

DELAWARE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION DUE PROCESS HEARING PANEL

In the Matter of)	DE DP 12-2
)	
(“ Student”))	ORDER
Petitioner,)	Hearing Dates: September 26, 2011
v)	September 30, 2011, October 4, 2011
COLONIAL SCHOOL DISTRICT)	Date of Order: October 17, 2011
School District (“District”))	

Counsel for Student/Parents: Mark W. Voigt, Esq., 600 W. Germantown Pike, Suite 400, Plymouth Meeting, PA and John V. Work, Esq., P.A. 800 N. King St., Suite 303, Wilm., DE 19801(Mr. Work did not attend hearing excused by DOE Order)

Counsel for District: John H, McMackin, III, Esq. , Morris James LLP,500 Delaware Avenue, Suite 1500, Wilm., DE 19801

FINAL ORDER AND OPINION

I. INTRODUCTION

Student is 8 years 11 months at the time of hearing and presently attends private school at the TALK Institute and School (“TALK”). Student has been attending TALK since September 7, 2010 (Parent’s Exhibit 29, p.290). This is the second due process hearing. The prior due process hearing DE DP 10 -20 was dismissed without prejudice and a private settlement agreement entered with District not admitting liability and Parent waiving all claims up to September 8, 2010, and agreeing to pay \$62,000 for Student’s 2010-2011 school year at TALK (less credits for any, if any, Medicare or insurance reimbursements), plus \$40 per day transportation and mileage calculated per the IRS formula. District’s Exhibit 22 p. D433-D439 (“2010 Settlement Agreement”). Student has been identified with the Autism Spectrum of Disorders.(District’s Exhibit 1, page D2), classified as a High Function Autistic Disorder(Parent’s Exhibit 14, p. P14) with Language Disorders (Parent’s Exhibit 14, p. P14) (Parent’s Exhibit 36, p. 428)

Mother filed this Due Process Complaint DE DP 12-2 on August 2, 2011 attached as Parent’s Exhibit 38 p.435-444 (“Complaint”). The Complaint requests that: Student be identified as a child with a disability in each and every way that Dr. K.M. identified Student in her report; requests reimbursement tuition, fees, supplies and books at TALK for the 2011-2012 school year; provide Student transportation or reimburse transportation at \$40 per day plus IRS mileage rate and reimburse Dr. K.M.’s Independent Educational Evaluation (“IEE”) .

A Prehearing Conference was conducted and a Prehearing Order entered on September 7, 2011. Two and a half days of hearing were held over September 26, 2011 (full day) September 30, 2011 (full day) and October 4, 2011(a half day) and Parent submitted 537 pages of Exhibits and a DVD and District submitted 439 pages of Exhibits (albeit District’s Exhibit 2 and Parent Exhibit 32 are the same document).This decision is entered after a review of the above evidence.

II. SUMMARY OF DECISION.

This decision was an extremely close. Two of the Panel Members, Mrs. Julie Johnson and Dr. James V. McLaughlin favor, order and grant Parent tuition and fees of \$62,000 for the 2011-2012 school year at TALK only, without prejudice as to any obligation after that, and \$40 per day transportation cost, plus a reimbursement of parents of the mileage at the standard IRS rate within thirty (30) days of the end of the 2011-2012 school year at TALK, and no award for reimbursement of the cost of Parent’s witness Dr. K.M.. The dissenting panel member, Gary R. Spritz, Esq. would deny the claims in totality. While there was disagreement as to the grant of relief of the Panel, there was an agreement as to the testimony and exhibits reviewed and the findings of facts except to the extent inconsistent as set forth in the dissent.

III. TESTIMONY AND EXHIBITS

A. Mother of Student testified that:

1. Student has autism, social skill, learning, receptive and expressive language disabilities. For example, Student is non-responsive to questions and at present, while Student shows an interest in playing with other children, that interest disappears when extensive language is involved due to Student's language disorder. N.T. 9/26/11 at p. 24, p.32, 63. However, this improved since 2010-2011 at TALK, as prior thereto, Student did not interact with peers, was involved in activity around other children, but did not participate. N.T. 9/26/11 at p. 32.
2. Paragraphs 3 through 4 are set forth for background only.
3. On 12/12/2009 while in District, Student was evaluated by a speech language pathologist C.K. because of his severe language needs. N.T. 9/26/11, p.34, Parents Exhibit 4. ("CAPEVAL 1") CAPEVAL 1 revealed Student was significantly below average with language fundamentals. Mother indicated this, manifested in Student's difficulty in forming sentences and inability to do first grade home work. N.T. 9/26/11, p.34-35. Despite Mother's concerns about Student's - insufficient progress in language skills and the IEP's insufficient occupational therapy (tapping on shoulder and verbal promoting not enough), Mother signed the District's 12/17/09 IEP set forth as Parents Exhibit 5. N.T. 9/26/11, p.35-36. Later during Student's first grade year at District, the IEP team reconvened and Mother disagreed with Student's placement in resource room as children in this resource room were independent (unlike Student) and on a different grade level than Student. N.T. 9/26/11, p.37-38. Parents 6. The District did a new IEP for Student on 2/22/10. Parents 10. Mother disagreed with this 2/22/10 IEP as Student was not ready to be integrated into general classroom full time (N.T. 9/26/11, p.43) and the IEP lacked meaningful information as to goals and about Student's behavior, attention skills, written communication. N.T. 9/26/11, p.44-45. District in response to Mother's above concerns placed Student in resource room for a month where Mother testified Student made little progress and was just a body. N.T. 9/26/11, p. 47-48.
4. Mother and District agreed to submit Student to an Independent Educational Evaluation conducted by Dr. K.M., Parents Exhibit 14 ("KAYVAL 1") which Mother shared with District. Notwithstanding having KAYVAL 1, District in its 6/7/10 IEP (attached as Parents Exhibit 18) offered Student 2d grade with no supports and Mother was told by Dr. C.J. that District did not offer aides. N.T. 9/26/11, p.48-52. Mother further testified that she felt this 6/7/10 IEP lacked an appropriate level of speech and occupational therapy services. N.T. 9/26/11, p.52. 56 as well as an insufficient description as to how District would measure Student's progress. N.T. 9/26/11, p.53. Mother testified that Dr. K.M. in her IEE recommended Student be evaluated at TALK for 1 week. N.T. 9/26/11, p.58. Mother filed a prior due process matter.

5. Student was accepted at TALK and enrolled there the ensuing 2010-2011 school years. N.T. 9/26/11, p.58-59. This occurred pursuant to a settlement agreement attached as District's Exhibit # 22 that led to the dismissal with prejudice of a prior due process case as well as all Student's claims prior to 9/8/11.
6. During the 2010-2011 school year, Mother went to TALK, three (3) times for Occupational Therapy and once to view Student in classroom. N.T. 9/26/11, p.60. TALK, unlike District, employed the brushing technique which was rubbing Student's legs, arms and stomach with a surgical brush that Mother testified soothes student. N.T. 9/26/11, p.60. While at TALK, Student did own homework, was happier and Mother was satisfied with progress. N.T. 9/26/11, p.61. For example, in comparing Student reactions to the two schools, Mother clarified that at days end pick up at District in 1st grade Student was nonresponsive to Mother's inquiries about his day whereas now at TALK he responds to questions in affirmative, negative or short sentences N.T. 9/26/11, p.144-145.
7. Mother testified as to District's minimal role in the IEP done at the private school TALK on 11/2010. N.T. 9/26/11, p.65. This 11/23/11 TALK IEP is attached as Parent's Exhibit 29.
8. The District conducted a new IEP for 2011- 2012 school year. Parent's Exhibit 32 and District's Exhibit 1. Mother at the 4/21/11 meeting, admitted she told District it did not have anything that was appropriate for Student and that was why she would not consider District's Program. N.T. 9/26/11, p.67-68.
9. Mother as to the District 4/21/11 IEP, Parents Exhibit 32, described District's program as incomplete since it had no teachers and District did not provide answers as to curriculum or other matters. N.T. 9/26/11, p.69. Mother contended that District was required per the settlement agreement to have a complete and full program for the Parent to consider. N.T. 9/26/11, p.69. However, while it is understood that Mother is not an attorney, a review of the Settlement Agreement set forth as District's Exhibit 22 p. D-434-439 indicates the settlement agreement did not state this. Rather, the closest statement thereto is subparagraph B 5 of District's Exhibit 22, p. -436 which says that District:
will conduct its classroom observation /psycho-educational testing of [Student], if any and convene an IEP meeting no later than May 1, 2011.
[District] will permit representatives of TALK, to attend the IEP meeting, either in person or by telephone at Parent's discretion. Thereafter [District] will prepare and circulate a new IEP for [Student] no later than May 15, 2011." *(bracketed materials substitutes names of District and Student to preserve privacy).*
District's Exhibit 22.
10. Mother further testified she did not recall whether there was any discussion as to Student returning to TALK initially later to say there was no discussion about Child returning to TALK. N.T. 9/26/11, p.71.

