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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

Case No. 8:04-CV-2657-T-24-EAJ

WILLIAM SAMMONS and  
JANIE SAMMONS,

Plaintiffs,

-vs-

25 February 2005

POLK COUNTY SCHOOL BOARD,

1:30 p.m.

Defendants.  
-----/

TRANSCRIPT OF PROCEEDINGS  
(MOTION FOR PRELIMINARY INJUNCTION)  
BEFORE THE HONORABLE ELIZABETH A. JENKINS,  
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

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STENOGRAPHICALLY REPORTED  
COMPUTER-AIDED TRANSCRIPTION  
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                                  Official Court Reporter, U.S. District Court  
                                  Middle District of Florida, Tampa Division

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1 (1:30 p.m.) P R O C E E D I N G S

2 THE COURT: All right. And I think this morning  
3 my courtroom deputy has discussed scheduling for the rest of  
4 the afternoon, and I would be happy to reconvene after these  
5 two guilty plea hearings I need to take.

6 You may proceed.

7 MR. PETERSEN: May it please the Court. I have no  
8 further questions. Thank you.

9 THE COURT: Okay. Redirect?

10 MR. WEBER: Thank you, Your Honor.

11 REDIRECT EXAMINATION

12 BY MR. WEBER:

13 Q Mr. Holmes, it's your testimony before this Court that  
14 this child is ready for college?

15 A Yes. I believe he's capable of doing the work.

16 Q Didn't you testify a minute ago that he couldn't even  
17 safely return to any school in the Bartow -- in the Polk  
18 County Public School District?

19 A That's his behavior I was talking about, not his  
20 abilities.

21 Q So, he couldn't even be anywhere in the Polk County  
22 School District with other students around?

23 A Well, we've accommodated him. I believe colleges can  
24 do the same.

25 Q So, he's ready for college?

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1           This opinion that you had based on the academic  
2 credits that you say the child earned, didn't the parents'  
3 April 20th letter suggest to you that they were challenging  
4 whether those credits had actually been earned and those  
5 grades had actually been earned?

6 A       Yes. That's what they stated in the letter.

7 Q       And you, sir, made no investigation concerning whether  
8 that was, in fact, the case, did you?

9 A       Not personally.

10 Q      And yet, you've come up here and told this Court that,  
11 based on your opinion, he's earned all those credits, he's  
12 earned all those grades, and he's graduated, and he's ready  
13 to go on?

14 A      Yes, and I think that's established that he has earned  
15 those.

16 Q      But you made no investigation concerning whether or not  
17 he had earned those credits; correct?

18 A      Not personally, I haven't.

19 Q      Okay. Well, who made that investigation on the part of  
20 the district?

21 A      Dr. Bruce Tongis.

22 Q      Didn't Mr. Tongis testify in the administrative hearing  
23 that he hadn't been showed the April 20th letter?

24 A      He testified to the credits that he reviewed, that they  
25 were appropriately met and he had a significant number of

1 them -- I think he said it was 27, if I recall -- and that  
2 he had met the credits.

3 Q I'm sorry. Wasn't his testimony that he hadn't even  
4 been shown the parents' April 20th letter before you asked  
5 him to sign an affidavit saying the student had met  
6 graduation requirements?

7 A Yes.

8 Q Okay. So, he made no investigation before signing the  
9 affidavit, which I believe is Exhibit "I" -- he made no  
10 investigation concerning the parents' claim that these  
11 credits were not awarded, that this child was advanced for  
12 the purpose of exiting him out of this system?

13 A No, not on that.

14 Q And so, he just signed an affidavit looking on the  
15 computer that there was a total number of credits that had  
16 been awarded?

17 A Correct.

18 Q And your testimony as you sit here today was your --  
19 based on the total number of credits that had been awarded,  
20 but not whether the parents' concerns regarding the  
21 legitimacy of those credits were valid?

22 A Correct.

23 Q Because you haven't looked into that?

24 A No. What I did, I asked Terry Bronson to go and talk  
25 with the teacher on that, and I believe she did.

1 Q And, specifically, you haven't even evaluated whether  
2 credits under state law were properly awarded based on the  
3 amount of instructional time that the child received?

4 A I have personally not done that.

5 Q Wasn't it, in fact, the parents' concern in this April  
6 20th letter that this child had not received 135 bona fide  
7 hours of credit -- of instruction per credit?

8 A I believe that was their contention.

9 Q And he had presented documentation to you saying, "Hey,  
10 wait a minute. These credits weren't earned"?

11 A I believe that's what they said.

12 Q And that has been the parents' contention in the  
13 administrative proceeding; correct?

14 A I believe so, yes.

15 Q And in this court?

16 A Yes.

17 Q So, they have made a challenge to the graduation of  
18 this child, have they not?

19 A Yes. In his letter, he doesn't agree with it.

20 Q And he furthermore said that the child hasn't met his  
21 IEP goals in order to graduate; correct?

22 A Correct.

23 Q They said that in the administrative due-process  
24 request; correct?

25 A I believe so.

1 Q And they're saying that in this court in their  
2 complaint; correct?

3 A Correct.

4 Q So, the plaintiffs have made a challenge both in the  
5 administrative procedure and in this court to (a) whether  
6 the child had received FAPE, (b) whether he had received the  
7 credits he had earned --

8 THE COURT: Excuse me, you're referring to FAPE,  
9 F-A-P-E, which is an acronym for free appropriate public  
10 education.

11 MR. WEBER: I'm sorry, Your Honor.

12 THE COURT: Remember, we're not in an  
13 administrative hearing; and, so, just so the record will be  
14 clear, that's what you were referring to; right?

15 MR. WEBER: That's correct, Your Honor. I  
16 apologize.

17 THE COURT: Okay. Go ahead.

18 BY MR. WEBER:

19 Q So, your purpose today is not to resolve these issues;  
20 it's to resolve whether the child is entitled to Stay Put  
21 while those issues are being litigated.

22 MR. PETERSEN: Object to the form. It calls for a  
23 legal conclusion.

24 THE COURT: Sustained.

25 BY MR. WEBER:

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1 Q How was it that the school district could have any  
2 confidence in the validity of this child's grades when  
3 there's no non-disabled peer in the same educational program  
4 to compare him to?

5 MR. PETERSEN: Objection. That question is so  
6 broad, I couldn't possibly anticipate a proper objection or  
7 answer that might come from that question.

8 How is it --

9 THE COURT: I agree. The objection is sustained.

10 BY MR. WEBER:

11 Q Now, this particular portable that the child was being  
12 educated in, were there other portables around that?

13 A Not directly near it, no.

14 Q None directly near it?

15 A Well, it depends on how close you want to go. I mean,  
16 there's none sitting beside it or adjacent to it.

17 Q Where was the closest portable?

18 A Oh, the closest classroom portable to it?

19 Q The closest portable.

20 A There are portables in a line there that are not  
21 classrooms. They're used for offices.

22 Q Are those portables still there?

23 A Yes.

24 Q So, it's only this one portable that was removed?

25 A Correct. Those are district offices.

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1 Q And what was the purpose of removing that portable?

2 A To recycle it back into classroom use.

3 Q It wasn't to bring the portable in compliance with the  
4 hurricane code?

5 A I don't think so.

6 Q You testified that you thought it would be  
7 discriminatory not to award this child a diploma; correct?

8 A Correct.

9 Q And that's assuming, of course, that he earned the  
10 diploma by completing the same curriculum as his  
11 non-disabled peers; correct?

12 A Correct, and I believe he did.

13 Q Okay. But you didn't make the investigation to  
14 determine that; correct?

15 A No.

16 Q Okay. And this child was a special ed student, was he  
17 not?

18 A Yes.

19 Q And in special ed, doesn't the child need to, in  
20 addition to the regular curriculum -- need to get the other  
21 things that he's -- that's on his IEP?

22 A I believe you asked that in another form earlier. I  
23 don't think, once you graduate, there is any IDEA rights.

24 Q Do you think affirmative action is discriminatory?

25 MR. PETERSEN: I object to the form of that

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1 question. I don't know what in the world --

2 THE COURT: Sustained. Relevancy.

3 BY MR. WEBER:

4 Q Isn't the purpose of education law to give that special  
5 student a little extra boost than his non-disabled peers by  
6 giving him training in other domains?

7 A Special education is to allow them to progress in the  
8 general curriculum to reach graduation.

9 Q And that includes more than academics, does it not?

10 A It can, yes.

11 Q Would it include social skills training, independent  
12 living skills, those types of things?

13 A If that's what it takes to get them to a regular  
14 diploma, yes.

15 Q And that's what was on this child's IEP?

16 A Yes.

17 Q And as you sit here and testify that this child  
18 received the same education as his non-disabled peers,  
19 you're aware of the fact that there was no written work  
20 required in his last two years?

21 A Yes, sir.

22 Q And you're testifying that Drew is ready for college  
23 even though he refuses to do written work?

24 A Well, I'd like to qualify that. He did do some written  
25 work. It wasn't exclusive; but, yes, based on what the

1 teachers testified to, I believe he could.

