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ILLINOIS STATE BOARD OF EDUCATION  
IMPARTIAL DUE PROCESS HEARING

[REDACTED]

Student,

Case No: 2015-0056

v.

Mary Schwartz, Impartial Hearing Officer

[REDACTED]

School District.

**FINAL DETERMINATION AND ORDER**

**JURISDICTION**

The undersigned hearing officer has jurisdiction over this matter pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.*, the Illinois School Code, 105 ILCS 5/14-8.02a *et seq.*, and her appointment as hearing officer by the Illinois State Board of Education (ISBE) on August 26, 2014.

**PROCEDURAL BACKGROUND**

This case began when the parents filed a due process complaint on August 21, 2014. The district received their complaint that same day. The parties were provided a written statement of their rights in these proceedings on August 26<sup>th</sup>, along with several other preliminary orders. The parents are represented by [REDACTED], and the district is represented by [REDACTED], who is with the district's due process department.

The parties held a resolution meeting on September 18<sup>th</sup> but were unable to resolve the issues in the parents' complaint. The prehearing conference was held on October 3<sup>rd</sup> by telephone conference call. Shortly thereafter, the parents requested leave to file an amended complaint so that they could provide additional facts and clarify some statements in their initial complaint. Their amended complaint was filed on October 10<sup>th</sup>.<sup>1</sup> Although the parties held an IEP meeting on November 24<sup>th</sup> to consider an independent evaluation of the student, the meeting did not resolve the issues in the parents' complaint.

<sup>1</sup> Because the amended complaint did not raise any new issues, the IDEA timeline did not restart. 20 U.S.C. §1415(c)(2)(E)(ii).

The parties requested two continuances and extensions of the 45-day timeline, the latter of which was requested so that the IEP meeting could be held. The date of the IEP meeting required new hearing dates to be selected. The hearing was held on December 1-3, 2014 and December 15-17, 2014. The record was held open for the submission of written closing statements, which were filed on December 23, 2014. Pursuant to the parties' joint request, the 45-day timeline was extended up to and including January 12, 2015.

Wichmann-Klawitter Reporting, Ltd. provided court reporters for each day of the hearing. No transcript was issued prior to the date of this decision; therefore, the testimony referenced below is based on the undersigned's written hearing notes and memory. In rendering this decision, the undersigned has considered all documents entered into evidence, testimony by parties' witnesses, the parties' closing arguments and their suggested case law, as well as the hearing officer's independent research. This decision is issued within ten business days after the hearing's conclusion, as required by Illinois law. 105 ILCS 5/14-8.02a(g55)(5).

### **ISSUES AND REQUESTED REMEDIES<sup>2</sup>**

The parents' complaint raises the following issues:

1. Whether the district failed to transition the student from early intervention (EI) services to early childhood services by her third birthday (July 31, 2013) and thereby failed to fulfill its child find responsibilities;
2. Whether the district failed to provide the student any special education placement from July 31, 2013 through November 25, 2013;
3. Whether the district failed to appropriately evaluate the student in November 2013 when its evaluation relied solely on observations rather than valid and reliable assessment tools;
4. Whether the district failed to evaluate the student in all areas of suspected disability when it knew that she has very limited speaking ability but did not conduct either an assistive technology (AT) or augmentative communication (AC) evaluation, from the date of the complaint through the end of the hearing;
5. Whether the district failed to include the student's mother at the November 4, 2013 IEP meeting and thereby denied her the opportunity for meaningful participation in planning for the student's education;
6. Whether the district's November 4, 2013 IEP failed to offer the level of special education and related services and supports the student needed to receive a free appropriate public education (FAPE) and achieve meaningful educational benefit;
7. Whether the district's offer of placement, which the parents received in a

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<sup>2</sup> The Issues and Remedies list here are the ones that were discussed at the October 3<sup>rd</sup> prehearing conference. The issues are rearranged and renumbered so that the events occur in chronological order. The undersigned did not hold a second prehearing after the parents filed their amended complaint on October 10<sup>th</sup> because the amended complaint did not include new issues but rather added facts not included in the original complaint.

- letter on or about November 25, 2013, failed to provide an appropriate placement and services for the student;
8. Whether the district's May 23, 2014 IEP failed to offer sufficient special education services and supports to allow the student to receive a FAPE and achieve meaningful educational benefit;
  9. Whether the district failed to consider the student's AT/AC needs when it developed her November 4<sup>th</sup> and May 23<sup>rd</sup> IEPs;
  10. Whether the district failed to provide an appropriate placement that would meet the student's needs following the May 23, 2014 IEP meeting; and,
  11. Whether the student requires placement at [REDACTED] due to her severe developmental delays and to receive a FAPE.

Based on the above-alleged violations of the student's right to receive a FAPE, the parents request that the hearing officer order the district to:

1. Place the student at [REDACTED] Preschool for the 2014-15 school year and develop an IEP for her that includes that placement and appropriate special education and related services, and accommodations;
2. Reimburse the parents for the tuition they paid to [REDACTED]
  - a. January 2014 through ESY for summer 2014; and,
  - b. 2014-15 school year;
3. Reimburse the parents for the AT/AC evaluation that was conducted by [REDACTED] on October 17, 2014
4. Provide compensatory education for its denial of FAPE from July 31, 2013 until January 2014, when the student began attending [REDACTED] in the form of:
  - a. Reimbursement for the 1:1 speech/language services that the parents paid from January 2014 to the date of the hearing; and,
  - b. Additional support and instruction in an appropriate augmentative communication device, as recommended by an expert at hearing
5. Attorney fees;<sup>3</sup> and,
6. Any other relief IHO deems appropriate.

#### BURDEN OF PROOF

The parents have the burden of proof on all issues raised in their due process complaint, as set forth in the preceding section. The district has a statutory duty to produce evidence that it has appropriately identified the student's special education needs and proposed a program and related services to adequately and appropriately meet those needs. 105 ILCS 5/14-8.02a(g-55).

#### FINDINGS OF FACT

The student in this matter is just shy of four and one-half years old. Very little is known about her life prior to April 18, 2013, when she was placed with [REDACTED]

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<sup>3</sup> The hearing officer does not have authority to award attorney fees. It is the hearing officer's understanding that this remedy is included to preserve the parents' right to file a request for such fees in court should they prevail in the administrative hearing.

██████████, her foster parents. PD 29. Reports indicate that her biological mother had a history of alcohol and drug abuse, and it is not known whether the student was exposed to alcohol or drugs in utero. PD 5, 8, 28. The biological family was homeless, and the student may have been exposed to domestic violence. PD 5. She was removed from her biological mother's care on April 10, 2013 due to neglect - including insufficient food, clothing, and shelter - and placed in a shelter until her foster placement began. *Id.*, PD 29.

██████████ was concerned about K.D.'s development from the day they first met, about three months before K.D.'s third birthday. She said that K.D. made a few unintelligible sounds but did not speak. She pinched and hit others but did not seem angry when doing so. She was "extremely active" and had very weak muscles. ██████████ contacted the foster care agency right away to "get the ball rolling on services" and was referred to an Early Intervention (EI) agency. Ms. ██████████, the EI service coordinator, testified that she received the referral on May 8, 2013. The EI tracking form, signed by Ms. ██████████ confirms her testimony. PD 223.

██████████ described her concerns to Ms. ██████████, and asked to have a transition meeting with the district as soon as possible so that services would be coordinated before ██████████'s third birthday on July 31<sup>st</sup>. The transition meeting was held by telephone conference call on May 22, 2013. ██████████, Ms. ██████████, and Ms. ██████████, the district's school entry support specialist, participated in the meeting. PD 224; SD 2. ██████████ described K.D.'s significant developmental delays, including that she did not speak. She asked to have an initial evaluation before school started to facilitate a "seamless transition." Ms. ██████████ told Ms. ██████████ that K.D. would be evaluated for EI eligibility. Although ██████████ asked the district to evaluate K.D. before July 31<sup>st</sup>, Ms. ██████████ told her that she would contact her near K.D.'s third birthday.

The EI team conducted its assessments on May 30, 2013 in the foster family's home.<sup>4</sup> The team included a speech/language pathologist, physical therapist, occupational therapist, and developmental therapist. PD 5-13. Ms. ██████████ also attended the assessment meeting. PD 8. Each evaluator conducted standardized assessments, interviewed ██████████, and observed the student interacting with ██████████. The team's assessments showed that K.D.'s skills were significantly below those expected of a child her chronological age.

The EI speech/language pathologist used the Bzoch-League Receptive-Expressive Emergent Language Scale (BEEL), Third Edition to assess K.D.'s receptive and expressive language skills. The Bauch is used to assess children between birth and 36 months of age. PD 8,10. K.D.'s language skills were 65% delayed, with age equivalency scores in both receptive and expressive skills at the 12-month level. PD 8. This delay was confirmed by ██████████'s report that K.D.

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<sup>4</sup> EI services must be provided in the child's natural environment, which in this case was the foster family's home. PD 8.

spoke only one or two words, used gestures to show what she wanted, and could follow simple one-step directions at home. PD 9.

K.D.'s fine and gross motor skills and sensory processing skills were also significantly delayed. On the Peabody Developmental Motor Scales-2 (Peabody), her fine motor skills were at the 20-month level, a 41% delay. PD 9,10. Her visual motor integration score indicated functioning at the 18-month level, which is a 47% delay. PD 9. On the Bayley Scales of Infant and Toddler Development, Third Edition (Bayley), her gross motor development was at an 18-month level, which is a 30% delay. PD 6.

The developmental therapist used the Bayley Scales of Infant Development, 3<sup>rd</sup> Edition (Bayley) and the Hawaii Early Learning Profile (HELP) to assess the student. The Bayley is a standardized measure to assess cognitive development, and the HELP is a curriculum-based developmental assessment. PD 12. On the Bayley, K.D. scored at the 18-month level, a 47% delay. PD 9. Based on the evaluator's observations, K.D. could engage in relational play but not imaginary play. PD 11. She showed poor skill development and was unable to identify matching pictures or colors. *Id.* Mrs. L. told the evaluator that K.D. pushed and hit other children for no reason and did not seem to know how to play with other children. *Id.* She could balance on one foot with support but could not jump off the floor with both feet. She was able to use utensils and help with grooming, although she did not indicate when she needed her diaper changed or to use the toilet. PD 12. K.D.'s HELP scores showed a 65% delay in receptive and expressive language, a 47% delay in gross and fine motor skills, a 47% delay in social/emotional skills, and a 26% delay in self-help/adaptive skills. PD 9.

The team also determined that K.D. should have a social work assessment, which was done on June 6, 2013. *Id.*, PD 27, 28. The EI social worker interviewed [REDACTED], observed her interacting with K.D., and evaluated the student using the Temperament and Typical Behavior Scale (TABS). PD 28-31. The TABS assesses self-regulation behavior, movement, and self-stimulatory behavior. PD 28, 29. [REDACTED] expressed concerns about K.D.'s global development and aggressive behaviors. *Id.* On the TABS, K.D. was scored as "atypical" in the area of hypersensitivity/activity due to reports of impulsive behavior, including not being able to wait, difficulty sitting still, and biting, hitting, and kicking others. PD 30. The evaluator recommended services in social-emotional development. *Id.*

Based on their assessments, the EI team found K.D. eligible for EI services and, with [REDACTED]'s input, developed an Individual Family Service Plan (IFSP). PD 13-23. The IFSP includes goals for speech/language development, motor skill development and coordination, functional skills, and social skills. PD 16-23. The IFSP requires speech/language therapy twice/week, developmental therapy twice/week, and occupational therapy once/week. PD 27. Ms. [REDACTED] testified that a standard EI session is for 60 minutes unless otherwise specified. The IFSP also has a transition goal: to help the student

transition to the school district at age 3. PD 16. The EI services were delivered in the foster home, so [REDACTED] was present at each session. PD 16-20.

