms. Crudele was about his experiences with the Student and she outlined the school's program for the Student. He felt that the Student's case was more complex than the program could handle. (Vol. VII p. 177 L. 16 to 25, p. 178L. 2 to 3)

On re-cross, the Doctor stated he was never at the Anna McCabe School. (Vol. VII p. 178 L. 16 to 17)

He also testified that he never reads the Student's IEP. (Vol. VII p. 179 L. 1 to 3)

On a question asked by the Hearing Officer the Doctor affirmed that he did not have any specific facts relating to Anna McCabe school either negative or positive that come from that

school or the programs in that school. (Vol. VII p. 180 L. 13 to 19) He also stated that he was unaware of any established program within the School District designed for kids with hearing loss particularly kids with unusual late diagnosed severe hearing losses who present at age two with no speech. (Vol. VII L. 4 to 8) Further, he testified that he was comparing Anna McCabe School with that of NRIC (Vol. VII p. 180 L. 23 to 25) He considered Anna McCabe as a typical public school.

He was also comparing a typical public school with specialized education setting for kids with hearing loss and he testified that he did not have any information as to whether Anna McCabe School is a typical public school. (Vol. VII p. 181 L. 2 to 9) The Doctor could not say with a reasonable degree of certainty whether the Student can make meaningful educational progress at the Anna McCabe School. (Vol. VII p. 182 L. 4 to 7)

Brenda Marie Storti Testified On August 30, 2017

Ms. Storti is an auditory oral teacher of the deaf and hard of hearing at the Northern Rhode Island Collaborative. She explained her specialty as follows: "my specialty would be working with auditory oral, working with children who do not know or have not learned to listen to speak, to learn language development and eventually to learn, through that, hearing" (Vol. V p. 19 L. 13 to 17) The Witness was qualified as an expert as a teacher of the deaf and early childhood education.

She explained the kind of children she has in her classroom. (Vol. V p. 22 L. 14 to 15) The general makeup of her classroom is an auditory environment. The services she provided would not be found in a typical preschool. (Vol. V p. 276 L. 18 to 19) As to the Student's auditory memory, she testified that the Student can hold on to greater vocabulary in her head if it is highly familiar to her. (Vol. V p. 34 L. 11 to 18) As to incidental learning she explained that

children who have not heard for the first couple of years have not had the ability to have much incidental learning. (Vol. V p. 36 L. 21 to 24) The Witness explained in detail her preschool program. (Vol. V p. 63 L. 2 to 5) To the Hearing Officer's question about her knowledge of the School District's proposal for the Student, she answered that she was not very familiar with the proposal from the School District. (Vol. V p. 62 L. 17 to 24)

On Cross Examination, the Witness agreed that the Student was with peers during free time for 40 minutes twice a week and during physical education for 35 minutes once a week. (Vol. V p. 66 L. 5 to 25, p. 67 L. 1 to 19) The Witness never observed the integrated preschool class at Anna McCable School (Vol. V p. 78 L. 17 to 21) She was asked to define "the least restricted environment and she defined it as "an environment where the child has the maximum amount of accessibility to the instruction that is provided to her. (Vol. p. 79 L. 2 to 4) (Vol. V p. 79 L. 2 to 4) She described her class as a day school on the continuum of placements. (Vol. V p. 79 L. 5 to 18) The Witness's supervisor at NRIC is Donna Rizzo. Of the children in her class for the last two years, not a single one has returned back to a district school. (Vol. V p. 85 L. 13 to 16) She explained the difference between chronological age and hearing age. She did not believe that the Student would be ready to be returned back to the district for the 2017 to 2018 school year. (Vol. V p. 87 L. 12 to 14, p. 88 L. 3 to 6)

The Witness was asked on re-direct examination the ability of the Student to access typical, early education instruction. She said that it would be beyond the language level that the Student is at receptively as well as expressively. (Vol. V p. 97 L. 1 to 15) Ms. Storti testified on re-cross examination that she did not know anything about teaching style, methodologies, or practices of the teacher in the intergrated preschool class at Anna MCCabe School. (Vol. V p. 98 L. 6 to 11)

In response to the hearing Officer's question, the Witness did not have any knowledge of what the School District offered the Student for her education. (Vol. V. p. 102 L. 4 to 7)

Donna Rizzo Testified on July 26, 2017,

August 9, 2017 and August 29, 2017

In October, 2016, the Student was referred to the NRIC Early Intervention Program through Meeting Street Early Intervention Program. Ms. Rizzo works for the NRIC and she was the Student's early intervention provider.

Ms. Rizzo identified herself as a Speech Pathologist. For twenty-three years, she worked as an auditory oral interventionist. (Vol. II p. 56 L. 8 to 13) She has a license from the Department of Health in order to work in early intervention program. She has a certification from the American speech, Language and Hearing Association. Twenty-three school districts use the services of NRIC. The Witness works with families in a consultative capacity that has a direct one-on-one service in a resource fashion. (Vol. II p. 59 L. 14 to 25) Technology is usually one of the bigger pieces of what they do such as Cochlear Implants, hearing FM systems, sound field towers, personal FM amplification systems and BAHA systems. (Vol. II p. 60 L. 16 to 25).

When the Witness identified her professional resume, Parent's Exhibit 10 (No Tab), the School District requested a voir dire. Ms. Rizzo agreed that she was not certified as an occupational therapist, physical therapist, audiologist, teacher of the deaf, preschool administrator, preschool educator or special – education administrator. (Vol. II p. 65 L. 21 to 25, p. 66 L. 1 to 16) The Witness's certification is limited to speech and language pathology. (Vol. II p. 66 L. 17 to 19)

The Witness identified herself as an auditory oral specialist. There is no certification from the R.I. Department of Education or from the Department of Health as an auditory oral specialist. (Vol. II p. 67 L. 1 to 9) In response, Ms. Rizzo said that it was a title that she began using to differentiate herself as an oral specialist working with students with hearing loss compared to other speech pathologist who work with children with different disabilities. (Vol. II p. 69 L. 1 to 8) On further examination, Ms. Rizzo agreed that she did not have a certification with the Alexander Graham Bell Academy for Listening and Spoken Language. (Vol. II p. 74 L. 23 to 25) The Witness is not an early childhood educator, not a member of the Rhode Island Association for Educating Young Children. (Vol. II p. 78 L. 2 to 10)

Continuing direct examination by the Parents, the Witness testified that many speech language pathologists have not worked with children with hearing loss. She helped them formulate goals, IEP goals, of which many are auditory goals. (Vol. II p. 93 L. 20 to 25)

The Witness, Ms. Rizzo, was qualified as an expert in speech and language pathology, in technology of the hearing impaired, and in the physical attributes of the environment where the hearing impaired to be educated. (Vol. II p. 99 L. 10 to 15)

On direct examination, the Witness testified that from the Student's audiological report she can achieve almost mild to moderate hearing when she has the BAHA on. (Vol. II p. 101 L. 21 to 25) She stated that the Student's ability to understand was far greater than the words she was using. (Vol. II p. 112 L. 3 to 7) Her opinion as to comparing the Student to a typical child her age was that the Student was functioning at about an eighteen month level. (Vol. II p. 13 L. 19 to 20) On cross examination, Ms. Rizzo admitted that her testimony concerning the Student's age level being 12 – to – 18 month as it applied to receptive language was a mistake. (Vol. II p. 141 L. 21 to 25) As to the Witnesses' report of December 2, 2016 (π Exh. 11) (Tab 5), she

testified that there were no formal assessments done for the Student. (Vol. II p. 150 l 10 to 25) The Witness never saw the Speech and Language Evaluation by Anne Marie Maguire SLP. (Vol. II p. 152 L. 4 to 6)

Ms. Rizzo agreed that her testimony about "listening age" was not consistent with what she wrote in her report on December 2, 2016. (Vol. II p. 162 L. 12 to 25) (Vol. II p. 163 L. 3 to 12)

Cross examination continued on August 9, 2017.

