

The Legal Writing Companion

The Legal Writing Companion

Problems, Solutions, and Samples

SECOND EDITION

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*To our families and friends,
from whom we learn new things every day.*

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Acknowledgments

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Finally, we also owe a debt to our former teaching assistants. We are particularly grateful for your unwavering and enthusiastic support of our teaching.

Introduction

Congratulations! You have officially arrived and are now an actual law student, a title you have worked long and hard to attain. Not too long ago, I experienced what you are probably now feeling: intimidated and overwhelmed, yet eager and ready to learn. This spectrum of thoughts is normal and may fluctuate between “I’ve got this! I’m a good writer! How hard can it be?” and “I am scared out of my 1L head and have never even seen an actual piece of legal writing in my life. What even is a memo?” Don’t worry! These feelings and thoughts are normal and to be expected.

So try to relax and lean into this, because you’ve got this! You are capable and prepared! As a recent novice legal writer myself, I wanted to share some advice that helped me or that I learned along the way and, more importantly, how *The Legal Writing Companion*, if used often and appropriately, will make the learning process tremendously less stressful.

Trust the advice. All of the advice contained in *The Legal Writing Companion* is tried and true. You can trust it. There is much to create stress during your first year of law school, to be sure, but if you trust the advice of those who have been there and done that and know better (which is true of the authors of this book), you will prevent at least *some* unnecessary stress. And that alone is crucial to your success as a first-year law student.

Trust the process. It works! While you cannot imagine at the beginning of your 1L year how you will possibly transform into a legal writer in just a couple or so months’ time, you will! The process detailed in this book truly works when you trust it.

Trust the directions. When your writing professor or *The Legal Writing Companion* provides directions on how to approach an assignment, how to research, how to format a document, how many and which words to use, and what to

include and exclude, follow those directions! While in your high school or college courses you might have been rewarded at times for going above and beyond the instructor's expectations or directions, this is not the case in law courses and legal writing. Trust the directions and follow them. They are given to you explicitly for a reason.

Respect the curve. No, not the notoriously vile law school *grading* curve. Respect the *learning* curve! Though all of legal learning involves a learning curve, perhaps no area demands it more than legal writing. You will no doubt experience this throughout your writing course, beginning with a near total lack of understanding at first, several weeks of struggling to understand, and then a lightbulb moment where it suddenly makes (much more!) sense. The learning curve truly is exponential. Trust it. This book will guide you along it.

Stay true to you and your writing style, but do not do so to your detriment. You are already a good writer, or you would not have this book in your hand in the first place. That alone should help you sit a bit taller in front of your computer. But as you have doubtlessly already heard, legal writing is entirely different from any creature you have attempted to slay before, so you must adjust your style accordingly. Sure, keep the parts of you that made you the writer you already are—Are you naturally concise? Excellent at transitions? Great at organizing your thoughts? Successful at structuring your writing? Wonderful! But understand that what made your writing unique and noteworthy before may not be super helpful now. I started law school later in life than most students and had already spent the better part of two decades in a successful writing career. But what made me appealing and unique as a writer before law school does not necessarily benefit me now in my legal writing. For example, normally I am wittier, wordier, and wired to emotionally connect with my reader. (I also have an apparent affinity for alliteration.) To be a successful legal writer, however, I have had to eliminate most of the wit and charm, reduce my word count (the bane of my legal writing!), and write in a more detached manner. Still, my legal writing is *me*, but it is the *legal* me. Preserve to a beneficial extent the qualities that already make you a good writer, but allow yourself to let go when those qualities are to your detriment in your legal writing.

Rely on this book. It is called *The Legal Writing Companion* for good reason: It is your *companion*. Your professor will likely assign readings from the text throughout the course, but you will want to regularly refer to it on your own as well. While working on each legal writing assignment in my first-year writing course, I kept this book physically next to me so I could turn to it at all times—

which I did, and often. I dog-eared multiple pages for quick reference and relied on several sections of the book for guidance in both general and specific ways. For instance, when my mind was a bit fuzzy on the purpose of a memo's umbrella sections, I reread appropriate portions of *The Legal Writing Companion* and studied the sample memos in the appendices. When I needed a refresher on how to construct roadmaps, I turned to the *Companion*. When I wanted to revisit how to create rule statements, I picked up this book. It is truly your companion, so do not hesitate to use it as such.