The parties dispute the date on which the district received K.D.'s EI evaluations and IFSP. Ms. [REDACTED] testified that she placed the EI Tracking Form in Ms. [REDACTED]'s inter-office mailbox on May 22, 2013, following customary procedures at that time. A May 22<sup>nd</sup> screen shot of Ms. [REDACTED]'s case note confirms her testimony. PD 112, 224. A screen shot of a second note, created on June 18, 2013, supports her testimony that she gave Ms. [REDACTED] copies of K.D.'s EI evaluation reports and IFSP on June 18<sup>th</sup>, again by placing the documents in Ms. [REDACTED]'s inter-office mailbox. PD 115, 226.<sup>5</sup> During the relevant time period, the EI office and Ms. [REDACTED]'s office were located in the same building and had inter-office mailboxes. Although Ms. Dal Pra testified that she did not receive the information until July 22, 2013, a review of screen shots of her notes raises questions about her testimony. Although she participated in the transition conference on May 22<sup>nd</sup>, she did not memorialize that event until July 25, 2013. SD 2. The undersigned finds that the testimonial and documentary evidence supports a finding that Ms. [REDACTED] informed the district of K.D.'s EI eligibility, including supporting documents, on June 18<sup>th</sup> via inter-office mail. The district's argument that it did not receive the information from DCFS until July 22<sup>nd</sup> is unavailing: the issue is when the EI agency informed the district of the student's EI eligibility. SD 1.

Ms. [REDACTED] left [REDACTED] a voice message on July 25<sup>th</sup> and talked with her the next day, July 26<sup>th</sup>. They tried to schedule an evaluation for the following week, but [REDACTED] had to work on the one date that was offered. Although [REDACTED] requested a date for the following week, Ms. [REDACTED] told her that the district did not do evaluations in August. On September 12<sup>th</sup>, Ms. [REDACTED] called [REDACTED] and scheduled the evaluation on October 21<sup>st</sup>. [REDACTED] rescheduled the evaluation on September 30<sup>th</sup> because K.D. was scheduled to have her tonsils and adenoids removed on October 7<sup>th</sup>, after which she was required to spend two weeks at home with no outside contact. PD 143. The district's initial evaluation was rescheduled for November 4<sup>th</sup>.

Because [REDACTED] and [REDACTED] were concerned about addressing K.D.'s severe developmental delays between the end of EI services and the district's evaluation, [REDACTED] sought out resources to address K.D.'s needs. She took K.D. for a speech/language evaluation at [REDACTED] on August 19, 2013. PD 49-53. The assessment consisted of clinical observations of [REDACTED] and K.D. interacting and an interview with [REDACTED]. During the assessment, K.D. did not produce any consonant sounds, although [REDACTED] reported that she made the sounds /m/, /b/, and /n/ at home. PD 50. [REDACTED] also reported that K.D. was able to vocalize four different syllables. /d/. As to expressive language, K.D. laughed, attempted to interact with an adult, and vocalized in response to objects. She

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<sup>5</sup> The record shows, via screen shots, that Ms. [REDACTED]'s notes were entered contemporaneously with an activity, e.g., the transition call was held on May 22<sup>nd</sup> and the note entered that day, PD 112; the initial EI evaluation was held on May 30<sup>th</sup> and the note entered that day, PD 113.

occasionally independently signed "please" and "help." *Id.* [REDACTED] reported that while K.D. used more expressive language at home, her verbal production was inconsistent. *Id.*

During the assessment, K.D. could not consistently imitate non-speech sounds, use a word to call a person, vocalize a desire to change activities, or say 15 meaningful words - all skills that are expected of a child K.D.'s age. PD 50, 51. She showed decreased speech production and oral motor skills including "difficulty imitating and producing duplicated syllables and consonant-vowel combinations, and decreased facial tone of the lips, cheeks, and tongue, with open mouth posture." PD 52. In terms of receptive language, K.D. could not respond to requests to say words, consistently respond to "no", respond to simple questions, follow two-step unrelated commands, or respond to "wh" questions - all skills that are expected of three-year-old child. PD 51. The evaluation revealed deficits in expressive, receptive, and pragmatic language skills that "directly impact her ability to effectively communicate her needs and wants to others, as well as to follow directions and effectively comprehend what is spoken to her." PD 50-52.

K.D. received weekly speech therapy at [REDACTED] from September 2013 to December 2013. PD 134. Although she made progress in using signs to indicate her wants, she still had great difficulty producing consonant-vowel combinations. PD 135. Her receptive vocabulary improved, but her expressive vocabulary was still very limited. *Id.* The report states that her language deficits "continue to directly impact her ability to effectively communicate her needs and wants to others." *Id.*

On September 17, 2013, K.D. received a feeding evaluation at [REDACTED] from a certified speech-language pathologist. PD 54, 56. The clinician diagnosed K.D. with oral dysphagia, characterized by reduced oral skills, and noted that she also had decreased feeding skills with both fingers and utensils PD 55. K.D. received services at [REDACTED] and, by October 28<sup>th</sup>, was able to eat many different kinds of food, sit at the table and eat, and showed improvement in fork to mouth coordination. PD 58.

[REDACTED] conducted an occupational therapy evaluation on June 27, 2013 and provided therapy to address K.D.'s fine and gross motor skills, sensory processing problems, and motor planning challenges. PD 32-35. The evaluation confirmed the delays reported in the EI evaluation. K.D.'s age equivalency scores were 15-19 months in the grasping subtest and 19 months on the visual motor integration subtest. PD 34. The delays impacted her ability to complete "age-appropriate table-top tasks and self-care." PD 34. The evaluator also reported that K.D. had difficulty processing and responding to sensory information and recommended direct occupational therapy. *Id.*

The district conducted its initial evaluation of K.D. on November 4, 2013. SD 16; PD 59. The evaluation team interviewed [REDACTED], observed [REDACTED] and K.D. interacting, reviewed the EI discharge reports, and conducted play-based

assessments of the student. SD 18,19. The team included a school psychologist, a speech-language pathologist, a physical therapist, an occupational therapist, a school social worker, and a school nurse. SD 16; PD 59. [REDACTED] described K.D.'s severe receptive and expressive language deficits, including that she might say one word and then never use it again. She also told them that K.D. used no verbal language at all when she first came to live with them. She described K.D.'s motor problems and delays and sensory seeking behaviors and informed them of the [REDACTED] evaluations. She had forgotten to bring the evaluation reports with her, but she did offer to provide those reports to the district. The evaluation team told her that they "did not need them."

Ms. [REDACTED], the occupational therapist who was part of the district's initial evaluation team, testified regarding the district's initial evaluation. She is the only member of the November 4<sup>th</sup> evaluation team who appeared as a witness for the district.<sup>6</sup> Ms. [REDACTED] confirmed that the district used a structured play-based interview with the student. Her evaluation found that the student had decreased motor planning skills, spatial and body awareness, and bilateral coordination. SD 28. She also showed sensory seeking behaviors. SD 28.

Ms. [REDACTED] did not find the outside evaluation reports very useful. She testified that the IFSP lacked information about services the student received and opined that K.D. "could have changed" since May, when the IFSP had been developed. She highlighted a difference between an EI evaluation, which determines services to be delivered in the home, and a district evaluation, which determines services to be provided in an educational environment, as another reason to give little weight to the EI reports. When asked about the relevance of standardized assessments, she stated that they provide developmental information rather than information of how a student would function in an educational environment. Other district staff that were not part of the initial evaluation team expressed similar views on the usefulness of play-based, as opposed to standardized, assessments. Their opinion testimony is self-serving and given little weight.

The district's initial physical therapy evaluation found that the student could walk independently around the room, go from a squat to a standing position, and sit on a chair. SD 31. However, she required supervision on stairs. *Id.* The report notes the student needed assistance navigating uneven surfaces such as curbs and obstacles and could not jump, hop, or catch, throw or kick a ball. *Id.* The report recommended direct and consultative services to help K.D. develop independent functional mobility and acquire a higher level of gross motor skills. SD 31.

The school psychologist reviewed the HELP assessment done by the EI provider and conducted a play-based assessment. SD 22. She reported that the

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<sup>6</sup> In their written closing statement, the parents ask the hearing officer to make an inference that testimony of the district employees who were on the district's final witness list but were not called to testify would not have rebutted [REDACTED]'s testimony regarding the initial evaluation and IEP meeting. The undersigned finds that it is not necessary to make this inference.

student could engage in different types of play, follow one-step directions inconsistently, and had emerging problem-solving skills and academic skills. *Id.* She noted that K.D was “mostly non-verbal” and used some signs to indicate what she wanted. *Id.* She had emerging academic skills, as shown by finishing a three-piece puzzle and scribbling with a crayon, but did not know her colors or letters. SD 23. Her report recommends that the student would “benefit from a structured teaching environment to improve her academic skills.” *Id.*

The speech-language pathologist corroborated some of the school psychologist’s observations, noting that K.D. vocalized “jargon like utterances” and had little verbalization. SD 25. Although she also reviewed the EI reports, her report does not include any discussion of the standardized testing conducted by the EI speech pathologist, who had found that K.D.’s receptive and expressive language skills were at a 12 month age equivalency level. PD 8; SD 24-26. The district’s initial speech-language evaluation states that the student’s speech/language problems “may impact her ability to access and succeed in an academic setting” and would adversely impact her socially because peers and adults would have difficulty understanding her. SD 25, 26.

The foregoing evidence supports a finding that the district’s initial evaluation consisted of an interview with [REDACTED], a play-based assessment of K.D., and a cursory review of the EI evaluations. The evidence also shows that the district turned down [REDACTED]’s offer to provide the [REDACTED] evaluations, which she had forgotten to bring with her, so that the district could consider them as part of its evaluation.

After the district’s interviews with [REDACTED] and K.D. were completed, the evaluators asked [REDACTED] to wait while they met separately to review their evaluations. [REDACTED] testified that they returned about 45 minutes later and presented her with a completed IEP. The district offered no testimony to rebut [REDACTED]’s description of the IEP meeting. The district determined that K.D. was eligible for special education and related services as a student with a developmental delay and proposed placement in an inclusive regular education classroom, with related services provided in the classroom. SD 58,76. Per district testimony, an inclusive classroom has 20 students: 14 regular education students and six special education students. The class is co-taught by a regular education teacher and a special education teacher. There is also an aide in the classroom. Related services are provided within the classroom for students whose IEPs require such services. The foregoing description of an inclusive classroom is not included in the IEP, and there is no evidence that the district provided this information to [REDACTED] during the November 4<sup>th</sup> meeting.

[REDACTED], who had no knowledge of, or experience with, the IEP process, was surprised by the IEP because K.D.’s functioning is so far below her chronological age. In response to [REDACTED]’s concerns about placing K.D. in such a large classroom, the team told her that it “would be challenging” but that K.D. “would do well with peer modeling.” [REDACTED] asked several questions about the IEP goals and was particularly concerned about the speech/language goal, which

she thought was inappropriate. The speech pathologist offered to change the goal, although there is no evidence showing that she actually did so. The IEP includes direct speech/language services for 30 minutes/week, delivered in the classroom. SD 72. ██████ asked about the amount of time and how to request more. ██████ testified that although the IEP team told her that K.D. would receive 45 minutes/week of occupational therapy and 15 minutes/week of physical therapy, neither of those services is reflected in the IEP. However, testimonial and documentary evidence shows that these services were not memorialized in the IEP because the occupational and physical therapists' practice acts at that time required a doctor's prescription prior to initiation of services. SD 31. The IEP also requires consultation services to the classroom teacher for 20 minutes/month by the speech/language pathologist and 15 minutes/month by the school social worker. *Id.* ██████ asked if she could request that K.D. be placed at ██████ School - she had heard good reports on ██████'s preschool programming - but the district told her that K.D. could not attend ██████

The IEP's procedural safeguard section states as follows: "Parent was sent "Conference Notification" less than ten (10) days before the IEP Meeting, but the Parent waived the ten-day waiting period. The Explanation of Procedural Safeguards was provided to the parent on (blank - no date or other information provided), and "Parent was given IEP paperwork and Conference Recommendations at the IEP Meeting by ██████." SD 59; PD 88. This evidence supports a finding that the district did not provide ██████ with the procedural safeguards at the November 4<sup>th</sup> meeting. ██████ testified that she had no experience with foster children until she took in K.D. and no knowledge of special education. She testified that she was first informed about special education procedures when K.D.'s Office of Public Guardian attorney referred her to LAF to discuss K.D.'s educational situation.