The Witness had an hour meeting with the attorney for the Parents. They re-evaluated some prior testimony. (Vol. III p. 6 L. 4 to 15) During the Witnesses meeting with the attorney for the Parents, she was on the payroll of the Northern Rhode Island Collaborative. (Vol. III p. 7 L. 18 to 20) The Witness, prior to this testimony, discussed the case with Mr. Qigg (director of student services at NRIC) and with Mr. Nasif (executive director of NRIC). The Witness describe the Collaborative. It provides special services for those students that the school district is unable to provide programming. (Vol. III. p. 24 L. 7 to 12) The Witness's position concerning the Student was stated: " I feel at her age and stage of development as a child with severe hearing loss who was late identified and late – fitted with her amplification, that her ability to process language in certain environments is challenging and would be inhibited. I think she needs a little bit more special programming at this time." (Vol. III p. 24 L. 7 to 25)

Ms. Rizzo testified that the Student was not ready for the Outreach Program but did not state that in her report. (π Exh. 11) (π Tab 5)

The Witness defined the least restrictive environment as "an environment in which a child can best access instruction." (Vol. III p: 42 L. 7 to 12) She agreed that it is requested that children are educated in their least restrictive environment. (Vol. III p. 42 L. 16 to 25) As to

typically developing peers, there are no peers throughout the entire school day. (Vol. III p. 43 L. 6 to 14) At the NRIC there are five forty-five minute periods where the Student is exposed to typically developing peers. (Vol. III p. 45 L. 19 to 22) NRIC is not a full-inclusive program. (Vol. III p. 46 L. 15 to 25)

In the December 2, 2016 report prepared by the Witness, she wrote that with the BAHA system in place the Student's hearing improved significantly to mild loss range. (Vol. III p. 66 L. 12 to 15, p. 67 L. 1 to 2) Her opinion was based on Dr. McGrath's audiological report. (Vol. III p. 67 L. 8) Ms. Rizzo's statement that the Student's receptive language was approaching age level was accurate when written. (Vol. III p. 69 L. 18 to 24) Her report included reference to the McArthur Bates Inventory. It did not include age equivalent scores, percentile ranking and no standard scores. (Vol. V p. 75 L. 12 to 20) Her report was an introduction of the Student. It was not an evaluation. It was an observation. It was the Witness' summary of the Student's current level of performance. (Vol. III p. 78 L. 18 to 23) The Witness has not worked with the Student since she turned three. (Vol. III p. 81 L. 1 to 2) The Witness had no reason to doubt the abilities of Ms. Maguire, SLP. (Vol. IV p. 82 L. 17 to 19)

Ms. Rizzo agreed with Ms. Maguire's evaluation (Δ Exh. 1) (Δ Tab 36) in the following areas: auditory comprehension is in average range (low end), auditory comprehension is in average range, expressive score is in the average range (low end), PLS 5 is in the average range (low end). Receptive One Word Picture Vocabulary Test is in the average range (low end), and the expressive One – Word Picture Vocabulary test is in the average range.

The Witness discussed the accommodation list (Δ Exh. 9) (Δ Tab 87) that was sent to Ms.

Maguire. She agreed that she did not send accommodation information to Ms. Maguire concerning the following: specialized placement, teacher of the deaf, and limited class size. (Vol. III p. 110 L. 21 to 25, p. 111 L. 1 to 14 p. 112 L. 10-12)

The Witness did say that she might have talked to Ms. Crudele about class size.

At the February 17, 2017 IEP meeting, the Witness did not object to the Student being placed at the Anna McCabe School. (Vol. III p. 114 L. 9 to 16)

Ms. Rizzo continued testifying on August 29, 2017. The Witness attended the February 17, 2017 IEP meeting. At that meeting she never said that the integrated preschool classroom at the Anna McCabe School was not an appropriate placement for the Student: (Vol. IV p. 30 L. 10 to 15) When the Parents suggested that the Student attend Anna McCabe for three days and NRIC for two days, the Witness never said that three days and two days was an appropriate placement. (Vol. IV p. 31 L. 14 to 18) Ms. Rizzo agreed that the discussion of placement at that IEP meeting revolved around the Anna McCabe School (Vol. IV p. 33L. 22 to 25) and that all recommendations were based on the classroom at Anna McCabe School in the School District. (Vol. IV p. 35 L. 22 to 25) As to placement, the Witness stated that she tries to be neutral without being a catalyst. (Vol. IV p. 40 L. 9 to 14)

In a conversation with Ms. Crudele, she said the Student required a teacher of the deaf, needed to be placed at NRIC and needed speech every day. (Vol. IV. P. 48 L 4 to 17)

The Student is currently attending preschool classroom that the Witness operates at the NRIC at the Edgewood Highland School. (Vol. IV p. 62 L. 10 to 15. At the February 17, IEP Meeting, it was discussed that when the Student turned three years old additional testing that is age appropriate could be performed. NRIC has not done any such testing. (Vol. IV p. 72 L. 14 to 23)

On Re-direct examination the Witness testified that she worked for A.G. Bell. She was hired as an auditory oral speech language pathologist. (Vol. IV p. 86 L. 1 to 2) The Witness was asked to give more information about the classification of hearing loss being in the mild range while using the BAHA. She responded: "...being in the mild range does not mean you automatically hear and understand spoken language or even all the sounds that are happening around you. That reverts back to how old she was when she was identified and when did she get equipment and when did she start to consistently use it." (Vol. IV p. 111 L. 9 to 18)

Ms. Rizzo has not been a consultant for the School District since April 10, 2017. (Vol. IV p. 118 L. 1 to 7)

Colleen Poyton Testified on September 12, 2017, September 27, 2017,

October 11, 2017 and October 12, 2017

Ms. Poyton is employed by the School District. She has the following responsibilities: early childhood coordinator for 20 years, coordinate and conduct child outreach screening, evaluation team leader, LEA for all preschool children with disabilities, administrator of OSEF child outcome summary, early intervention transition coordinator, liaison to the community and a resource to families. (Vol. VI p. 48 L. 1 to 18)

She has been educating early childhood teachers concerning Rhode Island Early Learning Development Standards and Implementation and their use for over ten years. (Vol. VI p. 52 L. 1 to 8)

She participated in meetings when the School District determined that a child with hearing loss was eligible for special education under the IDEA.

Colleen Poyton was found to be an expert in early childhood special education. (Vol. VI p. 56 L. 1 to 14) She was present at eligibility meetings for the School District in which there

were about ten children with hearing loss and some she recommended to be intergrated at the Anna McCabe School. (Vol. VI p. 57 L. 1 to 23) In her opinion those children received a free, appropriate, public education and they did make meaningful progress in the integrated preschool classroom at the Anna McCabe School. (Vol. VI p. 58 L. 1 to 4)

She testified about the Anna McCabe School; it has two morning and two afternoon sessions and a full day session. There are typically developing peers in all three classes (eight typically developing peers to seven with special needs). (Vol. VI p. 59 L. 3 to 18)

Anna McCabe School is accreted by the following: National Association For The Education of Young Children (NAEYC) and BrightStars. (Vol. VI p. 62 L. 5 to 25) She is the program administrator for both BrightStars and NAEYC. (Vol. VI p. 65 L. 4 to 19) She contradicted Ms. Storti's testimony that BrightStars was a rating system for – profit preschools. (Vol. VI p. 66 L. 6 to 18) The highest rating for BrightStars is five. The School District has five stars in seven areas and four stars in three areas for an overall rating of four. (Vol. VI p. 67 L. 8 to 22) BrightStars ratings are keeping with section 42-12-23.1 of the Rhode Island General Laws that established a voluntary quality rating system in early care and education programs. (Δ Exh. 12) (Δ Tab 86)

The Individualized Family Service Plan from Meeting Street School was considered by the School District in determing eligibility by the School District, (Vol. VI p.75 L. 8 to 25, p. 76 L. 1 to 2) (Δ Exh. 13) (Δ Tab 23)

September 21, 2016 was the last early intervention meeting and October 7, 2016 was the first School District meeting. (Vol. VI p. 93 L. 14 to 18) The Witness prepared the referral document. (Vol. VI p. 95 L. 5 to 9) In determinating eligibility of the Student the observation by

the school psychologist Margaret Gallagher was provided to the Team. (Vol. VI p. 100 L. 14 to 25; P. 101 L. 1 to 2)

Direct examination of Ms. Poyton continued on September 27, 2017. At the December 2, 2016 eligibility meeting, the report of Margaret Gallagher was discussed and used by the Team at subsequent eligibility and IEP meetings. (Vol. VII p.188 L. 6 to 20)

There were two individualized family plans for the Student, October 7, 2015 and October 28, 2016. The Witness was at the December 2, 2016 Team meeting at which the Student was determined to not be eligible for services. Except for the Parents, the members agreed with the determination. (Vol. VII p. 201 L. 20 to 23) Ms. Rizzo said the team would reconvene following further testing and further testing was agreed to by the Team. (Vol. VII p. 202 L. 1 to 7) The parents disagreed that the Student did not have a disability but wanted further review. (Vol. VII p. 202 L. 11 to 17) The Parents disagreed with a diagnostic assessment because they felt the Student had been tested enough. (Vol. VII p. 203 L. 7 to 10) The Father agreed to and authorized a speech and language evaluation. (Vol. VII p. 206 L. 1 to 4)

The Witness was asked to review Ms. Rizzo's Spoken Language Summary (Δ Exh. 10) (Δ Tab 30) and what is appropriate access to speech. Ms. Rizzo indentified the following: acoustic highlighting, one voice rule, auditory tracking, auditory bombardment, pattern perception, diversified vocabulary, incidental learning and language modeling.