Ask for help ... often. Alongside this book, your writing professor is your best resource. Get to know her and use her as a source as often as needed. The second week of my legal writing class, I visited Professor Wherry (my first writing professor and one of the co-authors of this book) and—after introducing myself and letting her know a bit more about me personally—asked her point-blank the following question: “What do your most successful legal writing students do that makes them the most successful?” Without hesitation Professor Wherry replied, “They communicate with me often and ask for help.” Bingo. I implemented that over the course of my legal writing class. Regularly asking for guidance when needed proved crucial to my transformation from a typical first-year law student struggling to get a grasp on legal research and writing to a confident writer who felt more certain about my independent choices in my writing assignments.

Keep the specific purpose in mind at all times. While it is always important to focus on the purpose of your writing, it matters now like never before. Legal writing must be intentionally and strategically constructed to meet the purpose of that specific document. If you fail to remember the document's purpose while you are writing, whether in your writing course or in your legal career itself, you will waste a great deal of energy on an ineffective document. Stay focused.

Don't waste words. My eleventh grade English teacher, Ms. Milam, deserves much credit for teaching me a most important writing lesson: Do not waste words. Include only what you need: no more, no less. If a word serves no purpose, is not essential, or does not enhance your sentence, remove it. When you are working with strict word counts in your legal writing class and career, this tip is critical and will help you avoid much stress when you are polishing a completed assignment and find yourself a thousand words over. (Trust me.)

Be confident. A confident thinker is a better thinker. A confident writer is a better writer. With *The Legal Writing Companion* in hand (and your professor

at the ready for additional guidance), you've got everything you need to become an accomplished first-year legal writer.

Here's to your success!

Heidi Weimer

Georgetown Law L'21

January 2019

About This Book

Following Heidi's thoughtful introduction, we would like to start by welcoming you. If you are reading this, you are probably a first-year law student, a new legal writer, or both. The first year of law school is daunting for many, with hundred-page weekly reading assignments, massive tomes on legal subjects, and a sense of wanting to make sure you are "doing it right" ... whatever "it" is. Many new legal writers feel like a stranger in a strange land as they begin to read and speak the language of the law, and discover that their past approaches to research and writing are insufficient or too different to be useful in this new context. You may also find that what you thought were strengths are now weaknesses and vice versa. You are not alone; almost every new legal writer experiences something like this—even the authors (who came to law school with strong writing credentials) discovered they had a lot to learn to become skilled legal writers.

As Heidi noted, you may imagine yourself at the start of a long road, and indeed you are—at the start of the road through your 1L year, which is the first leg of the journey through law school. You are not, however, at the start of a road through your legal writing course. Instead, you've been dropped somewhere in the middle of the journey, or off the road a bit, with writing experience and habits both good and bad both helping you and interfering with your ability to get on your way.

So, why add this book to the pile of resources you'll use as you navigate these journeys? We titled this book rather deliberately: we want this book to be a companion as you learn and develop your legal writing skills. Consider this book to be your buddy, your traveling partner, your go-to resource. It is designed to supplement the lectures and exercises, assigned readings, and writing assignments you will encounter in your legal writing course. We have long

thought that the ideal way to learn legal writing would be through one-on-one instruction, a model that no law school has the time and money to provide. Your legal writing professor will provide as much individual feedback as she can over the course of the year; this book is designed to fill in some gaps and act as a hands-on resource for those times when you are struggling on your own. We hope that it not only helps you troubleshoot your way through the first year, but also helps you develop the self-awareness and self-sufficiency to move forward confidently in your later law school writing experiences. We also hope this book can serve as a touchstone for the basics of legal writing as you work through your first years of legal practice. Indeed, we see this book as a resource to help you throughout your legal writing career.