On November 14<sup>th</sup>, the district sent a letter to ██████ and ██████, identifying ██████ School as the location where the student's IEP would be implemented. ██████ received the letter sometime the following week and promptly called ██████ to arrange a visit to the school. The case manager that she spoke with never called her back to arrange the visit.

Because of the foster parents' concerns about the district's proposed placement, ██████ had K.D. evaluated by Dr. ██████, who is the director of the Pediatric Psychology department at ██████. Dr. ██████ is a licensed clinical psychologist in Illinois and has extensive experience doing neurodevelopmental evaluations of high-risk children from infancy through age 17. PD 254-282. He also does school readiness evaluations of preschool children. PD 257. He has published and presented extensively on neuropsychology and neurodevelopmental issues in young children. PD 258-282.

Dr. ██████ met with ██████ and K.D. on November 11, 2013. PD 117. ██████ was present throughout the evaluation. *Id.* K.D. engaged easily, responded well to encouragement, demonstrated "very minimal use of language" saying only "mama" and "more," and used some signs to indicate her needs. PD

118. Dr. [REDACTED] administered the following standardized assessments: Wechsler Preschool and Primary Scales of Intelligence, 4<sup>th</sup> Edition (WPPSI-IV); Bayley Scales of Infant and Toddler Development, 3<sup>rd</sup> Edition (Bayley-III); Beery Developmental Test of Visual Motor Integration, 6<sup>th</sup> Edition (VMI-6); and two parent questionnaires, the Child Behavior Checklist for Ages 1½ - 5 (CBCL) and the Behavior Rating Inventory of Executive Functioning, Preschool Version (BRIEF-P). *Id.*

The evaluation confirmed [REDACTED]'s concerns about K.D.'s severe developmental delays. Her full-scale IQ on the WPPSI-III was 63, which is at the 1<sup>st</sup> %ile. PD 118. On the Bayley-III, her overall cognitive skills were at the 9<sup>th</sup> %ile and an age equivalency of 23 months, which is about 18 months below her chronological age at that time. PD 119. K.D. was "able to engage in representational play, attend to an entire story, and use a tool to obtain an object." PD 119. Her receptive vocabulary subtest scores on the Bayley III were in the borderline to low average range, 12 to 18 months below her chronological age, and her expressive language skills were lower, near the 13-month level - two and one-half years below expectations for her age. *Id.* K.D. also scored very low in perceptual-motor areas: extremely low range in perceptual reasoning, low average range for fine motor skills, and in the extremely low range for gross motor skills. PD 120. The tasks used to measure these skills included puzzle skills and drawing a line and a circle. PD 120. On the Bayley motor skills subtests, K.D.'s fine motor skills were at the 9<sup>th</sup> %ile, with an age equivalency of 26 months, and her gross motor skills were at the 1<sup>st</sup> %ile, with an age equivalency of 18 months. *Id.* The tasks used in the Bayley motor assessment include jumping backwards, balancing on one foot independently, using an intermediate tripod grasp, and pulling large Legos apart. PD 120. Her visual working memory score was at the 5<sup>th</sup> %ile, which is less than a 2.6 year age equivalency, and her spatial working memory was at the 9<sup>th</sup> %ile, which also less than a 2.6 year age equivalency. PD 121. [REDACTED]'s reports of K.D.'s functioning at home - difficulty sticking with an activity and holding information in her mind to complete a task or make a response - confirmed the working memory difficulties. *Id.* On the VMI-6, K.D.'s fine motor adaptive skills were in the low range. PD 120. However, the report cautions that the score "might be expected to decline with age, however, given the difficulty (the student) had with fine-motor control." *Id.*

Based on his evaluation, Dr. [REDACTED] determined that K.D.'s needs are those of a 30-month-old child, "at best." PD 122. His recommendations include: placement in a preschool program with two to three year old children who have similar language, communication, and social skills; intense and highly individualized therapy to facilitate her progress at this crucial time in her development; intensive 1:1 individual speech therapy to address her "dramatic delay of expressive language"; and, "intensive instruction on using alternative methods of communication" to help improve her language and social skills. PD 122,123. As to the importance of being with children her age, he opined that K.D. would have "little in common" with her same-age peers at that time. PD 122,123.

Dr. [REDACTED] testified that K.D.'s language deficits are a "special risk." Although children may catch up in gross motor skills, expressive and receptive language skills require extensive intervention because they will not get better on their own. K.D. also needs to develop social language skills. Dr. [REDACTED] emphasized the need for intense intervention now, while K.D. is young. The brain of a young child like K.D. can develop the interconnections necessary further development and for skills to increase. This concept of brain development is known as neural-plasticity. It is, essentially, a "use it or lose it" phenomenon. He stressed that if K.D. does not have intense interventions now, she will lose the opportunity to develop these skills because neurologically the opportunity for development will be past. Dr. [REDACTED] recommended that K.D. remain at [REDACTED] for an extra year of preschool rather than entering kindergarten in fall 2015. She will turn five this summer (2015) and so would be at the youngest part of a kindergarten class. He testified that because of her severe developmental delays and the need for intense intervention, a "preschool-like" environment would more appropriately address her needs. He advised against pushing her forward too rapidly and stated that it is important to "maintain the stability of the educational environment as long as possible" and to provide "social consistency," i.e., a program in which she is familiar with the teachers and students. He expressed concern about the impact that the stress due to change might have on her ability to perform.

[REDACTED] and [REDACTED] were concerned about this "crucial window of time" to impact K.D.'s delayed development in juxtaposition to the district's proposed special education program, which they felt could not meet K.D.'s severe developmental needs. K.D. had attended a two-week summer day camp program at [REDACTED] in June 2013, and [REDACTED] and [REDACTED] heard that [REDACTED] had opened a preschool. Mrs. L. met with the [REDACTED] director, Dr. [REDACTED] to learn about the preschool. After visiting the preschool, [REDACTED] and [REDACTED] decided to enroll K.D. in [REDACTED]'s preschool.

[REDACTED] then called Ms. [REDACTED] and told her about Dr. [REDACTED]'s evaluation and recommendations. She called Ms. [REDACTED] because she presumed, based on her experience with the district, that Ms. [REDACTED] was her "contact person." She testified that she told Ms. [REDACTED] that she and her husband had decided to enroll K.D. in [REDACTED] Preschool because of their concerns about the district's proposed placement. She testified that Ms. [REDACTED] did not ask for a copy of Dr. [REDACTED]'s report and did not inform her of her procedural rights under the IDEA or her right to request that the district place K.D. at [REDACTED].

The [REDACTED] preschool began in January 2014. Dr. [REDACTED] is the director of the preschool. She has a clinical doctorate in occupational therapy, certifications in sensory integrations, and is registered and licensed as an occupational therapist in Illinois. PD 234, 238. [REDACTED] is not an ISBE approved school. Although [REDACTED] did have a special education teacher when the program began, it currently does not have a special education teacher. The teachers have master's degrees in early child development and are trained to address all areas of development.

There are eight students in the classroom. The preschool program, which was for three hours/day for four days/week when K.D. began, focuses on teaching pre-academic skills in a therapeutic environment. It uses ZooPhonics and Handwriting Without Tears to teach early academic skills. Sensory integration techniques and Applied Behavioral Analysis (ABA) are integrated into the program as appropriate for the students. Art therapy is also part of the instructional day. A speech/language pathologist and an occupational therapist provide services within the classroom, working with small groups of four students. Each service is provided twice a week in 30-minute sessions. They also work on academic goals with the students.

Dr. [REDACTED] conducted an occupational therapy evaluation of K.D. when she began preschool. PD 137-142. K.D. had significant developmental delays, especially in expressive language, which was 64% delayed. PD. 137. These test results confirmed Dr. [REDACTED]'s findings from November 2013. Based on her evaluation, Dr. [REDACTED] found that K.D. has "atypical sensory processing, modulation and motor planning development that significantly impacts her ability to communicate and generalize learning skills in multi-sensory environments. PD 141. Dr. [REDACTED] gave several examples of how this impacts K.D. in a school environment. K.D. is unable to sequence multiple steps, such as take a coat off/hang up the coat. She is so dysregulated at circle time that she cannot control herself. She also functions at different levels on different days and in different environments. In addition to a therapeutic preschool, Dr. [REDACTED] recommended 60 minutes/week of occupational therapy. PD 142.

The [REDACTED] team develops a Preschool Plan of Care for each student. Each plan has academic goals, which are aligned with the Illinois Learning Standards. The speech/language, occupational therapy, and behavioral goals are also aligned with the Illinois Learning Standards. The staff assess each student's progress on goals every six months. Staff are trained in behavior plans. Augmentative communication devices are available for the students when appropriate. Staff communicate with parents by email on a daily basis.

[REDACTED] uses a DIR/Floortime approach to instruction, relating emotional development to communication. Dr. [REDACTED] testified that DIR/Floortime is an evidence-based approach in which the instructor meets a child at her individual level, follows the child's lead, works at the child's level, and then adds challenges. Dr. [REDACTED] testified that K.D. does well with this approach and when regulated, she shows "really nice skills." She has improved her receptive language skills and understands at an age-appropriate level.

Dr. [REDACTED] testified about the efficacy of DIR/Floortime. Dr. [REDACTED] has a doctoral degree in educational psychology. PD 247. She has extensive training and experience with young children and in DIR/Floortime. PD 247-249. The district objected to Dr. [REDACTED] appearing as a witness because she has never met or assessed the student. The undersigned overruled the district's objection, ruling that Dr. [REDACTED]'s testimony regarding DIR/Floortime is relevant to this proceeding. However, the weight given to her testimony might be limited by the fact that she

has no direct experience with the student. Dr. [REDACTED] testified that DIR/Floortime is an evidence-based approach of instruction for young children. It is helpful for children who, like K.D., have sensory processing and regulation disorders. She emphasized the necessity for a child to be sensorially regulated for academic learning to take place. Although Dr. [REDACTED] testified that K.D. should remain at [REDACTED] for another year, the undersigned gives this testimony little weight since she has never met the student.