2 Q And you understand he had no homework during his high  
3 school experience?

4 A Yes. I don't find that unusual.

5 MR. WEBER: Your Honor, if I may approach.

6 THE COURT: Yes.

7 BY MR. WEBER:

8 Q I show you what's previously been marked as Exhibit 5,  
9 which is the February 23rd IEP.

10 MR. PETERSEN: Your Honor, I'm going to object to  
11 the use of the IEP in this proceeding, continuing objection.

12 THE COURT: Your response?

13 MR. WEBER: Your Honor, I think this is the guts  
14 of the case here, that the Supreme Court tells us the IEP is  
15 the centerpiece of the special education law.

16 To just ignore the IEP as if it never existed, we  
17 believe, is the entire legal problem that the district has  
18 created here.

19 The cases that we'll be discussing in closing  
20 specifically say that graduation requires not only amassing  
21 the credits, but, in addition, meeting the goals on the IEP.

22 So, there's two requirements for graduation, not  
23 just the three that have been specified by the district, but  
24 actual attainment of the goals on the IEP.

25 There are two purposes for entering the IEP:

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1 Number one, we would like to show dates to discuss the  
2 procedural challenge.

3           THE COURT: Okay. We can discuss the dates. Are  
4 you -- I thought earlier you were saying that you were  
5 seeking injunctive relief preliminarily only on the Stay Put  
6 provision, which really has two issues. Were they  
7 challenged -- were they making a challenge at the time there  
8 was a change in the educational placement; correct?

9           Are you also seeking preliminary injunctive relief  
10 on the issue of whether or not it was appropriate for the  
11 school board to conclude that he was eligible for  
12 graduation? Because I see that as a somewhat different  
13 issue. This may have to do with credibility issues on  
14 testimony I've already heard, because there was testimony  
15 adduced on direct examination -- on cross-examination by  
16 this witness, I believe, about the FCAT.

17           THE WITNESS: Yes.

18           THE COURT: And so, that may be relevant to  
19 cross-examination there. But, again, I want to make sure  
20 that we hone in on the issues for which you're seeking  
21 preliminary injunctive relief.

22           MR. WEBER: Let me be clear about that. There's  
23 the automatic injunction under Stay Put. Our backup  
24 position is Rule 65 --

25           THE COURT: Mm-hmm.

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                  Official Court Reporter, U.S. District Court  
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1           MR. WEBER -- which requires a showing of a  
2 likelihood of success on the merits that we raised  
3 substantial issues.

4           We're contending, in addition to the issues raised  
5 in our complaint, that he was denied FAPE and --

6           THE COURT: Wait a minute. Your complaint defines  
7 the issues at this point.

8           MR. WEBER: Correct.

9           THE COURT: So, if you seek preliminary injunctive  
10 relief, you have to show that the claims in your complaint  
11 have a substantial likelihood of success.

12           I don't know that I can consider claims outside  
13 the complaint. Maybe you misspoke, but do you understand  
14 what I'm saying?

15           I thought you just said, "In addition to our  
16 complaint, we're alleging" thus and so, "but we're not here  
17 on claims that are not in the complaint."

18           MR. WEBER: Precisely, Your Honor. This is within  
19 the scope of my complaint, and my point is that we don't  
20 need to sit here and litigate whether or not the child  
21 actually received a free and appropriate public education.

22           I only want to admit the documentation for  
23 purposes of showing that (a) we have made the challenge that  
24 he hasn't made the goals on his IEP. We believe that to be  
25 a legal -- properly legal challenge.

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1           We've made the challenge. We believe that based  
2 on the documentation before the Court that we have a  
3 likelihood of succeeding on that, and that's the purpose of  
4 being able to present not only the procedural history of  
5 this child's graduation but also the IEP, which shows that  
6 the goals that were there haven't been met.

7           THE COURT: I'm going to overrule the objection,  
8 as I've said, subject to further consideration.

9           Is there a question pending? I think you asked  
10 him to identify Exhibit 5.

11 BY MR. WEBER:

12 Q       Do you recognize that document, sir?

13 A       Yes. It appears to be an IEP.

14 Q       Okay. And have you reviewed that particular IEP  
15 before?

16 A       Yes, I have.

17 Q       If I could ask you to turn to the end. Attached at the  
18 end is the prior written notice in the district's informed  
19 refusal.

20       Have you seen those documents before?

21 A       Yes, I have.

22 Q       Could you identify what the purpose of the prior  
23 written notice is?

24 A       Prior written notice is sent out to explain actions  
25 proposed with explanations of why they're proposed.

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                  Official Court Reporter, U.S. District Court  
                  Middle District of Florida, Tampa Division

1 Q All right. And is the purpose for that prior written  
2 notice so the parent has an opportunity to request some sort  
3 of procedural protection and invoke Stay Put?

4 A I believe it's so they'll know it's going to be  
5 discussed at the IEP meeting. They can obviously do a  
6 procedural due process any time.

7 Q The prior written notice that you have, what is the  
8 date on that?

9 A 2/24-- excuse me, 2/23/04.

10 Q Do you know when that was sent to the parents?

11 A I don't know the exact date.

12 Q Is there a certified mail receipt at the end of that?

13 A March 1st, I believe is what it says, received.

14 Q Does that refresh your recollection in any way as to --

15 MR. PETERSEN: Your Honor, I would like to take a  
16 look at that document, if I could, to see if there's a  
17 correlation between the certified mail receipt and the  
18 document, Exhibit 2.

19 THE COURT: All right.

20 MR. PETERSEN: May I approach the witness?

21 THE COURT: Yes, but you may not confer with  
22 him -- excuse me. You may not confer with each other. He's  
23 only entitled to look at the document that you're looking  
24 at. Step away from the witness, please, and look at it.

25 MR. PETERSEN: Your Honor, could I ask counsel a

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1 question for a moment?

2 THE COURT: Yes.

3 MR. PETERSEN: My objection at this point, Your  
4 Honor, is this -- these two documents that are part of that  
5 package don't identify themselves as having always belonged  
6 together; and, furthermore, they talked about March 1st--

7 THE COURT: Well, look --

8 MR. PETERSEN: And this says delivered on the 26th  
9 of --

10 THE COURT: I'm going to permit him to proceed.  
11 You may recross on this issue.

12 MR. PETERSEN: I mean, I just want you to know  
13 that I object to this exhibit.

14 THE COURT: I understand.

15 Are those labeled?

16 MR. WEBER: Your Honor, that is part of the  
17 Composite Exhibit Number 5.

18 THE COURT: Go ahead.

19 BY MR. WEBER:

20 Q Having reviewed the prior written notice and the  
21 informed notice of refusal, does that refresh your  
22 recollection in any way whether this was sent before or  
23 after the February 23rd meeting?

24 A Well, that would be before, I would assume. It's not a  
25 recollection, though.

1 Q Okay.

2 A The refusal would have happened at the IEP.

3 Q Okay. So, what I'm trying to understand is your prior  
4 written notice, is that prior to the mediation, or is that  
5 prior to implementing the change?

6 A I would say the change.

7 Q It's a document that's sent after the meeting that  
8 says, "We're giving you prior notice now that we're going to  
9 make a change in the future"; correct?

10 A No.

11 Q No?

12 A No. They would actually receive that before a change.

13 Q The parents should receive that before a change?

14 A I believe so.

15 Q Okay. Does that document say when the change is going  
16 to be initiated?

17 A The initiation date of 2/24/04.

18 Q So, the IEP team meets on the 23rd, and they're going  
19 to implement the proposed change on the 24th?

20 A Yes.

21 Q And then you're going to send a copy of that in the  
22 mail to the parents on the 26th?

23 A The parents were at the IEP meeting, and they left that  
24 meeting. So, yes, it would have to be sent to them.

25 Q So, they didn't get a copy of the documentation when

1 they left the meeting; it had to be sent to them in the mail  
2 afterwards?

3 MR. PETERSEN: I object to the form of the  
4 question. The documentation doesn't tell us what we're  
5 talking about here, and I do have a concern what we're  
6 talking about here. What documentation?

7 THE COURT: Sustained.

8 BY MR. WEBER:

9 Q Is it your understanding, sir, that the parents didn't  
10 leave on the 23rd with a copy of the prior written notice,  
11 Defense Exhibit 2?

12 A I believe they didn't leave with any of the paperwork.  
13 The only thing I recall them leaving with would be the  
14 procedural safeguards and copies of forms for due process or  
15 mediation.

16 Q And the same thing with the informed notice of refusal,  
17 they didn't have that when they left?

18 A I'm not aware of them leaving with any of the IEP.

19 Q So, some time subsequent to that it had to be sent to  
20 them; correct?

21 A I think so, yes.

22 Q If the district had the initiation date on this change  
23 to be the 24th of February; correct --

24 A Correct.

25 Q -- how could the parents have made a request for a due

1 process hearing and invoked Stay Put prior to you initiating  
2 the change?