Most first-year students have a lightbulb moment when legal writing finally clicks for them. “I barely wrote any papers in college so I had no confidence in my writing skills until I got feedback on my first paper,” said one science major. “I didn’t know how much background my audience would need so I spent 8 pages of my 10-page paper on introductory materials,” said a novice legal writer. Another goal of this book is to help you get to your lightbulb moment sooner by diagnosing the source of your confusion and understanding how to move forward to the next step.

The legal writing process involves making choices—ideally, effective choices that enhance your final work product. Many of the concepts and skills you will learn and practice during your first-year legal writing course are intended to help you understand how to make good choices that will effectively communicate legal analysis to a legal reader. Sometimes new legal writers feel like they are being forced to follow a formula at the cost of creative thinking and writing. Other writers may disagree with some concepts or approaches taught in class. It is typical and acceptable to have these feelings. Instead of focusing on the negative, try to embrace the new ideas and approaches as proven techniques for communicating legal analysis. Once you understand the basics and begin to master them, you will earn the right to make your own choices and to feel good about the choices you make. These choices will be informed by what you have learned in your legal writing course, and you can feel comfortable taking ownership of future writing projects.

Legal writing also involves proper citation of authorities. There are two primary resources that define and explain the rules of legal citation: the *ALWD Guide to Legal Citation* (6th edition) and the *Bluebook* (20th edition). We recommend the *ALWD Guide* for new legal writers because it is user-friendly, written with students in mind, and filled with sample citations and detailed descriptions of how to implement the rules in practice-based and academic

documents. Even better, the rules in the current edition of the *ALWD Guide* will produce the same citation form as the *Bluebook* rules. Thus, even if your supervisor requires *Bluebook*-compliant citation, you can use the *ALWD Guide* to get there.

Of course we understand that your immediate goal is to get a good grade in your legal writing course and we support that. But we want more for you. We want you to become a strong legal researcher and writer in preparation for your transition to practice. Once you leave the classroom, you need the confidence and competence to make effective choices on your own; this book is designed to take you there.

How to Use This Book

Your legal writing course and textbooks will provide you with the basics of legal writing. This book attempts to go beyond these basics: It focuses on providing more detailed support for the common struggles and obstacles that new legal writers experience. With a focus on the practice-based legal writing assignments you will encounter in your first year (in contrast to scholarly research projects you may work on as an upper-level student), the book walks you through the research and writing process, identifies common weaknesses and areas of struggle for new legal writers, and gives you specific, concrete guidance on how to avoid those pitfalls.

With this troubleshooting approach in mind, we have organized each chapter of this book around a specific issue typically encountered by new legal writers. Many of the issues are multi-faceted and we have included internal cross-referencing to show how aspects of legal writing overlap and interact with each other. We encourage you to check the cross-references to give yourself the greatest opportunity to benefit from the tools in the book. Also keep in mind that you might find it helpful to skim through various chapters to help figure out where to turn for help, rather than sitting down to read cover-to-cover.

The book is organized around the following potential problem areas for new legal writers:

- I Haven't Begun Yet and I Already Feel Lost
- I'm Having Trouble Managing My Research Process
- I'm Having Trouble Transitioning from Prewriting to Writing
- I'm Having Trouble Synthesizing, Writing, and Explaining Legal Rules in My Analysis
- I'm Having Trouble with Application in My Analysis

- I'm Having Trouble Organizing My Analysis
- I'm Having Trouble with the Smaller Components of Legal Writing
- I'm Having Trouble Polishing My Writing

Legal Writing Samples

In order to better explain some of these problems and solutions, throughout the book we use legal writing samples to give you concrete illustrations of how to execute our guidance. You will notice that we use isolated samples (without surrounding context) to focus on specific problems and solutions; to the extent you have questions about the surrounding context, consult the four annotated complete memos in Appendix A to give you a sense of how a specific sample would fit in the complete memo.