In July 2014, the [REDACTED] staff prepared a preschool evaluation for K.D., summarizing her developmental functioning and progress in the preschool program. PD 205-210. K.D. was almost four years old at the time of the evaluation. She was "excited and highly distractible" during the assessment, which made it difficult for her to complete all tasks. PD 205. However, the evaluator determined that her performance accurately reflected her abilities. *Id.* Her communication was "primarily composed of sign language and socially appropriate gestural expressions." *Id.* Her HELP scores showed significant improvements in receptive language and slight improvements in other areas. *Id.*

In terms of K.D.'s functional emotional development, the team found that K.D. had mastered the goal for using signals and gestures to communicate and problem solve. PD 206. She demonstrated emerging skills in using words and symbols to convey intentions or feelings. PD 206. On the HELP, K.D.'s developmental age in cognition was three years, which reflects a 24% delay. PD 205, 207. She had difficulty in the sorting tasks, but the evaluator noted that a recent vision assessment determined that K.D. needs glasses. PD 207. While her receptive language was consistent with her chronological age, her expressive language remained severely delayed. *Id.* Her expressive language skills significantly impacted by her ability to "motor plan oral movement" and were at a developmental age of 17 months. *Id.* She used gestures to communicate. *Id.* Her social/emotional skills were consistent with her chronological age. *Id.* She could "navigate" peer disputes about toys with support, wait for her turn, use signs for communicating. *Id.* Her self-help skills were slightly below her chronological age. PD 208. At home, she could put away her belongings independently. *Id.* However, she still had a great deal of difficulty with toileting - she required significant adult support to reinforce bathroom routines and toileting. *Id.* [REDACTED] and [REDACTED] also reported that she struggled with dressing herself independently. *Id.*

The occupational therapy summary reports severe delays in motor functioning, sensory processing, and motor planning. Her skill levels varied significantly: grasping at a 24% delay, locomotion at a 47% delay, stationary skills (e.g., kneel, stand on one foot) at a 58% delay, object manipulation at a 43% delay, and visual motor at a 47% delay. PD 208, 209. Her sensory processing and modulation skills had improved, and she was able to remain regulated for 20 minutes of an hour occupational therapy session. PD 209. Her motor planning ability fluctuated according to her overall regulation: when regulated, she could complete a three-step sequence but could not do so when dysregulated. *Id.*

The preschool staff updated K.D.'s Preschool Plan of care to reflect the information in July evaluation. K.D.'s current Preschool Plan of Care includes three academic goals: sort items based on shape, discriminate objects based on size, and engage in pretend play. PD 211. The "home goal" for [REDACTED] and [REDACTED] is to reinforce development of academic skills at home. PD 211. There are four speech therapy goals, which incorporate academic instruction. For example, one goal is to identify 26/26 animal names, sounds, signals, or letter names when presented with Zoo-phonetic materials. PD 212. A second speech goal addresses pre-reading skills by pointing to pictures and letters in books. *Id.* The final goal is to use appropriate communication skills to express her needs, wants and feelings. *Id.* There are also goals for gross motor and fine motor skills and sensory integration. PD 213. Each goal addresses an Illinois learning standard. *Id.* Finally, the plan has two behavioral goals: to attend appropriately during circle time and to use socially appropriate behavior with peers. PD 214. Again, the goals are tied to Illinois learning standards. *Id.*

A summary of her progress in occupational therapy indicates that as of March 21, 2014, her overall upper body and postural core strength had improved. PD 152. She still had difficulty using both hand together, and her oral motor strength had not significantly improved. *Id.* Her ability to regulate and modulate sensory information improved so that she is able to remain calm and regulated for 20 minutes of an hour occupational therapy session. PD 153. When regulated, K.D. can complete three step motor plan sequences; however, when she was dysregulated, she was not "organize herself to participate in these activities." PD 154.

In February 2014, K.D.'s pediatrician referred the family to Dr. [REDACTED] for a developmental-behavioral consultation regarding K.D.'s developmental delays. PD 148. Mrs. L. and K.D. met with Dr. [REDACTED] on February 7<sup>th</sup> to address concerns about developmental delays, apraxia, dyspraxia, and sensory processing difficulties. PD 149. Dr. [REDACTED] is the director of the Developmental-Behavioral Pediatrics program at [REDACTED]. PD 241. He has extensive experience evaluating children under the age of 5 and has made numerous presentations on developmental problems in young children. PD 241-246.

Although K.D. cooperated with the physical examination, she was extremely active, impulsive, and disruptive throughout the process, including climbing on the furniture and grabbing objects. PD 150. Because this behavior raised safety concerns, Dr. [REDACTED] recommended that she "needs very close supervision at all times." PD 151. Dr. [REDACTED] diagnosed K.D. with moderate-to-severe global developmental delays, severe expressive communication disorder, suspected childhood apraxia of speech, motor coordination disorder, and sensory processing deficits. PD 151. He recommended that K.D. remain in her "private therapeutic school program." *Id.*

In his testimony, Dr. [REDACTED] described speech apraxia as a "disconnect" between the language area in the brain and the muscles in the mouth used to

produce speech. Children with speech apraxia may want to verbally communicate but cannot do so. They need specific instruction to increase awareness of their mouth muscles and direct instruction on how to move the mouth muscles. Although he "suspected" that K.D. has apraxia of speech, he did not make a formal diagnosis because of her limited ability to express herself. His professional opinion, however, is that her clinical presentation suggests apraxia. Therefore, he recommended speech/language therapy targeted to apraxia to retrain the mouth muscles to respond to the brain. Conventional speech therapy would not address these problems. He also diagnosed K.D. with motor apraxia, moderate to severe developmental delays, and a severe delay in expressive language. The district disputes whether apraxia of speech in a young child is a proper diagnosis, especially in a child with limited speech, and spent considerable time eliciting testimony on this. The evidence shows that Dr. [REDACTED] did not diagnosis K.D. with speech apraxia for the very reason that district staff questioned such a diagnosis - K.D.'s limited verbal production. He did, however, recommend intense speech services, as noted above.

Dr. [REDACTED] stressed the importance of intense interventions now while there is significant brain plasticity, so the brain can respond by building new neural connections. These interconnections are required for further development of speech and motor skills. He testified that otherwise the "doors start to close," and she would not have as much opportunity to develop these speech and motor skills. He said that a "traditional" program would not meet K.D.'s needs.

Dr. [REDACTED] met with K.D. and [REDACTED] for a follow-up visit in April 2014. [REDACTED] reported that although K.D. did not need as much redirection in school, her in-school aggressive behaviors increased after visits with her biological mother. PD 156.<sup>7</sup> Her communication skills remained limited: she used 10-15 words consistently at home and had basic communication skills via using picture cards. PD 156. Dr. [REDACTED]'s diagnoses remained the same, and he recommended that K.D. continue in the "intense therapeutic school program," including intense speech, behavioral, and occupational therapy. PD 157, 158. He also recommended that she receive augmentative communication services to address her childhood apraxia of speech and family work with a behavioral specialist. PD 158.

Ms. [REDACTED], the speech/language pathologist preschool at [REDACTED] preschool, has worked with K.D since spring 2014. Ms. [REDACTED] has a master's degree in speech-language pathology and a certificate of clinical competence in speech-language pathology from the American Speech and Hearing Association (ASHA). PD 283). She has worked as a speech/language pathologist in public schools in Illinois and Missouri and provided services to children in private schools. PD 283, 284. Her work with K.D. is focused on increasing K.D.'s oral motor strengths to support sound productions. This is necessary because K.D. has difficulty "completing nonspeech movements such as lip rounding, tongue lateralization and tongue protrusion." Her assessment found that K.D.'s speech

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<sup>7</sup> As a foster child, K.D. had mandated visits with her biological mother

skills are "characteristic of childhood apraxia of speech," as indicated by her "severely delayed speech skills, her higher language comprehension skills compared to her language expression, difficulties producing sound sequences, inconsistency of errors, and voicing errors." PD 204. Her description of speech apraxia - knowing what you want to say but being unable to do so because of a disconnection between the brain and the mouth muscles - echoes that given by both Dr. [REDACTED] and Dr. [REDACTED]. She recommended frequent and intense speech therapy and alternative forms of communication such as sign language or an AC device. *Id.*

Ms. [REDACTED] also works with K.D. on verbal speech to increase her verbal sounds in isolation. When she first K.D., the student had a "handful" of single words and could not say a three-word sentence. She communicated by gestures, pointing, and a few signs. Although most children are able to make the sounds b, p, m, t, d, n, k, and g by the time they are two, K.D. was unable to do so when she was three years old. Ms. [REDACTED] reported that last month K.D. said a three-word sentence, a first in her experience with the student. Because K.D. is impulsive and distracted, Ms. [REDACTED] provides three sessions/week of 30 minutes. This amount is necessary for K.D. to progress in her verbal language skills and also supports K.D. in accessing the academic curriculum.

The district held an IEP meeting for K.D. on May 23, 2014 to address the parents' concerns about the student's special education program and ESY in light of outside evaluations. SD 84. [REDACTED] provided extensive evaluation materials to the district at the meeting, which the district reviewed and incorporated into the IEP as it deemed appropriate. SD 86, 122.<sup>8</sup> Although there are many similarities between the district's November 4<sup>th</sup> and May 23<sup>rd</sup> IEPs, there also are also differences. The May 23<sup>rd</sup> IEP sections on academic needs and transition incorporate information from the district's initial evaluation and information from [REDACTED], including her concern that the district offered insufficient services and her request for more related service. SD 86, 87. It also memorializes her request that the district place K.D. at Eyas Landing. SD 87.

The May 23<sup>rd</sup> IEP adds low-tech assistive technology (AT) services and identifies a need for an augmentative communication (AC) evaluation. SD 89. It states that an AC evaluation "is pending." *Id.* The IEP includes the following low-tech devices: picture/visual supports, timer, visual prompts, visual schedule, and weighted vest. SD 89. Mr. [REDACTED], who was the case manager at the meeting and also is the district's network executive director, testified that the district wanted to do additional evaluations, including an AC evaluation, and said that [REDACTED] agreed to the AC evaluation. The team found that K.D.'s behavior impeded her learning and developed accommodations and goals to address those concerns. SD 89, 91, 92, 100, 101. The IEP increased paraprofessional assistance to 30 minutes/day to supervise the student on stairs and uneven surfaces. SD 89. Consult time between related service providers and teachers is also included as

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<sup>8</sup> The information provided to the district included, but was not limited to, the following: medical information, reports from Dr. [REDACTED] and Dr. [REDACTED], reports from [REDACTED] and [REDACTED] notes and evaluations. SD 86, 122.

an accommodation/ modification in the following amounts: social worker and physical therapist, 15 minutes/month for each and speech pathologist for 20 minutes/month. SD 91.

The IEP team developed new goals for the student. The academic goals address early academic skills such as identifying initial consonants and letters, sorting objects, following a visual toileting schedule, and behavioral skills. SD 94-101. The speech/language goals address the student's expressive language and receptive language deficits. SD 102-107. The expressive goals are geared toward increasing her expressive language verbally and with signs and helping her learn to produce speech sounds. SD 102-1-5. The receptive language goal is directed to increasing her receptive skills. SD 106, 107. A physical therapy goal addresses gross motor skills such as jumping, catching a ball, and kicking a ball. SD 108, 109. The occupational therapy goal is to increase K.D.'s bilateral coordination so that she can successfully manipulate classroom materials. SD 110-113.

The placement proposed in the IEP is an instructional early childhood classroom for 775 minutes/week. PD 190; SD 114. Mr. [REDACTED] testified that the placement change was made to address the parents' concerns about K.D.'s behavioral issues. According to Mr. [REDACTED], the instructional classroom is highly structured and better able to address behavioral issues. The teachers can directly teach social/emotional skill development as well as address the student's other needs. The IEP team also determined that the student is eligible for extended school year (ESY) services for six weeks over the summer and for transportation. PD 193; SD 117, 118.

[REDACTED] filed a dissent to the IEP. PD 196; SD 123. She disagreed with the amount of related services offered by the district, asserting the K.D. requires more intense occupational therapy and speech/language therapy. She asked for specific schools to visit, but none were provided. She informed the district that she was placing K.D. at [REDACTED] on June 16, 2014 for the summer session and was seeking reimbursement for the summer session and for school year 2014-15. *Id.*

On June 6, 2014, the district sent a letter and consent form to [REDACTED] and [REDACTED] stating the ESY services would be provided at [REDACTED] School. PD 198; SD 128. The district also sent a second letter on June 6<sup>th</sup>, identifying [REDACTED] as school location for fall, beginning September 2, 2014. SD 129.

Although the district prepared a referral for an AC evaluation and [REDACTED] provided written consent for the evaluation on June 5, 2014, the district never conducted the evaluation. PD 200-202. Several district staff testified that an AC evaluation could only be completed after K.D. was enrolled in and attending a district school. The district insists that this is necessary so that it can see how she interacts with her environment. Despite the attendance requirement that the district places on the AC evaluation, no one from the district disputes that K.D. needs an AC evaluation.