3 A They can request a due process any time, including at  
4 the IEP meeting. If they leave the meeting, obviously  
5 they're not going to be there to see what the final product  
6 is, but they would know whatever they knew up to that point.

7 Q So, it's your testimony then the parents would have had  
8 to invoke due process on the 23rd of February before they  
9 had received their notice telling them of your informed  
10 notice of refusal in order to preserve this child's Stay Put  
11 rights?

12 MR. PETERSEN: I object to the form. It  
13 mischaracterizes the evidence before the Court.

14 THE COURT: Overruled.

15 THE WITNESS: Would you repeat the question,  
16 please?

17 BY MR. WEBER:

18 Q Are you telling this Court that the parents would have  
19 had to make their challenge on the 23rd of February in order  
20 to request a hearing and invoke Stay Put before the  
21 district's proposed change on the 24th?

22 A No. They can do that anytime. They can request due  
23 process before or after.

24 Q So, if the parents request due process after the change  
25 has taken effect, they're still entitled to invoke Stay Put

1 and have their pre-change placement?

2 A If -- if the student was not a graduated student and  
3 still has FAPE, yes.

4 Q So, what you're telling this Court then is it doesn't  
5 matter if their invocation of Stay Put is after you've  
6 already implemented the change, they're still entitled to  
7 their pre-change placement?

8 A If a parent disagrees with an IEP and leaves the  
9 meeting and wants to challenge the IEP, obviously it can't  
10 be done that same day, because they're not available. So,  
11 yes, it would happen afterwards; and as long as the student  
12 is still a student, yes, you can challenge an IEP.

13 Q So, the Sammons could have challenged the change that  
14 the district proposed to make on the 23rd of February any  
15 time up until the time he was still a student?

16 A Yes. You can challenge IEPs. You can file for due  
17 process, if that's what you're referring to, yes.

18 Q And had they done that, the district would have  
19 implemented the placement that was in existence prior to the  
20 February 24th change?

21 A Well, he was in that placement at that time.

22 Q Which placement are you talking about?

23 A On February 23rd, he was in the portable placement.

24 Q Sir, do you understand that there was an IEP in effect  
25 before the 23rd of February and the district proposes a

1 change?

2 A Yes.

3 Q There's an IEP that goes into effect the next day?

4 A Yes.

5 Q Two different placements; correct?

6 A There was two different IEPs. If they're challenging  
7 the new IEP, they can challenge it and ask for Stay Put.

8 Q There's a difference between the two?

9 A Correct.

10 Q You would have gone back to the first one had they made  
11 a challenge at any time after you had already implemented  
12 the second one?

13 A If they were challenging the new IEP, even if it was  
14 after that meeting and they were not present at the meeting,  
15 yes, I think your first IEP would have Stay Put, and then  
16 you would go through your due process to determine --

17 Q So, the IEP in place before the parents disagreed with  
18 the change would be the then current placement that would be  
19 implemented?

20 MR. PETERSEN: I object to the form of that  
21 question. It's speculative. It deals with speculation, and  
22 it's not material or relevant to this proceeding, as he has  
23 tried to say there was an --

24 THE COURT: We will take this up after the recess  
25 for my criminal case.

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1           So, sir, you are still on the stand, unfortunately  
2 or fortunately; but in any event, you can't discuss your  
3 testimony even with the counsel whose table you're sitting  
4 at.

5           THE WITNESS: Okay.

6           THE COURT: We may be through by a quarter till.  
7 Let's see, we have an interpreter. We'll be in recess until  
8 3:00. Hopefully we'll be able to resume at that time, and I  
9 hope we can finish in an hour. You think we can?

10          MR. WEBER: I think we can certainly finish the  
11 testimony part.

12          THE COURT: All right. Thank you. You're free to  
13 leave now.

14          Let me see, as far as your books and everything,  
15 we have two attorneys needed at each table. If you want to  
16 just put it on the chairs behind you, it will be safe. You  
17 don't need to worry about it. Somebody will always be here  
18 in the courtroom when someone else is here. Thank you.

19          (Recess from 2:25 p.m. until 3:10 p.m.)

20          THE COURT: If you'll resume the stand again,  
21 hopefully for the last time, and you may proceed.

22          MR. WEBER: Thank you, Your Honor.

23 BY MR. WEBER:

24 Q       Mr. Holmes, did at any point in time the Sammons  
25 receive notice that Andrew was going to graduate on May

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1 13th, 2004?

2 A They received calendars, I believe. I know they  
3 discussed it. I don't know if the date of the 13th was on  
4 there or not, though.

5 MR. WEBER: If I may approach the witness,  
6 Your Honor.

7 THE COURT: All right.

8 BY MR. WEBER:

9 Q I'd like to ask you to -- (handing item to the witness)  
10 if I could ask you to review those documents, what were  
11 previously identified as part of Government Exhibit Number  
12 9.

13 Do you recognize those two documents?

14 A Yes, I do.

15 Q Are those the calendars that you referenced?

16 A I believe so, yes.

17 Q And what do they specify as the date of graduation?

18 A They show the last date the seniors are there is a  
19 makeup day on the 13th, graduation practice from the 14th -  
20 16th, and the ceremony itself was on the 20th.

21 THE COURT: I'm sorry, the 14th - 16th ceremony --  
22 practice, and then the ceremony is on what date?

23 THE WITNESS: On the 20th.

24 BY MR. WEBER:

25 Q And next to the 20th on the calendar it says

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1 "graduation"?

2 A Yes.

3 Q You indicate in your affidavit that there was no effort  
4 on the part of the school district to mislead the parents?

5 A Yes.

6 Q This was a procedure that was actually orchestrated  
7 with outside litigation counsel, was it not?

8 A What are you referring to?

9 Q Did the district consult outside litigation counsel  
10 before sending the May 7th, 2004, letter?

11 A Are you asking if I consulted my attorney prior to  
12 sending the letter? Yes.

13 Q And was it an outside attorney that drafted the letter?

14 A Partly, so. Not completely.

15 Q And was it that same outside attorney that had reviewed  
16 the IEP before the February 23rd meeting?

17 A About that same time, he did, yes.

18 Q And just for clarity, that's Mr. Sharfe?

19 A Yes.

20 Q So, you consulted him before the February 23rd IEP  
21 regarding the IEP; correct?

22 A Yes.

23 Q And then before responding to the April 20th letter of  
24 the parents, you consulted the outside counsel; correct?

25 A Yes, sir.

1 Q And he drafted the response?

2 A For the most part he did, yes.

3 Q So, this wasn't just an automatic reaction to the  
4 parents' request for an IEP meeting; it was done with some  
5 deliberation? Correct?

6 A Yes. Anytime there's a situation where I have a parent  
7 who tends to be contentious or if there's issues, I do use  
8 counsel.

9 MR. WEBER: Your Honor, I just have one further  
10 question; and for some reason, I seemed to misplace my  
11 document that went with it.

12 BY MR. WEBER:

13 Q The actual diploma that the Polk County School Board  
14 issued to Andrew Sammons, what is the date on that diploma?

15 A I believe it reflects the ceremony date of the 20th.

16 Q The 20th day of May, 2004?

17 A I believe so, yes.

18 Q Under the seal of the school -- or the board and the  
19 signature of the superintendent?

20 A I believe so, yes.

21 THE COURT: I'm sorry. What was that document you  
22 were referring to?

23 MR. WEBER: Your Honor, the actual diploma; and it  
24 was part of Composite Exhibit 9--

25 THE COURT: Okay. So, the diploma says May 20th?

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1 MR. WEBER: Correct.

2 Nothing further of this witness, Your Honor.

3 THE COURT: Okay. I said you could recross on  
4 some documents that were shown to him, if you wish.

5 MR. PETERSEN: Yes, and I -- I don't know where  
6 they are. They didn't have a number, have not been  
7 identified.

8 MR. WEBER: Your Honor, the -- the document was  
9 Exhibit 5 on the parties' joint exhibit list, which was the  
10 February IEP.

11 MR. PETERSEN: Judge, I have two documents that we  
12 were talking about, and I withdraw from the package  
13 documents -- they are the certified mail receipt and then  
14 whatever this other return receipt was.

15 THE COURT: Well, do you need -- do you have  
16 copies of your own?

17 MR. PETERSEN: No. I can use these, unless you  
18 want them.

19 THE COURT: Well, they're counsel's copies; right?

20 MR. PETERSEN: Yes.

21 THE COURT: Because my copies are up here.

22 MR. PETERSEN: Do you have them?

23 THE COURT: I have a stack of documents that  
24 apparently is the exhibits that you agreed on subject to  
25 objection. So --

1 MR. PETERSEN: That's correct.

2 THE COURT: But you know how to make your record,  
3 so I won't say anything more.

4 MR. PETERSEN: At this point, if I could ask you,  
5 I would like to ask you to take a look at the two I have in  
6 my hand to make sure you know the two I'm talking about,  
7 because you do have them as part of your Exhibit 9.