Although we heavily rely on samples throughout the book, we want to offer a few words of caution about writing samples and explain how we use them here. Most first-year students—probably including you—clamor for samples of good legal writing. This is totally understandable—it's hard to talk about writing in the abstract, and it can be very beneficial to see principles of good writing in action. However, samples can be easily misunderstood, especially by students in their early days as legal writers. This is because so much of what constitutes “good” legal writing depends on the nature and complexity of the legal issue at hand, things that may not be appreciated by the new legal writer. We have seen a student go so far as to mimic a sample legal memo as literally as possible, from the number of paragraphs in the Statement of Facts to the number of cases cited in the Discussion section.

This is not a strategy for success, and these types of misunderstandings can cause long-term frustration and confusion; we hope to help you avoid these misunderstandings by explaining what we view to be effective use of writing samples. First, writing samples must include detailed discussions of both strong and weak writing. We have our doubts about the utility of samples read in a vacuum, but annotated, carefully-parsed samples of things that work and things that do not can be useful tools. Second, remember the purpose of writing samples: to get to the “why” of what makes them good, not to follow them as a blueprint of the “right” way to do things. As this book will make clear, there are many “right” ways to do things, and even those are very context-driven. Where there are multiple viable approaches, we will identify and explain them to give you the ability to make a fully-informed choice or to identify something to discuss with your supervisor. Distinguishing between rules

and conventions on the one hand, and personal audience preferences on the other, is an important skill that you will develop across many facets of your law school experience.

Finally, any samples your professor gives you trump the samples included in this book; your professor might have a preference different than what we have covered here. And to the extent you have questions about the samples from your professor, do not hesitate to ask questions about them, too!

Carlile and Lewis Case Files

In this book, we use samples from two different fictional cases: one involving a landlord/tenant case regarding a potential common law constructive eviction claim and the other regarding a potential claim under the federal Individuals with Disabilities Education Act for failure to provide a free and appropriate education in the least restrictive environment. We use these samples to illustrate the problems and solutions throughout the book. To get the most out of these samples, we recommend that you carefully read the case file materials (located in the shaded pages immediately following this introduction) and revisit those materials throughout your use of this book. The samples used in the book assume a familiarity with these materials and the strengths and weaknesses discussed in the text will make more sense to you with this familiarity. At times, we also refer to relevant legal authority that relates to the sample problems; you may want to read through these research materials to get the most out of the samples. We want you to put yourself in the shoes of the fictional legal writer working on these writing projects so that you can read and think critically about the approaches and samples included in the book. Our intent is that you will translate what you learn from these fictional situations to your own writing. You will see samples both large and small contained throughout the book; four fully annotated samples of a complete memo based on the case files can be found in Appendix A, and an annotated comparison of the two constructive eviction memos is in Appendix B.

Case File: Carlile

To: Associate
From: Nicole Vogel, Partner
Date: September 17, 2013
Subject: Dominic Carlile

We have a new client, Dominic Carlile. Dominic recently moved out of an apartment and his landlord has sued him. Dominic is hoping that he can avoid paying additional rent by asserting a constructive eviction defense, specifically that there was an interference with his quiet enjoyment of the apartment. My notes from this morning's meeting with Dominic are attached.

Your task is to determine whether there was an interference with Carlile's quiet enjoyment and whether the landlord was responsible if there was an interference. I had a chance to look briefly at the law—there seem to be some relevant statutes in Chapter 186 of Mass. Gen. Laws.

I have several associates working on various parts of this case, including investigating other defenses and the applicability of other statutes. Please focus only on your specific assignment to avoid duplicating work and to help me prepare to meet with Dominic. I have a meeting scheduled with Dominic on Oct. 1, 2013. I need your Informal Memo by 9:00am on Sept. 30, 2013. Please limit your memo to 1200 words.

Here are the notes from my meeting with Dominic Carlile

Carlile may have a defense of constructive eviction against his former landlord. The first step is determining whether there was interference with Carlile's quiet enjoyment and whether the landlord was responsible.