On October 17, 2014, K.D. was evaluated by [REDACTED] for a speech-generating device (SGD). PD 218. Ms. [REDACTED] is a speech/language pathologist at [REDACTED] Preschool. She is a licensed speech/language pathologist in Illinois and also has a certificate of clinical competence from ASHA. She has experience creating communication systems for children with limited verbal skills. She provides speech/language services to K.D. in preschool so she is very familiar with K.D.'s communication needs and motor skills. K.D. needs a SGD because of her "limited and inconsistent ability to produce speech sounds and syllables in imitation or spontaneously." PD 218. The Picture Exchange Communication System (PECS) K.D. used did not meet all her communication needs. *Id.* K.D. is "minimally intelligible" and "essentially nonverbal." *Id.* She has the necessary skills for using a SGD successfully. PD 219. Based on her evaluation and consideration of various SGDs, she recommended a DynaVox T10 for K.D. PD 220. The device would give K.D. access both quick phrases and also whole sentences. It has behavioral supports such as visual schedules, visual timers, and visual rules. PD 221. It would help her participate in academic activities, improve her ability to communicate with peers, and meet her academic goals. *Id.* The DynaVox T10 has synthesized speech and a screen that K.D. can see easily. *Id.* K.D. tried the DynaVox T10 and was able to use it. PD 220.

Ms. [REDACTED] is a licensed speech/language pathologist in Illinois and also has a certificate in clinical competence from ASHA. She is trained in augmentative communication. She has never met the student but has reviewed some of evaluations. She testified that the SGD evaluation was "a good evaluation" and agreed that K.D. would benefit from a SGD. She was unsure why the DynaVox was recommended over other devices.

Based on the foregoing evidence, the undersigned finds that the SGD evaluation was an appropriate evaluation and made appropriate recommendations. Given the overwhelming evidence of K.D.'s longstanding severe expressive language deficits, the evidence clearly shows that she needs a SGD to access education and to meaningfully benefit from her education.

The district held an IEP meeting on November 24, 2014 to review the AC evaluation. The hearing, which had been set for November, was rescheduled to December so that the parties could hold that IEP meeting. IHO Order, November 17, 2014. To the best of this hearing officer's review, the only reference to augmentative communication evaluation is in the speech/language goals, two of which include "multi-modal communication (i.e., words/word approximations, sign, pictures, low/high tech ACC). SD 163, 165. The IEP does not reference any discussion of the AC evaluation.

Although the district presented several witnesses to testify about the program offered at [REDACTED] via the November 24<sup>th</sup> IEP, that IEP is not contested in this hearing. See, Parents' August 21, 2014 Due Process Complaint and October 10, 2014 Amended Complaint.

## CONCLUSIONS OF LAW

The Individuals with Disabilities Education (IDEA) provides financial assistance to states to provide services to children with disabilities. Infants and toddlers under the age of 3 who have developmental delays or a diagnosed physical or mental condition that has a high probability of resulting in a developmental delay may receive early intervention (EI) services under Part C of the IDEA, 20 U.S.C. §1431(5)(A). Children between the ages of 3 and 21 are served under Part B, which requires states that accept federal funds to provide a free appropriate public education (FAPE) to eligible children with disabilities who are between the ages of 3 and 21. 20 U.S.C. §1412(a)(1)(A).

A school district must develop an individualized education program (IEP) for each student who receives special education and related services. 20 U.S.C. §1414(d). A district must comply with both the IDEA's procedural requirements and substantive requirements in order to provide a FAPE to a student. *Board of Educ. of the Hendrick Hudson Cent. Sch. Dist., Westchester Cnty. v. Rowley*, 458 U.S. 176 (1982) ("Rowley"). The educational program set out in the IEP must be "individually designed" to meet an individual child's unique needs and "reasonably calculated to enable the child to receive educational benefit." *Id.* However, a district is not required to provide "the best possible education." *Todd v. Duneland Sch. Corp.*, 299 F.3d 899, 905 (7<sup>th</sup> Cir. 2002).

I. Whether the district failed to transition the student from early intervention services to early childhood services by her third birthday (July 31, 2013) and thereby failed to fulfill its child find responsibilities:

Under the IDEA, a school district has an affirmative duty to identify, locate, and evaluate all children with disabilities who are in need of special education and related services, regardless of the severity of a child disability. 20 U.S.C. §1412(a)(3)(A). When Congress reauthorized the IDEA in 2004, it "strengthened the longstanding requirement that children participating in early intervention service programs under Part C of the Act experience a smooth and effective transition to preschool programs under Part B." *Letter to Hutton and East*, 58 IDELR 140 (OSEP February 9, 2011) (Hutton). When a child is referred to a Part C (EI) agency between 45 and 90 days prior to the child's third birthday, the EI agency must conduct the initial evaluation, assessment, and initial Individual Family Service Plan (IFSP) meeting. *OSEP Early Childhood Transition FAQs*, 53 IDELR 301, Question 7 (OSEP December 1, 2009). If the child is determined eligible and receives EI services, the Part C agency must also notify the student's local school district that the student is potentially eligible for Part B services. *Id.*, Question 8. A district is on notice that a child is potentially eligible for Part B special education and related services as of the date on which it is invited by a Part C agency to participate in a transition conference. Hutton; See also, *Board of Educ. of Evanston-Skokie Consol. Sch. Dist. 65 v. Risen*, 2013 WL 3224439 (N.D. Ill 2013) (holding that a district is on notice of its child find obligation from the date on which a parent first requests an evaluation).

The evidence shows that K.D. was referred for EI services on May 8, 2013, which is 75 days before her third birthday. The evidence further shows that the EI evaluations were conducted on May 30, 2013, and the IFSP was developed and consented to by Mrs. L. that same day. It is undisputed that the transition conference was held on May 22, 2013. The evidence shows that during that conference, Mrs. L. described K.D.'s significant developmental delays, including that she did not speak, had very weak muscles, and was extremely active. Mrs. L. asked the district to evaluate K.D. before the end of summer so that she could have a "seamless transition" to public school. Based on these facts, the district was on notice as of May 22, 2013 that K.D. was potentially eligible for special education and related services under Part B and of the parents' request for an evaluation.

If a district knows that a child served in Part C and referred to Part B will turn three over the summer and "that appropriate LEA personnel will not be available to conduct evaluations and hold IEP meetings during the summer," the district must conduct the evaluations, determine eligibility, and convene an IEP meeting "before the end of the school year in order to ensure that, if appropriate, an IEP is developed and implemented by the child's third birthday." *OSEP Early Childhood Transition FAQs*, 53 IDELR 301, Other Questions (OSEP December 1, 2009); 34 C.F.R. §300.124(b). Illinois regulations incorporate these mandates by requiring school districts to participate in EI transition planning conferences to "develop a transition plan enabling the public school to implement an IFSP or IEP no later than the third birthday of the child." 23 Ill. Adm. Code §226.100(a)(3) (emphasis added). Thus, the district's argument that federal regulations permit the IEP team to determine the date on which services begin when child's birthday occurs over the summer, must fail. 34 C.F.R. §300.101(b)(2).

The district's argument that its untimely evaluation was due to the parent's scheduling problems is unavailing. During the May 22<sup>nd</sup> transition conference, the district denied ██████'s request to schedule an evaluation date before K.D.'s third birthday on July 31<sup>st</sup>. Ms. ██████'s statement that she would call "around" K.D.'s third birthday to schedule the evaluation left little, if any, room for scheduling a timely evaluation. When Ms. ██████ spoke with ██████ on July 26<sup>th</sup>, she offered only one date for the following week, and ██████ could not change her work schedule so quickly.<sup>9</sup> ██████ requested a date for the following week. Ms. ██████ told her that the district did not do evaluations over the summer. There is no evidence showing that the delay in conducting a timely initial IDEA evaluation is attributable to the foster parents. Rather, the evidence clearly shows that the district did not fulfill its obligations to evaluate K.D. in a timely manner.

The district also had the option of implementing K.D.'s IFSP no later than her third birthday but chose not to do so. Although district introduced testimony that the IFSP does not include the frequency, intensity, or delivery model for services, the undersigned finds that testimony insufficient to support a finding that the IFSP could not have been implemented. Ms. ██████ testified that a

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<sup>9</sup> The last week of July 2013 had only three weekdays: July 29, 30, and 31.

standard EI service is provided for 60 minutes, unless otherwise indicated on the IFSP. More importantly, the law requires inter-agency cooperation to facilitate timely transition. Nothing prevented Ms. [REDACTED] from calling Ms. [REDACTED] or [REDACTED] to find out the frequency, duration, and delivery model for the EI services. Therefore, a preponderance of the evidence shows that the district failed to fulfill its child find obligations when it neither implemented K.D.'s IFSP nor evaluated her and developed an IEP for her by her July 31, 2013, her third birthday and thereby denied her a free appropriate public education. The parents have shown by a preponderance of evidence that the district failed its child find duty by not transitioning K.D. from EI to early childhood services in a timely manner and thereby failed to provide the student a free appropriate public education.

II. Whether the district failed to provide the student any special education placement from July 31, 2013 through November 25, 2013:

The district held its initial IEP meeting for K.D. on November 4, 2013. The term educational placement "refers to the provision of special education and related services rather than a specific place, such as a specific classroom or specific school." Commentary, Federal Register, page 46687. Prior to November 4<sup>th</sup>, the district had not evaluated K.D., found her IDEA eligible, or developed an IEP for her. The evidence shows that the district developed K.D.'s initial IEP on November 4, 2013. Thus, the evidence shows that the district provided a special education placement for K.D. on November 4, 2013. The evidence further shows that the district sent a letter to [REDACTED] and [REDACTED] on November 14, identifying that location at which K.D.'s IEP would be implemented. [REDACTED] and [REDACTED] received the district's letter sometime the following week. Based on the foregoing, the undersigned finds that a preponderance of the evidence shows that the district failed to provide K.D. a special education placement from July 31, 2013 through November 4, 2013 and thereby denied her a free appropriate public education from July 31 through November 4, 2013.

III. Whether the district failed to appropriately evaluate the student in November 2013 when its evaluation relied solely on observations rather than valid and reliable assessment tools:

When a district evaluates a child, it must use a "variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent." 20 U.S.C. §1414(b)(2)(A). A district may not use "any single measure or assessment as the sole criterion" for determining eligibility or an appropriate program for the child. 20 U.S.C. §1414(b)(2)(B). A district must use "technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors." 20 U.S.C. § 1414(b)(2)(C). The child must be evaluated in all areas of suspected disability. 20 U.S.C. §1414(b)(3)(B). The functional, developmental, and academic information gathered from the evaluation is the foundation for the child's IEP. 20 U.S.C. §1414(b)(2)(A)(i), (ii); 34 C.F.R. §300.304(b)(1)(ii).

The district does not dispute that its initial evaluation consisted of a play-based assessment of K.D., an interview with [REDACTED], and a review of some EI records. Rather, it disputes the usefulness of standardized assessments for a preschool child and whether standardized assessments provide useful information for an educational setting. This is a curious argument, given the IDEA's requirement that an evaluation *must* use a variety of technically sound instruments to assess how cognition, behavior, physical, and developmental factors impact a child's academic functioning. 20 U.S.C. § 1414(b)(2)(C).

A careful examination of standardized assessments that have been given to K.D. show that the areas measured on those assessments required K.D. to do things the district had asked her to do in a non-standardized format. For example, the assessments Dr. [REDACTED] administered required K.D. to engage in different types of play, listen to a story, use a tool to get an object, identify items of clothing, use an intermediate tripod grasp, pull apart large Lego blocks, jump, balance on one foot, and, identify pictures and body parts. PD 119-121. Because Dr. [REDACTED] used "technically sound instruments" to evaluate K.D., he was able to gather significant information about her developmental delays that the district appears to have missed.

The [REDACTED] August 19<sup>th</sup> speech/language assessment took a different approach by taking clinical observations and comparing them to what a typically developing child K.D.'s age could do. Using this approach, the evaluator obtained important information about K.D.'s receptive, expressive, and pragmatic language skills and the level of her speech/language impairments. PD 50, 51. This evaluation was offered to the district's initial evaluation team, but they declined to review it.