11. Mother took Student, on March 3, 20, 2011 to be retested by the Speech Pathologist C.K. to determine what progress Student made and testified that the gains noted C.K.'s report as to expressive and receptive language were due to Student's time at TALK. N.T. 9/26/11, p.73. Parents Exhibit 33 ("CAPEVAL 2") Mother categorized C.K. as recommending speech therapy three time per week at 30 minutes per session, but the District, despite having CAPEVAL 2 only offered Student speech therapy two times per week, 30 minutes per session, while TALK provided 8 ½ hours week of Speech N.T. 9/26/11, p.73-74.
12. Mother on May 2, 2011 took Student to Kennedy Krieger to evaluate Student's Occupational Therapy needs. N.T. 9/26/11, p.76. Mother also testified she took Student to Dr. K.M. for a follow up evaluation set forth as Parent's Exhibit 35 ("KAYVAL 2") and provided it to the District and despite providing this to District they made no meaningful changes to Student's placement. N.T. 9/26/11 at p.77. Dr. C.J. on cross examination testified he did receive a June 18, 2011 letter from Parent's Counsel enclosing KAYVAL 2 and request that an IEP meeting to be convened within ten (10) days thereof, and that they contacted Parent's Counsel who stated that parents would not meet unless District agreed to change the setting to TALK, but had no written documentation to support this. N.T. 9/30/11 at p. 752-753.
13. Mother met with District on June 8, 2011 about 2 and ½ months before school at District would start and the new speech pathologist assigned to Student had not read the District's 4/21/11 IEP (which was later confirmed in the testimony of District's witness. Dr. C.J.)Also there, Mother saw safety issues where Student would receive Occupational Therapy due to a lack of sufficient padding. N.T. 9/26/11, p.80. Later Mother saw and admitted that there were 2 adults with the children on the mats, 9/26/11, p. 131. Mother further testified that District's Dr. C.J. informed her that a peer ambassador program would be used in the general education settings in the social studies and science blocks. N.T. 9/26/11, p.81 and later clarified that this program as "Autism Ambassadors" a program Mother believed be designed by a 10th grader in California and that this program was inappropriate for another 9 year old to teach Student Social Skills as her son Student lacked language skills. N.T. 9/26/11, p.82.
14. Mother placed Student in TALK for the 2011-2012 school year because they have a program that meets student needs. N.T. 9/26/11, p.90 and specifically that Student has moved on to "story work", Student's pronunciation and language and his ability to self-regulate his emotions to not distract himself from school work had improved. N.T. 9/26/11, p.90-91.
15. On September 23, 2011 Mother visited the setting which District proposed for Student in 2011-2012 ("CASL") and described CASL with its 5 students as a joke, chaotic, without pull outs for Speech and Occupational Therapy, an over

(15. Ctd.) reliance on paraprofessionals to teach core subjects, a lack of individualization for lessons for the very different 5 students Mother described CASL's Occupational Therapy room as unsafe with the Children just running around, a lunch room where the 5 children in CASL did not interact with the other 100 or so typical children, and a gym class where the supervision of the 5 children was so lax that one CASL child wandered off. Mother believed that Student would regress in CASL. N.T. 9/26/11, p.92-97. District's witness, H.C., the occupational therapist testified that District's, the CASL setting for Student was not chaotic. N.T. 9/30.11, p.583. Dr. W.V. another district's witness testified that while at CASL a child(other than the one at issue in this case) was having a tough day, but staff was doing the best it could to redirect, engage and interest student, but that he saw the same thing at TALK. N.T. 9/30/11 at p. 851. Mother testified that she did not observe disruptive behaviors with Children at TALK. 9/26/11, p. 140.

16. Mother testified that while in 1st grade Student was absent 27 times. N.T. 9/26/11, p.114.

17. Mother testified that Student is brushed twice a day at TALK. N.T. 9/26/11, p.117.

18. Mother, at some time before the District IEP meeting, informed District that she would like Student to attend TALK school for "several" more years and then to the Centerville School and that she did not want Student to go to public school. N.T. 9/26/11, p. 121, and p. 125. Mother later said that after speaking to Dr. K.M. "two more years will do it . It's not forever. TALK's not forever, you know. 9/26/11, p. 121, line 15-17.On this point, Mother later on cross, testified as to Student's future ability to return to a public setting that, "I believe at some point in his life, he will be able to go back and function. Not right now. But again, in five years where will [Student] be, I can't speak on that...." N.T. 9/26/11, p. 141-142.

19. Mother also testified she did not recall saying that Dr. K.M. would provide her family's perspective on IEP. 9/26/11, p. 124, but that she had not made up her mind at the 4/21/11 IEP meeting. 9/26/11, p. 125-126.

20. Student's program at TALK does differentiate for grade levels. 9/26/11, p. 140 and Mother indicated she would have to defer to M.K. of TALK as to how to accomplish a transition to a grade level program.N.T. 9/26/11, p. 142.

21. Mother testified that she does brushing of Student at home despite not being an occupational therapist. 9/26/11, p. 143. Mother testified that Student is brushed twice a day at TALK. N.T. 9/26/11, p.117.

- B. Dr. K.M. testified for Student. She is a Nationally Certified School Psychologist, Delaware Psychologist who does educational evaluations. N.T. 9/26/11, p.148 whose curriculum vitae is attached as Parent's Exhibit 44 N.T. 9/26/11, p.149. who was qualified as an expert without objection and testified:
1. Student was referred by parents and school district agreed to pay costs of initial evaluation of 5/27/10. N.T. 9/26/11, p.150-151.(Admitted as to background only)
 2. Student has a language processing problem diagnosed by Dr. B, a neurologist with an encephalopathy problems, and symptoms of pervasive developmental disorder with temper tantrums that appeared to coincide with Student's inability to communicate that was classified by district as Autistic. N.T. 9/26/11, p.152.
 3. During her initial 5/27/10 testing Student burst into tears for unknown reasons and needed frequent breaks. N.T. 9/26/11, p.152-152. However. at that evaluation whose results are set forth as Parent's Exhibit 14 ("KAYVAL 1"), Student in Wechsler Intelligence scale showed good scores on non verbal visual tests, but low scores on tests that required comprehension, " the ability to reason his way through a verbal problem" (N.T. 9/26/11, p.154) with slower clerical function and low short term memory scores. (N.T. 9/26/11, p.154), comprehensively testing in the borderline test on the Wechsler IQ test with a high language load but on the high average in the nonverbal version of the Wechsler given to English as second language students and students with language processing impairment. N.T. 9/26/11, p.154. Student scored "very low on receptive and expressive language test. N.T. 9/26/11, p.154-155. On the Wechsler Achievement test, Student's basic reading and phonetic decoding skills were fine (N.T. 9/26/11, p.155), his Math Skills a little low, good rote spelling skills, but trouble with listening comprehensions, verbal expressions. N.T. 9/26/11, p.156. As to Mother's and teacher's responses on Asperger's questionnaires (questionnaire as to whether Student suffered from Asperger's), Mother saw a lot more symptoms as to Asperger's then Teacher and Dr. K.M. notes that persons with the Asperger's classification often displayed a greater facility in using language that Student did (N.T. 9/26/11, p.156, 160), but assessed Student as high functioning autistic not Asperger's due to Student's low verbal skills and higher nonverbal ones. N.T. 9/26/11, p.160. Dr. K.M. visited District only once on the last day of school in 2010 due to scheduling issues and viewed this as less than idea presumably because the academic component on the last day of school differs from the typical day(N.T. 9/26/11, p.157-159), but noted that Student's didn't interact with the other students and provided single word responses. N.T. 9/26/11, p.159. Dr. K.M. assessed Student as having learning disabilities manifesting in inability to comprehend verbal what he said and synthesizing his thoughts into sentences describing student's central areas of difficulties and need for intervention as speech and language problems. N.T. 9/26/11, p.163.

4. Dr. K.M. recommended certain programs nonexclusively intended to bridge student language and communication difficulties such as “Teach Me Language”, the Lindamood Bell and foresaw a window of opportunity to bridge Student’s language deficits that would close once Student reached ages 10-11. N.T. 9/26/11, p.163. Dr K.M. reasoned that Student’s social deficit stemmed from his language deficiencies. N.T. 9/26/11, p.163. Dr. K.M. further testified that the teaching method should use Student’s High visual spatial abilities and links them to language. N.T. 9/26/11, p.165. Dr. K.M. recommended a behavioral approach ABA with a strong verbal and language skills. N.T. 9/26/11, p.166.
5. As to schools, Dr. K.M. suggested the Talk School and the Lindamood Bell Center in Bryn Mawr., and Vanguard but that Student’s language was too deficient for Vanguard.
6. Dr. K.M. testified that TALK had a strong track record of working with kids where language is the central issue and categorized TALK as following kind of ABA/behavioral model with an emphasis on language through the Association Method which has a high amount of visual, very practice orientated, sequential and systematic N.T. 9/26/11, p.167-168.
7. Dr. K.M. testified that the Association method did not get traction in research, not because it did not work, but because it did not get traction with dyslexic type kids where the majority of research was conducted. N.T. 9/26/11, p.168.
8. Dr. K.M. thought the Talk Schools emphasis on language was the key to improving Student’s other abilities to function. T. 9/26/11, p.169. This was echoed M.M., TALK’s speech pathologist.
9. Dr. K.M. testified about her follow-up 5/20/11 evaluation of Student, which was done at Parent’s sole request, to determine whether Student had progressed during the year at TALK. N.T.9/26/11, p.171-212, Parent’s 36 (“KAYVAL 2”). Dr. Dr. K.M. tested at TALK, again noted Student’s crying for no apparent reason(N.T. 9/26/11, p.175) and did the same testing she had done the prior year (Parent’s 14 .T. 9/26/11, p.176). In listening comprehension on KAYVAL 2, Student’s score’s went from 64 to 68 [Compare. Parent’s Exhibit 14, p.83 to Parent’s Exhibit 36, Page 398] (N.T. 9/26/11, p.176) and the oral expression scores went from 46 to 57 [Compare Parent’s Exhibit 14, p.83 to Parent’s Exhibit 36, Page 398 N(.T. 9/26/11, p.177)]which Dr. K.M. testified was more than a years’ worth of progress in listening comprehension, the increase in 11 points was a big deal, Student’s reading comprehension went from a 1.1 grade equivalent to a 1.9 grade equivalent, word reading went up from a raw score of 93 to 97, phonetic decoding 99 to 101, and reading fluency 88 to 92, Math from grade 1.4 to grade 2.6 and only spelling went from 2.1 grade equivalent to 2.5 grade equivalent. 398 (N.T. 9/26/11, p.178). As to raw scores improvements, Dr.