Ms. Poyton explained each term and acknowledged that each of those events happen at the Anna McCabe School. (Vol. VII p. 208, 209, 210, 211, 212, 213 L. 1 - 25)

Direct examination continued on October 11, 2017. The February 10, 2017 Team Meeting was continued to February 17, 2017 because of snow. Donna Rizzo was at the IEP

meeting. She had made an observation of the Student at Anna McCabe School (Ms. Carnevale's class) and made recommendations for the classroom. (Vol. IX p. 18 L. 1 to 20)

Ms. Poyton testified that she never understood during the meeting that Ms. Rizzo did not approve of a placement in the integrated classroom in the School District. (Vol. IX p. 20 L. 20 to 22) They (Parents) made a proposal for the Student to attend Anna McCabe for three days and NRIC for two days. (Vol. IX p. 21 L. 12 to 14) The Witness stated that it was felt that Anna McCabe was the least restrictive environment. (Vol. IX p. 21 L. 15 to 21) Ms. Rizzo made recommendations for the classroom at Anna McCabe School. (Vol. IX p. 22 L. 10 to 12, p. 23 L. 17 to 23) After listening to the Father, the Witness understood that the Father felt that the Student would get more therapy from NRIC than through the Anna McCabe program. (IX p. 26 L. 9 to 15) Ms. Poyton went on during examination to explain the services being offered. The School District added services as a result of the concern raised by the Parents between February 17, 2017 and March 10, 2017 according to the Witness. (Vol. IX p. 30 L. 21 to 25) The Witness testified about the e-mail from the Parents. (Δ Exh. 26) (Δ Tab 57) The Parents wanted wrap – around services for the whole preschool development program, five days a week at NRIC (Vol. IX p. 32 L. 8 to 18) Ms. Poyton's opinion was that the least restrictive environment is at Anna McCabe School in the Student's hometown and where she will be with typically developing peers. (Vol. IX p. 34 L. 1 to 6) At the March 10, 2017 IEP Meeting, the Parents were not satisfied with the proposal offered by the School District (Vol. IX p. 45 L. 9 to 12) At this time, the Student was still in the early intervention program. (Vol. IX p. 46 L. 2 to 8)

At the end of the March 10, 2017 Meeting, the School District was willing to work with the family. (Vol. IX p. 48 L. 11 to 18) Because Ms. Rizzo was not at the March 10, 2017 meeting, the School Department offered to schedule another meeting. (Vol. IX p. 50 L. 1 to 8)

As of March 29, 2017, the School District was still working with the Parents by conducting an observation at Anna McCabe and then NRIC (Vol. IX p. 48 L.11 to 18)

When asked about her observation at NRIC, she had the following criticisms: it was not a standard space program, the materials used were not something the children would be interested in, they were not learning through play and interaction, there were no developing peers, it was teacher – directed, it was away from the Student’s home community and there were a lot of adults in the classroom. (Vol. IX p. 54 L 14 to 25) (Vol. IX p. 55 L. 1 to 7)

Ms. Poyton did not see any learning centers. Anna McCabe School has learning centers. They have a math center, a science center, literary area, a dramatic play area, a block center and a listening center. (Vol. IX p. 58 L. 7 to 10)

She taught a class for Rhode Island Early Learning and Development Standards through R.I Department of Education to teachers and teacher assistants in designing a standard space curriculum. (Vol. IX p. 61 L. 14 to 23)

Ms. Poyton was cross-examined by the Parents attorney.

The Witness did not know that the Student did not receive hearing aids until she was two years old. (Vol. IX p. 63 L. 22 to 24) When asked about emerging skills, she responded that emerging skills may not be consistent. (Vol. IX, p. 96 L. 11 to 14) Ms. Poyton testified that the observation at Anna McCabe was not a formal observation and the School District did not rely on it in determining placement. (Vol. IX p. 100 L. 14 to 19) The School District was considerate of any and all the Parents’ concerns including speech and language. (Vol. IX p. 107 L. 4 to 6) When questioned about incidental learning, Ms. Poyton opined that based on research young children learn over 50 percent of what they learn from incidental learning because they are not setting at a desk and they are using all of their senses to learn. (Vol. IX p. 134 L. 14 to 22)

Cross-examination continued on October 12, 2017. The initial questioning involved activity centers which were explained by Ms. Poyton. (Vol. X p. 3, 4, 5, 6 and 7) When questioned about the addition of a teacher of the deaf, the Witness explained that the teacher of the deaf was a consultant who may work with the Student. (Vol. X p. 20 L. 18 to 24) The Witness agreed to the following: hearing loss impacts the Student ability to understand and follow directions. (Vol. I p. 31 L. 12 to 17) As to the last IEP, the Witness, in responds to needs that the Team felt might still be outstanding the Witness, said, "once the (Student) got into our program and we were able to observe her in that setting and gather additional data on how she did, the team may revise the IEP as appropriate." (Vol. X p.36 L. 7 to 14)

The Witness explained that they looked at the NRIC but the least restrictive environment was at the Anna McCabe School. (Vol. X p.38 L. 14 to 19)

The Witness was asked several questions about what the parents offered during the IEP process. The following statements by the Parents were presented to the Witness to affirm or deny: there were insufficient goals, they wanted a teacher of the deaf, hearing impaired peers to be with the Student and listening goals in the IEP. (Vol. X p.37 L. 6 to 10, p.38 L. 1 to 4) The Witness affirmed each statement made by the Parents.

On redirect, the Witness explained why she was not impressed with the NRIC Ms. Poyton explained: "Specifically I was looking at content, specifically skills, the teaching and the facilitating, what the teacher was doing, the process of how children were learning and then the context, the materials, the learning environment, routines and schedules." (Vol. X p 55 L. 7 to 12)

Anne Marie Maguire testified on October 12, 2017

She is employed by the School District as a speech language pathologist. She previously worked at Meeting Street School and she is certified by the American Speech Language and Hearing Association, by Rhode Island Department of Education, and by the Department of Health. (Vol. X p. 67 L. 7 to 25) Ms. Maguire was qualified as an expert in the area of speech language pathology. She attended the eligibility meeting for the Student on December 2, 2016. (Vol. X p.69 L. 11 to 14) The Witness reviewed the I.F.S.P. which had expressive language testing. (Vol. X p. 70 L. 7 to 25) She explained the expressive and receptive language testing found in the I.F.S.P. of October 7, 2015 and October 28, 2016. (Vol. X p. 70 L. 17 to 25, p. 71, p.72) The Student scored 30 in both those areas which mean the Student had a significant delay in expressive and receptive language. (Vol. X p. 71 L. 4 to 25, p. 72 L. 1 to 11) She compared the October 7, 2015 with the October 28, 2016 I.F.S.P. (Vol. X p. 72 L. 15 TO 25)

For receptive and expressive language the Student was within normal limits a year later. (Vol. X p. 73 L. 1 to 12) Ms. Maguire was asked why the Student made progress and she testified that the Student was receiving services through early intervention and she received hearing aids. (Vol. X p. 74 L. 1 to 6)

The Witness agreed with Dr. McGraft's October 14, 2016 letter (π Exh. 1) (π Tab 1) where the Doctor states that in the aided condition (hearing aids) the Student's auditory thresholds are at a level of a mild hearing loss. (Vol. X p. 74 L. 14 to 15, p. 75 L. 1 to 5)

Reference was made to Donna Rizzo's report of December 2, 2016 where Ms. Rizzo stated that the Student's hearing was in the mild range. The Witness agreed with that statement (Vol. X p. 76 L. 20 to 25). Ms. Maguire agreed that a student with a mild hearing loss can be taught in an inclusive classroom like the Anna McCabe School. (Vol. X p. 7 L. 1 to 9) The

Witness defined least restrictive environment and she explained why the School District makes every attempt to educate students in the least restrictive environment. It is the most appropriate environment for children to make the most appropriate gains and be around children who will be their peers and their classmates. (Vol. X p.77 L. 13 to 25)

Ms. Rizzo's summary (Δ Exh. 12) (Δ Tab 30) identified some basic principles for auditory training and language that were used for the Student. The Witness testified that the following principles for auditory training and language can be done in an integrated preschool classroom: acoustic highlighting (typically used), one voice rule, auditory tracking (typically used), auditory bombardment (typically used), strategy pattern perception, diversified vocabulary, direct input (consistently used) incidental learning and language modeling (consistently used). (Vol. X p. 78 to 84)

The Witness testified that the Student demonstrated incidental learning and she explained how the Student demonstrated incidental learning. (Vol. X p. 86 L. 1 to 25)

Ms. Maguire does not use the MacArthur Bates test because the parents complete it and the Witness prefers testing where she gathers the information directly from the Student. (Vol. X p. 88 L. 8 to 23)

The Witness gave her opinion that there is nothing in Ms. Rizzo's summary (Δ Exh. 10) (Δ Tab 30) that would preclude the Student from being educated in the integrated preschool at the Anna McCabe School. (Vol. X p.89 L. 1 to 7)

Anne Marie Maguire continued testifying on October 25, 2017.

Ms. Maguire worked with three children with hearing loss in the preschool. Unaided, one was severe, one was moderate – severe, and one was moderate. Aided, one was mild – moderate and two fell into the mild range. The Witness' opinion was that those students made

meaningful educational progress at the integrated preschool at Anna McCabe School. (Vol. XI p. 85 L. 3 to 15)

The Witness was at the December 2, 2016 eligibility meeting and the Student was not found eligible because the data did not support eligibility. (Vol. XI p. 87 L. 15 to 25, p. 99 L. 1 to 4)

Ms. Maguire reviewed her evaluation. (Δ Exh. 1) (Δ Tab 36) The purpose of her report was to determine the Student's level of function in the areas of speech and language. (Vol. XI p. 90 L. 15 to 19) She explained each of the tests performed: behavioral observation (p. 91), the Goldman Fristoe Test (p. 92), the Preschool Language Scale Fifth Edition. (P. 95), receptive one-word picture test (p. 97) and the expressive one-word picture test. (p. 98)

The Student was within the average range for the following tests: Preschool Language Sale Fifth Edition, (p. 97) the receptive one-word picture test (p. 98) and the expressive one-word picture test. (p. 99)

The Witness addressed Ms. Rizzo's opinion that the Student's D sound should be solid for a two year old.