The district's assertion that standardized assessments do not provide useful and relevant information for an educational setting is not supported by the evidence. Moreover, the IDEA specifically requires a district to use a variety of assessment tools and technically sound instruments. The district did neither. The parents have shown by a preponderance of the evidence that the district failed to conduct a comprehensive evaluation that used a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, as required by law and that this failure denied K.D. a free appropriate public education.

IV. Whether the district failed to evaluate the student in all areas of suspected disability when it knew that she has very limited speaking ability but did not conduct either an assistive technology (AT) or augmentative communication (AC) evaluation, from the date of the complaint through the end of the hearing:

An appropriate evaluation "must include an assessment that will enable the IEP team to determine whether the child needs assistive technology in order to receive FAPE." *Letter to Fisher*, 23 IDELR 565, 566 (OSEP December 4, 1995). The parties' dispute on this issue centers on whether the district had

information to indicate that AT/AC evaluations were necessary and whether a student must be attending a district school to receive an AT/AC evaluation.

Each of the district's initial evaluation reports references K.D.'s limited speech and her use of gestures and a few signs. SD 23, 25, 26, 30, 33, 36, 46. The initial IEP identifies one of her communication needs as being able to consistently "communicate her wants and needs through either simple signs or words/word approximations." SD 60. The same IEP memorializes [REDACTED]'s concern about K.D.'s speech/language development. SD 61. Despite clear documentation of K.D.'s severe and persistent communication needs, the IEP team determined that she did not need assistive technology "to access any portion of the curriculum or to meet the behavioral or adaptive needs of the student" and did "not require an alternative/augmentative communication device to interact with staff and peers, to access any portion of the curriculum, or to meet the social and communication needs." SD 63. This is a startling conclusion given the evidence showing her severe expressive language deficit.

The district had even more information about K.D.'s communication needs when it developed the May 23, 2014 IEP. [REDACTED] provided numerous evaluations and progress reports to the district at the May 23<sup>rd</sup> meeting, each of which clearly documented K.D.'s severe and persistent communication needs. SD 86. The May 23<sup>rd</sup> IEP states that an AC evaluation is "pending," although it does not clarify what "pending" means. SD 89. The IEP also states that K.D. needs "visuals to supplement communication," "speaking alternatives (communication through pictures, manipulatives, etc.)", and "visual picture aid to follow for transitions/activities throughout the day." SD 63, 64. The foregoing evidence undermines the district's argument that it had "no suspicion" that K.D. might need AT or an AC device. District's Closing Statement, p.9. The evidence clearly shows that the district knew that K.D. had severe communication needs but did not conduct an AT or AC evaluation to assess her needs and determine the services and devices she required.

The evidence shows that the IEP team prepared an AC referral at its May 23, 2014 IEP meeting and that [REDACTED] gave written consent for the evaluation on June 5, 2014. SD 124-126, PD 200-202. The district asserts that it has been unable to conduct the evaluation because K.D. is not enrolled in the district and attending a district school. The district has provided no legal authority supporting such a requirement, and the undersigned has been unable to find any. The district's argument, if accepted, would render the IDEA's evaluation requirements meaningless for a student who, like K.D., has never been enrolled in or evaluated by the district. It might be the district's practice, but it clearly is not the law.

The evidence clearly shows that the district was aware of K.D.'s severe expressive language needs since November 4, 2013, when it conducted its initial assessment. Between that date and the time of this hearing, the parents have provided extensive documentation of K.D.'s communication needs to the district, but the district has never conducted an AC evaluation. The district's argument that a student must be enrolled in and attending a district school has no legal

foundation. The parents have sustained their burden of showing that although the district knew about K.D.'s severe communication deficits since November 4, 2013, it never conducted an AC evaluation. Further, that failure denied the student a free appropriate public education.

V. Whether the district failed to include the student's foster mother at the November 4, 2013 IEP meeting and thereby denied her the opportunity for meaningful participate in planning for the student's education:

A district must ensure that a parent of a child with a disability has an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child and the provision of a free appropriate public education to the child. 20 USC §1415(b)(1). In the *Board of Educ. of the Hendrick Hudson Cent. Sch. Dist., Westchester Cnty. v. Amy Rowley*, 458 U.S. 176 (1982), the Court emphasized the importance of the procedural safeguards by stating that "Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation at every stage of the administrative process" as it did on the substantive requirements for an IEP.

The parents contend that the district actively denied Mrs. L.'s participation in developing the IEP by excluding her from the meeting at which the student's eligibility and proposed program were developed. The evidence shows that on November 4, 2013, the district met with [REDACTED] and K.D. for an initial evaluation to determine if the student was eligible for special education and related services. After the evaluation, the district asked [REDACTED] to wait in another room with the student [REDACTED]. [REDACTED] testified that they waited for "about 45 minutes," and then the district asked her to return to the room. The district handed her a completed IEP, which it then reviewed with her.

Districts frequently prepare "draft" IEPs and, in the right circumstances, courts find that doing so does not deny parents meaningful participation. The district cites *Deal v. Hamilton Cnty. Bd. of Educ.*, 42 IDELR 109 (6<sup>th</sup> Cir. 2004) (*Deal*) for the proposition that meaningful participation occurs when the IEP team considers the child's individual needs and the parent's suggestions rather than pre-deciding the child's program and services. In *Deal*, the Sixth Circuit found that the parents had been denied meaningful participation because the district did not treat their proposed placement as a viable option. Instead, the district had a policy of pre-deciding the placement and services for children with autism. The Seventh Circuit, in *Hjortness v. Neenah Joint Sch. Dist.*, 507 F.3d 1060, 1060, 1064 (7<sup>th</sup> Cir. 2007) the court held that the district had not made an impermissible predetermination because it was willing to make adjustments to the proposed IEP based on the parent's input. In *T.P. and S.P. v. Mamaroneck Union Free Sch. Dist.*, 554 F.3d 247, 51 IDELR 176 (2<sup>nd</sup> Cir. 2009) ("*Mamaroneck*"), the court found that although the district had prepared a draft IEP, it had not predetermined the student's placement because it adopted some of the parents' suggestions and discussed placement at the meeting. *Id.*

The evidence shows that the district prepared the IEP outside of the parent's presence. The question is whether [REDACTED] was given the opportunity for meaningful participation when the district reviewed the IEP with her after the evaluation. The evidence shows that [REDACTED] asked about the speech goal because K.D.'s skills are so far below those of a typically developing child. The speech pathologist offered to change the goal. [REDACTED] also asked about increasing the service minutes. The speech pathologist told her that K.D. would receive 30 minutes/week. It is unclear whether the district responded to her question of how to request more time. [REDACTED] and the occupational therapist discussed strategies that would be provided in the classroom to support K.D. When [REDACTED] expressed concern about the placement decision, the district told her that the setting would provide the student with the opportunity for peer modeling. When [REDACTED] asked about Stock School, the district told her that K.D. could not attend Stock. As in *Mamaroneck*, the district in this case discussed [REDACTED]'s concerns at the IEP meeting. The evidence shows that the district considered [REDACTED]'s input; therefore, the parents have not sustained their burden of proof on this issue.

VI. Whether the district's November 4, 2013 IEP failed to offer the level of special education and related services and supports the student needed to receive a free appropriate public education (FAPE) and achieve meaningful educational benefit:

An IEP is a comprehensive educational plan for a child who needs special education and related services. In developing an IEP, the team must consider a number of factors, including the child's academic, developmental, communication and functional needs. It must include the child's present levels of academic achievement and functional performance and, for a preschool child, how the child's disability affects the child's participation in appropriate activities. 20 U.S.C. §1414(d)(1)(A)(i)(I). It must also include: measureable academic and functional goals designed to meet the child's needs resulting from the child's disability and to enable the child to be involved in and make progress in the general education curriculum and meet each of the child's other educational needs that result from the child's disability. 20 U.S.C. §1414(d)(1) (A)(i)(II). The IEP must include a statement of the special education and related services and supplementary aids and services that will be provided for the child to make appropriate progress on the IEP goals. 20 U.S.C. §1414(d)(1) (A)(i)(IV). Related services include "developmental, corrective, and other supportive services" that are designed to enable the child to receive a free appropriate public education. 20 U.S.C. §1401(26)(A). This definition specifically includes speech/language pathology services and physical and occupational therapy services. *Id.*

In light of these comprehensive requirements, it is clear that the IEP must be based on an individual child's unique needs. The evidence shows that K.D. has severe developmental delays in all areas of functioning. Her expressive language development is severely delayed. In November 2013, she could not say 15 meaningful words or use a word to call a person, skills that most children have by age three. PD 8, 50,119. Her oral motor skills made it difficult for her to imitate and produce duplicated syllables and consonant-vowel combinations. PD

52. She used only a few simple signs to communicate her wants and needs. PD 50. Her receptive language skills were also delayed, impacting her ability to respond to simple questions and follow simple directions. PD 51,119. Her pragmatic language skills were also impaired, due in large part to her very limited ability to vocalize and her distractibility. PD 51.

K.D. also has developmental delays in fine and gross motor functioning, which adversely impact her ability to do educational tasks such as writing, drawing, holding a crayon or pencil and skills like jumping and balancing. PD 120. Her difficulty processing and responding to sensory information adversely impacts her ability to engage in age-appropriate play. PD 34. Her social skills are adversely impacted by her expressive and receptive language deficits, sensory processing problems, and pragmatic language skills. PD 51,121. All of the foregoing needs should have addressed in her IEP to provide her with a free appropriate public education.

In *K.I. v. Montgomery Pub. Sch.*, 805 F. Supp. 2d 1283, 1287 57 IDELR 93 (M.D. Ala. 2011) (*K.I.*), the court held that the district's failure to conduct a comprehensive evaluation resulted in a failure to design suitable goals for the student and to develop an adequate IEP. The court further held that this procedural failure denied the student a free appropriate public education. *Id.* One of the evaluations that the school had not conducted was an assistive technology evaluation, despite knowing that the student had severe communication problems. *Id.* Similarly, in *Aaron P. and Puakielenani P. v. State of Hawaii, Dept. of Educ.*, 897 F. Supp. 2d 1004, 59 IDELR 256 (Haw. 2012) (*Aaron P.*), the court held that the IEP was inappropriate because it was based on insufficient information and did not include a "detailed and accurate assessment" of the student's abilities and needs. Even though the parent had not shared an outside evaluation with the district, the court found that the district has a responsibility to fully evaluate a student prior to developing the student's IEP. *Id.* Because the IEP did not adequately address the student's needs, the court held that the IEP was not designed to provide the student with a meaningful educational benefit and, therefore, the student was denied a FAPE. *Id.*

As in *Aaron P.* and *K.I.*, the district in this case did not fully and appropriately evaluate K.D. The failure to do so resulted in the development of an IEP that did not meet K.D.'s individual needs. The evidence shows that the K.D. needs intense services to address her global developmental delays, including her severely delayed expressive language skills, delayed receptive language skills, fine and gross motor delays, and sensory processing deficits. These delays also impact K.D.'s social skills and behavior. Both Dr. [REDACTED] and Dr. [REDACTED] testified of the need to provide intense services now while K.D.'s brain has the ability to develop the neural connections required for developing new skills. Otherwise, she will lose the opportunity to develop these skills.

The evidence shows that K.D. needs intense individual speech therapy to address her symptoms of apraxia of speech so that she can develop the mouth muscles necessary for verbal speech. Without direct instruction, these muscles

will not develop, and K.D.'s expressive language skills will not improve. Although several district witnesses disputed whether a child K.D.'s age can be diagnosed with apraxia of speech, the evidence shows when a child displays the symptoms of apraxia of speech, the recommended intervention is to treat those symptoms. The evidence further shows that K.D. needs occupational therapy services to address her motor skill delays and her sensory processing deficits, both of which adversely impact her functional and educational performance.