8 THE COURT: Cathy, find that.

9 MR. PETERSEN: I'm sorry to have you to do that.

10 THE COURT: It's not a problem.

11 MR. PETERSEN: Perhaps Mr. Campbell would help.

12 THE CLERK: It's not attached to it.

13 MR. WEBER: Your Honor, it's Exhibit 5. That's  
14 Composite 1, and then there should be a separate 5.

15 THE COURT: Well, let me tell you, I don't want to  
16 get exhibits again that are attached at the top. I want  
17 them in books, three-ring binders, please, because they're  
18 very hard to work with; and we'll give you a chance to make  
19 that change after the hearing.

20 MR. PETERSEN: Could I ask you a question about  
21 that, Judge?

22 THE COURT: Not right now. Let's wait and locate  
23 that.

24 MR. PETERSEN: Excuse me, Your Honor. Ordinarily  
25 I would have numbered them 5A, B, C, D, E, and something

1 like that; but the two you have are folded over by --

2           THE COURT: Well, they're folded over because you  
3 asked the deputy clerk to fold them over, and I'm looking at  
4 them right now.

5           What I'm looking at now is 5, and I don't think  
6 there are any numbers on these; right? This is a Composite  
7 5, and that doesn't do the trick. It should be Composite  
8 5.1, 2, 3, 4, etcetera.

9           Maybe it does. This says Page 1 of 14, and then  
10 we have -- we have behind that -- I'm looking at a return  
11 receipt. And then behind that there's something that says  
12 "Sharon Alcorn."

13           Are those the two documents?

14           THE CLERK: Yes, Judge, they are.

15           THE COURT: Okay. Go ahead.

16           So, you can borrow defense counsel's -- you can  
17 borrow plaintiff's counsel's copies, and you can mark those  
18 however you want to.

19           MR. PETERSEN: All right. I would like to mark  
20 the one that says "Sharon Alcorn" as the second of the two,  
21 and the one that is "Sender, complete this section" --  
22 "complete this section on delivery" across the top as Number  
23 1. So, that would be 5.1 and 5.2. Is that all right?

24           THE COURT: All right.

25           MR. PETERSEN: For purposes of the record then I'm



1 Alcorn, who was the staffing specialist for the IEP meeting.

2 Q Okay. Now, is it the practice then that you would,  
3 after the IEP and documents were signed and completed, send  
4 a complete set out?

5 A Yes, it is.

6 Q And is it the practice to send any part of this package  
7 out ahead of time, such as the exhibit, Defendant's Exhibit  
8 2, prior to written notice?

9 A Yes.

10 Q Defendant's Exhibit 2 -- I'm showing you a copy of what  
11 is Defendant's Exhibit 2. It's a part of that.

12 So, Defendant's Exhibit 2 would actually be sent out  
13 prior to the IEP; is that correct?

14 A Yes. We send a notice out to notify the parents.

15 Q Okay. Now, right after the IEP, was a request for a  
16 due-process hearing requested?

17 A No, there wasn't.

18 Q Okay. And there was an opportunity at that point,  
19 wasn't there?

20 A Yes, there was.

21 Q And, in fact, in this case the parents did not sign the  
22 IEP, did they?

23 A No.

24 Q So, that would be an indication that if they had a  
25 disagreement, they should go to the next step?

1 A You would assume they would, yes.

2 Q What is the next step?

3 A To file a due process if they wanted to challenge the  
4 IEP.

5 Q Now, after the administrative hearing in August of  
6 2004, there's a 30-day warning and time period when the  
7 administrative law judge renders an order; is that correct?

8 A Correct.

9 Q And it says, "You have 30 days to appeal this case"; is  
10 that correct?

11 A Yes.

12 Q And that occurred in this case; is that right?

13 A Correct.

14 Q Was there an appeal at that time?

15 A No, there wasn't.

16 Q Now, that appeal is the -- would have been the appeal  
17 to all issues that came up at the administrative law  
18 hearing; is that correct?

19 A That's my understanding.

20 MR. PETERSEN: I've taken all the exhibits back  
21 from the witness, and I'm handing them to counsel.

22 That's all the questions I have, Your Honor.

23 THE COURT: Well, those that you've marked need to  
24 be part of the record.

25 MR. PETERSEN: The ones that I handed him?

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1 THE COURT: The ones that you marked 5.1 and 5.2  
2 need to be part of the record.

3 MR. PETERSEN: Here they are, Judge.

4 THE COURT: You can get copies, Mr. Weber, from  
5 the deputy clerk, or they can send them to you.

6 MR. WEBER: Your Honor, I don't mean to beat a  
7 dead horse, but the witness testified in response to my  
8 question that the prior written notice document was sent  
9 after the meeting, and I thought he just testified it was  
10 sent before the meeting; and I think I could make one more  
11 question of the witness that might help to clarify that  
12 point.

13 THE COURT: All right.

14 MR. WEBER: If I may approach the witness.

15 THE COURT: All right.

16 CONTINUED REDIRECT-EXAMINATION

17 BY MR. WEBER:

18 Q Mr. Holmes, I'm showing you a copy of the notice that  
19 goes to the parents before the meeting which says "Meeting  
20 Notice."

21 Is that the document that notifies the parents of  
22 the meeting before the meeting?

23 A Yes, I believe it is.

24 Q Okay. So, the document entitled "Prior Written Notice"  
25 that was identified as Defendant's Exhibit 2, that's not the

1 document that is used to notify the parents of the meeting,  
2 is it?

3 A I'm not sure if it actually goes out. I know this is a  
4 prior meeting notice in itself.

5 Q So, there's a document of a meeting notice that goes  
6 out telling them to come to the meeting; and then the  
7 document, Defendant's 2, is dated February 23rd, and that's  
8 a prior written notice of the change, is it not?

9 A Yes, I believe it is.

10 MR. WEBER: Thank you.

11 THE COURT: Is there anything further?

12 MR. WEBER: No, Your Honor.

13 THE COURT: You may step down.

14 Your next witness.

15 MR. WEBER: Your Honor, the plaintiff would call  
16 William Sammons. As we do, I would like to move into  
17 evidence a few documents, specifically, Your Honor, Exhibits  
18 1C through EE, which is the administrative proceedings.

19 THE COURT: The record of the administrative  
20 proceedings?

21 MR. WEBER: That's correct, Your Honor. There is  
22 the documents from the initial documents all the way through  
23 to the final order and the trial transcript.

24 THE COURT: Just a minute.

25 Any objection, Mr. Petersen?

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1           MR. PETERSEN: The problem I have, Your Honor, is  
2 we've noted our objections on the exhibit list. I'd like  
3 those to stand as -- when he says "1," I don't know what he  
4 means by "1."

5           As I read this exhibit list, I take it there's a 1  
6 that's document Number 8 with all attachments.

7           THE COURT: Well, wait a minute. He just told me  
8 that these Exhibits C through EE constitute the record at  
9 the administrative hearing. Do you agree, or do you not  
10 agree?

11          MR. PETERSEN: I don't know. It doesn't  
12 correspond to our exhibit list. I don't know what he's  
13 talking about.

14          THE COURT: Well, you all should have figured this  
15 out before right now.

16          MR. PETERSEN: We did. We did. Exhibit 1 in this  
17 case is Docket Number 8 with all attachments, and I think  
18 that's the transcript with all attachments. If that's what  
19 he's saying, he has to use those words. I know what we did.

20          MR. WEBER: Your Honor, I never dealt with  
21 Mr. Peterson on exhibits. I dealt with his associate,  
22 Ms. Sedaka.

23                 Exhibits C through EE are simply the labels given  
24 to the specific documents in the administrative record, and  
25 we filed those along with our motion for preliminary

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1 injunction as Docket Number 8. The parties referred to it  
2 as such, which had an index and said C through double E.

3 THE COURT: Well, wait a minute. Well, if you  
4 already have -- is Docket Number 8 -- do I need to consider  
5 C through EE if we have 1, or is 1 simply -- is 1 complete?

6 MR. WEBER: Yeah. A and B were the two  
7 affidavits.

8 THE COURT: I see that. But is Docket -- is  
9 Exhibit Number 1 complete? Is that the administrative  
10 record?

11 MR. WEBER: Yes, Your Honor.

12 THE COURT: Then why do I need to also consider C  
13 through EE?

14 MR. WEBER: Well, it's the administrative record  
15 plus the two affidavits. I was just moving them in  
16 separately so if there was an objection --

17 THE COURT: Oh, well --

18 MR. WEBER: I apologize for the confusion.

19 THE COURT: So, he's telling me it's 1C through  
20 1EE, if I understand it correctly?

21 MR. WEBER: Correct.

22 MR. PETERSEN: If he's saying that, our objections  
23 are as noted; and I can go through each one, or you can take  
24 --

25 THE COURT: Well, let me tell you something: You

1 told me that my inquiry was limited to the administrative  
2 record, did you not?

3 MR. PETERSEN: Yes.

4 THE COURT: Okay. Well, then, why do you have  
5 specific objections to specific parts of the administrative  
6 record?