- Carlile was recently sued by former landlord, Melanie Hairston
 - Suit filed 8/15/13
 - Sought rent for month of August and injunction compelling Carlile to pay remaining months on lease
- Carlile entered lease with Hairston, tenancy began 2/1/13, 12-month lease agreement
- Hairston owns small apartment complex in Worcester, MA
 - All units surround small inner courtyard, green lawn lined with flowers, some small trees for shade and benches for residents to sit
- Carlile rented an efficiency with a window facing the courtyard
- Carlile is an artist; makes money selling watercolor paintings
 - Courtyard was dealmaker for him in choosing this apartment because he could paint outdoors; thought peaceful setting would improve productivity
 - He did not mention this to Hairston at the time or when he signed the lease
 - Hairston did not even know Carlile is an artist
- After moving in, he painted indoors for several months

- As weather improved, he moved his work outside to paint outdoors exclusively
- Quickly adapted to working outdoors; painting indoors seemed unbearable
- Another tenant, Luke Konrad, lived in building for several years; rents a large two-bedroom apartment
- 6/21/13—While painting in the courtyard, Carlile was distracted by noise coming from Konrad's apartment
 - Konrad recently developed an interest in the trumpet; had some friends over for an impromptu brass section music session
 - Carlile couldn't finish the painting he was working on in the courtyard; he ended up with one-half a painting instead of the three or four he planned to complete
 - Carlile figured it was one jam session; no big deal, he would catch up on his painting over the weekend
- 6/26/13—Another small practice session interrupted Carlile's painting
 - Annoying because there was an art fair that coming weekend; Carlile was worried he wouldn't have as many pieces ready to sell
 - He did not say anything to Konrad about the noise
 - He had never talked to Konrad; thought two times were not enough to raise the issue with Konrad
- 6/27/13—Carlile heard "trumpet noise" while he was painting in the courtyard; screeching sounds from trumpet disturbed Carlile so much he had to stop working again
- 6/28/13—Carlile again was unable to paint in the courtyard because of Konrad's trumpet practice
 - He was so frustrated he decided to skip the weekend art fair
- 6/29/13—Carlile knocked on Konrad's door several times, hoping to discuss the noise problem
 - Konrad never answered
 - Carlile left a note under the door asking Konrad to practice somewhere else
- 6/30/13—Carlile paid his rent in person to Hairston
 - While in Hairston's office, Carlile mentioned the trumpet noise and note
 - Hairston said she hoped Konrad would read the note
 - Carlile told Hairston that he could not hear the trumpet sound when he was inside his apartment with the window shut, but that he preferred to paint outside of his small apartment
- 7/1/13—Carlile heard Konrad practicing again

- Carlile tried to talk to Konrad, but again Konrad did not answer the door
- Carlile went back later thinking Konrad did not hear him over the trumpet blasts when he knocked earlier; Konrad again did not answer
- Carlile called Hairston to complain
 - Hairston said that she had no idea Carlile wanted to use the courtyard to paint; the courtyard was for use by residents as a space to get outdoors
 - She suggested Carlile try a nearby public park or his apartment for painting; or wear headphones or earplugs while painting in the courtyard
 - She also suggested Carlile just wait it out because Konrad was known to go through phases and would probably grow out of trumpeting
 - She noted that he recently had been interested in shadow puppets and that interest had run its course in just a few months
- Konrad practiced during the day the rest of the week
- Carlile completed only one painting that week but he doesn't think he will be able to sell that painting; his style has been strained by the trumpet noise
- Carlile said he has lost all inspiration; he used to sell excellent floral and pastoral scenes, inspired by the courtyard
 - Forced to listen to Konrad's trumpeting, all Carlile can think of while painting is a wounded elephant
- 7/6/13—Carlile moved out, taking his belongings; moved into his parents' home where he has been productively painting since
 - He did not pay any further rent or utilities

Lease Agreement Excerpts:

§ 14. Common Areas

A. Common Areas are defined as building lobby, fitness room, laundry room, and courtyard.

... All tenants have full access to and enjoyment of the common areas....

§ 23. Community Living

...

C. Lessee shall not disturb the enjoyment of other tenants.... Lessee shall abide Lessor's instructions to abate any action found to be detrimental to the interests of the Lessor or any tenant.