(ctd.) K.M. said there was not necessary a correlation with grade equivalents. (N.T. 9/26/11, p.179). Dr. K.M. further noted increases in Receptive Vocabulary from Raw Scores of 7 to 15 but the still low scores in these areas as supporting an remaining need for Student [Compare p.82 of Parent's Exhibit 14 to p.408 Parent's Exhibit 408] (N.T. 9/26/11, p.178. -185). In summary, Dr. K.M. testified that TALK was "doing the job" but Student has "a long way to go" (N.T. 9/26/11, p.188). Dr K.M. later testified that she had been to TALK a couple of times for other children besides Student and once total for Student for 1.5 to 2 hours of observation outside of testing and she saw no take outs for Student for Speech Therapy (or speech therapy specific to Student) or Occupational Therapy (and no occupational therapy other than brushing). N.T. 9/26/11, p.198-200.

10. As to District's proposed 4/21/11 IEP for the 2011-2012 School Year (Parent's Exhibit 32, P355-P372), Dr. K.M. testified that it was not FAPE since it was not configured to Student's particular need for an intensive language program when the critical window as to language development slowed/ closed on Student's 10th or 11th birthday. N.T. 9/26/11, p.206-208.
11. Dr. K.M., as to District's proposed 4/21/11 IEP, testified that the classification as autism was deficient in that it should have stated multiple handicapped or referenced speech and language as Speech and language was Student's primary deficiency(N.T. 9/26/11, p.190), the District's IEP lacked inclusion of the data from her evaluation, the Kennedy Krieger Occupational Therapy Evaluation, and Dr. B and the 4/21/11 did not pass the "stranger test" meaning that a stranger could not pick up the IEP and know exactly how to work with Student and as examples, noted the lack of specificity as to what would be done for Student in Reading Comprehension in the way of naming a specific program ((N.T. 9/26/11, p.191-192). There was vagueness as to Math in that if District intended to use general education curricula there lacked a description of adaptations for Student. ((N.T. 9/26/11, p.193). As to pragmatic language Dr. K.M. testified that District's 4/21/11 IEP for the 2011-2012 School Year, Parent's Exhibit 32, p. 361, there was no baseline stating where Student started. N.T. 9/26/11, p.194. As to the proposed setting in District's 2011-2012 IEP in a separate special education in an integrated setting, Dr. K.M. indicated that it could be done in a public school, but only if correctly customized to Student (and she did not see this as being done from the 4/21/11 IEP-N.T. 9/26/11 at 203. Dr. K.M. stated Student was progressing at TALK. N.T. 9/26/11, p.197. Dr. K.M. testified that while the program District intended to use, "Devereaux" had some merit it was not individualized to Student's need for intensive language therapy infused throughout the school day. N.T. 9/26/11, p.204-205,208. However, Dr. K.M.'s basis for this statement was unclear in that she had not visited District's classroom for the 2011-2012 year and in 2010 had only spent 45-50 minutes at District on non-academic, day, only spent 1.5-2 hours other than testing with Student at TALK during the 2010-2011 school year. Dr. K.M. further expressed a hope that Student would make meaningful progress if at TALK during 2011-2012. N.T.

(11 ctd.)9/26/11, p.209-210 and would need a couple of more years at TALK. Dr. Dr. K.M. testified that her charge for the IEE was \$3,500.

12. Dr. K.M. on cross examination testified that:
 - a. Student would benefit from skill training N.T. 9/26/11, p.217;
 - b. Student did not increase one grade level in all areas tested despite a year between tests. N.T. 9/26/11, p.224;
 - c. the Association Method used at TALK was not an “established” methodology N.T. 9/26/11, p.225, and the sensory integration treatment at TALK was unestablished and that Dr. Dr. K.M. did not know of any research supporting that Sensory Integration used at TALK was effective for Autistic Children. N.T. 9/26/11, p.227.
 - d. As Applied Behavioral Analysis Dr. Dr. K.M. testified while that was not the model upon which TALK based their instruction, TALK used elements of it. N.T. 9/26/11, p.229-230.

13. As to District’s 4/21/11 IEP for the 2011-2012 School Year, Parent’s Exhibit 32 and District 1, Dr. K.M. when asked what was deficient indicated she would have changed classification from “autism” to language disabilities (but admitted she did not know whether or not Delaware law at the time permitted listing multiple handicaps in an IEP, included parental input that was blank and multiple sources of data. She indicated that she did not know whether District had the Occupation Therapy Report of May 12, 2011 at the time they did the IEP, that Dr. Dr. K.M. did not convey to District the need for more detail in the IEP (N.T. 9/26/11, p.241 and that she did not indicate whether the level of related services was enough or not in District’s IEP for 2011-2012. N.T. 9/26/11, p.243 and that she question whether District had enough language enrichment’s as it lacked a full complement of language goals, objectives and methodologies and that District needed to work with TALK on them. N.T. 9/26/11, p.245.

14. As to the Association Method, Dr. K.M. testified that a distinguishing feature was the strong visual component with intensive linguistic therapy and that she did not know of any studies discussion the pros and cons of the Association Method for high functioning autistic children and her connection was this case only. N.T. 9/26/11, p.258-259.

15. On recross, Dr. K.M. clarified that her statement that certain materials done after 4/21/11 the date District presented parents with the IEP needed to be included (despite their nonexistence at the time since the IEP was an evolving document and the District had 4 and ½ months to make changes to the IEP, make another IEP, but had not. N.T. 9/26/11, p.254-255. Dr. K.M. further testified that there was a lack of research for high functioning autistic children. N.T. 9/26/11, p.257.

C. M.K. testified that she is the Executive Director at TALK for the 10 years it existed, has a Master's in Education and trained in Association Method. N.T. 9/26/11, p.260-263 including a 5 day graduate course for 3 credits. N.T. 9/26/11, p.314 and:

1. Student started at TALK in September, 2010 (N.T. 9/26/11, p.288) and Student's schedule through November, 2011 is set forth in Parent's Exhibit 46. N.T. 9/26/11, p.288-289. There are 15 students at TALK in 3 classes/levels divided up by need of child, not age. N.T. 9/26/11, p.291. About ½ of the children at TALK are autistic. N.T. 9/26/11, p.320.
2. Student was at beginning level last year and now second level, the story level, where there are 6 or 7 children. N.T. 9/26/11, p.229-230, of which 3 are autistic (N.T. 9/26/11, p.319) and at present, there is only 1 child in the advanced level (who is in his 6th year at TALK) and about six (6) at the beginning level. N.T. 9/26/11, p.294-296. To graduate TALK, a child's speech and language testing have to be at grade level or a year behind grade level. N.T. 9/26/11, p.323. Since opening ten (10) years ago only three children have graduated of the approximate 25-30 that attended TALK and went to a public school (N.T. 9/26/11, p.261,324, 327). and approximately five others went to private schools approved by public schools. N.T. 9/26/11, p.327.
3. The Charge for Talk is \$62,000 per year for an 11 month program. N.T. 9/26/11, p.302. TALK in a full day intensive speech and language school at which prior to acceptance student spends a full week to see if they will benefit from the method used, the Association Method. There are between 4 and 8 schools which M.K. thought used the Association method in the U.S. N.T. 9/26/11, p.317.
4. The Association Method is a multi-sensory phonics method to teach children to read, write, process and speak and is part of the Orton Gillingham family of methods N.T. 9/26/11, p. 263.-265. Children start with units of sound called phonemes with each child having a particular sound based upon their individual need, and with these sounds, they have 4 components, they have flash cards and the child tells the sound, then an auditory drill where a sound is repeated to child who finds it and then they write them down. When a child get 8-10 phonemes sound, they progress to syllables and then progress to nouns and when they get 50 nouns, children are taught to blend nouns and systematically teach the articles that go with them. After nouns and articles, they progress to sentences and questions which become longer as the child displays mastery. Even though some daily activities such as journal are group activities, the content of the activity is adapted to each child's ability level.

- (4. ctd). In language group, children are pulled out individually or in pairs to work on their specific receptive and language goals in their IEPs. Pullout for this Student in this case for individual speech/language therapy is 3 times a week for 30 minutes. However, Student gets speech and language services in the classroom as a speech pathologist is in the classroom assigned to Student, with a minimum of an hour and a half devoted to Student by the Speech Pathologist in the group setting(N.T. 9/26/11, p.264-280).
- 5.To address the relational difficulties with Autism, TALK uses the Greenspan's DIR approach. DIR differs from a behavioral approach in that while they both utilize rewards, the focus in DIR is the investment in the relationship, as opposed to skill mastery. N.T. 9/26/11, p.284.
 6. TALK's approach as to the sensory processing needs of Student are brushing and buzzing adapted to a child's particular need. N.T. 9/26/11, p.285.
 7. M.K. was aware of no peer research that supported the efficacy of the Association Method for students with Autism.
 - 8.TALK after the initial evaluation offered a trial placement to Student in July 2010. M.K. felt Student was a good fit because while Student had an average non-verbal IQ, but his language abilities as to expressive and receptive language were lower with expressive lower than receptive. N.T. 9/26/11, p.287.
 10. M.K. believed that Student made meaningful progress at TALK in 2010-2011 and would do so in 2011-2012. N.T. 9/26/11, p.300-301. M.K. about her 9/20/2011 3 hour visit to CASL District's proposed placement said there was: little interaction between Children with disabilities and those without, two digit addition in Math when Student was doing triple digit addition, Occupational therapy used "How Does Your Engine Run" above Student's ability and seemed non individualized in an unsafe environment. N.T. 9/26/11, p.302-309.
 11. She summarized District's proposed CASL setting as inappropriate for Student as Student needed intensive language instruction. N.T. 9/26/11, p.311. As to the District's April 2011 IEP, M.K. testified that it lacked language curriculum, and math and reading goals specific to Student. N.T. 9/26/11, p.313-314.