7 MR. PETERSEN: Well, because A and B are  
8 affidavits that are not a part of the record.

9 THE COURT: Well. Forget A and B. We're talking  
10 about C through EE. You want me to go through and look at  
11 each of these objections. What does "R" stand for?

12 MR. PETERSEN: Relevance.

13 THE COURT: Okay. I don't have a code here.  
14 So -- well, all right. Well, if these are relevancy  
15 objections to the documents, which you agree are part of the  
16 administrative record, those relevancy objections are  
17 overruled, and 1C through 1EE are admitted.

18 (Plaintiff's Exhibits 1C through 1EE were  
19 received in evidence.)

20 MR. WEBER: Your Honor, Exhibit Number 2 is the  
21 exhibits from the administrative hearing. They were  
22 actually admitted into evidence. I would move that they be  
23 admitted.

24 MR. PETERSEN: No objection.

25 THE COURT: 2 is admitted.

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1 (Plaintiff's Exhibit 2 was received in evidence.)

2 MR. WEBER: I think we previously discussed  
3 Exhibit 9, which was the exhibits that were proffered to the  
4 administrative tribunal. We'd move those into evidence.

5 THE COURT: Subject to your objection?

6 MR. PETERSEN: Yes, we object to those.

7 THE COURT: Those are admitted. Objection  
8 overruled subject to my further determination.

9 (Plaintiff Exhibit Number 9 was received in  
10 evidence.)

11 MR. WEBER: Thank you, Your Honor.

12 THE COURT: Has this witness been sworn?

13 THE CLERK: No.

14 THE COURT: Please rise, sir.

15 WILLIAM SAMMONS,  
16 the witness, being sworn or affirmed, testified as follows:

17 THE CLERK: Please have a seat. State your name  
18 and spell your last name for the record.

19 THE WITNESS: William H. Sammons, "S" as in  
20 Sally-A-M-M-O-N-S.

21 DIRECT EXAMINATION

22 BY MR. WEBER:

23 Q Mr. Sammons, what capacity do you have as far as your  
24 ability to represent Andrew?

25 A I've been -- my wife and I are both co-guardians of

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1 Drew. Right after he turned 18, we got that done.

2 Q So, he's been declared incapacitated?

3 A That's correct.

4 Q All right. And his legal rights, is that something  
5 that you have the authority to exercise for him?

6 A All of his rights, except I think he kept the right to  
7 vote.

8 Q So, other than the right to vote, they've been  
9 delegated to you and your wife?

10 A That's correct.

11 Q Okay. Could you describe for the Court very briefly  
12 the nature of Drew's disability?

13 A Yes. Drew -- a lot of people might call him a  
14 high-functioning autistic. He has Asperger's Syndrome,  
15 which is on the continuum of autism.

16 Academically, he can have a rote memory, but he has a  
17 hard time with comprehension in subjective reasoning.  
18 Behaviorally, he has the general behavior of a six-year-old,  
19 and he will come up and give you a hug, and he acts with  
20 behaviors consistent with a six-year-old child.

21 Q And as a result of that, has he received exceptional  
22 student education through his career?

23 A Yes. Drew, when he was born, we knew he had  
24 developmental disabilities. He wasn't able to walk until he  
25 was four. He had very poor eyesight, and still does. He

1 doesn't have a full correction on his eyesight. And he's  
2 been unable to speak.

3           He can make some sounds, some verbalizations for  
4 "yes" and "no," like "ah" for yes and "unh-unh" for no. He  
5 can make a series of sounds for someone's name for people  
6 that he's close to. Oh -- and, by the way, he signs. He  
7 finger spells, a lot of finger spelling; and he is able to  
8 write and type on a computer.

9 Q       What was your understanding of the duration of  
10 Andrew's -- what is the duration of Andrew's stay in high  
11 school going to be?

12 A       Well, in fact, we were very concerned that Drew would  
13 not make it through high school and wouldn't be able to get  
14 a regular diploma.

15       The county does not give out regular diplomas to ESE  
16 students when compared to other counties in the state, and  
17 we wanted to -- we were concerned that if we worked just on  
18 his disabilities as it related to Asperger's and didn't  
19 worry about an academic -- about his academic instruction,  
20 then while we may be solving one disability or improving on  
21 one disability, we may be creating another disability,  
22 because he'd have the lack of academic instruction.

23       So, we were excited to find out when he was in the  
24 tenth grade -- we didn't find out from the school system,  
25 but we found out that a child can actually take more than

1 four years to go through a high school program and still get  
2 a regular diploma.

3       And so, we saw that it was possible that he could get  
4 the developmental instruction that he needed and, at the  
5 same time, get academic instruction and he could get a  
6 regular diploma.

7 Q       And did you understand that was going to be longer than  
8 the normal four years?

9 A       Well, yes, I did. I just -- from that standpoint,  
10 initially he had fewer classes scheduled than typical; and  
11 then later on, much of his day -- Drew also has sleep apnea.  
12 He has a mild to moderate case of sleep apnea, and that plus  
13 the medications he takes for behavior required him to sleep  
14 a lot during the day. About a third of Drew's class day he  
15 sleeps, and it's not something that's voluntary on his part.  
16 It's just required of his makeup.

17       So, we knew a third of his day he was sleeping, and  
18 there's some inefficiencies in educating Drew because of his  
19 disabilities, and there was certainly a lot of time when he  
20 was away from academic instruction just because of his  
21 behaviors.

22       So, we knew it was going to take longer to get him the  
23 same material that the regular ed student would receive.

24 Q       During the course of your experience with the Polk  
25 County School District, did you have occasion to attend IEP

1 meetings for your son?

2 A Yes. We certainly had more IEP meetings than the  
3 average parents do with an ESE child. Drew was very  
4 involved, a very difficult child to educate, given his  
5 disabilities.

6 And we also found -- my wife and I would go to  
7 conferences and try to be knowledgeable on how to educate  
8 Asperger's, and there was a learning curve; and so, we had  
9 to work with the school system. We found generally that  
10 there was a lack of trained personnel in the school system.

11 Q Let's stop you there, and I'm going to try to keep my  
12 questions somewhat focused. How many IEP meetings over the  
13 course of Drew's career do you think you attended?

14 A I don't -- I know in the last four years -- I just  
15 counted them up last night. We had 13 IEPs in four years.  
16 So, that's more than two a year. One year where we were  
17 having some significant behavioral problems with Drew, I  
18 think we had four or five IEPs in the same year.

19 Q And in connection with those meetings, would the  
20 process typically be the same as far as the notices that you  
21 received and copies of the paperwork?

22 A Yes, they would.

23 Q All right. And during this period of time, did you  
24 attempt to cooperate and work with the school in achieving  
25 the objectives that were set forth?

1 A We did. It was difficult. We realized that the school  
2 system had limited resources and could not meet the needs of  
3 Drew because of their limited resources; and on the one  
4 hand, we had federal law that says what the school system  
5 was required to do, and then we had the realities of  
6 education in Polk County.

7 Q You tried to work within that with the school district?

8 A Yes, we did.

9 Q At some point in time did the relationship with the  
10 school district come to a head where you just simply didn't  
11 agree with them?

12 A Well, I -- we had always signed IEPs, and we had  
13 certainly objected to parts of IEPs and gotten letters of  
14 refusal on items. I will admit that we didn't take it  
15 forward into mediation or into due process.

16 One of the things is -- again, you learn. If I had to  
17 do it over again, we'd do it differently. Now I know, but I  
18 didn't.

19 On the -- in the February IEP meeting -- my wife and I  
20 attend almost all of them together -- she had to leave  
21 early. She was concerned. She had an appointment. She was  
22 to find out whether or not she had breast cancer, so she  
23 left early. She didn't. That was good.

24 But anyway, that particular meeting, we had been  
25 concerned that Drew had not been getting any of his writing

1 skills that we'd had on IEPs for four years; and in that  
2 meeting, they wanted to take out the goals for writing; and  
3 I have a non-verbal child, and it just -- the absurdity of  
4 it was quite upsetting.

5       Then we -- also, they were talking about graduation;  
6 and we approached it from two different aspects. One was  
7 his goals. His IEP goals certainly hadn't been met, because  
8 we had just gone over the goals for the previous IEP in that  
9 meeting, and it was quite clear from the teacher's comments  
10 that they hadn't been met. And I have a digital recording  
11 of that IEP, and I listened to most of it last night. It's  
12 quite clear.

13       And then at the -- let's see -- so, there were -- there  
14 were two aspects of it. One was we had always been told in  
15 all the conferences and all the conversations I'd had with  
16 an attorney -- in fact, part of the conversation --

17 Q     I don't want you to talk about any conversations you  
18 had with an attorney. If there was something at the meeting  
19 you discussed.

20 A     All right. But basically if a child is not meeting his  
21 IEP goals, the child does not have to graduate is what I had  
22 always understood.

23       The Polk County school system was taking a -- a  
24 separate -- taking a separate -- had a separate opinion.  
25 So, there was that.