She testified that the School District use Sander Research that reports that fifty percent of 2 ½ years old should say the D sound but it develops up to age 4.

At age 4, ninety percent can say it correctly. (Vol. XI p. 94 L. 1 to 6) The evidence that the Witness had that the Student mastered the D sound was the fact that the Student used the word "don't." (Vol. XI p. 95 L. 11 to 17)

Because the time between two years and eight months and three years is a significant time of growth for children in the areas of language, the Student should be re-evaluated in the area of speech language. (Vol. XI p. 100 L. 7 to 18)

Except for the physical therapy sections the Witness developed most of the IEP document of February 17, 2017. (Vol. XI p. 104 L. 4 to 12) That IEP addressed both production and listening skills. (Vol. XI p. 108 L. 8 to 11)

She testified that children need social interaction that pragmatic interaction with other children, pragmatic is the area of language that focuses on social interaction and the ability to engage in conversation. (Vol. XI p. 113 L. 1 to 13)

She testified about the March 10, 2017 IEP and what she added to the February 17, 2017 IEP. The additions were in response to the concerns of the Parents. (Vol. XI p. 118 L. 8 to 10) They added a consultation with an audiologist so they would have the most recent audiological information regarding the Student. (Vol. XI p. 118 L. 20 to 25)

Ms. Maguire concluded direct examination with her professional opinion about the March 10, 2017 IEP. It provides the Student with FAPE. that will allow her to make meaningful educational progress. (Vol. XI p.127 L. 1 to 13) Further, as to the least-restrictive environment, her opinion was that the Anna McCabe class was the least-restrictive environment. (Vol. XI p. 125 L. 14 to 25, p. 128 L. 1)

Ms. Maguire was Cross examined by the Parents' attorney.

The Witness never had a child with bilateral artresia and none with a late diagnosis as the Student. (Vol. XI p. 129 L. 18 to 23) the Witness testified that she did not have the Student's audiogram. (Vol. XI p. 130 L. 12 to 14)

When the Witness worked at Meeting Street School, she worked with many deaf children. (Vol. XI p. 133 L. 3 to 7) Ms. Maguire was questioned about her observations at the NRIC (Vol. I p. 141 L. 8 to 15) She was questioned about auditory training and the Witness explained that it is the ability to detect, discriminate, identify and work on the ability of the child

to incorporate all of the skills to be able to understand language. (Vol. XI p. 142 L. 1 to 9) Ms. Maguire works on all areas of language. (Vol. XI p. 142 L. 19 to 23)

Throughout the process, the Witness consistently advised that she wanted to re-evaluate the Student at three years old. (Vol. XI p. 154 L. 1 to 3)

Prior to the Witness' evaluation of the Student, the Goldman-Frestoe Test of Articulation that she used for the Student had been updated before her evaluation. She recently became aware of a change. (Vol. XI p. 155 L. 19 to 24)

As to passive listening the Witness' opinion was that there is no test to measure passive listening so that the results are not objective. (Vol. XI p. 162 L. 10 to 16)

The Witness was asked about the noise in the preschool at Anna McCabe. She stated that during teacher-directed activity the preschool classroom is extremely quiet and the teacher's voice is the only one being heard. During center time, there may be conversations among the children so the volume may be a little bit louder. (Vol. XI p. 165 L. 17 to 25)

During the Student's evaluation, the Student made herself clear for the most part and the Student engaged the Witness socially (Vol. XI p. 169 L. 12 to 23)

The Student would be understood by her peers some of the time. (Vol. XI p. 170 L. 14 to 21)

The Witness was then questioned under direct examination by the School District.

Bobbi-Jo Carnevale Testified on October 5, 2017

Ms. Carnevale is a preschool special education teacher at the Anna McCabe School. She has an Early Childhood Special Education Certification which is from birth through pre-k. She is certified for Early Childhood Regular Education pre-k through second grade and she has a Significant Intellectual Disabilities Certification. (Vol. VIII p. 4 L. 13 to 18) Ms. Carnevale was

qualified as an expert in Early Childhood Education and Early Childhood Special Education.
(Vol. VIII p. 6L. 5 to 8)

The Witness testified about BrightStars program. She described it as a tiered-quality rating system for child care centers and elementary preschool centers. It is a five star rating system with five being the best. (Vol. VIII p. 6 L. 12 to 21) BrightStars is administered through the Department of Education and the Anna McCabe School has a four star rating. (Vol. VIII p. 7 L. 3 to 11)

She testified about the National Association for the Education of Young Children, NAEYC. It is a federal accreditation for preschool centers and the Anna McCabe School is accredited by NAEYC. (Vol. VIII p. 8L. 1 to 10)

As to the Student, Ms Carnevale served as the special educator on the eligibility team of which Ms. Payton was the chairperson. Before a child is determined to be eligible for special education she reviewed the IFSP and testing brought in by the family, testing and evaluations from doctors, physical therapist, occupational therapists and speech pathologists. (Vol. VIII p. 9, L. 7 to 24, p. 10 to 19)

The Witness attended the December 2, 2016 eligibility meeting when the Student was found not eligible because of the evaluations and information presented but further evaluations were recommended. (Vol. VIII p. 12 L. 1 to 22)

The Witness was asked to review Ms. Rizzo's language summary (Δ Exh. 11) (Δ Tab 30). On a daily basis, in her classroom she uses the following: auditory tracking, auditory bombardment, and direct input and incidental learning. (Vol. VIII p. 15 L. 23 to 25, p. 16 L. 1 to 25, p. 17 1 to 7)

Ms. Carnevale attended the December 16, 2016 eligibility meeting for the purpose of reviewing the language evaluation. There was a discussion of educational evaluations. The Parents did not agree with additional educational evaluations. (Vol. VIII p. 18 L. 5 to 25, 19 L. 1 to 7) The Witness attended the eligibility meeting of January 27, 2017 where the Student was found eligible for services. They discussed a diagnostic placement. (Vol. VIII p. 19 L. 9 to 22)

The Witness attended the February 17, 2017, IEP meeting at which a draft IEP was presented. (Vol. VIII p. 20 L. 1 to 18) A diagnostic placement at the Anna McCabe School in the preschool class for observation was recommended. (Vol. VIII p. 21 L. 17 to 25, p. 22 L. 1 to 11) The Student was observed at her classroom by the Witness. It was an interactive observation. (Δ Exh. 45) (Δ Tab 48) The Student interacted with her typically developing peers. (Vol. VIII p. 23 L. 18 to 25, p. 24 L. 1 to 24) The Witness testified that research shows that the best practice is for children to interact with typically developing peers and that they will progress quicker and further along when they have their peers as roll models next to them. (Vol. VIII p. 25 L. 10 to 14)

Ms. Carnevale visited the Northern Rhode Island Collaborative on February 28, 2017 to view the auditory oral preschool classroom. (Δ Exh. 46) (Δ Tab 61) (Vol. VIII p. 27 L. 1 to 23) She had not made a decision at that time as to placement. She did not observe any typically developing peers, and therefore there was no opportunity for incidental learning. (Vol. VIII p. 29 L. 1 to 9) She observed two grades in the classroom, preschool and kindergarten. Her opinion was that it was not beneficial for the children because one is working with two different types of standards. For preschool, one works with the Rhode Island Early Learning and Development Standards and for kindergarten one works with Common Core Standards. (Vol. VIII p. 29 L. 5 to 25, p. 30L. 1 to 16) She observed the teaching style which was teacher-directed where the

teacher taught all lessons. At Anna McCabe, there is teacher-directed and student-directed within the classroom. Student-directed would be children playing within centers and directing their own play and learning skills. (Vol. VIII p. 30 L. 17 to 25, p. 31 L. 1 to 12)

Ms. Carnevale attended the March 10, 2017 IEP meeting which added classroom placement. Instead of a diagnostic placement the team offered to place the Student into a classroom Monday through Thursday. That was based on further information from the family and team members. (Vol. VIII p. 34 L. 3 to 24) As to the IEP, Ms. Carnivale's opinion was that the IEP would provide for meaningful progress in the academic area, it provides for the Student to make meaningful progress in the social and emotional areas, it provides the Student with a free, appropriate public education and that the School District is ready willing and able to accept the Student into the preschool education class at Anna McCabe School. (Vol. 36 p L. 1 to 25, p. 37 L. 1 to 24)

The Witness was cross examined by the Parents' attorney.

Ms. Carnevale was question about BrightStars and some evaluators do not have degrees in education. (Vol. VIII p. 41 L. 5 to 13)

The Witness taught one student with hearing loss and none that was deaf. (Vol. VIII p. 42 L. 20 to 25) At the February 17, 2017 meeting, it was a team decision to delay evaluations. (Vol. VIII p. 47 L. 21 to 23)

At the March 10, 2017 meeting, the Parent identified his main concerns: teacher of the deaf, number of students with hearing impaired peers and auditory expertise. (Vol. VIII p. 68 L. 17 to 23)

When asked if the Witness has a way of assessing if the child is hearing the words during auditory bombardment, the Witness responded that they have ongoing observations of peers to

peer interaction and one is listening to see if they are continuing to build on the information.