12. M.K. noted Student's deficiencies as to general information. TALK had social studies or science twice a week for ½ hours with Student getting Social Studies only in the fall and Science only in the spring (N.T. 9/26/11, p.330)as well as music once a week for 30 minutes and art once a week for 30 minutes. N.T. 9/26/11, p.348.

13. In comparing what District proposed in its 2011-2012 IEP as to speech and language pathology services ("SLP"), M.K. testified she did not see a significant difference in the amount of SLP proposed in the 4/21/11 IEP by District, but that the students in District were getting significantly less repetition or turns. N.T. 9/26/11, p.335, and children at District in CASL setting did not use a systematic language curriculum. N.T. 9/26/11, p.342. As to its use of DIR, M.K. agreed on cross-examination that DIR was not an established program under the National Standard, Defendant's Exhibit 6 but was an emerging treatment. N.T. 9/26/11, p.337-338. As to TALK's use of sensory integration, M.K. acknowledge that Page D59 of District Exhibit 6, the National Standards Report indicated was unestablished. N.T. 9/26/11, p.343. M.K. also admitted not knowing anything about Developmental Sequencing and Autism. N.T. 9/26/11, p.361.

14. M.K. testified that Student was due for a new annual IEP at TALK in November, 2011. N.T. 9/26/11, p.398

D. P.L., Parent's witness is a nationally and Pennsylvania certified occupational therapist employed by TALK whose curriculum vitae was Parents 56. She was admitted as an expert without objection and testified that:

1. Student was observed as under responsive to tactile-prociocptive (awareness of where one's body is) and vestibular input (awareness of one's head in space exemplified by no response to dizziness), hyper responsive to sound (insufficient filtering ability) and visual hyper responsiveness (always looking around), low muscle tone and bad posture, moderate difficulties in motor planning and a lack of finger strength necessary for tasks such as making change all of which at the inception of the 2010-2011 TALK school year led her recommending 3-4 hours of Occupational Therapy a week with a sensory integrative approach. N.T. 9/26/11, p.366-375. Brushing and buzzing are done daily for Student which P.L. testified relaxed Student to better allow him access to learning. N.T. 9/26/11, p.377. Brushing and buzzing took about 20 minutes to ½ hour a day or an additional 2 ½ hours weekly approximately and staff other than the OT does the brushing and bussing. N.T. 9/26/11, p.430. Additionally, Student also receives Occupational Therapy individually three hours a week to address Student's above deficiencies, covered in Parents Exhibit 51, page 516. N.T. 9/26/11, p.382-383. P.L. testified to agreeing with the findings in the Kennedy Krieger Report marked as Parent's Exhibit 52 but TALK did not change the IEP, rather changing the manner it used to reach goals. N.T. 9/26/11, p.394-396.

3. Student made meaningful progress regarding his Occupational Therapy needs in the 2010-2011 year, but still has deficits and would continue to make meaningful progress in TALK in the 2011-2012 year. N.T. 9/26/11, p.398-399. Student no longer was bouncing off walls like when he came to TALK in September 2010 but was able to follow a schedule, create his own activities and not always upset at encountering a new activity and able to come up with creative words for objects. N.T. 9/26/11, p.399-400.

4. As to the District's 4/21/11 IEP for the 2011-2012 school years set forth as Parent's 32, page 365, P.L. testified that the Occupational Therapy was not appropriate for Student as it was insufficient for Student to remain focused. N.T. 9/26/11, p.401-402. Similarly, as to Parent's 45, page 479, a schedule proposed by District, P.L. testified that from an OT standpoint this was not appropriate. N.T. 9/26/11, p.403. (Dr. C.J. for district later testified that this was not a formal schedule but rather incomplete ideas he provided Mother upon request). As to the OT offered in the CASL, P.L. testified that she observed the same for 3 hours. It used a program ALERT that Student was not ready for, but will be good for Student when ready and the OT room was unsafe and with less equipment than TALK. N.T. 9/26/11, p.406-407, 427 and summarized that what District offered was not an appropriate education for Student from an OT perspective.

5. P.L. testified that in the ten categories of testing set forth on page 280 of Parent's Exhibit 27, Student tested average in all but two, Student's bilateral motor coordination were above average (N.T. 9/30/11, p.433-436) and that while acknowledging that the District 4/21/11 IEP for the 2011-201 school year specified sensory/movement breaks as needed through day, from P.L.'s observation in September, 2011 those provided were not active or intense enough for Student. N.T. 9/30/11, p.438-438. P.L. acknowledged that Dr. K.M. has recommended the use of the ALERT program but maintained that although a good program Student was not ready for it (N.T. 9/30/11 at P.442-443) and later admitted there she did not know whether the ALERT program was designed to be collaborative between teachers, staff and occupational therapists. N.T. 9/30/11 at p.444. As to the brushing technique, P.L. indicated she was aware that the Wilbarger Brushing Pressure Protocol indicated to never brush a child's stomach and Student's stomach was brushed, but that TALK did not use this protocol. N.T. 9/30/11. p.444-445.

E. M.M., a speech language pathologist at TALK, certified by the American Speech Language Hearing Association and certified in PA level 2, whose curriculum vitae was Parents Exhibit 55, p. 534 and testified as an expert without objection. N.T. 9/30/11 at p. 451-454 that:

1. While Student was autistic, he saw Student as a child with a language disorder at his initial screening in the summer of 2010 and TALK was a language school that accepted only about 20% of the children that apply and that after a host of tests and trial placement, Student was accepted. N.T. 9/30/11 at p. 455-459. Student's disorder manifested in Student becoming disinterested in an activity he may ordinarily have an interest when language became a part of the activity (N.T. 9/30/11 at p. 463).
2. Student enrolled at TALK the 2011-2012 School Year and received 8 and ½ hours per week including 1 ½ hour of individual Speech Pathology Services. A Speech Pathologist is in the classroom during the teaching of the Association Method an hour a day during 2011-2012 and now is in the classroom for 1 ½ hours each day where Student is 1 of 5 students. N.T. 9/30/11 at p. 468-474.
3. The teacher has been absent from the classroom from the beginning of the school year and would be out until October 10, 2011. 9/30/11. N.T. 9/30/11 at p. 470, 498, 543. M.M. clarified that he had been substituting for her. N.T. 9/30/11 at p. 497.
4. As to Parents Exhibit 33 a report of Student by A speech Pathologist C.K. CAPVAL 2, M.M. expressed that there was improvement from a prior CELF 4 test in CAPVAL 1 in that Student attained a score of 58 after being at TALK (CAPVAL 2) whereas before at TALK, Student had a score of 42(CAPVAL 1). 9/30/11 at p. 479-482 and that his only disagreement was that C.K. only recommended speech service 3 times a week for 30 minutes and he felt Student with a high non-verbal IQ should have more. N.T. 9/30/11 at p. 484-485. M.M. stated that he believed TALK would meet student's speech and language needs as Student was essentially had a language disorder with a need for intensive and structured language therapy which was provided by the Association Method. N.T. 9/30/11 at p. 499.
5. As to the IEP proposed by District for Student's 2011-2012 School Year, Parent's 32, M.M. indicated issues as to the speech and language program thereunder was vagueness such as under goals he could not determine whether the 80% was for each activity or one, as to the expressive language on page 363 of Parent's Exhibit 32 under targeted vocabulary, he expressed a lack of knowing whether the targeted vocabulary changed weekly for Student, how would you keep

(ctd. 5) data, how many words would Student be required to master 80% of. N.T. 9/30/11 at p. 501.