Case File: Lewis¹

MEMORANDUM

To: Associate
From: Jessica Wherry
Date: November 11, 2016
Re: Elle Lewis—potential challenge to Individualized Education Program (IEP)

Our client, Joyce Lewis, is trying to decide whether to challenge the current 2016–17 IEP the Hawkins County School Board (the Board) developed for her daughter, Elle. Specifically, Ms. Lewis wants to know whether she should move forward with challenging the Board’s placement of Elle at Woodside Elementary School because she thinks the placement is inappropriate for Elle.

Our task is to assess the likelihood that she would succeed in a claim that the Board’s placement at Woodside, as set forth in the IEP, violated the Individuals with Disabilities Education Act (IDEA) by failing to provide Elle with the least restrictive environment that provides her with a free and appropriate public education (FAPE).

I am attaching several documents that identify Elle’s placement and related educational services as provided by the current IEP, as well as Elle’s placement

1. We thank Julie Reiley, former adjunct professor at George Washington University Law School, for the original idea for this writing assignment.

and educational services for the prior school year, and other information about Elle's disabilities and needs. The documents are:

- (1) a letter from Dr. Ronald Howe;
- (2) a memorandum from Sarah Wells;
- (3) a letter from Jason Grange; and
- (4) Elle's IEP.

Your task is to write a predictive memorandum addressing whether Ms. Lewis would likely succeed in challenging the IEP if the case went forward in federal court. Even though Ms. Lewis would first have an administrative hearing before suing in federal court, treat the analysis as the likely outcome in federal court regardless of the result at the administrative level. Assume that the Hawkins County School Board has complied with all statutory procedural requirements. I already checked and have confirmed that Autism Spectrum Disorder is a disability and that Elle is therefore entitled to services under the IDEA. Elle is a resident of Hawkins County, Delaware (fictional location), and the Board is bound by the IDEA. You should also assume that federal law governs this issue and that the case would be properly filed in federal district court. Please limit your formal memo to no more than 2100 words.

Dr. Ronald Howe
DELAWARE BEHAVIORAL AND DEVELOPMENTAL PEDIATRICS
4218 N. Heaton Street
Dover, DE 18926

May 15, 2016

Joyce Lewis
2016 Matarazzo Lane
Dover, DE 18926

RE: Elle Lewis, DOB: Feb. 19, 2009

Dear Ms. Lewis:

In response to your request, I have set forth below a brief summary of my findings regarding your daughter, Elle.

Elle has Asperger's Syndrome, a form of "high functioning" Autism Spectrum Disorder (ASD). Testing has indicated that her IQ is 135 ("gifted").

Elle's ASD manifests itself primarily in two ways: (1) behavioral issues and (2) speech and language disabilities. With regard to behavior, as compared with non-disabled children, Elle's ASD causes her to have difficulty focusing, and she needs more adult prompting and guidance than a typical child to stay on task. In addition to difficulty following instruction and directions, Elle can become over-stimulated or anxious in large, active settings. In these situations, Elle may engage in self-soothing behavior.

Like many children with ASD, including Asperger's, these self-soothing behaviors can be triggered by situations in which she is subjected to too much noise, too many people, or varying activities occurring at one time. After placing and observing her in varying situations intended to trigger such behavior, I noted that Elle may rock back and forth while making hooting sounds, put her hands over her ears or eyes to block out auditory or visual stimuli, or hum.

The ASD also manifests itself in appreciable speech difficulties. While Elle can communicate her needs to adults, she has difficulty maintaining conversations at times, especially with other children. Specifically, Elle speaks in a stilted manner. Elle may also engage in speech cycling, in which, in an attempt to engage in a conversation, Elle repeats the same Q&A pair, or di-

rective comments, until an adult prompts her to move forward in the conversation.

Elle is a bright, affectionate girl, who belies the myth that children with ASD are unable to forge social connections. Elle is quite sensitive to her surroundings. She is fully aware in this regard and experiences the same psycho-emotional feelings that any other child would if placed in a setting in which she is ostracized or ridiculed, or even just overwhelmed. In fact, having treated Elle for almost three years, and observed her in varying situations, it is my professional opinion that Elle is especially sensitive to the social actions and reactions of her peers and her environment overall.