(Vol. VIII p. 74L 20 to 25, p. 75 L. 1 to 9) The Witness was asked to define FAPE in preschool and she responded that is access to curriculum with modifications and accommodations. (Vol. VIII p. 88 L. 1 to 8)

The Witness testified that the hearing aid of the Student would be the main role of the speech pathologist in consult with the audiologist. (Vol. VIII p. 90 L. 1 to 21)

The School District continued with re-direct examination. (p. 94)

The Parents conducted a re-cross examination. (p. 106)

Eileen Crudele Testified On October 26, 2017

Ms. Crudele is the Director of Special Education for the School District. Her responsibility is to ensure that all regulations and the IDEA as well as the Rhode Island Special Education Regulations are followed. (Vol. XII p 3 L. 12 to 20) She is the direct supervisor of Colleen Poyton and Anne Marie Maguire. She services children from age 3 to 21. The School District has a preschool at the Anna McCabe School which is an integrated preschool. (Vol. XII p. 4 L. 5 to 24) An integrated preschool has students with disabilities as well as typically developing peers. The Witness testified that the regulations require the School District to start services on the child's third birthday but a child that is eligible for services under the IDEA and has an IEP can start in preschool at any time. (Vol. XII p. 5 L. 9 to 20) An integrated preschool has students with disabilities as well as typically developing peers. The Witness testified that the regulations require the School District to start services on the child's third birthday but a child that is eligible for services under the IDEA and has an IEP can start in preschool at any time. (Vol. XII p. 5 L. 4 to 9)

The Witness explained why the School District engaged Mr. John Reed (teacher of the deaf) who had taught at the Rhode Island School for the deaf. (Vol. XII p. 11L. 4 to 6)

Mr. Reed had a background in oral auditory intervention approach. (Vol. XII p. 12 L. 1 to 6) Ms. Reed met with Ms. Crudele (Director), Ms. Poyton (Early Childhood Coordinator), Ms. Poyton and Ms. Carnevale (preschool teacher) in order to explain how he provides services in the public system. (Vol. XII p. 13 L. 6 to 25 p. 14 L. 1 to 2, p. 15 L. 19 to 24) Ms. Crudele explained how the consult with the teacher of the deaf as found in the final IEP (March 10, 2017) would be implemented. Mr. Reed would go into the classroom to observe the Student, the activities and to interact with the Student. (Vol. XII p. 15 L. 14 to 24) Further, Mr. Reed would consult with the Parents at school and review his strategies of what could happen in the classroom as well as what could happen and strategies at home. (Vol. XII p. 16 L. 1 to 13)

After the Student was found not eligible for special education services, the Witness had a telephone conference with the Mother. (Vol. XII p. 17 L. 10 to 19) She explained the following to the Mother: that the regulations require not only to have a diagnosis but the team has to determine that specialized instruction is required for the student to learn, it is a two-pronged approach. She told the Mother that the team would reconvene to review the results of the speech and language testing. (Vol. XII p. 18 L. 1 1 to 14) The Witness did not attend the December 2, 2016, the December 16, 2017 or January 27, 2017 eligibility meetings. (Vol. XII p. 19 L. 4 to 22)

The Witness was questioned about the e-mail from the Mother on February 22, 2017.

(Δ Exh: 26) (Δ Tab 57) This followed the IEP meeting of February 17, 2017. On February 24, 2017, the Witness had a telephone conference with the Mother during which the Witness took notes. (Δ Exh. 65) (Δ Tab 58)

On February 28, 2017, the Witness visited the auditory oral program at NRIC and prepared a report of her visit. (Δ Exh. 66) (Δ Tab 60) Ms Crudele observed a preschool-kindergarten class combined. (Vol. XII p. 34 L. 13 to 24) The preschool at Anna McCabe is just a preschool because preschool focuses on a different set of learning standards than kindergarten. (Vol. XII p. 35 L. 1 to 17)

She did not see any typically developing peers at the NRIC which disturbed her. She indicated that children learn best from their peers who serve as role models for students with disabilities. (Vol. XII p. 36 L. 1 to 9)

The Witness was declared to be an expert in the field of special education. (Vol. XII p 39 L. 17 to 20) (Δ Exh. 67) (Δ Tab 923) (Resumé of Crudele) Her testimony continued: concerning her observation at NRIC. The activities she saw were teacher – directed.

She did not like what she observed because students were not interacting with each other practicing the skills they learned through teacher-directed activities. (Vol. XII p. 42 L. 1 to 11)

Ms. Crudele had a telephone conversation with the Mother on March 2, 2017. She called the Mother to inform her that she observed the program at the NRIC (Δ Exh. 68) (Δ Tab 63). The Witness was asked if she would replicate the NRIC program. She responded that she would not because it is the most restrictive setting for a child and there are no peers involved. (Vol. XII p. 48 L. 1 to 19)

The Witness spoke to Dr. McGraft by telephone sometime between February 22, 2017 and March 10, 2017. She recalled that the doctor indicated he was willing to speak with members of her staff and she gave him contact information for Anne Marie Maguire. (Vol. XII p. 51 L. 5 to 22) It was the Witness' understanding that Ms. Maguire tried to reach Dr. McGraft multiple times because she wanted the audiogram. (Vol. XII p. 52 L. 1 to 12)

Ms. Crudele attended the March 10, 2017 IEP meeting because the Parents wanted her there. (Vol. XII p. 53 L. 1 to 12) The team made changes to the IEP because of Parents' concerns but the team did not agree with all of their concerns. (Vol. XII p. 54 L. 6 to 14)

The Witness identified L. Smith Brown as being at the March 10, 2017 IEP meeting and Ms. Brown was a resource specialist with the Rhode Island Parent Information Network. She was experienced with families who have deaf or hard of hearing children. (Vol. XII p. 56 L. 1 to 10) Ms. Crudele offered as a possible addition to the IEP, a consultant with the School for the Deaf as another option. Vol. XII p. 58 L. 6 to 16)

The program at Anna McCabe School address vocabulary acquisition. (Vol. XII p. 59 L. 19 to 18) Ms. Crudele explained how the IEP can be changed at any time due to parent request or due to school request. (Vol. XII p. 61 L. 1 to 16) The Witness agreed that the School District would have started services to the Student on her third birthday or about April 10, 2017 at Anna McCabe School even if the IEP was not finished. (Vol. XII p. 66 L. 1 to 7)

Ms. Crudele testified that the final IEP (Δ Exh. 28) (Δ Tab 70) affords the Student a free, appropriate, public education in the least restrictive environment; affords the Student meaningful academic progress; affords the Student meaningful progressing the social domain; provides the Student social interaction with peers; addresses the Student's emotional needs.

Ms. Crudele was cross-examined by the Parents' attorney.

Concerning her observation at NRIC, the Witness did not see other activities other than teacher-directed activities. (Vol. XII p. 79 L. 22 to 25, p. 80 L. 1)

There are no regulations prohibiting preschool and kindergarten from being in the same classroom. (Vol. XII p. 80 L. 14 to 17)

When asked how Mr. Reed would consult with the staff at Anna McCabe School she responded that he would go into the classroom and observe the Student with the peers. He would observe the instruction being done. (Vol. XIII p. 83 L. 21 to 25, p. 84 L. 1 to 8)

There was no time limit for the consultation in the IEP. (Vol. XII. P. 85 L. 15 to 17)

When Ms. Maguire could not reach Dr. McGraft, the Witness did not ask Ms. Maguire to ask the Parents to check the phone number or for them to call the doctor. She did not advise Ms. Maguire to ask the Parents for the audiogram. (Vol. XII p. 9 L. 8 to 14)

On or about April of 2017, the Witness did consult with R.I. School for the Deaf because she wanted them to look at the program and see if they had any suggestions. (Vol. XII p. 97 L. 22 to 25, p. 98 L. 1 to 3)

When asked on what she based her conclusion that the Student would make meaningful progress, the Witness replied that what she saw with early intervention services and the progress she made with Donna Rizzo that in those limited amounts of time she made progress. With a program for four days a week, she had no reason to believe that she would not make meaningful progress. (Vol. XII p. 103 L. 1 to 13) The Student was also receiving intervention from her parents. (Vol. XII p. 104 L. 1 to 6)

The School District attorney conducted re-direct examination.

The Parents' attorney conducted a re-cross examination.

The Father Testified On July 26, 2017

The Father was called as a Witness by the Parents' attorney.