The district also has never evaluated K.D.'s AT/AC needs, and so the November 4<sup>th</sup> IEP could not adequately address her communication needs. The evidence shows that because of her severe deficit in expressive language, K.D. needs a SGD to help communicate and to access the educational curriculum.

Based on the foregoing evidence, the undersigned finds that the parents have sustained their burden of showing that the district's November 4, 2013 did not offer the level of special education and related services and supports necessary to provide K.D. with a FAPE from which she could receive a meaningful educational benefit.

VI. Whether the district's offer of placement, which the parents received in a letter on or about November 25, 2013, failed to provide an appropriate placement and services for the student:

The IDEA has a panoply of confusing terms, and in this hearing officer's experience, "placement" ranks near the top of the list. A district must ensure that a continuum of alternative placements is available to meet a child's special education and related service needs. 34 CFR §300.115(a). The district must ensure that the child's educational placement is determined by a "group of persons, including the parents," i.e., IEP team. 34 C.F.R. §300.116(a)(1). The placement must be determined at least annually and must be based on the child's IEP. 34 C.F.R. §300.116(b)(1), (2). The U.S. Department of Education has explained that the term "placement refers to the provision of special education and related services rather than a specific place, such as a specific classroom or specific school." Commentary, 71 Fed. Reg. 156 (2006).

The November 10<sup>th</sup> letter, which states that the student's IEP will be implemented at ██████████ School, is not an offer of placement but rather a statement of where the IEP will be implemented. The district may select the school at which a student's IEP implemented, as long as the IEP can be fully implemented at the specified location. There is no evidence to show that the November 4<sup>th</sup> IEP could not have been implemented at ██████████ School.

VII. Whether the district's May 23, 2014 IEP failed to offer sufficient special education services and supports to allow the student to receive a FAPE and achieve meaningful educational benefit:

The May 23<sup>rd</sup> IEP meeting was held to address the parents' concerns about the student's special education placement, particularly as to the amount of

related services offered by the district. SD 87. At the meeting, the student's placement was changed to an instructional early childhood program. SD 114. The May 23, 2014 IEP increased related services to the following levels: 45 minutes/week of speech/language therapy; 15 minutes/week of physical therapy; and, 45 minutes/week of occupational therapy. SD 114; PD 190. Additionally, support is to be provided at daily scheduled bathroom times to address K.D.'s toileting needs. PD 176. The IEP also requires consultation between: the social worker and the teacher and the physical therapist and the teacher, each for 15 minutes/month; the occupational therapist and the teacher for 30 minutes/month; and, the speech pathologist and the teacher for 20 minutes/month. *Id.*

The district's proposed speech/language services address both receptive and expressive language. SD 102-107; PD 180-183. The expressive goals are geared toward increasing her expressive language verbally and with signs and helping her learn to produce speech sounds. SD 102-1-5. The receptive language goal is directed to increasing her receptive skills. SD 106, 107. The physical therapy goal is to help the student acquire gross motor skills so that she can more fully participate with her peers. SD 108. The occupational therapy goals address the student's bilateral coordination and ability to imitate pre-writing symbols. SD 110-113.

The parents' expert, Dr. [REDACTED], recommended 60 minutes/week of individual speech/ language services and 80 minutes/week of group speech/language services to address K.D.'s expressive and receptive language deficits. She also recommended 60 minutes/week of direct individual occupational therapy services to address her sensory processing deficits. She said that K.D. requires time at the start of each session to get regulated and after that, she can "go to work." Additionally, she recommends 80 minutes/week of group occupational therapy services.

In *T.H. v. Board of Educ. Of Palatine Comm. Cons. Sch. Dist. 15*, 30 IDELR 764 (N.D. Ill. 1999) ("T.H."), the court held that a district must sufficiently individualize its early childhood program to ensure that it met the student's needs. *Id.* The parents' experts testified that there is a critical "developmental window" for young children during which language and behavioral deficits can be addressed and ameliorated. Without sufficient intervention to "reprogram" the brain during that critical time, the opportunity for meaningful access to education could be "permanently foreclosed." *Id.* If intensive services were provided while the child was still developing, the child would be better able to fully participate in a less restrictive program later. *Id.*

Similarly, in *Board of Educ. of the City Sch. Dist. of the City of Cincinnati v. Wilhelmy*, 689 F. Supp. 2d 970, 54 IDELR 58 ( 2009) ("Wilhelmy"), the court accepted evidence that a child's brain is "most receptive to learning language before the age of six when their brains are most malleable. The potential for learning language abilities is greatest from birth to three years of age, then from three to five years of age." *Id.* The court found that the student had a "limited window of opportunity" to 'close the gap' " in her language skills and needed

intense services. *Id.* Although the student in *Wilhelmy* had a hearing impairment, the emphasis on the necessity for early intensive services to address language development supports the testimony by the parents' experts.

Both Dr. [REDACTED] and Dr. [REDACTED] testified about neural plasticity and the necessity of intense intervention during early childhood. Their testimony mirrors that accepted by both the *T.H.* and the *Wilhelmy* courts, which was used as a basis for the courts' decisions. Dr. [REDACTED] and Dr. [REDACTED] presented credible testimony that K.D.'s unique educational needs require intense services now to address her expressive and receptive language deficits, her gross and fine motor development deficits, and her sensory processing problems. Dr. [REDACTED] testified that K.D.'s expressive and receptive language skills would not remediate themselves as she gets older.

Dr. [REDACTED] testified that K.D. needs 60 minutes/week of direct individual occupational therapy services to address her sensory processing deficits. She said that K.D. requires time at the start of each session to get regulated and after that, she can "go to work." She also recommends 80 minutes/week of group occupational therapy services. To address K.D.'s expressive and receptive language deficits, she recommends 60 minutes/week of individual speech/language services and 80 minutes/week of group speech/language services.

Based on the foregoing evidence, the undersigned finds that the parents have sustained their burden of showing that K.D. requires intense speech/language and occupational therapy services to meet her unique educational needs and to receive a free appropriate public education. Because the district's May 23<sup>rd</sup> IEP did not provide sufficient services, it did not provide a free appropriate public education for K.D.

VIII. Whether the district failed to consider the student's AT/AC needs when it developed her November 4<sup>th</sup> and May 23<sup>rd</sup> IEPs:

Assistive technology is defined as "any item, piece of equipment, or product system...that is used to increase, maintain, or improve the functional capabilities of a child with a disability." 34 C.F.R. § 300.5. The November 4<sup>th</sup> IEP recommends visual aids to help K.D. prepare for a transition. PD 89. It also recommends sensory objects to help with self-regulation, and visual schedules, prompts and times. PD 93. The IEP also includes "speaking alternatives" such as pictures and manipulatives." *Id.* Despite those statements of need, the IEP states that K.D. "does not require an alternative/augmentative communication device to interact with staff and peers to access any portion of the curriculum, or to meet the social and communication needs." PD 92. The independent functioning goal requires a visual toileting schedule for bathroom times. PD 99.

The May 23<sup>rd</sup> IEP indicates that an AC evaluation is required and is pending. PD 167. It also recommends a timer, visual prompts, a visual schedule, and a weighted vest as assistive technology. *Id.* It states that an assistive technology evaluation was not done. *Id.* Similar to the November 4<sup>th</sup> IEP, the May IEP

includes sensory objects for self-regulation, visual schedules/prompts/timers, speaking alternatives such as pictures and manipulatives, and a picture schedule. PD 169.

Based on the foregoing evidence, the undersigned finds that the November 4<sup>th</sup> and May 23<sup>rd</sup> IEPs do consider the student's need for assistive technology through the provision of various "low-tech" devices as curricular accommodations. The parents have not sustained their burden of proof on this issue. The question of evaluation of her AT/AC needs is addressed in Issue IV.

IX. Whether the district failed to provide an appropriate placement that would meet the student's needs following the May 23, 2014 IEP meeting:

The May 23<sup>rd</sup> IEP proposes placement in an instructional early childhood classroom and the following related services: speech/language therapy 45 minutes/week, physical therapy 15 minutes/week, and occupational therapy 45 minutes/week. SD 114; PD 190. The program minutes for an entire week are 775 minutes, which is the district's half-day preschool program. *Id.* Mr. [REDACTED] testified that the placement change was made to address [REDACTED]'s concerns about the student's behavior. He said the instructional classroom would provide instruction in social/emotional skill development throughout the day and also address K.D.'s other needs. The instructional classroom is highly structured and has a higher teacher: student ratio. The IEP also includes an ESY program. SD 117; PD 193.

The IEP includes curricular accommodations and modifications: picture/visual supports, visual prompts, a timer, visual schedule, and a weighted vest. SD 89. The IEP does not require an AC or AT device to meet the student's communication needs. *Id.* It requires shared paraprofessional support for toileting and for supervision when the student is on steps or uneven surfaces. *Id.*

The team developed IEP goals for language arts, math, social/emotional and independent functioning (i.e., personal care). SD 94-101. Related service goals are also included. The three speech/language goals address expressive and receptive language. SD 102-107. One of the speech/language goals works on producing speech sounds. SD 104. A physical therapy goal is directed toward working on the student's gross motor skills. SD 108. The occupational therapy goals address bilateral coordination and pre-writing skills. SD 110-113.

While the May 23<sup>rd</sup> IEP is substantively different from the November 4<sup>th</sup> IEP, the question is whether it provides the special education and related services necessary to meet K.D.'s unique needs and provide a free appropriate public education. The evidence shows that K.D. needs intense related services to address her expressive and receptive language delays, sensory processing deficit, and gross and fine motor development. She requires direct, intense instruction in these areas to address her needs. See, Issue 7. The related services required in the May 23<sup>rd</sup> IEP are insufficient to meet this student's needs. Additionally, the IEP does not require an AC device to address K.D.'s severe communication needs. The parents have shown by a preponderance of

the evidence that the May 23<sup>rd</sup> IEP does not meet K.D.'s individual needs and thus does not offer her a free appropriate public education.<sup>10</sup>

The parents also argue that the district cannot cure its FAPE violations through the IEP it developed in November 24, 2014. The district had requested the IEP meeting to review the independent AC/SGC evaluation that had been done on October 17<sup>th</sup>. The evidence shows that rather than reviewing the SGD evaluation, the November 24<sup>th</sup> meeting focused on developing a new IEP. The parents did not raise the November 24<sup>th</sup> IEP in their complaint, nor could they have done so since their complaint was filed in August 2014. The November 24<sup>th</sup> IEP is not at issue in this hearing and therefore is not addressed in this decision.

X. Whether the student requires placement at [REDACTED] due to her severe developmental delays and to receive a FAPE:

Parents who disagree with a proposed IEP and unilaterally withdraw their child from the public school and place the child in a private school may be reimbursed for the cost of the private school if they show that the district's proposed placement is not appropriate and that the private placement is appropriate. *Burlington Sch. Comm. v. Mass. Dept. of Educ.*, 471 U.S. 359, 369-370 (1985) (Burlington). In *Florence Cnty. Sch. Dist. Four v. Shannon Carter*, 510 U.S. 7 (1993)(Carter), the Court extended *Burlington* to allow reimbursement for a unilateral placement that is appropriate but that does not meet the state's educational standards, provide services pursuant to an IEP, or appear on a state's list of approved schools. *Id.*

The cost of reimbursement may be reduced or denied if the parents did not inform the IEP team at the most recent IEP meeting that they were rejecting the placement proposed by the district and inform the district of their intent to enroll their child in a private school at public expense. 20 USC §1412. The notice requirement does not apply if the district did not provide a copy of the Notice of Procedural Safeguards to the parents prior to the time of the unilateral placement. *Board of Educ. of the City of Chicago v. Ill. State Bd. of Educ. and Ellett*, 62 IDELR (N.D. Ill. 2013) ("Ellett"). The documentary evidence shows that the parents were not given a copy of the procedural safeguards at the November 4, 2013 IEP meeting. SD 59; PD 88. The district did introduce any evidence showing otherwise. [REDACTED] testified that she did not know anything about special education procedures until K.D.'s attorney at the [REDACTED] directed her to [REDACTED] for legal assistance. Because the parents were not given their procedural safeguards at the November 4<sup>th</sup> IEP meeting, the 10-day notice requirement does not apply.<sup>11</sup>

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<sup>10</sup> The parents' argument regarding the location at which the district proposed to implement the IEP is addressed in Issue VI.