Sincerely,

Ronald Howe

Ronald Howe, M.D.

Sarah Wells, Special Educator and SLP
Hawkins County Public Schools
538 Harbour Road
Dover, DE 18927

MEMORANDUM

To: Jason Grange, Assistant Director, Special Ed., Hawkins County
CC: Joyce Lewis regarding Elle Lewis
Matthew Ott, Principal, Woodside ES
RE: Elle Lewis—Recent Educational History
Date: July 11, 2016

During the 2015–2016 school year, I was Elle Lewis’s caseworker and one of her two special education teachers and speech language pathologists (SLP). I worked with Elle in a first-grade special education (SE) classroom setting at Coleman Elementary School. Elle was placed in this setting and received all her educational services pursuant to her Individualized Education Program (IEP) for that year (“15–16 IEP”). Elle’s diagnosis is Autism Spectrum Disorder, although I believe her doctor refers to it as Asperger’s Syndrome.

Elle attended Coleman ES in Hawkins County. She was placed in a self-contained SE program within the otherwise general education (GE or “mainstream”) school. At Coleman, Elle spent 4.5 out of 6 hours in a SE classroom setting, which consisted of 12 disabled children and 3 adults—me, another special educator/SLP, and a teacher’s aide. Elle also spent 1.5 hours of each day in a GE setting. Elle was both the brightest and highest functioning student in her SE class.

Elle’s SE class setting was very structured and adhered to a routine in which all 12 children engaged in the same activities at the same time of the day. We provided a “group” approach to speech because all of the children had significant speech disabilities, although Elle’s was the least severe of the class. Likewise, because all of the children had social and behavioral needs of varying degrees, which caused them to engage in disruptive behavior or become more easily distracted than a typical child, we placed significant emphasis on social and behavioral developmental strategies. For example, we worked with the children to help them maintain focus and follow directions. Again, Elle’s social and behavioral needs were the least severe in her class.

Of the 12 children in Elle's SE class at Coleman, Elle was the only child with an IQ in the gifted range. The other children's IQs were in the low average range. In light of the children's varying abilities and needs, although it was a first-grade class, the academic curriculum was on par with a typical kindergarten class.

Elle's 15–16 IEP for that first-grade year also provided for her to be pulled out of the SE setting to receive GE services for 1.5 hours each day in a mainstream setting. Elle spent 45 minutes each day with Harriet, a fifth-grader "Big Buddy," in the Big Buddy Reading Program. During that time, Elle read with Harriet in a small classroom with 2–3 other pairs of fifth graders and non-disabled children in grades 1–3. With Harriet's tutoring, Elle was reading fourth grade level books by the end of her first-grade year at Coleman.

The remaining 45 minutes per day of Elle's daily mainstream time was spent at the Art Center where she worked under the guidance of the Art Center Director with varying groups of 5–10 non-disabled children from different grades. Coleman has a significant art program and Elle has drawing skills advanced for her age. In February, she displayed three pencil and charcoal sketches (one was purchased by a law firm) at a Washington, D.C. gallery gala featuring children's artwork from around the country. Elle was proud of her drawing and the recognition she earned.

The Art Center had additional benefits for Elle. She was accompanied by a teacher's aide, Charlie Johnston, who was training to become a speech language pathologist. Charlie used these occasions (as instructed by me) to work individually with Elle to help her develop her pragmatic language skills. Charlie worked with her to develop more meaningful, back and forth conversations focused on appropriate topics, such as her artwork, or whatever activity she was currently engaged in. He also worked with her (as I have in the classroom) to speak with a more natural tone and volume, to avoid speech cycling—a tendency Elle has to repeat questions and answers, or other comments.

Elle was typically calm and focused during Big Buddy Reading and her time at the Art Center. Elle also observed and mimicked the more appropriate behavior (such as waiting for turns, sharing materials, and having conversations in a more natural manner) modeled by the other, non-disabled children.