The Father began by explaining the history of the Students disability. The Student's pediatrician referred them to a doctor for implanting tubes in the Student's ears. She was having a lot of speech delays and her balance was not good. (Vol. II p. 8 L. 22 to 25, p. 9 L. 1 to 7)

They were unable to do the tube implantation and they were referred to Dr. McGraft. (Vol. II p. 9 L. 3 to 13) They decided on bone anchored hearing aids for the Student which she obtained after age two. (Vol. II p. 12 L. 4 to 17)

After the hearing aids were used, they saw a pretty immediate response to the Student hearing things, reacting to them, her demeanor, participating in conversations or talking to the Student. (Vol. II p. 12 L. 2 1 to 25, p. 13 L. 1 to 4) In the Father's opinion, the Student cannot hear one hundred percent like other people. They noticed that the Student does not hear directional sounds. There are certain sounds she does not hear, she skips a lot of consonants, she cuts off words and she is not hearing fully what they are saying. (Vol. II p. 13 L. 23 to 25, p 14 L. 1 to 10)

The Student had the following services: early intervention, speech therapy, and physical therapy. (Vol. II p. 15 L. 3 to 14) The Witness testified the services were not specialized in any type of way for a deaf child. (Vol. II p. 15 L. 18 to 25) The Student received services from the auditory oral program in October of 2016 when she was approximately 2 ½ years old. (Vol. II p. 16 L. 10 to 17) The Parents were given techniques to use with the Student. (Vol. II p. 17 L. 12 to 25) When asked if the Student still had struggles, he responded that the Student is doing a lot better and she is improving. Concerning her struggle he said the following: her intelligibility of speech is very poor and it is difficult to understand her. (Vol. II p. 18 L. 2 to 16)

The Father explained that their other daughter has been in the School District preschool classroom at Anna McCabe. They are happy with the progress she made and with the teachers. (Vol. II p. 19 L. 8 to 24) At some point, the Parents became more educated on the Student's unique specific needs as a deaf child and they listened to doctors' recommendations and listening

to the therapist at the auditory oral program. They also listened to parents of children with similar needs. (Vol. II p. 20 L. 19 to 25, p. 21 L. 1 to 13)

At the IEP meeting, the Witness and the Mother consistently voiced what they were told from experts and doctors. (Vol. II p 26 L. 17 to 25) Those needs are as follows: a teacher of the deaf throughout the day, a classroom acoustically geared to children with hearing loss, small class size and auditory oral training to help the Student listen. (Vol. II p. 27 L. 1 to 12) The Witness explained the list of concerns sent to Ms. Crudele and she responded. (π Exh. 7) (π Tab 18)

The Parents' goal is to return to the community school in the integrated classroom once the Student is prepared for successful inclusion. (Vol. II p. 35 L. 25, p. 36 L. 1 to 3)

The IEP of March 10, 2017 was reviewed with the Father. The Witness testified that there is no mention of listening skills in that IEP. (Vol. II p. 39 L. 1 to 13)

The Parents decided to place the Student in the auditory oral program (AOP) unilaterally and they believed it is the program that can satisfy the Student's unique needs. (Vol. II p. 40 L. 13 to 20) They chose the AOP program over the Anna McCabe program because from what they read and what they were told by experts this is a critical time for language acquisition. Prior to age five or six, the brain is such that it allows a child to acquire language more readily.

The Student was at a severe disadvantage from other deaf children that are diagnosed at six month old. (Vol. II p. 42 L. 2 to 17)

The Father testified that they had the Student evaluated for speech and language communication at Boston Children's Hospital on April 18, 2017. The Parents wanted a third party perspective evaluation on the Student to see if there was anything different from what had been recommended by the doctors and experts. (Vol. II p. 53 L. 18 to 23) (Because the report

from Boston Children's Hospital was not seen or considered by the March 10, 2017 IEP team, it was not in evidence.)

Cross examination began on September 12, 2017.

The Witness did not provide Dr. McGraft with a copy of Ms. Maguire's report. (Vol. VI p. 7 L. 11 to 15) He never asked Dr. McGraft to look at the program at Anna McCabe School. (Vol. VII p. 7 L. 13 to 15) The Father did not provide Dr. McGraft information from the School District. (Vol. VII p. 9 L. 8 to 10) The Witness did not attend any Parent training sessions at the NRIC (Vol. VI p. 10 L. 1 to 8) The Father testified that what he was asking for in the IEP is what the NRIC provides. The Witness acknowledged that the Student does not have goals or an IEP at NRIC (Vol. VII p. 11 L. 8 to 19, p. 12 L. 17 to 25)

When asked if the Witness believed that NRIC's program is better than that of the School District, the Father responded in the affirmative. (Vol. VI p. 14 L. 9 to 20)

The Parents continued with redirect examination. (p. 26)

The Mother receives services to help reinforce what NRIC teaches at school. (Vol. VI p. 26 L. 18 to 25) Teaching the Student to listen is one of the primary needs that the Parents were seeking. (Vol. 29 p. 29 L. 8 to 15)

The Father explained their state of mind when they put the Student into NRIC. They did not have three months, another 1/12 of her life, to spend in diagnostic testing at Anna McCabe in a program that is not auditory oral to see how she did and if she failed to send her to NRIC (Vol. VI p. 36 L. 2 to 9)

The School District re-cross examined the Witness. (p.36)

As to the School District-not-responding to the due process complaint, the School District did set up mediation after receiving the due process complaint. (Vol. VI p. 38 L. 9 to 16)

Whether the Student attended the Anna McCabe program or the one at NRIC the first 45 or 60 days would be for diagnostic purposes. The Father agreed. (Vol. IV p. 41 L. 1 to 2)

During the Father's testimony the Student was present and the Hearing Officer went to look at the hearing aids. The Hearing Officer spoke to the Student and the Mother explained the hearing aids. (Vol. VI p. 43 L. 12 to 25, p. 44 L. 1 to 8)

The Mother Testified on September 27, 2017

The Mother was called as a Witness by the School District.

The Mother went to their pediatrician with concerns about the Student before she was two years old and they started to investigate having tubes put in the Student. A little after two years they diagnosed the Student. The Mother did not understand why the Student was not diagnosed before her reaching two years old. (Vol. VII p. 8 L. 8 to 25) The Mother did not know when the Student had an ABR test (Auditory Brainstem Response) (Vol. VII p. 11 L. 6 to 22) The Mother testified that the Student passed the ABR test. (Vol. VII p. 12 L. 6 to 10)

The Witness did not know or did not remember the following: how much time lapsed between finding out the Student was fine (ABR Test) and the diagnosis from Dr. McGraft, did she ever go back to the first pediatrician, did she provide Dr. McGraft with a release for Valley Hospital, did Dr. McGraft follow up with the Valley Hospital, and who was the first pediatrician. (Vol. VII p. 12 L. 11 to 25, p. 13 L. 8 to 25, p. 14 L. 21 to 23, p. 15 L. 8 to 19)

The Meeting Street School IFSP was reviewed. (Δ Exh. 13) (Δ Tab 23) No one from the School District was at that meeting and the Witness gave her consent to implement that IFSP. (Vol. VII p. 18 L. 12 to 16, p. 19 L. 7 to 13) As to that document (IFSP), the Mother testified that Bayley Test was conducted poorly. (Vol. VII p. 22 L. 6 to 10) The Witness had an issue with the test done by the school psychologist, Peg Elmer. The Mother did not understand why Ms. Elmer

would give opinions concerning areas that were outside of her field of expertise (Vol. VII p. 26 L. 7 to 15)

As to Meeting Street School testing, the Mother agreed that she inflated the Student's abilities as well as the abilities of her other daughter when she was tested by the School District. (Vol. VII p. 27 L. 14 to 22)

The Mother found out that parental testimony is not allowed on the Bayley Test. (Vol. VII p. 31 L. 3 to 25) (Δ Exh. 25) (Δ Tab 22) (Email between Mother & Ms. Payton)

In a string of e-mails the Mother's opinion was that they did not feel that their concerns or opinions regarding the Student's needs for speech have been asked for nor heard. (Vol. VII p. 34 L. 14 to 23) (Δ Exh. 26) (Δ Tab 57) (Mother's e-mail)

The Witness did not agree with the statement that she was a member of the group that makes the decision on the educational placement of her child every step of the way. (Vol. VII p. 35 L. 10 to 14) She continued that she was told that she was part of the team but they did not have to listen to her. (Vol. VII p. 35 L. 15 to 19) The Witness never felt that she was part of the Team. (Vol. VII p. 36 L. 8 to 10) She continued and reported that she was told by Ms. Pelligrino, the physical therapist, that the Student only had to function. (Vol. VII p. 57 L. 12 to 13) The Mother was here to make sure her daughter gets what she desperately needs so that she can access the curriculum. (Vol. VII p. 39 L. 17 to 21) The Witness explained that there is a Rhode Island Bill of Rights for deaf and hard of hearing children but she believed that nobody is concerned about that. (Vol. VII p. 41 L. 2 to 6) Her understanding of that statement was that it doesn't matter what the Student's diagnosis is, it doesn't matter if the Student has problems, issues hearing or walking or whatever it may be, education wise, whatever the problems are, the

Student just needs to function, meaning that in the Witness' mind, she needs to just get by. (Vol. VII p. 46 L. 5 to 14)

The Mother did receive the parental rights and procedural safeguards information explaining the rights of parents under the IDEA which was very detailed. (Vol. VII p. 47 L. 1 to 5)

When asked if she understood the difference between listening and agreeing she responded that her daughter has listening problems that if you hear something you have to interpret the information but that might be too complex for (the attorney) to understand. (Vol. VII p. 50 L. 10 to 22)