1           And then I said, "Well, let's just set aside the  
2 regular diploma for a while," because they were saying if  
3 Drew got a regular diploma, he would be exiting the system;  
4 and I knew Drew was not ready to go to college and that we  
5 have a 50-hour-a-week employee that stays with Drew during  
6 the day, and that required that we needed to -- let's see.  
7 I lost track --

8 Q       Let me just --

9 A       Yes, thank you.

10 Q       -- ask you a question. You refused to sign what the  
11 school was proposing on the 23rd?

12 A       Yes, we did.

13 Q       Okay. And you left the meeting. Did you indicate to  
14 them in any way that you were objecting to what they were  
15 profiling?

16 A       It was quite clear, because I had never not signed an  
17 IEP, even when I registered objections. We just -- it was  
18 just clear -- I felt that the decision had been made prior  
19 to -- I felt like it was a railroad and something was  
20 happening; and I didn't know what was happening, but I  
21 just -- I needed to get out of the room. I knew that it  
22 just appeared that things were stacked against us.

23 Q       And subsequent to that, did you attempt to put your  
24 objections in writing to the school district?

25 A       Yes, I did. In fact, where I might disagree with

1 others, I have always tried to keep the cost of litigation  
2 or the cost of legal down, because I realize the limited  
3 resources of the school system. I want to get services to  
4 the kids. I mean --

5 THE COURT: Excuse me. I'm going to stop you. I  
6 want to discuss time. Okay. We can come back and conclude  
7 the evidentiary hearing, but we're not going to go much  
8 longer today. So, I just wanted you to be cognitive of  
9 that.

10 MR. PETERSEN: Judge, I don't want to come back to  
11 conclude the evidentiary hearing. I think they get their  
12 time and they use it any way they see fit, and I would just  
13 ask the Court that otherwise we're going to be here perhaps  
14 after that time, another time after that, and another time  
15 after that --

16 THE COURT: Thank you.

17 MR. PETERSEN: -- just while the rambling goes on.

18 THE COURT: How long do you think it will take --  
19 is this your last witness?

20 MR. WEBER: This is my last witness.

21 THE COURT: How long will it take to conclude his  
22 direct testimony?

23 MR. WEBER: I hope to just get through the  
24 documentation in maybe ten minutes.

25 THE COURT: So, you think another ten minutes?

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1           How long will your cross-examination take?

2           MR. PETERSEN: So far zero.

3           THE COURT: Well, then we're okay. But we're not  
4 going to be here until 5:00 because of my schedule and  
5 because of the traffic issues we talked about previously.

6           MR. PETERSEN: Well, I --

7           THE COURT: Just a minute, please. May I finish?  
8 It's not that I don't want to hear what you have to say,  
9 sir, but we have certain -- this is not a trial, and the  
10 background is helpful; but some of this may already be in  
11 the record, so let's move on to the issues that you think  
12 are important for this preliminary injunction, which you're  
13 getting into; but we need to proceed.

14          MR. WEBER: If I may approach the witness.

15          THE COURT: Now, what did you have to say,  
16 Mr. Petersen?

17          MR. PETERSEN: Nothing, Your Honor.

18          THE COURT: Go ahead.

19 BY MR. WEBER:

20 Q       (Hands item to the witness.) Mr. Sammons, I would like  
21 you to take a look at Exhibit 1A, which is the affidavit  
22 that you purport to be your affidavit.

23 A       Yes, that's my affidavit.

24 Q       Would you take a moment to review that.

25 A       I did.

1 Q You're familiar with that document?

2 A I am.

3 Q You're familiar with the attached exhibits?

4 A I am.

5 Q And would you affirm the statements that you made in  
6 that affidavit here as being true?

7 A Yes, I would.

8 MR. WEBER: Your Honor, I move Exhibit 1A into  
9 evidence.

10 THE COURT: You were having him incorporate this  
11 affidavit in lieu of testimony here?

12 MR. WEBER: In lieu of testimony here.

13 THE COURT: So that cross-examination can follow?

14 MR. WEBER: Correct.

15 THE COURT: Do you have any objection?

16 MR. PETERSEN: Yes, but -- I mean, if the -- if  
17 that affidavit comes in and we now walk out of here and I  
18 don't cross-examine --

19 THE COURT: Mr. Petersen, I'm not saying you can't  
20 cross-examine. What I'm saying is that, do you have any  
21 objection to this being admitted?

22 MR. PETERSEN: Yes. He either testifies or we get  
23 the affidavit in, whichever, not both.

24 THE COURT: There is a procedure that I've  
25 utilized before where I will permit someone to incorporate

1 an affidavit subject to full cross-examination on the  
2 matters in the affidavit. I do this procedure in certain  
3 cases.

4           You are objecting to that; is that right?

5           MR. PETERSEN: Yes, I'm objecting, because there  
6 is also a rule of procedure that says that you have to give  
7 notice that you're going to use the affidavit ahead of time,  
8 and that was not done.

9           I mean, other than the fact it's included as an  
10 exhibit, there's never been a motion to use the affidavit in  
11 lieu of testimony.

12          THE COURT: Your response, Mr. Weber.

13          MR. WEBER: Your Honor, this was the affidavit we  
14 filed in support of our motion for preliminary injunction  
15 and we later put on a witness list. They are aware of  
16 Mr. Sammons' affidavit.

17          THE COURT: Well, you know, you can't have it both  
18 ways, and I realize you're trying to expedite this, and I'm  
19 going to give everybody a full and fair hearing. So, I  
20 think we're probably going to have to do what we can today,  
21 recess, and come back another day.

22          So, the objection to the affidavit is sustained  
23 based on what defense counsel has said; and if you want to  
24 elicit the testimony in the affidavit, you must do so this  
25 way.

1           MR. PETERSEN: Judge, I withdraw the objection. I  
2 have no objection to the affidavit.

3           THE COURT: Mr. Petersen --

4           MR. PETERSEN: Yes, ma'am.

5           THE COURT -- these kind of tactics do not really  
6 help me.

7           MR. PETERSEN: I didn't understand what you were  
8 doing.

9           THE COURT: Pardon me.

10          MR. PETERSEN: I didn't understand what you were  
11 saying. I thought you were saying he gets to put in both  
12 the affidavit and have him testify as to what he says.

13          THE COURT: No, that's not what I was saying.

14          MR. PETERSEN: I misunderstood. That's why I  
15 objected when you asked me. I'm sorry.

16          THE COURT: You know, when you invoke the rule of  
17 sequestration on that attorney because you didn't want that  
18 attorney coming in and assisting him, that's the kind of  
19 thing that I just think is disappointing.

20          So, the affidavit is admitted, and you may  
21 proceed.

22          MR. WEBER: May I approach the witness,  
23 Your Honor?

24          THE COURT: Yes.

25          MR. WEBER: (Hands item to the witness.)

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Middle District of Florida, Tampa Division

1 THE COURT: What exhibit is it?

2 MR. WEBER: Your Honor, I'm showing the witness  
3 what has previously been identified as Exhibit 3, the  
4 October 2003 IEP.

5 BY MR. WEBER:

6 Q Mr. Sammons, do you recognize that particular document?

7 A I do.

8 Q All right. Could you describe for the Court what that  
9 is?

10 A It is the IEP document that was created during and  
11 after the meeting. I guess it would be during the  
12 meeting -- IEP meeting of October 6th, 2003.

13 Q Does that particular document have the writing goals  
14 that you referenced?

15 A It does.

16 MR. WEBER: And if I may approach again,  
17 Your Honor.

18 THE COURT: Yes.

19 BY MR. WEBER:

20 Q (Handing item to witness.) I'm also showing you what  
21 was previously identified as Exhibit 5, and I believe  
22 attached to that is 5.1 and 5.2. I ask you if you can  
23 review that document a minute.

24 A Yes. This is the -- the February 23rd IEP that I  
25 received in the mail.

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1 Q At the end of that document --

2 A I was going to say yes, it also has the meeting notice  
3 of that IEP meeting, and it also has my parents' response.

4 MR. WEBER: Your Honor, I would move Exhibit 3 and  
5 5 in evidence, the October IEP and October 2005 IEP.

6 THE COURT: And those are not part of the  
7 administrative record?

8 MR. WEBER: No, Your Honor; but the October 6th,  
9 2003, IEP is what we contend is the Stay Put placement.

10 THE COURT: Let me ask you the question again. Is  
11 Exhibit 3 in the administrative record which has been  
12 identified as 1C through EE, yes or no?

13 MR. WEBER: No, Your Honor.

14 THE COURT: Okay. And was it a document you were  
15 not allowed to introduce at the administrative hearing?

16 MR. WEBER: Yes, Your Honor.

17 THE COURT: And the record will show that, that  
18 you tried to introduce it?

19 MR. WEBER: The record will show that.

20 THE COURT: Okay. What's your position with  
21 regard to Exhibit 2?

22 MR. PETERSEN: Judge, it was not proper, and it  
23 was not admitted, and it's not relevant. It's not relevant  
24 because the IEP is not relevant, be it the February or the  
25 October IEP.

1 THE COURT: All right. The relevancy objection is  
2 overruled. Subject to further consideration, Exhibit 2 is  
3 admitted.