6. As to Parent's Exhibit 4, the Schedule for the District's proposed setting for Student's 2011-2012 school year, he felt that it was too vague for him to determine what speech therapy was taking place in the classroom. N.T. 9/30/11 at p. 502. Dr. C.J. later testified that this was not a formal schedule.
7. M.M. visited the proposed CASL setting for Student in 2011-2012 in September, 2011 and the Speech Pathologist gave each child 2 turns when Student should have 20 repetitions for the activity they were doing and overall felt Student would have difficulty with the language instruction. N.T. 9/30/11 at p. 507-508. In summary from the IEP and visit, he did not feel the District proposed CASL placement in 2011-2012 would be appropriate for Student because there lacked language instruction and enough repetitions. N.T. 9/30/11 at p. 510.
8. On cross Mr. M.M. testified that there was benefit to Student from monthly visits by typical students from a private school, but once a month was sufficient as TALK was a language school where socialization was less important than language development. N.T. 9/30/11 at p. 514-515, 517. As to research as to this prioritization, M.M. indicated that there was the autism literature that supported that working on language was more important than peer relationships, but could not recall any names of such literature. N.T. 9/30/11 at p. 517. As to Student's expressive language deficiencies, M.M. did admit that Expressive Vocabulary was only slightly below the mean for Student. N.T. 9/30/11 at p. 519. He later indicated that in Parent's Exhibit 33, p. 378 Student had mild vocabulary impairment.
9. M.M. explained there are 44 different sounds of the Northampton Alphabet (44 different sounds in the English language) and at the beginning of the 2010-2011 school year Student was only able to do 25 of those sounds acceptably and at the end of the school year Student was able to 40/44 sounds and probably would get to all 44 this school year. TALK has purposely withheld 4 certain sounds "th"s" ings" and "nn" as Student had difficulty. N.T. 9/30/11 at p. 523-525. As to nouns, Student was originally presented at the start of the 2010-2011 school year with 10 nouns and would increase to 25. . N.T. 9/30/11 at p. 526-527. However, all the data that was tested in Parent's 41 was of Student using the Association Method, not in natural or conversational speech. N.T. 9/30/11 at p. 532.
10. At the IEP meeting, M.M. testified that his supervisor at the TALK School told him to be an observer and that when he made comments as

(ctd.)to the practice effect, the District's Mr. Dr. C.J. indicated that he should not have spoken up. N.T. 9/30/11 at p. 539-540.

11. As to the deficiencies in the goals set forth in the 4/21/11 2011-2012 District IEP marked as Parents Exhibit 32, while M.M. understood they may be vagueness as a result of District not having Student in classroom with them daily, they still needed to be measurable. .N.T. 9/30/11 at p. 541.
12. M.M. indicated that the first 60 days of the TALK 2010-2011 they amassed data for his IEP done at TALK, Parent's Exhibit 29 and they were working without an IEP with Student until then and were working on another one for November, 2011. N.T. 9/30/11 at p. 540-543.
13. As to District asking him for information as to Speech, M.M. indicated that if he had been asked he would have provided it, but that another speech pathologist may have been involved. N.T. 9/30/11 at p. 545.

- F. H.C., District's first witness is an Occupational Therapist, who works for Colonial School District, DE is a National Certified with a Master's Degree qualified as an expert, Curriculum Vitae attached as Defendant's Exhibit 18. N.T. 9/30/11 at p. 547-550.
1. H.C. testified that the recommendations of the Kennedy Krieger as to Student's Occupation Therapy needs were addressed in the District's 4/21/11 IEP attached as Parent's Exhibit 32, p. 364 as "Use of sensory or movement breaks throughout the day as needed, Sensory or movement break examples may include, but not be limited to, use of a sensory room, heavy work activities, taking a walk to do an errand, using fidget objects at his desk, taking a quiet break in the chill out area in the classroom, extra outdoor recess, classroom exercises, chair push-ups, use of a seat cushion or ball chair at his desk, and vibration" and would be met all day in the classroom. N.T. 9/30/11 at p. 554.
 2. Student's sensory diet would be delivered by teachers and paraprofessionals with monitoring and collaboration by H.C. It was designed with information from TALK and would encompass 6 hours a day within the school environment. N.T. 9/30/11 at p. 555-556. Services done on a consult 45 minutes a week sometimes working with Student in classroom and sometimes training staff. N.T. 9/30/11 at p. 577 However, H.C. felt that certain recommendations of Kennedy Krieger bear hugs, massages and swimming could be done by Parent at home. N.T. 9/30/11 at p. 557-558 and the Kennedy Kreiger Parents Exhibit 35, page 394 recommendation as to Student engaging in motor planning and bilateral integration could be accomplished at District in Student's twice weekly gym class. N.T. 9/30/11 at p. 559-560. As to Kennedy Kreiger Parents Exhibit 35, recommendation as to oral seeking activities she indicated that this has been done with extra snack time, crunchy foods, gum chewing. N.T. 9/30/11 at p. 561. As to the Kennedy Kreiger Parents Exhibit 35, page 395 recommendation number 5, that the classroom where Student was to be place in 2011-2012 was to be small. H.C. testified CASL has a 5-1 student teacher ratio with 5 students and 2 staff at all times. N.T. 9/30/11 at p. 561-562, 564, with dividers to eliminate distractions for Student, a sensory wedge was proposed under the IEP as an accommodation to Student. N.T. 9/30/11 at p. 567.
 3. H.C., however, felt that it was important for Student to have exposure to typical peers as supported by the National Standards Report for Autism set forth as District Exhibit 6. N.T. 9/30/11 at p. 570.
 4. H.C. testified that three articles District's Exhibit 15 an article titled "Integrating Occupational Therapy Service into a Kindergarten Curriculum: A Look at the Outcomes" by Susan Bazyk et. al. District's Exhibit 16 titled "Young Exceptional Children Integrating Therapies into the Classroom:", supported that students benefited from receiving OT in classroom setting such as that proposed by District for Student in its IEP. N.T. 9/30/11 at p. 571-572. District Exhibit 12 and 13 supported the District 2011-2012 IEP's position as to providing OT

- (ctd. 4) services to Student on a consult basis in collaboration with teachers and trained paraprofessionals implementing the follow through (N.T. 9/30/11 at p. 573) and District's Exhibit 17, a study that supported work in the classroom is just as effective as pulling the student out of classroom. N.T. 9/30/11 at p. 574. Later, H.C. admitted that District Exhibits 15,16, and 17 had nothing to do specifically with students with **both** autism and language based learning disabilities. N.T. 9/30/11 at p. 606.
5. H.C. testified the benchmark for the 4/21/11 IEP concerning as to Occupational Therapy was taken from TALK. The goal for the Occupational Therapy in this IEP was for Student to demonstrate improved self-regulation in class by independently managing his /Student's sensory needs with no more than 6 visual or verbal cues from an adult 4 out of 5 days. She felt this was appropriate as it was designed to allow Student independence to facilitate Student's transition of these skills to general living. N.T. 9/30/11 at p. 575.
 6. H.C. also criticized the manner at which "brushing" was done at TALK with removal of children's (Boys) shirts as not respectful of child's dignity and that the Brushing of student's stomach should not be done as it can induce the flight response or vomiting of child. N.T. 9/30/11 at p. 580.
 7. H.C. also testified that she spent about 5 hours weekly in the proposed setting CASL setting and it was not chaotic. N.T. 9/30/11 at p. 583.
 8. On cross examination, H.C. said she had a degree in special education but was not certified and had not seen Student since June, 2010, had not visited TALK prior to the 4/21/11 IEP and Student did not need direct intervention for his low end of normal muscle tone. N.T. 9/30/11 at p. 583-585. H.C. admitted that the statement in the 4/21/11 IEP that Student had made significant progress with his self-regulation skills was taken from TALK. N.T. 9/30/11 at p. 587. As to measurement, there was admission that there was no mention of using a data sheet in either District's 4/21/11 IEP or for that matter the IEP used at TALK. There was no CASL setting as it was being developed as of the writing of the IEP 4/21/11. N.T. 9/30/11 at p. 592-593. H.C. testified that she never tested Student to see whether the OT program, "How is Your Engine Running" also known as the ALERT program was appropriate for Student but rather relied on Dr. K.M. first report and the Kennedy Krieger Report. N.T. 9/30/11 at p. 597. H.C. testified to seeing the Kennedy Krieger report at the end of May/June, 2011 N.T. 9/30/11 at p. 607. As to the lack of a fully matted or padded OT room at District's proposed school for Student, H.C. said more mats were available should the activity merit it and there were 3 staff members in the room to ensure child safety. N.T. 9/30/11 at p. 599-600. H.C. also testified that gym teacher at the proposed school for Student was not a special education teacher, but had one day of training as to language based disabilities, N.T. 9/30/11 at p. 602. As to Student's classroom teacher, she was a special education teacher, but had not seen her certification. N.T. 9/30/11 at p. 603-604. As to the aide named. Ms. L, H.C. did not know her degree but that

(ctd.) she had training with Autistic children. N.T. 9/30/11 at p. 604. As to CASL, she testified while it was not a research based program, H.C. said the methods used were research based. N.T. 9/30/11 at p. 605. H.C. testified she had 35 students in her group and occupational therapy would be offered group as well as consultative. N.T. 9/30/11 at p. 609, but she estimated 80 percent thereof or 30-40 minutes would be working with Student, and 75 minutes would be in group where Student if he attended District's proposed placement would be the 6th student and that the reason consultative term rather than individual was used in the IEP as the term "consultative" was more flexible and allowed her to use the time for training as well as individual Occupational Therapy. N.T. 9/30/11 at p. 610-613. H.C. testified that she did not see a child banging their head in the Student's proposed setting in the classroom. Mother testified that this occurred while H.C. was not in the room, but admitted that her son Student was never self-injurious banging his head or otherwise. N.T. 9/30/11 at p. 617-618.