The Mother testified that the Student's needs are very complex and that no one has understood that and that no one has listened to her. (Vol. VII p. 51 L. 1 to 3) The Witness testified that doctors and therapist advised that the Student needed an intensive educational program with people who specialized in hearing loss. (Vol. VII p. 53 L. 15 to 18)

The Witness agreed that the March 10, 2017 IEP was modified but she did not know the basis of the modification. (Vol. VII p. 63 L. 11 to 13)

It was not her understanding that the Student was in a diagnostic placement at NRIC (Vol. VII p. 87 L. 13 to 16)

The Witness testified that she was staying up all night researching the law on the internet because what she was being told at meetings was not what she was reading about in the IDEA. (Vol. VII p. 95 L. 10 to 24)

At the March 10, 2017 IEP Meeting the Mother was still concerned about the Student's placement. (Vol. VII, P. 998 L. 18 to 24)

The School District indicated it would be willing to have another IEP Meeting when Ms. Rizzo could be present. (Vol. VII p. 104 L. 4 to 14) As of March 10, 2017, the Student's birthday was less than a month away and they scrambled to come up with an idea of what to do with the Student by her third birthday. (Vol. VII p 105 L. 5 to 14)

As to the March 10, 2017 IEP offer, the Witness testified that it did not even come close to the Student's needs. It did not reference her BAHA or the maintenance of the BAHA and it did not talk about any of her environmental needs. When asked if Ms. Maguire said that the goals were individualized for the Student, the Witness responded that she did not know. (Vol. VII p. 107 L. 18 to 25)

On Cross examination the Mother explained why they wanted an independent speech and language evaluation and she testified that the listening and spoken language auditory oral program is not widely in use because it is for very rare incident children like the Student. There is a very low incident of this in Rhode Island. When discussing the results with Ms. Maguire they felt the Student's listening and spoken needs were not being met. (Vol. VII p. 120 L. 10 to 25)

Cross examination continued on October 25, 2017. The Mother explained the Student's disability. (Vol. XI p. 5 to 8) The Witness saw changes in the Student once NRIC started speech services. (Vol. XI p. 9 L. 18 to 25) As to testing, the Witness testified that she asked for testing and observation from the very beginning. (Vol. XI p. 23 L. 9 to 12)

The Mother did not think that they (School District) have the experience or knowledge about children with hearing loss. (Vol. XI p. 31 L. 18 to 24). As to the teacher of the deaf as found in the IEP, that person would not have one-on-one experience with the Student. (Vol. XI p. 32 L. 11 to 24)

The Witness was concerned about the size of the classroom. She testified that the classroom at Anna McCabe is over 1000 square feet and the one at NRIC is 700 square feet. (Vol. XI p. 34 L. 18 to 20)

The Mother pointed out at the IEP Meeting that the primary need for the Student above everything else is listening. The Student's EI therapist recommended it as did the Student's doctors. (Vol. XI p. 43 L. 17 to 25)

The School District began a re-direct examination of the Witness.

When the Witness was asked about Ms. Rizzo's testimony that NRIC did not perform any testing of the Student, she responded that she sent them testing from Boston Children's Hospital. (Vol. XI p. 46 L. 20 to 25) Later she testified that she was not sure. (Vol. XI p. 47 L. 5 to 8) The Witness was questioned about her expertise in giving her opinion concerning the Bayley Test, she responded that her opinion was warranted because she had viewed many tests for her two children with special needs and disabilities. (Vol. XI p. 56 L. 8 to 17) As to the Bayley Test, she observed the administering of the test at least once. (Vol. XI p. 56 L. 18 to 20) The Witness was questioned about Ms. Maguire's testing. Her response was that a child with hearing loss has different needs from a hearing child. The child is deaf by definition and the Student was not tested that way. (Vol. XI p. 59 L. 11 to 22) The Witness was asked if the receptive one word picture vocabulary test measures listening skills. She testified that she did not know (Vol. XI p. 61 L. 16) When asked if it was her testimony that Ms. Maguire did not know what she was doing when she administered the testing, the Witness answered that she is a member of AB Bell and the Early Hearing Detection Intervention Advisory Committee. Actually someone proposed her name to be a commissioner on the Board of the Rhode Island

Commission of The Deaf. She feels that she has a lot of knowledge in this area. (Vol. XI p. 62 L. 6 to 17)

The Witness testified that Ms. Maguire was to provide only speech services. (Vol. XI p. 77 L. 2 to 18)

Re-cross examination by the Parents was started. (Vol. XI p. 81)

The Witness' concern with Ms. Maguire was that she had three children with hearing loss but no experience with someone like the Student. (Vol. XI p. 81 L. 21 to 25, p. 82 L. 1 to 2)

Decision

The Early Intervention Service Plan by Meeting Street School of October 7, 2015 reported that the Student had significant delays, development delays in the areas of cognitive, five motor skills, expressive and receptive to communication. There were no needs in the areas of gross motor skills, adaptive skills, and social emotional skills. Vision and hearing were within normal limits. The family felt speech was the most important concern. The next evaluation by Meeting Street School was October 28, 2016, a year later. At that time the Student was wearing her hearing aids. It was determined that cognitive, expressive communication, vision, family circumstances, and social emotional skills were all within normal limits. On October 14, 2016, Dr. McGraft found that with the hearing aids audio thresholds were at level of mild hearing loss. The School Psychologist, Ms. Gallagher-Elmer, on October 27, 2016 observed the Student for one hour. She reported that the Student participated in an age appropriate manner, demonstrated good overall gross motor development and balance skills, as well as social skills. The Student interacted appropriately with adults, and peers, followed directions, and responded to both music and storytelling. The Student responded to verbal commands. She initiated limited speech when prompted. The Student was seen at Hasbro Children's Hospital for physical therapy evaluation.

The Parents chief complaint was that the Student had coordination difficulty, gross motor delay, poor endurance and weakness. The Student was two years three months old. The evaluation concluded that the Student needed physical therapy services. On December 2, 2016, Donna Rizzo reported that the Student's receptive language was approaching age level but expressive skills were in the 12-18 month range. She also reported that the Student had an extensive inventory of words acquired by age two which was between 200 and 300 words. Given the standards reported, the Student was well below average. Spoken language skills was in the 12 to 18 month range.

On December 2, 2016, the School District held a Team meeting to determine eligibility of the Student for special education services. The Team decided that the Student did not have a disability and was not eligible for special education services.

I find that the School District initial denial was not unreasonable based on the reports and evaluations from Meeting Street School, Dr. McGraft, Ms. Gallagher, Hasbro, and Donna Rizzo.

The evaluation reported in part that vision and hearing were within normal limits. Also, within normal limits were cognitive, expressive communication, vision, family circumstances and social emotional skills. Other positive results were that the Student's receptive language was approaching age level, the Student had an extensive inventory of words (268) by age two, with hearing aids, the Student audio thresholds were at the level of mild hearing loss. The Team had evaluations from Hasbro and Meeting Street School that were in conflict with each other.

The School District Team acted properly in its denial of eligibility by recommending additional testing for the Team to further consider the eligibility of the Student for special education. The School District requested personnel to perform a speech and language evaluation for the Student.

At the request of the Parents, a Team meeting was held on December 16, 2016 where they extensively described with the Parents the difference between assessments for a two year old and a three year old.

The Speech and Language Pathologist, Ms. Maguire, concluded on December 19, 2016 that the Student scored within the average range on all language testing, but the Speech and Language Pathologist recommended that the Student's language be monitored to ensure that she continues to develop those skills so that those skills remain within age expected levels.

The Parents' Witness concerning speech and language skills did not provide an evaluation equal to that of Ms. Maguire. Ms. Rizzo testified that her summary of the abilities of the Student concerning speech and language did not include age equivalent scores, percentile ranking and no standard scores. Ms. Rizzo's report was a summary and not an evaluation. Neither Dr. McGraft nor Ms. Storti provided any information that contradicted the findings of Ms. Maguire's evaluation.

I find that Ms. Maguire's input in the Team meetings leading up to the final IEP was very important.

The initial IEP meeting of February 17, 2017, developed a plan for the Student. Contrary to the Mother's insistence and repeated testimony that the IEP team did not listen to her, the very first IEP meeting did in fact provide a plan that took into consideration speech and language as well as gross motor skills. These goals were mentioned many times by the Parents up to and including the initial IEP.

It was at this IEP meeting that the Parents first suggested that the Student utilize the program at NRIC. Strangely, Ms. Rizzo, who works at NRCI was present as a consultant to the IEP team and she did not support the Parents' position in any way.

On February 22, 2017, the Mother e-mailed Ms. Crudele and gave her opinion concerning how speech and language education is to be implemented. She suggested that the Student needs to increase listening confidence, small class size, specialists, a person experience with auditory oral and the deaf, speech and language pathologist, and a teacher of the deaf.

Whether or not the Mother's suggestions are to be part of the IEP plan, according to law, is left to the decision of the school professionals. Rowley, 458 U.S. at 207, 102 S. Ct. 3034 Not even courts in their review of special education cases can substitute their own notions of sound educational policy for those of the school authorities. Rowley, 458 U.S. at 206, 102 S. Ct. 3034. This does not mean that the final IEP is automatically appropriate and it can be challenged by the Parents as in this case. I compliment the Parents for their concern and involvement with their disabled child and wanting what they believed to be the best program for their child. The IEP of February 17, 2017 was rejected by the Parents.