<sup>11</sup> The parents did include a 10-day notice with their dissent to the May 2014 IEP. PD 196.

The evidence has shown that the district failed to transition K.D. from EI services to early childhood services in a timely manner and also failed its child find duty. The evidence has further shown that the district failed to conduct an appropriate initial evaluation and has never evaluated K.D.'s need for augmentative communication, despite being on notice of her severe expressive language deficit since November 4, 2013. The district's procedural failures have denied K.D. a free appropriate public education.

The evidence has shown that neither the November 4, 2013 IEP nor the May 23, 2014 IEP proposed an appropriate placement for K.D. because neither offered the intense related services required to meet K.D.'s unique needs. Dr. [REDACTED] and Dr. [REDACTED] offered credible testimony that K.D. is at a critical time in her development for acquiring new skills, particularly in expressive language. Both experts testified that without input to build new neural connections, the opportunity to appropriately address K.D.'s developmental delays would be gone. Her expressive and receptive language skills will not remediate themselves over time, and the proposed IEPs do not adequately address her needs. The same is true for her delays in gross and fine motor development.

Dr. [REDACTED] testified credibly about the impact of K.D.'s sensory processing deficits on her functioning and the need for intensive services to address this deficit. K.D. is frequently dysregulated during the school day, even in individual therapy sessions, and this impacts her ability to sequence multi-steps in an activity and to control herself. This dysregulation also impacts her behavior and social skills.

Both Dr. [REDACTED] and Dr. [REDACTED] presented credible evidence about the need for intense, direct intervention to address K.D.'s symptoms of speech apraxia. They recommended that K.D. receive specific, direct instruction on how to move her mouth muscles to produce speech sounds. K.D. currently has severely limited verbal production. Both Dr. [REDACTED] and Dr. [REDACTED] presented credible evidence that her ability to produce speech sounds would not improve without direct and intense intervention.

[REDACTED] and [REDACTED] placed K.D. at [REDACTED] School in January 2014 because they believed that it could meet her unique educational needs. The evidence shows that the [REDACTED] program is individualized to meet K.D.'s needs and provides academic instruction and intense related services necessary to provide her an appropriate education. She receives intense individual and group speech language therapy that addresses her expressive and receptive language deficits. The evidence shows that she has made progress in the Eyas program. The July 2014 Preschool Summary reports that her receptive language was age appropriate. PD 207. However, her expressive language was still severely delayed and impacted by her inability to "motor plan oral movement." *Id.* Her social/emotional skills had improved and were age-appropriate. *Id.* Although she still had significant deficits in motor functioning, sensory processing, and motor planning, she had shown some improvement in these areas. PD 208, 209. This

evidence shows the parents' unilateral placement is appropriate and is meeting K.D.'s unique needs.

The district argues that [REDACTED] preschool does not provide academic instruction, develop IEPs, or have special education teachers. It also asserts that [REDACTED] is not on the list of ISBE approved schools. In *Carter*, the Court held that a unilateral placement does not have to meet state standards. *Carter*, 510 U.S. 7. In *Anchorage Sch. Dist. v. D.S. and C.S.*, 688 F. Supp. 2d 883, (D.C. Alaska 2009), the court held that a parent's unilateral homebound placement was appropriate even though it did not have certified special education teachers or develop an IEP for the student.

Although [REDACTED] is not required to meet state standards, the evidence shows that [REDACTED] developed K.D.'s most recent Plan of Care in August 2014. The plan addresses pre-academic skills such as sorting and discriminating objects, letter recognition, pre-reading skills, attending in circle times, showing socially appropriate behavior with peers, and developing appropriate communication skills. PD 211-214. The plan also has a goal for [REDACTED] and [REDACTED] to develop strategies to reinforce academic skills at home. PD 211. The evidence at hearing showed that [REDACTED] uses a DIR/Floortime model of instruction and that K.D. benefits from this approach. [REDACTED] uses ZooPhonics and Handwriting Without Tears to teach early academic skills. The program incorporates sensory integration techniques and ABA into the program as appropriate for each individual student. Art therapy is also part of the instructional day. The evidence clearly shows that [REDACTED] does provide academic instruction and that K.D. has benefitted from that instruction.

The district also asserts that the services provided at [REDACTED] are either medical or clinical services rather than academic services. A medical service is a service "provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services." 34 C.F.R. §300.34(c)(5). [REDACTED] does not provide any medical services to K.D. The occupational and speech/language services that K.D. receives at [REDACTED] Preschool are within the definition of related services in the regulation. 34 C.F.R. §300.34(c)(6), (15).

The Northern District has upheld a unilateral placement for a preschool child that provided services intense services in the child's home. In *T.H.*, the court held that the unilateral in-home ABA/DTT placement was reasonably calculated to enable T.H. to received educational benefits. *T.H. v. Board of Educ. of Palatine Comm. Cons. Sch. Dist. 15*, 30 IDELR 764 (N.D. Ill. 1999). Similarly, Eyas landing provides intense services in a therapeutic preschool setting, where K.D. has the opportunity to interact with other children. The evidence shows that K.D. benefits from the [REDACTED] program and that its intense services meet her unique needs. The undersigned finds that the parents have shown by a preponderance of the evidence that K.D. requires placement at [REDACTED] Preschool to address her unique educational needs and to receive a free appropriate public education. The [REDACTED] preschool placement is reasonably

calculated to enable her to receive educational benefit and make meaningful progress.

In their closing written statement, the parents withdrew their request for reimbursement for the AC/SGD evaluation. They also withdrew their request for reimbursement for individual occupational therapy services provided by Dr. [REDACTED]. They request tuition reimbursement for the tuition they have paid since January 2014 to [REDACTED] Preschool. The undersigned has determined that the district did not provide K.D. a free appropriate public education and that the [REDACTED] Preschool does provide her a free appropriate public education. The district shall place K.D. at [REDACTED] Preschool for the remainder of school year 2014-15, including ESY for summer 2015.

The parents request prospective placement at [REDACTED] Preschool for school year 2015-16 as compensatory education for the district's failure to provide an appropriate education. They also assert that [REDACTED] is the student's least restrictive environment and would allow K.D. to remain in a consistent educational setting until she transitions to kindergarten. Compensatory education is a proper remedy for a district's past FAPE denial. *Reid V. Dist. of Columbia*, 401 F.3d 516, 43 IDELR 32 (D.D.C. 2005). The calculation of compensatory education may be made on a quantitative or qualitative basis. The parents have provided no basis for a qualitative standard, for the undersigned finds that compensatory education is due for the time that the district denied the student a FAPE: from August 1, 2013 (the day after her third birthday) through January 4, 2014 (the day before K.D. began attending [REDACTED] Preschool). As compensatory education, the district shall pay for the student to attend [REDACTED] Preschool for five months, to begin in Fall semester of the 2015-16 school year.

Finally, the parents ask the hearing officer to order the district to allow K.D. to enroll in kindergarten in school year 2016-17, rather than in first grade. The undersigned denies this request for two reasons. First, although there was expert testimony on this recommendation, the undersigned has no authority to order the district to allow the student to enroll in kindergarten in 2016-17 rather than in first grade. Also, the undersigned declines the request to predict what K.D.'s educational needs would be in the future.

#### ORDER

IT IS ORDERED THAT:

1. The district shall reimburse [REDACTED] and [REDACTED] for the tuition they have paid to [REDACTED] Preschool, which is \$18,100. They shall also reimburse [REDACTED] and [REDACTED] for tuition billed and paid for December 2014, upon receipt of a statement from Eyas verifying the amount paid for December 2014. The district shall provide this reimbursement within 45 calendar days of the date of this Order.
2. The district shall reimburse [REDACTED] and [REDACTED] \$1575.00 for one-to-one

speech/language therapy that they paid. The district shall also pay \$862.50 for services billed and not yet paid for speech/language therapy. The district shall provide this reimbursement and payment within 45 calendar days of the date of this Order.

3. The district shall convene an IEP meeting for K.D. within 20 school days of receipt of this Final Decision and Order and to revise the student's IEP in accordance with the findings of this Decision. Specifically, the IEP team shall:
  - Place the student at [REDACTED] Preschool for the remainder of the current school year (2014-15), including ESY for summer 2015;
  - Include the related services that K.D. is currently receiving at [REDACTED] in the amount of service minutes that she is currently receiving; and,
  - Provide the Dynavox T10 device for K.D.

Within 45 calendar days of receipt of this Order, the City of Chicago Public Schools District 299 shall submit proof of compliance to:

Illinois State Board of Education  
Program Compliance Division  
100 North First Street  
Springfield, Illinois 62777-0001

#### **REQUEST FOR CLARIFICATION**

Either party may request clarification of this decision by submitting a written request for such clarification to the undersigned-hearing officer within five (5) days of receipt of this decision. The request for clarification shall specify the portions of the decision for which clarification is sought, and a copy of the request shall be mailed to the other party(ies) and the Illinois State Board of Education. After a decision is issued, the hearing officer may not make substantive changes to the decision. The right to request such clarification does not permit a party to request reconsideration of the decision itself, and the hearing officer is not authorized to entertain a request for reconsideration.

#### **RIGHT TO APPEAL**

This decision is binding on the parties unless a civil action is timely commenced. Any party to this hearing aggrieved by this final decision has the right to commence a civil action with respect to the issues presented in the hearing. Pursuant to 105 ILCS 5/14-8.02a(i), that civil action shall be brought in any court of competent jurisdiction within 120 days after a copy of this decision is mailed to the parties.

ISSUED: January 2, 2015

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Mary Schwartz  
Impartial Hearing Officer

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**APPENDIX A**

[Student] v. [School District]

Case No:

Child	
Attending School	
Child's Parent(s) (specific relationship)/Petitioner	

**CERTIFICATION OF THE RECORD –  
HEARING OFFICER RESPONSIBILITIES**

**A. RESPONSIBILITY.**

1. Hearing Officer. The Hearing Officer has the sole responsibility for certifying the record for all cases to which the Hearing Officer is assigned.

2. Timing. After issuance of an Order of Withdrawal, Order of Dismissal or Decision, Hearing Officers shall certify and return the organized record to the ISBE. Hearing Officers shall provide the ISBE a record certification, along with the complete record within thirty (30) calendar days of the issuance of the Order of Withdrawal/Dismissal or Decision, as the case may be.

3. Form. The Hearing Officer shall certify the record using the attached Form “Certification of the Record.”

**B. CONTENTS OF THE RECORD.**

1. Content of Certification. Hearing Officers shall include in the record all exhibits submitted by any party that were admitted into evidence, all pleadings, motions, briefs, or other documents filed with the Hearing Officer, all orders, the Decision and any correspondence between the Hearing Officer and the parties/counsel as provided below at B-2.

2. Correspondence. The Hearing Officer will not include any letters, emails or facsimiles as part of the record except for letters, emails and facsimiles requested for inclusion by a party and included in the party’s five-day disclosures. The Hearing Officer has the discretion to include any other letters, emails or facsimiles into the record prior to the end of the hearing. The Hearing Officer should include in the record any letters, emails and facsimiles that document the basis for any rulings, relate to compliance with any IDEA or Illinois legal requirements, or might be relevant to any possible basis for appeal.

3. Evidence Excluded From the Record. Any exhibits, or portions of the verbatim record, that the Hearing Officer during the course of the hearing allowed as a separate record for the purposes of appeal, shall be so marked or identified, noted in the certification, and accompany the record. Any other proposed exhibits or documents not admitted into the record shall be destroyed or returned to the party who provided the proposed exhibit or document.