- G. N.D., district's second witness is a nationally and Delaware certified speech language pathologist whose CV was set forth as District's Exhibit 20, worked with Student in the 2008-2010 school years prior to his September, 2010 entry in the private TALK program and observed Student at TALK in the Spring, 2011. N.T. 9/30/11 at p. 619-62 and said:
1. that Parent's CAPVAL 2, C.K.'s latest evaluation recommended speech and language services three times a week for 30 minutes, but did not specify whether these had to be individual group or consult and that District's 4/21/10 IEP for the 2011-2012 school year set forth on page 365 of Parent's Exhibit 32 proposed 2 individual sessions weekly of 30 minutes and 5 group sessions of 60 minutes per session more than what C.K. recommended. N.T. 9/30/11 at p. 622-624.
 2. that Student had the following specific needs per CAPVAL 2 addressed in the following sections of District's 4/21/11 IEP:
 - a. Expressive and Receptive Language (summarized as Student's difficulties comprehending/following directions and answering questions) addressed in District's IEP under Characteristic #4 and #5, pages 362 and 363 of Parent's Exhibit 32;
 - b. working on grammatically correct sentences using core vocabulary words, producing irregular word forms, correct tense, pronouns, telling stories using tenses, working on vocabulary, word relationships using proper syntax is addressed in District's IEP under characteristic 5, p 363 of Parent's Exhibit 32. N.T. 9/30/11 at p. 627-629;
 - c. Student's need to repeat directions and model an activity to display understanding of task addressed under characteristic 4, p. 362 of Parent's Exhibit 32 of District's IEP. N.T. 9/30/11 at p. 628;
 - d. Student's need for pragmatic language improvement addressed under characteristic 3 of Parents Exhibit 32, p.361 where she said District employed use of videotape in role playing and skill modeling, visual supports, social stories, speech language therapy and family partnership all based on best practices that is in the National Standard's Report attached as page D111, 112 and 114 of District's Exhibit 6. N.T. 9/30/11 at p. 629-631.
 - e. as to C.K. recommendation to choose non-preferred topics for 3 to 5 terms while Ms. N.D. said that it was woven throughout District's IEP referencing characteristics #1, #6 of Parents Exhibit 32. N.T. 9/30/11 at p. 633-634.
 - f. as to C.K. recommendations as to self-regulation these were addressed under #6 of District's IEP, Parent's Exhibit 32, and added that it needed to be taught in an authentic ongoing environment such as a school day to best able Student to provide information to a peer and adult and generalize to home and community. N.T. 9/30/11 at p. 634-635.
 - g. N.D. emphasized that it was important for student to get speech language services in a small group as it was not best for Student to always feel he was on the "hot spot". N.T. 9/30/11 at p. 637-638.

(ctd.) Similarly, exposure to non-disabled peer was important as per the modeling for children with language learning disabilities or autism or both and that the nondisabled peers have some sort of training such as what's being used in CASL's peer program N.T. 9/30/11 at p. 638-639. The data that was used by District's IEP set forth as Parent's Exhibit 32 both came from TALK as to p.362 short paragraph, and the data N.D. obtained in April, 2011 concerning Student. N.T. 9/30/11 at p. 639.

3. N.D. viewed the speech language pathology services set forth in District's 4/21/11 IEP as considerable, rigorous and in Student's best interests and in sum an intensive speech language program that would engage Student (N.T. 9/30/11 at p. 640-643) and meet Student speech and language needs. N.T. 9/30/11 at p. 649.
4. N.D. visited TALK and characterized its use with Student as going back to phonics and phonology. Student prior to TALK had a good phonological system that broke down with larger pieces of language (sentences, words, conversations) with more frequent breakdowns as length increased. The Association Method was working on the letters and letter sounds that Student had when he left the District in 2010 and attributed the progress that Student made at TALK in 2010 - 2011 to the skills he had while at District. N.T. 9/30/11 at p. 643-646.
5. N.D. testified as to Student's increase in CELF 4 from a Standard score of 42 in 12/09 to 58 in March 11 was possibly because the first score was Student's first experience with a more rigorous method of testing. Student previously was given testing with more manipulatives geared to preschoolers than the age appropriate CELF 4 and was not used to there being less picture stimuli and more verbal in the CELF 4. N.T. 9/30/11 at p. 655-657. However, Ms. N.D. never spoke to Ms. Capitan or Parents as to this effect. N.T. 9/30/11 at p. 658.
6. As to the omission of a starting level that Student responded to greetings and farewells, this was based in N.D. observations when testing Student in 2011, She based the Student's baseline as 0 in response to "wh: questions" (what, where, who...) based upon their 2011 evaluation and Notes from TALK and used a baseline of 0 on targeted grammatical structures. N.T. 9/30/11 at p. 664-665.
7. N.D. testified as to only being at the proposed placement for Student at District, CASL once for a whole day, and had no idea what the speech pathologist in the proposed placement for Student at District for modeling. N.T. 9/30/11 at p. 670.
8. As to the alleged non interaction that Mother testified to at lunch between the disabled Students in the CASL room that it was the beginning of the school year. N.T. 9/30/11 at p. 673-674.
9. N.D. testified that the speech language pathologist who would be working with Student at its 2011-2012 proposed setting did not testify because she did not know

(ctd.) Student and N.D. developed the IEP which drove the services and evaluated Student and had worked with him. N.T. 9/30/11 at p. 677.

10. As to the vagueness in baselines, N.D. attributed some of this to not having Student “to be able to get a baseline in specific objectives as it relates to what he would do in school on a day to day basis.” N.T. 9/30/11 at p. 683.
11. N.D. also testified that CASL was a new program and had not evaluated outcomes, but based CASL on solid research. N.T. 9/30/11 at p. 685.
12. N.D. testified that TALK was not designed to give meaningful educational benefit to Student in that it used the Association Method originally created for deaf or hard of hearing students that may be appropriate for children with severe oral apraxia, but not Student. TALK did not address Student’s deficiency and need to socially interact which was not available in the restrictive class of TALK and there was a lack of other curriculum science, social studies, library which would provide Student with general information necessary to function. N.T. 9/30/11 at p. 686-688 and if the Student was not exposed now, he was only going to miss out on time. N.T. 9/30/11 at p. 688. Working on 50 nouns was not enough. N.T. 9/30/11 at p. 680.
13. N.D. admitted to not being trained on the Association method and that no other schools in Delaware used the CASL method which was a program created by this District using research. N.T. 9/30/11 at p. 689-692.

D. Dr. C.J., Ed.D., district's witness is the supervisor of student services for District, the District office administrator primarily responsible for District's complying with IDEA and the Delaware Code as they relate to special education services. He is a Delaware state certified assistant principal/principal and a Delaware State and national certified school psychologist with over 10 years' experience providing services to autistic and learning disabled children whose CV is set forth as Defendant's Exhibit 21 N.T. 9/30/11 at p. 693-694. He testified that:

1. District's 8/15/11 Response to the Due Process Complaint attached as District's Exhibit 3 was authorized by him as well as District's Exhibit 4 the Notice of the 4/21/11 IEP meeting, the receipt that parent received the notice, a request for permission to evaluate Student indicating the type of evaluations and reasons which parents signed, the prior written notice and an additional prior written notice proposing a math assessment along with the other assessments. N.T. 9/30/11 at p. 696-699. Dr. C.J. further explained that District's Exhibit 2 were minutes from the 4/21/11 IEP meeting. Dr. C.J. testified that District's 4/21/11 IEP attached as District's Exhibit 1 and Parent's Exhibit 32 was developed with input from a school psychologist, speech pathologist, special and general education teacher and that District was open to addressing parent's concerns about the IEP to which parent's attorney "stated that Dr. K.M. would review the IEP and write a statement that represents parent's educational concerns." Page D-23, Defendant's Exhibit 2. N.T. 9/30/11 at p. 701.

3. Dr. C.J. said there were multiple contacts, with parent's attorney and family, but no agreement to meet with them to do another IEP meeting or to revise IEP. Parents made no mention as to specific concerns as to how goals were written, the way services were proposed or delivered or any substance of the IEP other than placement at TALK. N.T. 9/30/11 at p. 702-703.

4. Dr. C.J. testified that Dake was the language pathologist District hired and was a certified speech pathologist. N.T. 9/30/11 at p. 703. As to the Autism Ambassadors program Dr. C.J. testified that it was developed from the peer training program referenced on page D58 of the National Autism Center's National Standards Report, District's Exhibit 6.

5. District developed the CASL program after consultation with Dr. Todd Harris of the Division for Autism Services for Devereaux PA, an organization with a significant focus on providing evidence based practice services for children and adults with developmental disabilities including autism. N.T. 9/30/11 at 718.

6. The CASL program is described in Exhibit 5 and was designed for a maximum of 6 students with demonstrated skill deficits in the areas of communication and social learning and stressed family inclusion, support and training. CASL's goal was for students to achieve maximum possible function in the community, with the rate of introduction determined by the individual's progress. Its services were not limited to a specific window of opportunity (presumably speaking as to

(6. ctd.) Dr. K.M.'s testimony that a child's window of opportunity as to language skills closed after child is 10 or 11) but rather was meant to provide services through a child's 21st birthday. Further, Dr. C.J. testified that the District was accountable to ensure Student progressed and if they did not the District was to reconvene the IEP team and change the instruction and or intervention so that student progresses. CASL was a setting which was not to be confused with the IEP and the IEP for 2011-2012 was set forth as District's Exhibit 1 and Parent's Exhibit 32 was developed based upon best practices and in line with the National Standards Report set forth as District Exhibits 6 and while CASL was new, the methodologies it used were established as set forth in the National Standards Report such as Applied Behavioral Analysis (sometimes "ABA") using positive reinforcers, not just negative ones.

7. As to Student, Dr. C.J. categorized Dr. K.M. as supporting exposing Student to a general curriculum for the 3rd grade. N.T. 9/30/11 at p. 704- 716 and doing it this year was better than in 4th grade as it would be more difficult due to the greater expectation of independence built into a 4th grade curriculum. Typically in 4th grade a student is reading to learn while in 3rd grade they are still learning to read. N.T. 9/30/11 at p. 718. Moreover, Student showed average core academic testing with a low fund of knowledge. N.T. 9/30/11 at p. 724. As to District's proposed IEP for 2011-2012, he stated there was specially designed instruction using the state mandated form, developed with consultants from Devereaux and written so District's staff can carry it out. N.T. 9/30/11 at p. 719. It would never have greater than a 6-1 ratio of children to staff (that would be if Student attended). N.T. 9/30/11 at p. 722. Staff were trained to monitor if Student became over stimulated, N.T. 9/30/11 at p. 729-730.