The Parents have every right to do everything within their power to convince the School District of the appropriateness of their suggestions and concerns. The law requires a school district to take the Parents wishes seriously when formulating an IEP. Papron v. West Clark Community Schools, 230 F. Supp. 2 d. 910 at 943, 2002

I Find that the School District did in fact take what the Parents suggested very seriously throughout the entire IEP process.

On February 28, 2017, every concern raised by the Parents were dramatically addressed by the School District. It specifically addressed in a five page document (π Ex. 7) (Tab 18) the following Parent concerns: Acoustically appropriate classroom, class room set up, visual support, assistive technology, BAHA use and maintenance, and academic consideration. I find

the School District responses to be detailed and extremely informative. This document clearly establishes that the Parents were listened to by the School District.

On March 6, 2017, the Parents completed a central registration form registering the Student with the School District with enrolment at the Anna McCabe School in pre-kindergarten starting April 7, 2017.

On March 10, 2017 an IEP meeting was conducted. The purpose was to review evaluation results from Hasbro. The IEP was to be revised to reflect current recommendations.

The March 10, 2017, IEP was the final IEP. It had many amendments. (See IEP Review page 14) Was this IEP appropriate and did it provide FAPE?

Before we consider this issue it is important to point out that the Parents did not make any allegation that any procedural rules of the IDEA were violated.

It should be noted:

The burden of persuasion
in an administrative hearing
challenging an IEP is
properly placed upon the
party seeking relief – whether
that is the disabled
child or the School District
Schaffer v. Weast, 546 U.S. 42, 126 S Ct. 528

A free, appropriate, public education was defined by the Supreme Court in the following manner:

A free appropriate public
education specifically designed
to meet the unique needs
of the handicapped child, supported
by such services as
are necessary to permit
the child to benefit from
instruction. Board of Education
of Hendrick County et al v.
Rowley 458 U.S. 188 & 189, 102 S. Ct. 3034

In a recent Supreme Court Case, Douglas County School District RE-1, in referencing the Rowley case said:

“We will not attempt to elaborate on what “appropriate” progress will look like from case to case. It is the nature of the Act and the standard we adopt to resist such an effort: the adequacy of a given IEP turns on the unique circumstances of the child for whom it was created. This absence of a bright-line rule, however, should not be taken for an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review.

At the same time, deference is based on the application of expertise and the exercise of judgment by school authorities. The Act vests these officials with responsibility for decision of critical importance to the life of a disabled child. The nature of the IEP process from the initial consultation through state administrative proceedings, ensures that parents and school representatives will fully air their respective opinions on the degree of progress a child’s IEP should pursue.” Andrew v. Douglas County School District RE -1, 137 S. Ct. 1002

After the March 10, 2017 IEP meeting, the Parents rejected the IEP and on March 23, 2017, by letter, notified the School District that they were unilaterally placing the Student at the Northern Rhode Island Collaborative.

The Parents were fixated on time and to have a program begin as soon as possible. It was brought out several times during the Parents’ testimony that it was imperative that the Student have speech therapy. The Father said at the February 17, 2017 IEP meeting that the Student urgently needed speech therapy. During his testimony he stated that they chose the AOP program at NRIC over Anna McCabe program because it was a critical time for language acquisition. They did not want the Student to spend time in a diagnostic setting at the Anna McCabe School. None of the Parents’ expert Witnesses made such a statement. It should be noted that the placement at NRIC was in fact a diagnostic placement.

To determine FAPE, it is incumbent on the educational experts to look at the last IEP offered to the Student.

The last IEP offered was on March 10, 2017. Thereafter, they must ascertain whether that IEP offered a free, appropriate public education according to the law.

To meet its substantive obligation under the IDEA a school must offer are IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. Andrew V. Douglas County School District, 137 S. Ct. 992.

It is imperative that the experts review the program being offered by the School District in order to provide compelling opinions and evidence as to whether or not the last IEP provided FAPE.

Dr. McGraft's testimony concerning the Student's disability was thorough and useful in understanding the disability and the Student's use of the BAHA hearing aids. As of January 20, 2017, the only information he had about the School District came from the Mother. The Doctor had no knowledge of the March 10, 2017 IEP. He never reviewed that IEP. In essence, he had no opinion as to appropriateness of the March 10, 2017 IEP.

Ms. Brenda Storti was another expert witness for the Parents. She explained her program at NRIC but she did not have any knowledge of what the School District offered in the IEP. Again, this Witness did not provide anything concerning the appropriateness of the proposed IEP.

The only Parents' Witness to offer an opinion on the IEP other than the Parents was Ms. Donna Rizzo. She was qualified as a speech and language pathologist and also as an expert in hearing technology of the hearing impaired and physical attributes of the environment where the hearing impaired are going to be educated. This Witness was in a very difficult position. The

NRIC provides consultation services to the School District. She was involved in the IEP process of the Student. She attended the February 17, 2017 IEP meeting. She knew that the School District was recommending a placement at Anna McCabe integrated program. She never once recommended that the Student should be placed in the NRIC program. She never said that the integrated preschool classroom at Anna McCabe was not an appropriate placement for the Student. She testified that she tries to be neutral without being a catalyst as to placement. Ms. Rizzo claimed that she told Ms. Crudele in a conversation that the Student needed a teacher of the deaf, needed placement of NRIC, and needed speech every day. This information should have been given to the Team in a formal manner at the IEP meeting. Her summary concerning the Student never recommended placement at NRIC. The fact that NRIC was available to the School District for consultation, she had an obligation to give her advice to the Team. Being neutral was not an option. It must be remembered that the Student was dropped off at NRIC. This put Ms. Rizzo in a very difficult position. Her testimony was such that it was not at all persuasive to this Hearing Officer.

In contrast, the testimony of the School District's expert Witnesses was very persuasive.

Ms. Colleen Payton is the early childhood coordinator for 20 years, conducts child outreach screening, a leader of the evaluation team, LEA for preschool children with disabilities, administrator of OSEF child outcome summary, early intervention transaction coordinator, and liaison to the community and a resource to families. She is an expert in early childhood special education. She testified that Ms. Rizzo's enumerations in her summary as to what is appropriate access to language are available at Anna McCabe School. Mrs. Payton felt that Anna McCabe was the least restrictive environment for the Student compared to the program at NRIC. As to observation at the NRIC she had many criticisms. Her testimony overall was very persuasive.

Anne Marie Maguire is a speech pathologist for the School District. She testified that there was nothing in Ms. Rizzo summary that would preclude the Student from being educated in the integrated preschool at the Anna McCabe School. She concluded her testimony by giving her expert opinion that the IEP of March 10, 2017 provides the Student with FAPE in the least restrictive environment. Her testimony was very persuasive.

Bobbi-Jo Carnevale testified. She was qualified as an expert in Early Childhood Education and Early Childhood Special Education. She described the Brightstars program for preschool centers and that Anna McCabe had a four star rating. They also belonged to the National Association for the Education of Young Children. She explained the interactive observation in her classroom where the Student interacted with typically developing peers. She observed the program at NRIC where she viewed the auditory oral program (AOP) classroom which she criticized because there was no opportunity for incidental learning and for other reasons. Ms. Carnevale's opinion was that the IEP of March 10, 2017 would provide the Student meaningful progress in the academic area and provide the Student with a free, appropriate public education. Her testimony was very persuasive.

Eileen Crudele testified. She is the Director of Special Education for the School District. Her responsibility is to ensure that all state regulations and the IDEA are followed. She services students from 3 to 21 years of age.

In the City of Pawtucket she planned and coordinated special education services for 1,400 students with disabilities in 15 schools. In East Providence she planned and coordinated special education services for 900 students with disabilities.

As Special Education Director in the School District and in the other cities she coordinated staff, schedules and resources to ensure students receive a free, appropriate, public education.

She described her involvement with the IEP process for the Student. Her conclusion was that the IEP of March 10, 2017 affords the Student with a free, appropriate, public education in the least restrictive environment, affords the Student meaningful academic progress, affords the Student meaningful progress in the social domain, provides the Student social interaction with peers, addresses the Student's emotional needs.

Her testimony was very persuasive.

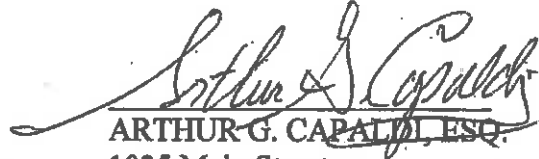
The Mother and Father both testified. I find them to be very caring and devoted Parents. Contrary to the Mother's testimony that she was never listened to by the Team, I find that the Team did listen to the Parents. This is evident by looking at the IEP development that included many concerns of the Parents. The Mother and Father learned much about special education and its relationships to the hearing impaired. However, their knowledge and expertise does not compare to the many years of experience and knowledge of the school officials who testified and whose responsibility, under law, is to formulate and develop an IEP for disabled children like the Student.

I find that the final IEP of March 10, 2017, does provide the Student with a free, appropriate, public education. Placement at the Anna McCabe School is appropriate. The Parents request for reimbursement for the out of district placement is denied.

DATED:

January 19, 2014

HEARING OFFICER



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