4 Now, as far as Exhibit 5 --

5 MR. PETERSEN: That would have been Number 3, I  
6 believe.

7 THE COURT: Excuse me. Exhibit 3 is admitted.

8 (Plaintiff's Exhibit Number 3 was received in  
9 evidence.)

10 THE COURT: What about Exhibit 5? That was the  
11 IEP received in the mail. That's not part of the  
12 administrative record either?

13 MR. WEBER: Your Honor, that was also excluded by  
14 THE ALJ.

15 THE COURT: Same objection, Mr. Petersen,  
16 relevancy?

17 MR. PETERSEN: Relevancy and hearsay, yes.

18 THE COURT: Overruled subject to further  
19 consideration when I put this R&R together.

20 MR. WEBER: I believe I only have one further  
21 exhibit, if I can approach. Maybe I can do it without the  
22 exhibit. It is the case conference report from the February  
23 23rd meeting.

24 MR. PETERSEN: Same prior objection, but it  
25 appears to be an accurate document.

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Middle District of Florida, Tampa Division

1 THE COURT: What exhibit number?

2 MR. WEBER: Exhibit Number 4, Your Honor.

3 THE COURT: Exhibit 4 is admitted.

4 (Plaintiff's Exhibit Number 4 was received in  
5 evidence.)

6 MR. WEBER: I really didn't intend to go here, but  
7 Mr. Holmes made an issue of this. I would like to ask  
8 Mr. Sammons whether Drew is prepared for college, if the  
9 Court wants to hear that.

10 THE COURT: Go ahead.

11 THE WITNESS: The answer is no -- a disappointing  
12 no; but I'd be glad for a lot of people to look at Drew, and  
13 I think they'd all say the same.

14 We had hoped that he would be; but at age 19, he  
15 isn't. We have Florida prepaid tuition, and I'd love for  
16 him -- to say yes, but he has to be with an adult at all  
17 times, and his reasoning ability is such that it wouldn't be  
18 a profitable experience for him; and, also, he's not writing  
19 as requested, and I doubt English teachers in college would  
20 allow him to take an English course and not have to write.

21 MR. WEBER: Nothing further, Your Honor.

22 THE COURT: Cross-examination.

23 MR. PETERSEN: May it please the Court.

24 CROSS-EXAMINATION

25 BY MR. PETERSEN:

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1 Q Regarding the October 6th IEP, 2003, isn't it correct  
2 that as of October, the discussion went, "Mr. and  
3 Mrs. Sammons would like" -- during the IEP meeting, "Mr. and  
4 Mrs. Sammons would like for Drew to graduate from high  
5 school with a standard diploma. They would like for him to  
6 attend college and pursue a computer-related field." True  
7 or not true?

8 A Read it one more time.

9 Q "Mr. and Mrs. Sammons would like for Drew to graduate  
10 from high school with a standard diploma. They would like  
11 for him to attend college and pursue a computer-related  
12 field."

13 This is the IEP --

14 A Mm-hmm.

15 Q -- for October.

16 A That's what we would like. That's a dream.

17 Q Now, since August have you pursued any educational  
18 benefits for Drew toward college?

19 A Not -- well, I say "not," we've had Drew go to go  
20 through the voc. rehab -- Florida voc. rehab. Testing  
21 Abilities of Florida tested Drew as to his employability and  
22 found that there was some serious concerns. In fact --

23 Q Mr. Sammons, I didn't ask you about employability.

24 A Okay.

25 Q I asked you about going to college.

1 A No.

2 Q An educational pursuit toward going to college?

3 A No.

4 Q Then is it no longer the desire of Mr. and Mrs. Sammons  
5 that Drew would go to college?

6 A We would like him to first get his high school  
7 education, and then we'd like him to go to college.

8 Q Is it your intent to take action to take away his high  
9 school diploma that was awarded back in May of 2004?

10 A It is -- yes. It's my intent for him to earn his high  
11 school diploma and to learn the material that's required to  
12 obtain it.

13 Q Is it correct that you have posted a website involving  
14 your case on the Internet?

15 A Yes, sir, it sure is.

16 Q And on that Internet, is it correct that you have  
17 posted your attorney's fees and other documents relating to  
18 this case?

19 A Yes.

20 Q And commentaries by yourself --

21 A That's correct.

22 Q -- discussing every bit of this case?

23 A Not every bit, because I just don't have enough time.

24 Q It's extensive, though, isn't it?

25 A That's correct.

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1 Q About 22 pages?

2 A Excuse me?

3 Q At least 22 pages on your website?

4 A Yes, sir. I added some last weekend. I don't know if  
5 that's after last weekend. Yes, it's extensive.

6 MR. PETERSEN: I would like to have this marked as  
7 an exhibit -- the next numbered exhibit.

8 THE COURT: What number would that be? Do you  
9 have an exhibit list?

10 MR. WEBER: Judge, this document was not on the  
11 exhibit list that the parties agreed to.

12 THE COURT: There's no separate defendant's  
13 exhibit list, because I'm looking at -- this was intended to  
14 be a joint exhibit list, was it not?

15 MR. PETERSEN: Yes.

16 THE COURT: So, it would be what, Cathy?

17 THE CLERK: 4.

18 THE COURT: But we already have 4.

19 THE CLERK: Of the defendant's.

20 THE COURT: Okay. You have an objection,  
21 Mr. Weber?

22 MR. WEBER: Your Honor, I don't know if the  
23 purpose of this is impeachment or whether it's trying to be  
24 offered for some sort of substantive evidence. It was not  
25 disclosed to be offered as substantive evidence.

1 THE COURT: The objection is not previously  
2 disclosed.

3 Are you offering this as substantive evidence,  
4 Mr. Petersen?

5 MR. PETERSEN: No, I'm not. I'm offering it -- I  
6 know you withheld ruling on the attorney's fee billings  
7 issue. I think his questions have probably covered it, and  
8 I may not need it.

9 THE DEFENDANT: Well, if it's impeachment, the  
10 objection is overruled.

11 (Defendant's Exhibit 4 was marked for  
12 identification.)

13 BY MR. PETERSEN:

14 Q This has been marked for identification, and this is  
15 Defendant's Exhibit Number 4. Does that appear to be a  
16 printout of your website regarding this case?

17 A Yes, it is.

18 Q Was this intended to be disseminated to the public in  
19 general?

20 A Yes, also along with the attorneys' fees for the school  
21 board.

22 Q Now, you are an ESE advocate, aren't you?

23 A Yes, sir.

24 Q Now, that's a word of art, isn't it?

25 A Yes, sir, it sure is.

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Middle District of Florida, Tampa Division

1 Q That means you represent other parents in ESE cases; is  
2 that correct?

3 A I can't say -- I wouldn't go so far to say I represent  
4 other parents. I work with other parents. They -- they  
5 are -- have IEP meetings and run the IEP meeting, but I  
6 certainly let them know what concerns they need to have.

7 Q And you advise them on ESE issues?

8 A Yes, that would be fair to say.

9 Q Okay. And do you go into the ESE sessions with them --  
10 or the IEP meetings with them?

11 A Yes, I do.

12 Q Okay. And do you do this on a regular basis?

13 A For instance, I did it twice in March, but that's  
14 unusual. Probably once every other month.

15 Q Throughout the year?

16 A Throughout the school year typically, yes, sir.

17 Q Then have you educated yourself on the -- the various  
18 provisions of IDEA?

19 A To the best of my ability.

20 Q How have you done that?

21 A Well, in fact, I actually took a course -- I don't even  
22 know if Mark remembers it -- from STAND, which is for an  
23 advocacy group, and then I do go to conferences trying to  
24 learn about the disability; and from time to time they'll  
25 have a workshop on IEPs, and from time to time I've attended

1 those workshops.

2 Q And you're familiar with the process of filing for a  
3 due-process hearing?

4 A And mediation, yes, sir.

5 Q Okay. Now, did you file for a due-process hearing  
6 after the October IEP, October 2004?

7 A No.

8 Q Did you file for a due-process hearing after the  
9 February 2004 IEP?

10 A I filed for a mediation.

11 Q Well, that was -- that wasn't until May; is that  
12 right -- April or May?

13 A I filed for a mediation. I guess that would be the --  
14 what is it, April 23 -- 24th, I guess y'all received it or  
15 whatever, my -- my ten-page letter that we referred to  
16 today.

17 Q You have a right after the IEP as you walk out of there  
18 to request a due-process hearing, don't you?

19 A I have a right to request a due-process hearing any  
20 day. The -- the question or the-- what I tried to do, I had  
21 to get -- I wanted to get the records from the school  
22 system. So, I had to set up an appointment to go down and  
23 get records from the school system.

24 I also needed to calm down. I don't think -- Drew is  
25 my own son; and so, I got more emotionally involved than I

1 normally would. Frankly, I just had to have a cooling off  
2 period, because I was very disappointed in what I had seen.

3 Q And you did not take an appeal from the administrative  
4 law ruling when the ruling came out that says at the end of  
5 it you have 30 days to appeal?