8. As to Dr. K.M.'s testimony that the classification of disabilities is not complete, Dr. C.J. testified that classification has no bearing on the services in an IEP. N.T. 9/30/11 at p. 722-723.

9. Dr. C.J. testified that CASL was the least restrictive environment housed in a school rated superior in Delaware. CASL was taught by a certified special education teacher. N.T. 9/30/11 at p. 730-731. He viewed CASL with students in session once and that it was not chaotic as testified to by Mother and used differentiated instruction for the different students. N.T. 9/30/11 at p. 730-737.

10 Dr. C.J. further explained that Parent's Exhibit 45 was not the schedule for CASL, but rather a planning document provided to the parents upon request representing preliminary ideas provided around June 8, 2011. N.T. 9/30/11 at p. 737-738, 792. District's Exhibit 11 indicated that Student still needed special education services in 2011-2012 and District's Exhibit 22 was the settlement agreement executed by the District and Parent.

10. Dr. C.J. testified that he was required by the IDEA that the services offered in the IEP be research based and moreover the purpose was so that students with disabilities could display mastery of their skills not just in a

(10 ctd.)controlled setting but in the naturalistic setting so as to maximize independence as an adult. N.T. 9/30/11 at p. 740-741.

11. Dr. C.J. testified to not giving parents a description of CASL until August 22, 2011. N.T. 9/30/11 at p. 749.

12. Dr. C.J. admitted he requested to meet but that parent's attorney was unwilling unless District agreed to change setting but later clarified that he did receive a June 18, 2011 letter enclosing Dr. K.M.'s IEE and requested that an IEP meeting to be convened within ten (10) days, and that they contacted Parent's Counsel who stated that parents would not meet unless District agreed to change the setting to TALK, but had not written documentation to support this. N.T. 9/30/11 at p. 752-753. Ultimately, Dr. C.J. in hindsight admitted he should have noticed and scheduled a meeting despite Parent's counsel warning the same was a waste of time unless it was to place Student at TALK.

13. Dr. C.J. further admitted that in the 4/21/11 meeting rather than discuss Student's needs and goals first as was typically done, they discussed placement first and typically placement of where the Student would receive services was only discussed after discussing Student's needs. Dr. C.J. said this was done in reverse out of his excitement to propose a program that he felt strongly met Student's needs. N.T. 9/30/11 at p. 758-760.

14. Dr. C.J. testified that on June 8, 2011 the Speech Pathologist that District hired to work in the CASL program did indicate that she had not read Student's IEP. N.T. 9/30/11 at p. 777 and later indicated that the speech pathologist was not special education certified, N.T. 9/30/11 at p. 770.

E. Dr. W. V., Ed.D. district's last witness is the Director of Delaware Autism Program with an Ed. D. in Special Education, with over 25 years of special education experience in Autism and developer of Devereaux Cares which started as a children's program. N.T. 9/30/11 at p. 806-809,811. His curriculum vitae was introduced as D19 and he was admitted as an expert without objection. N.T. 9/30/11 at p. 809. He testified that:

1. In this case, he did no formal evaluations, but reviewed records including Parent's expert reports of Dr. K.M. (their Ph. D. in Education) and C.K. (speech pathology). He observed the CASL setting at district for 2 ½ hours and the TALK program for 3 hours. As to CASL, he indicated, its core components were research supported, that while it was new program that will have growing pains, it needed to stay true to its model. N.T. 9/30/11 at p. 812-813.

2. As to TALK, Dr. W. V. noted from his observation, Student was 1 of 3 students involved in questioning activity where children were asked questions such as "how was your day? what did you have to eat" that he thought was intended to get students to speak in sentences and have peer to peer, or peer to staff interactions and he saw the peer to peer interactions as limited and prompted by staff. N.T. 9/30/11 at p. 817.

3. That in his 25 years, the treatment of autism has changed recently increasingly more children with autism spectrum and language disorders considered for regular education placements with supports. Dr. W. V., emphasized the National Autism Standards attached as Districts Exhibit 6 was written from a review of scientific studies concerning autism to see what works and what does not with 3 levels Substantial Evidence (the highest level of studies), and Emerging being a lower level. Some treatments have been debunked such as facilitated communication and where there is no research on a method National Autism Standards that's a reason for caution. N.T. 9/30/11 at p. 818-823. As to TALK, the students appeared to Dr. W. V., to all have language disorder and there was no evidence that putting them together leads to language improvements and he believes you maximize probability for children with autism learning to communicate when you place them with kids who are talkers. N.T. 9/30/11 at p. 824-825.

4. As to the District IEP for Student for the 2011-2012 school year attached as Parents Exhibit 32, as to Occupational Therapy Dr. W. V., indicated that while he was not an Occupational Therapist, the OT gave a decent chance of success and was consistent with other IEPs he seen. The IEP was rich in language and would enable Student to make meaningful educational progress with the placement at CASL in the least restrictive environment. N.T. 9/30/11 at p. 825-836.

5. Dr. W. V., stated that with a higher functioning students such as Student, it is beneficial for them to be exposed to State Curriculum, participate in a school program with typical peers and benefit from social expectations of children in a public elementary school and that the 1 day a month exposure that Student got at

(ctd.)TALK from visits from children from a more typical private school was not enough. N.T. 9/30/11 at p. 828-831.

6. As to the National Standard set forth as Exhibit 6, Dr. W. V. explained that while this was authoritative in the professional communities, it was less accepted with families with autism. N.T. 9/30/11 at p. 833.

7. Cross examination as to bias of Dr. W. V. does not reveal any bias but did establish that he does receive revenue from consulting for other districts that primarily use an ABA model, employed by District in this case. N.T. 9/30/11 at p. 838 and the over 200 children at the Brennan School where Dr. W.V. is associated uses the ABA model. N.T. 9/30/11 at p. 834-840.

8. Dr. W.V. agreed that Student had a language disability. N.T. 9/30/11 at p. 840.

9. Dr. W.V. testified that as to the Association Method he was not aware of any research debunking it or any research at all concerning its efficacy with autistic children but that it was an intervention model designed for a different population than autistic children. N.T. 9/30/11 at p. 841. However, that he did see elements of ABA used when he went to TALK. N.T. 9/30/11 at p. 843. However, Dr. W.V. did see other elements at TALK that were not designed for Student to achieve educational benefit such as the amount of time based on phonics was extreme, too much time on OT, whereas that proposed in the District 4/21/11 2011-2013 IEP was more “carefully balanced” N.T. 9/30/11 at p. 845-847. Dr. W.V. testified that Student was making progress at TALK but that TALK was not appropriate as TALK sacrificed core curriculum, opportunities for social engagement with typical peers, is the way to “learn how to comport yourself” N.T. 9/30/11 at p. 849-850.

10. Dr. W.V. agreed that Student progressed in 2010-2011 school year at TALK but would not say there was meaningful progress. N.T. 9/30/11 at p. 855-857.

11. As to children with Autism and the prospects of future research showing efficacy of additional teaching methods, Dr. W.V. did think this would occur, but not with the Association Method because it had not happened yet.

IV. FINDINGS OF FACTS

1. CASL is a setting in an Elementary School where the District proposes placement for Student in 2011 and 2012.
2. The 4/21/11 IEP, however, is different from the CASL setting and is set forth as District's Exhibit 2, and Parents Exhibit 32.
3. Student suffers from an autistic disorder, but also has significant deficits as to language. However, the classification of the student in the District's 4/21/IEP is irrelevant as Dr. C.J. is correct. District, in its IEP and in this case, had to address all Student disorders once the need was established. This included his need for meaningful educational opportunities addressing Student's language disorder.
4. District's 4/21/11 IEP and education was established to be sufficient and provide a meaningful educational opportunities insofar as the occupational therapies. The testimony of H.C. was regarded as credible.
5. However, while the District's speech pathologist N.D. was extremely credible and viewed as capable, she admitted minimal exposure to the CASL setting where language services were proposed for student and the District's speech pathologist M.M. specified that in that in CASL, there were only two repetitive opportunities for child per language exercise viewed that was not enough for Student. While it is not accepted that 20 are needed as testified by M.M., the absence of the rebuttal to this testimony by not having either the teacher, paraprofessional or anyone from District in CASL daily to contradict either the number of repetitions on that day or typicality of repetitions for language services in CASL, or more specificity as to the content of language services delivered at CASL translated to an inability of District to prove that the setting where its IEP is delivered, CASL, provides meaningful learning opportunities as to Student's Language needs at the time of this Hearing. From this the majority finds that District failed to meet its burden to provided FAPE to Student both procedurally and substantively insofar as it language services. This does not have any bearing on any other child in CASL as their needs are not known. Nor should the District be precluded from establishing in the future that enough repetition and specific content is available for Student to address his language needs. It merely was not done at this hearing, with the results and this finding limited to this hearing for Student at this time and not a future hearing.

6. The Panel all did not attribute a great deal of weight to Dr. K.M.'s testimony. The reason for this included, but is not limited to, Dr. K.M.'s testimony that an IEP document that preexisted her second evaluation should have included her later evaluation (even with her later explanation) combined with the conflicts with Defendant's other witnesses, her inability to visit District when academics were scheduled, compromised the credibility of her testimony. The Panel listened to her testimony carefully and came to the conclusion that it was necessary to review the other testimony and exhibits independently. For this reason and for the additional reason that the provision of Dr. K.M.'s evaluation was supplied to District about a month after the May 15, 2011 deadline set forth in subparagraph B5, p. D435 of District's settlement agreement page, all the Panel agreed decided not to tax her report or testimony as a cost to Petitioner.