With regard to the few instances in which Elle had difficulty, they were instances in which there was an unusual amount of activity, or a larger number of children than usual were present. She engaged in self-soothing behavior until an adult helped her calm and refocus herself, which usually took about five minutes. Elle's self-soothing behavior is usually rocking back and forth while making owl-like noises, putting her hands over her ears, or humming.

Big Buddy Reading and Art Center were the only times Elle spent outside the SE setting. Elle had begun the 2015–16 year attending recess, lunch, and music with the non-disabled children (typically 75 children total at lunch/recess and 25 at music), but the noise and activity in both were overwhelming for Elle, and she often had to leave the settings. To the extent Elle could maintain composure to participate in recess with the non-disabled children, some of the children teased Elle about her speech, which upset her so much that she rocked back and forth and cried until an adult escorted her from the situation. As a result, Elle's participation in lunch/recess and music was stopped in October of the school year.

Jason Grange, Special Education Director
Hawkins County Public Schools
538 Harbour Road
Dover, DE 18927

July 14, 2016

Matthew Ott
Principal, Woodside ES
9231 Ryder Lane
Dover, DE 18926

Dear Mr. Ott:

As you are aware, the current IEP for Elle Lewis will mandate her transfer from Coleman ES, where she is in a special education (SE) classroom, with some pull out for general education (GE) services, to Woodside, where she will be mainstreamed.

In an effort to facilitate the transition, I have set forth some specifics regarding her placement (Elle's full IEP is attached), and am forwarding you a memo I requested from Sarah Wells, outlining Elle's most recent educational history.

On April 6, 2016, the IEP team held an IEP meeting to develop Elle's 2016–17 IEP. Over Elle's mother's objections, Elle's placement for second grade was changed from Coleman to a mainstream classroom setting at Woodside, the elementary school Elle would attend if she was not disabled. At Woodside, Elle will be instructed at the second-grade level. She will attend a regular classroom setting, which, according to our current numbers, will be comprised of 23–25 non-disabled students and one GE teacher.

The 16–17 IEP provides, with the exception noted below for speech services, that Elle will spend the entire 6-hour school day in a mainstream setting. The IEP provides 3.5 hours a day of special education and related support services to be provided in the GE, mainstream classroom setting by a SE teacher we have designated to provide Elle with "in class" SE and related services. As detailed in the IEP, these services would be designed to help Elle achieve certain educational/academic goals, but also to help her stay on task in the mainstream classroom, adopt age appropriate behaviors, teach her strategies to maintain calm, and to support her, including leaving the classroom with her, when necessary, if she becomes over-stimulated.

The IEP also provides for 0.5 hour per day of segregated one-on-one speech services by a Woodside SLP.

The remaining 2 hours each day, Elle will spend just like any other child in the GE setting, with her GE teacher as her sole adult support and educator.

Elle's 16–17 IEP, in accordance with Woodside general policies, does not provide Elle access to Woodside's Big Buddies Reading Program or access to Woodside's Art Center because these programs are reserved for children in the third grade or higher. I understand that art in the GE classroom setting has been downsized to one half hour a week in the classroom, due to changes in the curriculum school-wide, and will not provide Elle with access to the same charcoal or other art supplies and equipment that Coleman did. However, I ask that you do your best to encourage Elle (and Elle's teacher) to make use of the crayons, markers, and paper available to all the children in class, and make the most of the art time she will have. Artistic activities have been shown to have a calming influence on Elle.

Please contact me if you have any questions or concerns regarding implementing Elle Lewis's new IEP placement.

Sincerely,

Jason Grange

Jason Grange

Individualized Education Program (IEP)
Summary Information Sheet

Agency: Hawkins County Public Schools
Student: Elle Lewis

IEP Meeting Date: April 6, 2016
#2812 — Woodside ES

Services	Location	Length of Time / Frequency	Provider(s)
Gen. Ed. (Grade 2)	In Gen. Ed. Setting	2 hours / daily	Gen. Ed. Teacher
SE — SLP	Out Gen. Ed. Setting	.5 hour / daily	SLP
SE — Education	In Gen. Ed. Setting (including recess/ lunch)	3.5 hours / daily	Spec. Educator
Total Ed. Service Day:		6 hours	