6 A I will tell you through all the courses I've had,  
7 that's never been covered. At least I certainly don't  
8 recall that I have 30 days for the ruling. I've also always  
9 been told by school personnel, "You can go ahead and sign  
10 this IEP, and you can always ask for another IEP the next  
11 day." So, if you're unhappy, you can come back to the  
12 table.

13 So, in my letter in April, I asked to come back to the  
14 table. And if -- basically the County wasn't agreeable to  
15 come back to the table in IEP, so I asked for mediation.

16 Q I'm sorry. Perhaps I was not clear. On the 11th of  
17 August, 2004, the administrative law judge, William F.  
18 Quattlebaum, issued a final ruling in this case; is that  
19 correct?

20 MR. WEBER: Your Honor, I'm going to object to the  
21 question. It calls for a legal conclusion as to whether  
22 that was the final order.

23 MR. PETERSEN: It says "Final Order." It's  
24 attached to the complaint. They filed the complaint.

25 THE COURT: Wait a minute. Just wait a minute.

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1 You were asking him whether he received it or whether he  
2 agrees that was the final order?

3 MR. PETERSEN: I'm asking if he agrees this is the  
4 final order, and then I was going to ask him if he received  
5 it and talk to him about it.

6 THE COURT: Go ahead. Objection's overruled.

7 MR. PETERSEN: May I approach the witness?

8 THE COURT: Yes.

9 BY MR. PETERSEN:

10 Q Here's the final order. This is the judge's signature.  
11 Is this the final order in this case?

12 A Well, yes and no, and this is very unusual for this  
13 particular case. My attorney actually filed a motion to  
14 reconsider after this was filed, because he believed that  
15 basically this ruling was, I guess you'd say, off the wall.  
16 And so, he did file a motion to reconsider, and then there  
17 was some time after the motion to reconsider before there  
18 was -- before he was turned down, if I'm not mistaken. I  
19 could be wrong on that.

20 MR. PETERSEN: Are you asking Mr. Weber or --

21 MR. WEBER: Your Honor, I would like to make an  
22 objection.

23 THE WITNESS: I would have to say we --

24 THE COURT: Let him finish.

25 THE WITNESS: It would certainly be on the record

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1 of the administrative judge, and we need to check that out.

2 I can't answer your question.

3 BY MR. PETERSEN:

4 Q So, there may have been a request for reconsideration;

5 but at some point in time, the judge denied the request for

6 reconsideration? Is that correct?

7 A That's correct.

8 Q And you did not take an appeal from this case at that

9 point in time?

10 A Just a minute. One of the things that was happening --

11 and this is an -- well, I --

12 Q Just yes or no.

13 A We were getting a new school superintendent. I was

14 hoping the new school superintendent would take a different

15 attitude.

16 Q Answer yes or no, Mr. Sammons.

17 A Okay. The answer is we had a motion to reconsider. I

18 don't know when that answer came back; and then when I was

19 convinced the school system wasn't going to change its mind,

20 I then took action to see about filing in federal court.

21 MR. WEBER: Your Honor, may I interpose my

22 objection? This entire examination is misleading the

23 witness. The final order of the Division of Administrative

24 Hearings is dated November 10th, 2004, and I filed the

25 lawsuit within 30 days after that in this court.

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1 I don't understand what --

2 THE COURT: Is that correct? Is that chronology  
3 correct, Mr. Petersen?

4 MR. PETERSEN: I don't know. I don't know if that  
5 chronology is correct.

6 THE COURT: Well, then where are you going?  
7 You're going toward the bar -- has there been a motion to  
8 dismiss filed by you in this case?

9 MR. PETERSEN: No.

10 THE COURT: When was the lawsuit filed? Well,  
11 I'll tell you. The docket shows it was filed on 12/9 of  
12 2004. Do you disagree with that?

13 MR. PETERSEN: No.

14 THE COURT: Do we have a 30-day bar problem that I  
15 need to consider in connection with the report and  
16 recommendation?

17 MR. PETERSEN: I don't know. I haven't looked at  
18 that.

19 THE COURT: Well, if the order was November 10th  
20 and the complaint was filed on 12/9, according to the court  
21 record which I'm looking at -- because it's electronic  
22 now -- is that more than 30 days?

23 MR. PETERSEN: No, it's not more than 30 days.

24 THE COURT: All right.

25 MR. PETERSEN: You're asking me things that I

1 don't have at hand.

2           THE COURT: Well, Mr. Petersen, I'm just trying to  
3 figure out how to rule on the objection; and in my own mind,  
4 I'm thinking, "Well, wait a minute. If there was a filing  
5 later than 30 days, there's no motion to dismiss." I'm  
6 trying to sort out the wheat from the chaff. You understand  
7 that. You do that as an attorney. So does Mr. Weber.  
8 That's what I'm trying to do.

9           You may proceed.

10          MR. PETERSEN: I would ask that the final order  
11 be -- that's Exhibit A to the -- I want to make sure this is  
12 in the record. I believe it's in the record. I believe  
13 it's part of the administrative proceedings below.

14          THE COURT: I think it's in the record definitely.

15          MR. PETERSEN: Okay.

16          THE COURT: Because it is DD.

17          MR. PETERSEN: All right. Thank you.

18          THE COURT: Is that what DD is?

19          MR. WEBER: Yes, Your Honor; and that's also an  
20 exhibit for my complaint, Document 1.

21          MR. PETERSEN: No further questions of this  
22 witness.

23          THE COURT: Any redirect?

24          MR. WEBER: No, Your Honor.

25          THE COURT: All right. You may step down, sir.

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1           Any additional witnesses on behalf of the  
2 plaintiff?

3           Your Honor, the plaintiff rests.

4           I wanted to inquire of the Court whether we'd have  
5 an opportunity to argue the legal aspects in the closing at  
6 a later time.

7           THE COURT: Just a minute.

8           Any witnesses on behalf of the defendant?

9           MR. PETERSEN: No, Your Honor.

10          THE COURT: Is there any additional evidence that  
11 either side wishes to offer?

12          No? Okay.

13          Apparently -- I'm gathering you put this together,  
14 these exhibit books, Mr. Weber.

15          MR. WEBER: Yes, Your Honor.

16          THE COURT: Well, you heard me say that they're  
17 not very helpful to me. I don't like exhibit books that  
18 way. And so, I need to have another set sent over, or I  
19 need you to take back this set. But these have some yellow  
20 stickies on them. So, I guess what we'll have to do is make  
21 it into something that I can use.

22          With regard to your request for a closing  
23 argument, certainly I'd like to have closing argument. How  
24 long will it take? Thirty minutes per side?

25          MR. WEBER: I figure probably at least an hour per

1 side.

2 THE COURT: Well, I'll tell you what, we certainly  
3 won't be able to do that today.

4 Are you all requesting to appear by telephone for  
5 this hearing?

6 MR. PETERSEN: No. I'm just asking we submit oral  
7 arguments in writing. We can do it just as well in writing  
8 as we can --

9 THE COURT: Well, the only problem with that is it  
10 doesn't give me the ability to ask you all questions, so --

11 MR. PETERSEN: We have no objection to doing it by  
12 telephone.

13 THE COURT: Okay. I've got some time on Monday,  
14 May 7th. I'm thinking --

15 MR. WEBER: I'm sorry, did Your Honor say May 7th?

16 THE COURT: Oh, excuse me, March 7th. March 7th.  
17 We don't want to wait that long. Eleven o'clock?

18 MR. PETERSEN: Judge, do we have the opportunity  
19 to check with our office on that?

20 THE COURT: Sure.

21 MR. PETERSEN: Can we get back to you Monday?

22 THE COURT: Sure. You can call Ms. Morgan. An  
23 hour each is really going to be long. I mean, remember this  
24 is not a trial. We've had probably about four hours of  
25 testimony today. So, I think half an hour is reasonable.

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1           THE COURT: Thank you. I'm sorry that we had to  
2 split it up this way, but I had things that I couldn't  
3 anticipate at the time I set the hearing that I needed to  
4 take care of.

5           We're in recess. If you find out this day is not  
6 convenient, please call Ms. Morgan next week. Thank you.

7           (Adjourned at 4:16 p.m.)

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CERTIFICATE OF REPORTER

I, SHERRILL LYNN JACKSON, Official Court Reporter  
for the United States District Court, Middle District of  
Florida, Tampa Division,  
DO HEREBY CERTIFY, that I was authorized to and  
did, through use of Computer-Aided Transcription, report in  
shorthand the proceedings and evidence in the above-styled  
cause, as stated in the caption hereto, and that the  
foregoing pages numbered 1 to 69, inclusive, constitute a  
true and correct transcription of my shorthand report of  
said proceedings and evidence.

IN WITNESS WHEREOF I have hereunto set my hand in  
this 16th day of March, 2005.

---

SHERRILL LYNN JACKSON, RPR  
Official Court Reporter

Sherrill L. Jackson, RPR  
Official Court Reporter, U.S. District Court  
Middle District of Florida, Tampa Division