7. Two of the Panel Members, Ms. Johnson and Dr. McLaughlin found that TALK provided appropriate educational opportunities but limited this as to only applying to the 2011-2012 school year and believed that beyond that TALK could not provide appropriate educational opportunities to Student. These two panel members felt Student's measured languages improvement while at TALK outweighed the lack of research based studies concerning the efficacy of the Association Method. As to the equities, the two panel members, while troubled as to both Parent and District, did not find the same so egregious that District for example could not overcome them by District for example of "flushing out" Mother's specific objections by scheduling an IEP meeting after the Dr. K.M. report was provided in June, 2011 as to affect their award. The disagreement of the other Panel Member is set forth briefly in the dissent and the parties should know that while there was disagreement, it was close for all the Panel Members.

V. Rationale for Decision.

A. District Has Not Met Burden of Proof Showing that it Offered Student a Free and Appropriate Public Education (“FAPE”) in 2011-2012.

District has the burden to establish that it both procedurally and substantively offered Student a Free and Appropriate Public Education (“FAPE”) in 2011-2012. A student receives FAPE where Student’s IEP is developed procedurally and substantively so the educational program offered is reasonably calculated to enable the student to receive educational benefits. Bd. of Educ. of Hendrick Hudson Sch. Dist. v. Rowley, 458 U.S. 176, 206-207 (1981) (“Rowley”). An educational benefit must be meaningful and provide the “basic floor of opportunity or access to specialized instruction and related services, which are individually designed to provide educational benefit to the handicapped child.” Rowley, 458 U.S. at 201. The education benefit must be “more than a trivial educational benefit.” Coale v. State Dep’t of Educ., 162 F. Supp.2d 316, 324 (D. Del. 2001) (quoting Ridgewood Bd. of Education v. N.E., 172 F.3d 238 (3d Cir. 1999) at 247-248).

In this case, District placed the “cart before the horse”, they presented the IEP on April 21, 2011 without meaningful input from parent and never reconvened a meeting to take into account parent’s concerns by proxy or otherwise or to “flush them out”. Parent’s later expressed lack of specificity in the IEP regarding speech language services, in light of the admitted ability to schedule an additional IEP meeting and the failure to do so, places the responsibility for this omission on District. Further, while both sides admit Student’s lack of language skills, there was no testimony by the person charged with implementing the language services or those district employees present when such services are presented to provide the Panel a more specific notion as to what was being offered for Student. That is the majority of panel though these omissions came away with a sense of vagueness as to the nature of speech language services to be provided to Student and make a factual finding that District has not met its burden of proof of establishing meaningful language services for Student. For this reason, the majority did not feel that District met its burden to provide FAPE.

B. Parent Has Met Burden to Show that TALK would Provide Appropriate Education in 2011-2012.

As to TALK not being the least restrictive environment while this is true, the effect of this is measured in light of the factual finding that District did not provide FAPE as essentially Student must be educated somewhere and the failure to be the Least Restrictive Environment does not pursuant to Florence School District IV v. Carter, 510 U.S. 7, 114 S.Ct. 361(1993) act as *per se* barrier to Parent's request for reimbursement.

However, Parents did meet their burden for 2011-2012 of showing that TALK was an appropriate educational placement. Anchorage School District v. D.S., 688 F. Supp. 2d 883 (D. Alaska 2009). While the all panel members agree that after this 11 month school year 2011-2012, TALK will not be an appropriate placement¹, the Majority felt that this year TALK was appropriate educationally as Parent by virtue has shown meaningful educational benefit to Student by virtue of the testing gains Student made in language during the 2010-2011 year. The majority did not feel the lack of research basis for the Association Method as compelling for this Student this year only, but had concerns as to efficacy of TALK's curriculum and efficacy beyond 2011-2012 as well as with the lack of data as to success of TALK's curriculum provided by M.K..

¹ Mother even expressed that TALK was not forever and while her expressed limitation may be more liberal than Panel's nonetheless she agrees as to the limited time at which there is efficacy at TALK.

C. The Majority Does Not Feel it is Appropriate to Reduce the Tuition Reimbursement For Equitable Considerations.

While the majority came away with the impression that Mother expressed a firm unwavering desire that TALK only was appropriate, she nonetheless participated enough to show engagement in the FAPE process so that the late provision of her specific concerns to the IEP did not excuse District's failure to provide FAPE. Notwithstanding the allegations of Mother's unwillingness to consider options other than TALK, District could have and should have convened a formal IEP meeting. They did not and it cannot be said in this absence, it would not have mattered. Accordingly, consideration of this factor does not reduce the District's obligation to pay tuition and as to attorney's fees, this issue is not before this tribunal and will not be considered.

VI. ORDER.

1. Parent's request for reimbursement for \$62,000 for TALK 2011-2012 is granted. Parent's request for costs for Dr. K.M. is denied. Parent's request for a list of Multiple classifications of Student is denied. Parent shall be reimbursed mileage at the end of the 2011-2012 at the IRS rate within thirty (30) days of the end of the school year. District shall pay an additional \$40 per school day parent provides transportation within thirty (30) days of the end of the school year.

2. **This is a final decision subject to appeal by any aggrieved party within ninety (90) days in the federal court or the Delaware Family Court.**

October 17, 2011
Date

/s/Julie D. Johnson
Mrs. Julie D. Johnson

October 17, 2011
Date

/s/JamesV. McLaughlin
Dr. James V. McLaughlin

DISSENTING OPINION

While this was a close case, the undersigned disagrees with the majority's findings of facts that District failed to establish FAPE, although this is extremely close and more significantly, that Parent has not established that TALK was appropriate.

As to this District's provision of FAPE, the dissenting panel member believes that the 4/21/11 IEP had to be measured insofar as what information District reasonably had in its possession as of that date. While it District should have discussed Student's needs first, it nonetheless did by May 15, 2011 circulate a New IEP where it is un rebutted that Parent did not by May 15, 2011 provide any input. While Parent was free to provide her input in a manner so the IEP could be distributed by May 15, 2011, no evidence of any feedback was provided until after May 15, 2011, in June, 2011 when Parent's Attorney sent Dr. Dr. K.M.'s IEP and requested a reconvening of the IEP. Why Dr. K.M.'s report was not completed and sent sooner was never explained adequately? Why did Dr. K.M. not fit Student in within the agreed deadline? What prevented her from providing a report previous to April, 2011.

This request to reconvene the IEP after May 15, 2011 in June, 2011 was viewed as a hollow request in light of the un rebutted testimony of Dr. C.J. (even if no written evidence was produced) that parent felt the same as meaningless and would not change her commitment to send Student to TALK. That is I regard District's failure to reconvene the IEP as excused because it would have been futile in light of the un rebutted testimony that Parent was only interested in a TALK setting. Having said this, it would have been better that the IEP team be reconvened. However, when a parent says they will address concerns and has an agreement with a deadline to do so, that agreement should be honored with an address of all the concerns for the following reasons. Parent presented additional concerns at trial. Any expert, a district, a physician, can only make recommendation based upon the information they have in possession. District did not by 4/21/11 or 5/15/11 the date the IEP was due know parents' concerns and while parents were free to not to provide them or provide them in the limited manner that they did in June, 2011, I do not feel it is equitable to hold District to a standard higher than what they knew. Susan N. v. Wilson Sch. Dist., 70 F.3d 751 (3d Cir. 1995); Fuhrmann v. East Hanover Bd. of Educ., 993 F.2d 1031 (3d Cir. 1993). Having said the above, this was close and the undersigned feels that District met its obligation by the slimmest of margins.

However, the greater difference in the panel is the undersigned's view as to an establishment of the appropriateness of TALK for student. I do not feel Parent has met the burden that TALK is appropriate. In stating this, I am persuaded by the lack of evidence as to how many of TALK students progress to less restrictive settings than TALK.

While sympathetic to Parent, as a consumer, thrust with the most personal of decisions presented with the "magic pill" that her Child was 1 out of the 5 admitted to this school, I am more concerned as to the lack of evidence presented by M.K. as to progress children make at TALK, than the lack of research. This combined with the admission that TALK was not forever, and the overlap of the measuring periods where progress was made as to Student's language—some time spent in District, and N.D.'s

explanation as to the first time CELF was administered lead me to conclude that there has not been proof that Student would receive appropriate educational benefit at TALK.

I, unlike, my fellow panel members, look at the language gains, and do not feel it has been explained as solely attributed to TALK and enough educational gain to meet the burden of proof as appropriate. It says nothing as to whether Student will meet the next level at TALK, where at present there is one (1) student, or more significantly, make appropriate gains in 2011-2012. This is not to say the proof does not exist. I merely say it was not established at this hearing. It is mainly for this reason and with the sympathy that a parent shopping for a school for their child is in a delicate position, do they risk offending the school by asking too many questions and risk non acceptance of their beloved child, and removal from the opportunity? This panel does not have this limitation and I merely find that not enough has been done to convince me that TALK is educationally appropriate for Student. Now the lack of established research does not so much trouble me as to the lack of evidence. This does not mean that a future tribunal will not have that evidence, merely that I did not feel I had it. My colleagues who I respect disagreed.

October 17, 2011
Date

/s/ Gary R. Spritz, Esquire
Gary R. Spritz, Esquire